STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS, LOCAL 760,	)	
	)	
Complainant,	)	CASE 21469-U-08-5470
	)	
vs.	)	DECISION 9992-A - PECB
	)	
CITY OF MABTON,	)	
	)	
Respondent.	)	DECISION OF COMMISSION
	)	

Reid, Pedersen, McCarthy & Bellew, L.L.P., by *David Ballew*, Attorney at Law, for the union.

The Wesley Group, by *Kevin Wesley*, for the employer.

This case comes before the Commission on a timely appeal filed by Teamsters, Local 760 (union) seeking review and reversal of an order of dismissal issued by Examiner Carlos Carrion Crespo.[1] The City of Mabton supports the Examiner's conclusion.

ISSUE PRESENTED

1. Was dismissal of the union's complaint appropriate in light of the fact that the union served the employer with its original complaint, but failed to serve the employer's representative?

2. Was dismissal of the union's complaint appropriate in light of the fact that the union failed to prove that it served the employer with its amended complaint?

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[1] *City of Mabton*, Decision 9992 (PECB, 2008).

For the reason set forth below, we affirm the Examiner's decision to dismiss the union's complaint. Although the union was not required under the facts of this case to serve a copy of its original or amended complaints upon Kevin Wesley, the employer's past representative, the union failed to perfect service of its amended complaint on the employer.

FACTUAL SITUATION

On January 11, 2008,[2] Wayne Johnson, the union's business representative, filed a complaint on behalf of Francisco Tijerina alleging that the employer violated Chapter 41.56 RCW when it terminated Tijerina based upon his union activity. The complaint listed Mayor Velva Herrera as the employer's contact person, and also listed Wesley as the attorney or representative of the employer. The union did not provide a record of service with its complaint.[3] The agency docketed this case listing the union as the complainant.

On January 23, Unfair Labor Practice Manager David I. Gedrose issued a deficiency notice finding the complaint defective under WAC 391-45-050, which regulates the content of a complaint. The Unfair Labor Practice Manager addressed the deficiency notice to Johnson, as well as Wesley. It is important to stress that Wesley had not yet filed a notice of appearance with the agency.[4]

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[2] Unless otherwise noted, all events took place in 2008.

[3] Although WAC 391-08-120(4) does not require a party to file a record of service with documents filed with this Commission, it does require parties to create a signed document stating how service was completed. However, the recommended practice for parties filing documents with this agency is to file records of service at the same time.

[4] Commission staff also sent the deficiency notice to Herrera and John Parks, who, according to the docket records, is associated with the union's office.

On January 25, the union filed an amended complaint which complied with the requirements of WAC 391-45-050. The union once again did not provide a record of service with this complaint.[5] The Unfair Labor Practice Manager issued a preliminary ruling on January 29, sending this matter to hearing. The preliminary ruling was once again addressed and mailed to Johnson and Wesley.

Following the issuance of the preliminary ruling, Wesley, claiming to be the employer's representative of record, sent a letter to the Unfair Labor Practice Manager claiming that the employer could not provide an answer as required by WAC 391-45-190 and -210 because the union failed to serve both him and the employer with a copy of the amended complaint. In addition, Wesley's letter asked that the amended complaint be dismissed.

On February 15, the Examiner issued a show cause directive requiring the union to provide the records of service for its documents. On February 22, the union filed a copy of the United States Postal Service certified mailing receipts. Examination of those records indicate that this agency, as well as Herrera, were sent copies of a document (presumably the complaint) on January 8. The receipt indicated that Herrera received the filing on January 10, and this agency received the filing on January 11. The union provided no other evidence supporting its record of service.

The Examiner dismissed the union's complaint stating that while "the union showed that it had served a copy of the [original] complaint on the mayor of the city of Mabton, the fact remains that the union did not serve the counsel of record with a copy of the amended complaint." The union then filed this appeal.

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[5] *See* footnote 2.

ANALYSIS

ISSUE 1 - Service of Original Complaint

Applicable Legal Principles

This dispute concerns application and interpretation of the Commission's rules of practice and procedure, Chapter 391-08 WAC. Specifically, the union claims that the Examiner misapplied WAC 391-08-120(3) when he dismissed the union's complaint for failure to serve Wesley with a copy of the complaint. We agree.

WAC 391-08-120(3) outlines the requirements of a party when filing a document with this agency, and states, in part:

> A party which filed any papers with the agency shall serve a copy of the papers upon all counsel and representatives of record and upon unrepresented parties designated by them or by law.

While we agree with the employer that this rule requires services upon all counsel and representatives of record, we disagree that Wesley was, in fact, the employer's representative of record in this case. Throughout these proceedings, Wesley never filed a notice of appearance under WAC 391-08-010 affirmatively stating that he was representing the employer in this matter. Thus, while Wesley may have historically represented the employer in matters before this agency, that historical relationship does not translate into a permanent standing appearance before this agency for future matters.

The employer argues that Wesley was not required to file a notice of appearance because the union recognized Wesley as the employer's representative on its complaint. If we were to accept the employer's argument creating a standard that requires service upon

historical representative(s), in addition to the actual respondent(s), an unnecessary burden would be placed upon complainants.[6] Simply put, while a complainant may list a historical representative upon a complaint, that representative is not the representative of record until he or she files a notice of appearance.[7]

Turning to the record before us, we note the union used certified mail, which is an acceptable method of obtaining proof of service under WAC 391-08-120(4)(c)(i). Thus, based upon the record before us, we find the Examiner erred in finding that the union failed to perfect service of its complaint when it failed to serve Wesley with a copy of its original complaint.

ISSUE 2 - Service of the Amended Complaint

The same legal principles used in our analysis of the first issue apply here. Following the issuance of the deficiency notice, the union filed its amended complaint. The Examiner issued a show cause directive requesting the union to provide proof of service of its complaint, though he did not specify which complaint. While the union provided proof of mailing for its original complaint, it failed to provide any demonstrative evidence that it served its amended complaint upon the employer. As the Examiner aptly points out, the Commission's rules are in place to encourage effective

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[6] If such a requirement was in place, a complainant filing against an employer who has used different representatives for different matters would have to serve all of those representatives in order to perfect service. What would happen if the complainant did not know of a particular historical representative?

[7] As such, the Commission's staff should not add a respondents' attorney or representative listed on a complaint form to the docket record until a notice of appearance is filed. However, attorney or representative filing the complaint on behalf of a party is presumed to be appearing on the filing party's behalf.

communications between all parties and to nurture the orderly resolution of disputes, and by enforcing timely and effective service, these rules ensure due process is afforded to all parties. *City of Mabton*, Decision 9992, *citing State - Patrol*, Decision 8709 (PSRA, 2004). Full compliance with the service rules avoids the need for hearing and decisions on "substantial" compliance claims. *City of Kalama*, Decision 6276 (PECB, 1998). The union's complaint must be dismissed for failure to comply with the service rules.[8]

ORDER

The Order of Dismissal issued by Examiner Carlos Carrion Crespo is AFFIRMED and adopted as the Order of Dismissal of the Commission.

Issued at Olympia, Washington, the 7th day of May, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

PAMELA G. BRADBURN, Commissioner

DOUGLAS G. MOONEY, Commissioner

[8] Based upon the limited record before us, it appears that the six-month statute of limitations has yet to expire for this matter, so nothing would preclude the union from properly refilling and serving it complaint.