

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TACOMA SCHOOL DISTRICT,)	
)	
Employer.)	
-----)	
ALEATHA HARRIS,)	
)	
Complainant,)	CASE 12017-U-95-2821
)	
vs.)	DECISION 5337-B - PECB
)	
INTERNATIONAL UNION OF OPERATING)	DECISION OF COMMISSION
ENGINEERS, LOCAL 286,)	
)	
Respondent.)	
)	
_____)	

This case comes before the Commission on a petition for review filed by Aleatha Harris, seeking to overturn a dismissal order issued by Executive Director Marvin L. Schurke.¹

BACKGROUND

Aleatha Harris filed a complaint charging unfair labor practices with the Commission on September 6, 1995. Harris alleged that her exclusive bargaining representative, International Union of Operating Engineers, Local 286 (union) interfered with her rights as an employee and committed "other unfair labor practices". Her employer, the Tacoma School District, was not named as a respondent in the complaint.²

¹ Tacoma School District, Decision 5337-A (PECB, 1995).

² On September 14, 1995, the employer advised the Commission and Harris that it had not received a copy of the complaint, and requested a copy.

The routine processing of an unfair labor practice complaint under Chapter 391-45 WAC includes a "preliminary ruling" by the Executive Director under WAC 391-45-110. 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.

In this case, Harris claimed that a union business representative did not fully and/or fairly represent her in a gender and racial discrimination complaint filed with another administrative agency. The facts alleged in the complaint were found to be insufficient to support an unfair labor practice violation under the limited scope of jurisdiction which the Commission asserts over "duty of fair representation" cases.³ The complainant was given a period of time in which to file and serve an amended complaint. Supplemental materials filed by the complainant were also found insufficient to state a cause of action, and the Executive Director dismissed the complaint on November 8, 1995.⁴

Harris filed a petition for review with the Commission on November 15, 1995, but her documents do not indicate that copies had been provided to the other parties. In a letter issued on November 16, 1995, the Executive Director acknowledged the petition for review, but noted that it did not indicate, on its face, that a copy was served on the employer and union in accordance with WAC 10-08-110 and WAC 391-08-120. He allowed the employer and union 14 days to file briefs in opposition to the petition for review.

³ See, Mukilteo School District (Public School Employees of Washington), Decision 1381 (PECB, 1982)

⁴ An order of dismissal issued on October 31, 1995, was corrected and reissued on November 8, 1995.

On November 30, 1995, the employer moved for dismissal of the case based on the complainant's lack of compliance with the service rules. Stating it did not receive the documents supporting Harris's petition for review, it contends it is unable to effectively respond to her claims. In addition, the employer states that it did not receive a copy of the original complaint from Harris, and never received a copy of her amended complaint. The union did not respond to the petition for review or the employer's motion for dismissal. Harris has neither responded to the employer's motion for dismissal nor provided proof of service of her complaint, amendment and petition for review on the union.

DISCUSSION

The Legal Standard

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. This particular dispute arises under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. The Commission has adopted specific rules for processing unfair labor practice cases in Chapter 391-45 WAC.

WAC 391-45-030 requires complainants alleging unfair labor practices to serve the complaint on other parties:

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.]

WAC 391-08-120 provides for the filing and service of papers with the Commission in the following manner:

WAC 391-08-120 SERVICE OF PROCESS--FILING AND SERVICE OF PAPERS.

(1) All notices, pleadings, and other papers filed with the agency or the presiding officer shall be served upon all counsel and representatives of record and upon parties not represented by counsel or upon their agents designated by them or by law.

(2) Service shall be made personally or, unless otherwise provided by law, 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. Service by telegraph shall be regarded as completed when deposited with a telegraph company properly addressed and with charges prepaid. Service by electronic telefacsimile transmission shall be regarded as completed upon production by the telefacsimile device of confirmation of transmission. Service by commercial parcel delivery shall be regarded as completed upon delivery to the parcel delivery company with charges prepaid.

(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.]

WAC 391-08-120 is a copy, in all relevant parts, of the model rule adopted by the Chief Administrative Law Judge as WAC 10-08-110.

Inadequate Service

In Mason County, Decision 3108-A (PECB, 1989), the Commission ruled that service of a petition for review on opposing parties is a "jurisdictional requirement", and as such is equivalent to the service of a notice of appeal from the superior court to the court of appeals. When directed by a court to reconsider that case for whether a waiver of the procedural defect should be granted under WAC 391-08-003, the Commission declined to waive the rule. Mason County, Decision 3108-B (PECB, 1991). The rule requiring service on other parties exists for important legal reasons, and unfair labor practice complaints have been routinely dismissed upon a record showing inadequate service. See, King County Fire District, Decision 4116-A (PECB, 1993); Morton General Hospital, Decision 3836 (PECB, 1991); and City of Pasco, Decision 2450 (PECB, 1986).

The Commission's complaint form contains instructions for filing and service of unfair labor practice cases, including:

- 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.]

Harris submitted her complaint on a complaint form which included that instruction.

Our rules do not require that unfair labor practice complainants be represented by legal counsel, but a pro se claimant may be treading on unfamiliar ground in presenting a case on his or her own. While leniency towards a pro se litigant is sometimes appropriate, we must also be mindful of statutory requirements and the rights of other parties. See, Port of Seattle, Decisions 4394-B and 4395-B (PECB, 1992), and North Thurston School District, Decision 4938-A (PECB, 1995). Parties who choose to appear pro se are not thereby excused from compliance with fundamental due process requirements found in the rules duly promulgated by the Commission and published in the Washington Administrative Code (WAC). King County, Decision 2704-A (PECB, 1987).

The employer's letter of September 14, 1995, which noted that it had not received a copy of the complaint and asked the Commission to send a copy, also indicated that a copy was sent to Harris. Therefore, Harris was on notice as of September 14, 1995, that the employer had not received a copy of a document. The Executive Director's preliminary ruling letter also called upon Harris to "file and serve" an amended complaint. When the attention of a pro se litigant has been called to procedural requirements that are then disregarded, the Commission has found no greater consideration can be given to such a litigant than to a party represented by experienced counsel.⁵

It is important to document proof of service contemporaneous to the service, and as to all documents served. In this case, the best that can be inferred from the documents on file is that the employer received Harris's letter in which she petitioned for

⁵ See, Battle Ground School District, Decision 2997-B (1989), and North Thurston School District, supra.

review, but did not receive the supporting material. We recently dismissed a petition for review where the petition and its attached documents filed with the Commission did not indicate, on their face, that copies were provided to either the union or the employer, and no affidavits of service were included with the complaint. In Spokane School District, Decision 5151-A and 5152-A (PECB, 1995), the complainant later supplied affidavits of persons regarding service that was alleged to have taken place a year earlier. The affidavits referred only to a letter, however, and there was no assertion that copies of all of the materials filed with the Commission were provided to the employer and the union, as required. We found that, even if we credited the contention that employee supplied his employer and union a copy of the letter, we would still lack substantiation that a large stack of enclosures was provided to them as well, as would have been necessary to effect proper service. In this case, there is no contemporaneous documentation of service of either the letter or the supporting material, which would provide us a basis to infer that Harris attempted to comply with the service requirements. The record is insufficient to infer that the union and employer had the documents in a timely manner.

The fact the union and employer may have subsequently become aware of the filing does not satisfy the procedural requirements. The requirement for service of process is well defined. Lacking sufficient evidence that the complainant fulfilled her obligation to serve a copy of the material in support of her petition for review, we are unwilling to conclude that service was properly effected. As in Mason County, where the Commission found that waiver of the service requirements of WAC 391-45-350 would not effectuate the purposes of that rule, we find under the circumstances of this case that a waiver of WAC 391-95-270 would neither further the statutory policies of "communication" and "orderly dispute resolution", nor promote peace in labor relations.

NOW, THEREFORE, it is

ORDERED

1. The petition for review filed in this matter is DISMISSED.
2. The Executive Director's order dismissing the complaint charging unfair labor practices filed in this matter will stand as issued.

Issued at Olympia, Washington, this 31st day of January, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANET L. GAUNT, Chairperson



SAM KINVILLE, Commissioner



JOSEPH W. DUFFY, Commissioner