

Kitsap County (WSCCCE, Local 1308), Decision 5773-A (PECB, 1997).

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF)	
COUNTY AND CITY EMPLOYEES,)	
AFSCME, LOCAL 1308,)	CASE 12568-U-96-2988
)	
Complainant,)	DECISION 5773-A - PECB
)	
vs.)	
)	
KITSAP COUNTY,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
)	

Julia C. Mallowney, Legal Counsel, appeared on behalf of the union.

Patricia A. Richardson, Deputy Prosecuting Attorney, appeared on behalf of the employer.

The Washington State Council of County and City Employees (WSCCCE) filed a complaint charging unfair labor practices with the Public Employment Relations Commission on June 26, 1997, alleging that Kitsap County failed to bargain in good faith concerning reorganization in the offices of two elected officials which resulted in skimming of bargaining unit work, a layoff of one bargaining unit employee, and a reduction of work hours for another bargaining unit employee. In filing the complaint, the union furnished only one copy of 15 exhibits it attached to the complaint.

On September 12, 1996, the Executive Director directed the attention of the union to the requirement of WAC 391-45-030 for filing of an original and one copy of a complaint and all attachments. The union was given a period of time to correct the defect, and it subsequently filed an additional copy of the documents.

On November 13, 1996, the Executive Director issued a deficiency notice under WAC 391-45-110,¹ indicating that allegations with respect to the events described in the county treasurer's office could be the basis for finding a violation of the statute, but that allegations relating to the county assessor's office failed to state a cause of action. The union was given 14 days to file and serve an amended complaint, or face partial dismissal of its complaint.

The union did not respond to the deficiency notice. On November 27, 1996, the Executive Director issued an order partially dismissing the complaint with respect to the allegations arising out of the assessor's office, and assigned Vincent M. Helm to act as Examiner to conduct further proceedings relative to the re-organization in the treasurer's office. The employer was directed to file and serve an answer within 21 days following the date of the order.

¹ At this stage of the proceedings, all of the facts alleged in a complaint are assumed to be true and provable. The question at hand is whether the complaint states a claim for relief available through unfair labor practice proceedings before the Commission.

RESPONDENT'S MOTION TO DISMISS AND COMPLAINANT'S RESPONSE

On January 6, 1997, the employer filed a motion for dismissal of the complaint, asserting that the union failed to serve the employer with a copy of the original complaint and statement of facts. While acknowledging that it received a notice of case filing from the Commission, the employer additionally claimed that it received only an amended complaint and statement of facts which did not contain several exhibits referenced therein. On January 9, 1997, the Examiner gave the union a period of 14 days in which to furnish proof that the complaint was properly served on all parties entitled to service, or to otherwise show cause why the motion to dismiss should not be granted.

On January 22, 1997, the union filed a response accompanied by an affidavit of its legal counsel. The response states that the union's routine practice is to serve complaints by sending copies, via regular U.S. mail, to the employer and its legal representative at the addresses indicated on the complaint. Counsel further stated that the dispute was discussed between employer and union representatives between July 12, 1996 and January 3, 1997, and that the employer's representatives had never contended that a copy of the complaint had not been received. The union pointed out that counsel for the employer objected to the union's introduction of certain evidence in an arbitration proceeding on November 14, 1996, on the basis that it might be relevant to a pending unfair labor practice complaint but was not germane to the arbitration proceeding. The union also urged that the employer's failure to file a timely answer should be regarded as an admission of the facts

alleged in the amended complaint, and as a waiver of a hearing as to those facts.

FILING AND SERVICE REQUIREMENTS

WAC 391-08-120 details the requirements for filing and service of papers with the Commission, including:

391-08-120 Filing and service of papers.

FILING OF PAPERS FOR ADJUDICATIVE PROCEEDINGS

(1) Filing of documents with the agency for adjudicative proceedings under the Administrative Procedure Act (cases under chapters 391-25, 391-35, 391-45, and 391-95 WAC) shall be deemed complete upon actual receipt of the original document and any required copies during office hours at the agency office designated in this rule. Electronic telefacsimile transmissions shall not be accepted as filing for such documents, unless RCW 34.05.010(6) or WAC 10-08-110 is amended to permit filings by electronic telefacsimile transmission.

(a) Petitions or complaints to initiate adjudicative proceedings shall be filed in the Olympia office;

(b) Documents to be filed with the executive director or with the agency generally shall be filed in the Olympia office;

(c) Documents to be filed with a presiding officer can be filed in the Olympia office or in the office of the presiding officer;

(d) Documents to be filed with the commission, including any petitions for review or objections, shall be filed in the Olympia office.

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SERVICE ON OTHER PARTIES

(3) 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. Service shall be by one of the following methods:

(a) Service may be made personally, in the manner provided in RCW 4.28.080;

(b) Service by first class, registered, or certified mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service by telegraph or by commercial parcel delivery company shall be regarded as completed when deposited with a telegraph company or parcel delivery company properly addressed and with charges prepaid.

(d) Service by electronic telefacsimile transmission shall be regarded as completed upon production by the telefacsimile device of confirmation of transmission, together with same day mailing of a copy postage prepaid and properly addressed to the person being served.

Like the model rules adopted by the Chief Administrative Law Judge of the State of Washington in Chapter 10-08 WAC, the Commission's rules do not require "proof of service" except where the sufficiency of service is questioned by another party to the case. WAC 391-08-120 thus continues:

PROOF OF SERVICE

(4) Where the sufficiency of service is contested, the timely filing of the papers under this section, together with one of the following shall constitute proof of service:

(a) An acknowledgement of service by the person who accepted service.

(b) A certificate signed on the date of service, stating that the person signing the certificate personally served the papers upon all parties of record in the proceeding by delivering a copy thereof in person to (names) at dates, times and places specified in the certificate.

(c) A certificate signed on the date of service, stating that the person signing the certificate completed service of 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) Depositing a copy thereof with a telegraph or parcel delivery company named in the certificate, 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.

The requirement for timely service of papers is a fundamental element of due process, and has been enforced in several recent cases. In Spokane School District, Decision 5647-B (EDUC, 1996) and Thurston County, Decision 5633 (PECB, 1996), the Executive Director dismissed unfair labor practice complaints which had not been properly served on the respondents in those cases. In City of Puyallup, Decision 5460-A (PECB, 1996), the Commission dismissed a petition for review which had not been properly served on the opposite party to the proceeding.

DISCUSSION

The union states its usual practice with respect to service of complaints, and it supports its contention through the affidavit of its legal counsel who is based at the union's headquarters in Everett, Washington. The affidavit of the union's legal counsel is predicated, however, upon representations made to her by other legal staff and business representatives of union. This case was filed by a union staff representative who is based at a union office in Lacey, Washington. The union has not furnished any affidavit or evidence that the practices described in the affidavit were actually followed in the case now before the Examiner.

References to the pending unfair labor practice case in discussions between the parties do not suffice to establish that the union properly served the original complaint and all of its accompanying exhibits upon the employer. If anything, the failure of the union to comply with WAC 391-45-030 by filing the original and one copy of all documents with the Commission tends to support an inference that the union may have failed to comply with the "service" requirement of the same rule.

As the moving party in this proceeding, the union bears the burden of establishing that it has, in fact, complied with mandatory procedural requirements. Having failed to do so, its complaint must be dismissed.

NOW THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above entitled matter is hereby DISMISSED for insufficient service.

ISSUED at Olympia, Washington, this 26th day of March, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



VINCENT M. HELM, Examiner

This order may be appealed by filing a petition for review with the Commission under WAC 391-45-350.