

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TACOMA SCHOOL DISTRICT,	)	
	)	
Employer	)	
-----	)	
LOIS MEHLHAFF,	)	CASE 11775-U-95-2770
	)	
Complainant,	)	DECISION 5465-B - EDUC
	)	
vs.	)	
	)	
TACOMA EDUCATION ASSOCIATION,	)	ORDER DENYING MOTION
	)	TO DISMISS
Respondent.	)	
	)	
	)	

---

On May 17, 1995, Lois Mehlhaff filed two unfair labor practice complaints, naming the Tacoma Education Association (TEA) and the Tacoma School District (employer) as respondents. The complaint against the TEA was docketed as Case 11775-U-95-2770; the complaint against the employer was docketed as Case 11776-U-95-2771.<sup>1</sup> Preliminary rulings were issued in both cases, under WAC 391-45-110,<sup>2</sup> and partial dismissals were issued in both cases to narrow the litigation to issues within the Commission's jurisdiction.<sup>3</sup>

---

<sup>1</sup> The charges against the Tacoma School District were filed on a separate form, and had a different statement of facts, from the charges against the TEA.

<sup>2</sup> At that stage of the proceedings, all of the facts alleged in the complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

<sup>3</sup> Tacoma School District, Decision 5465 (EDUC, March 12, 1996) was the partial dismissal in this case. Tacoma School District, Decision 5465-A (EDUC, April 19, 1996) denied a motion to make more definite and certain.

J. Martin Smith of the Commission staff was designated as Examiner, to conduct further proceedings in the consolidated matters.

The TEA filed a motion to dismiss on May 6, 1996, contending the complainant neglected to serve a copy of the complaint and its pertinent attachments on the TEA, as required by applicable statutes and rules. When invited to do so, the complainant filed a written response to the motion. For the reasons set forth below, the motion is DENIED.

#### Requirement for Service Upon Parties

This dispute arises under the Educational Employment Relations Act, Chapter 41.59 RCW. The Commission is a state administrative agency vested with responsibility for the administration of Chapter 41.59 RCW, including the determination of unfair labor practice claims. The conduct of adjudicative proceedings before Washington administrative agencies is regulated by the Administrative Procedure Act, Chapter 34.05 RCW, and by the Model Rules of Procedure promulgated by the Chief Administrative Law Judge in Chapter 10-08 WAC. The Commission itself has adopted general Rules of Practice and Procedure in Chapter 391-08 WAC, and has adopted specific rules for processing unfair labor practice cases in Chapter 391-45 WAC.

At the time these cases were filed, WAC 10-08-110 and 391-08-120 were each general rules which required service of "**all notices, pleadings and other papers**" which were filed with the agency [emphasis by **bold** supplied].<sup>4</sup> Those rules each detailed the requirements for service, as follows:

---

<sup>4</sup> WAC 391-08-120 has subsequently been amended by the Commission to even more clearly require service of papers on opposing parties. The version in effect at the time of filing is used in this decision, however.

(2) Service shall be made personally or ... by first class, registered, or certified mail; by telegraph; by electronic telefacsimile transmission and same-day mailing of copies; or by commercial parcel delivery company.

(3) Service by mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed. ...

As to unfair labor practice complaints, WAC 391-45-030 provides, specifically:

WAC 391-45-030 FORM--NUMBER OF COPIES--FILING--SERVICE. Charges shall be in writing, in the form of a complaint of unfair labor practices. The original and three copies shall be filed with the agency at its Olympia office. **The party filing the complaint shall serve a copy on each party named as a respondent.**

[Emphasis by **bold** supplied.]

The reverse side of the complaint form promulgated by the Commission (and used by Mehlhaff in these cases) states, pointedly:

D. SERVICE: The party who submits a case to PERC **must give or send a copy of the completed form, together with all attachments, to the other party or parties to the dispute.**

[Emphasis by **bold** supplied.]

The instructions printed on the reverse side of the complaint form used for this complaint also repeat the text of WAC 391-08-120.

The applicable statutes and rules do not require the filing of an affidavit of service in every case, but it is worthwhile to refer to the standardized requirements for proof of service in a case where the sufficiency of service is contested. WAC 10-08-110 and WAC 391-08-120 provide as follows:

(5) Where proof of service is required by statute or rule, filing the papers with the presiding officer, together with one of the following shall constitute proof of service:

(a) An acknowledgement of service.

(b) A certificate that the person signing the certificate **did on the date of the certificate serve the papers upon all parties** of record in the proceeding by delivering a copy thereof in person to (names).

(c) A certificate that the person signing the certificate **did on the date of the certificate serve the papers upon all parties** of record in the proceeding by:

(i) Mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent; or

(ii) Telegraphing a copy thereof, properly addressed with charges prepaid, to each party to the proceeding or to his or her attorney or authorized agent; or

(iii) Transmitting a copy thereof by electronic telefacsimile device, and on the same day mailing a copy, to each party to the proceeding or his or her attorney or authorized agent; or

(iv) Depositing a copy thereof, properly addressed with charges prepaid, with a commercial parcel delivery company.

[Emphasis by **bold** supplied.]

No affidavits of service were filed in this case, and there is no showing that such an affidavit is necessary here.<sup>5</sup>

The TEA's motion is based on a claim that its attorney was provided with incorrect pleadings after he entered his appearance in this matter. The motion must be ruled upon, however, based on whether there was "service" upon the TEA soon after the case was filed in

---

<sup>5</sup> In Spokane School District, Decision 5151-A (PECB, 1995), the complainant failed to serve voluminous attachments (numbering over 250 pages) which comprised the "clear and concise statement of the facts" required by WAC 391-45-050(3). This was revealed after the Commission asked the complainant to verify what was served.

this office on May 17, 1995. Until he submitted his Notice of Appearance, on January 26, 1996, the attorney was not a "party" entitled to service under WAC 391-45-030.<sup>6</sup> An affidavit submitted by the TEA in support of its motion for dismissal indicates that the TEA's office and all of its files related to this action were destroyed by a fire on December 23, 1995.

The affidavits and copies of documents submitted by the complainant are, in fact, consistent with the facts alleged by the TEA:

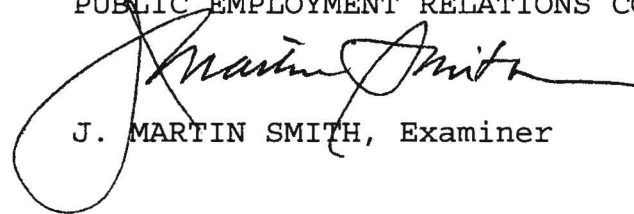
\* The Commission's datestamp in the upper right-hand corner of the document indicates the complaint was filed on May 17, 1995.

\* Another datestamp which appears on the upper left side of the same document indicates receipt on "May 18". Although that marking is not expressly identifiable as the TEA's datestamp, it is markedly different from the Tacoma School District datestamp which appears on the complaint which the TEA's attorney received.

The Examiner concludes that proper filing and service of the complaint was accomplished in Case 11775-U-95-2770.

Dated at Olympia, Washington this 10th day of June, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



J. MARTIN SMITH, Examiner

---

<sup>6</sup> The attorney did not file a pleading as a representative of the TEA until April 2, 1996.