

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

VICTOR OCHOA,

Complainant,

vs.

PASCO SCHOOL DISTRICT,

Respondent.

CASE 139098-U-24

DECISION 13969 - PECB

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER

*Victor Ochoa*, the complainant.

*Lorraine L. Wilson* and *F. Chase Bonwell*, Attorneys at Law, Porter Foster Rorick LLP, for Pasco School District.

Victor Ochoa filed an unfair labor practice (ULP) complaint against Pasco School District (district). He subsequently filed an amended complaint, which was found to state a cause of action for employer discrimination. The district moved to dismiss, asserting that Ochoa did not properly serve the district with his amended complaint. Because Ochoa did not properly serve the district, the case is dismissed.

ISSUES

Did Ochoa properly serve the district with his amended complaint?

## BACKGROUND

On June 5, 2024, Ochoa filed a ULP complaint cover sheet<sup>1</sup> using the Commission's e-filing system. In the e-filing system, Ochoa selected a "system service" option, which, according to the online form, indicated that Ochoa "elected to use the system to serve the other parties." Ochoa submitted contact information for Dr. Robert Smart, the district's Human Resources Director. Ochoa did not include a statement of facts, requested remedy, or any other information with the cover sheet.

On June 6, 2024, Ochoa sent a document titled "Timeline of Events" to the Commission's filing email account, filing@perc.wa.gov. This document sets forth the facts and a requested remedy for Ochoa's ULP complaint. In his email, Ochoa wrote, "Can you please upload my document into my file. when I filed yesterday I couldn't get the file to upload. so I called and talked to Robins<sup>2</sup> and he guided me to send it via email." Ochoa did not include the district in his email to filing@perc.wa.gov, nor is there any indication in the record that he separately provided the "Timeline of Events" document to the district in any way.

On June 7, 2024, Ochoa emailed a document titled "Statement of Facts / Timeline of Events Amendment - 1" to filing@perc.wa.gov. In this email, Ochoa said, "Can you please attach this document to my file its an amended document. thank you I made some changes that I missed on the original." Ochoa did not include the district in his email to filing@perc.wa.gov, nor is there any indication in the record that he separately provided this document to the district in any way.

Ochoa's complaints concerned events occurring between January 4, 2023, and January 8, 2024, when his employment was allegedly terminated by the district.

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<sup>1</sup> Practitioners will be familiar with this ubiquitous form, emblazoned with the Commission logo and containing discrete sections about the parties, bargaining units, party representatives, and submission and service.

<sup>2</sup> Ochoa is presumably referring to Robbie Duffield, the Commission's IT Manager.

On June 11, 2024, the Executive Director issued a cause of action statement, finding that the amended complaint stated a claim for employer discrimination.

On July 2, 2024, the district filed an answer through the Commission's filing inbox, filing@perc.wa.gov, and it also emailed the document to Ochoa. In its answer, the district asserted that Ochoa had not served his complaint or amended complaint on the district.

On July 18, 2024, I was assigned as the hearing examiner.

On August 1, 2024, the district filed a motion to dismiss under WAC 391-08-155. The district asserted that it had never been served with the amended complaint and became aware of its existence only when the Executive Director issued the cause of action statement. The district's motion was supported with a declaration by Dr. Smart.

On August 20, 2024, Ochoa submitted copies of his original complaint cover sheet, original "Timeline of Events," and his amended complaint to filing@perc.wa.gov and the district. He noted that the "Timeline of Events" had originally been submitted via email to filing@perc.wa.gov. Ochoa also submitted a certificate of service dated August 20, 2024, stating that he had emailed copies of the "Timeline of Events" and the amended complaint to the district on June 20, 2024.<sup>3</sup>

Later in the day on August 20, 2024, Ochoa submitted a response to the district's motion to dismiss.<sup>4</sup> Ochoa asserted that he had elected to use the Commission's e-filing system with the understanding that it would serve the other parties. Ochoa stated in the response, "I was told by a Public Employment Relations Commission (PERC) staff member that by electing to have the other parties served it would automatically send everyone to the case a copy of the documents being

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<sup>3</sup> It appears that the date of June 20, 2024, was a typo and that Ochoa actually meant August 20, 2024, the day that he emailed these documents to the district and created the certificate of service. This inference is supported by the fact that Ochoa stated that he served Chase Bonwell, an attorney for the district who did not file a notice of appearance until July 2, 2024.

<sup>4</sup> Ochoa did not send this document to filing@perc.wa.gov or otherwise file it by any means authorized by WAC 391-08-120. He emailed it directly to me, as well as to the district.

uploaded to the system, creating a summons and service record. I checked, marked the option to have all parties serviced and summon By the System. . . .”

On August 26, 2024, the district filed a reply reiterating that it had not been served the amended complaint through the e-filing system or otherwise.

## ANALYSIS

### Applicable Legal Standard(s)

WAC 391-45-030 requires the party filing a complaint to serve a copy of the complaint on each party named as a respondent. The rules for service and showing proof of service are contained in WAC 391-08-120 and are also provided in the agency’s standard complaint form.

In addition to more traditional methods, WAC 391-08-120(4) provides that filing and service of documents may be completed by

(a) E-filing. Filing is complete when a legible copy of the document is successfully uploaded to the e-filing system. Service is complete upon receipt of the entire electronic transmission by the recipient. The metadata created by the successful transmission of the email will serve as the record of the time of service.

(b) Email. Filing or service is complete upon receipt of the entire electronic transmission by the recipient. The metadata created by the successful transmission of the email will serve as the record of the time of filing or service.

WAC 391-08-120(3) specifies that documents filed with the agency shall be served upon all parties on the same day. Service shall be upon counsel and the representative of record or upon their designated agents.

WAC 391-08-120(6) provides that on the same day that filing and service is completed under WAC 391-08-120(3), the person who completed service must, if using the e-filing system, “[o]btain the confirmation of filing and service upon the recipient(s) generated by the agency’s e-filing system,” and if serving by email, making a certificate stating that the recipient was served by email.

Where the sufficiency of service is contested, WAC 391-08-120(7) provides that a confirmation of filing obtained from the e-filing system or a certificate of service for email submissions constitutes proof of service.

The Commission's service rules are in place to encourage effective communication between all parties and to nurture the orderly resolution of disputes. Timely and effective service is enforced to ensure due process is afforded to all parties. *City of Mabton*, Decision 9992-A (PECB, 2008). Service of the complaint is a jurisdictional requirement. *Tacoma School District (International Union of Operating Engineers, Local 286)*, Decision 5337-B (PECB, 1996). Full compliance with the service rules avoids the need for hearing and decisions on "substantial" compliance claims. *City of Mabton*, Decision 9992-A (citing *City of Kalama*, Decision 6276 (PECB, 1998)). Where a party raises a claim of defective service, the burden is on the party that filed the document to prove that it served the other party or parties. *King County*, Decision 7221-A (PECB, 2001) (citing *King County*, Decision 6329 (PECB, 1998)). Failure to provide proof of service will result in the dismissal of a complaint. *Washington State University*, Decision 12396 (PSRA, 2015) (citing *State – Fish and Wildlife*, Decision 11748 (PSRA, 2013); *City of Kirkland*, Decision 8822-A (PECB, 2005)).

#### Application of Standard(s)

On August 20, 2024, after the district had filed its motion to dismiss, Ochoa emailed copies of his original and amended complaints to filing@perc.wa.gov as well as to the district. This contemporaneous filing and service satisfied the requirements of WAC 391-08-120.<sup>5</sup> However, Ochoa's August 20, 2024, filing cannot be the basis for a cause of action within the Commission's jurisdiction because "a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint." RCW 41.56.160(1). All of the events described in Ochoa's complaints occurred more than six months before August 20, 2024. Ochoa stated that his termination occurred on January 8, 2024, and so a complaint alleging that his

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<sup>5</sup> Or nearly so, as the certificate of service seemed to have the wrong date.

termination constituted an unfair labor practice would have needed to be filed and served by July 8, 2024. Ochoa did not file a complaint, perfected by service, in that time.

It is possible that Ochoa properly served the district with the June 5, 2024, ULP complaint cover sheet by selecting “system service” using the Commission’s e-filing system (although he did not provide a confirmation of filing and service necessary to prove service under WAC 391-08-120(7)). The lonely cover sheet e-filed by Ochoa on June 5, 2024, was defective as a complaint without also including a statement of facts under WAC 391-45-050. Ochoa sent the “Timeline of Events” to filing@perc.wa.gov the following day but did not serve it on the district.<sup>6</sup>

On June 7, 2024, Ochoa filed his amended complaint by emailing it to filing@perc.wa.gov. There is no indication that he served the district with a copy the same day as required by WAC 391-08-120. Ochoa also did not create a certificate of service on the same day which would rebut the district’s claim of defective service under WAC 391-08-120(7).

Ochoa states that he “used the PERC E-Filing System to file the modified complaint and notify all parties” and “admits that he did not send the original or updated complaints to Dr. Robert Smart because he assumed the system would do so because he chose the System Service option.” He also claims, “[I]t wasn’t until I called PERC to inquire about the filing that I learned I had six months to file, I was Led to believe that by e-filing that when I chose to have the system service it would serve ALL Parties to the case.” He states that he was told by PERC staff that the e-filing system “would automatically send everyone to the case a copy of the documents being uploaded to the system.”

Assuming it is true that in talking to PERC staff Ochoa was led to believe that he could use the e-filing system to serve the other parties, it is nonetheless evident from the record that Ochoa only

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<sup>6</sup> Ochoa created a certificate of service on August 20, 2024, stating (likely inaccurately) that he had served this document on the district on June 20, 2024. This belated certificate of service is insufficient to prove proper service, as WAC 391-08-120(3) requires service on the same day as filing, and WAC 391-08-120(6) requires that the certificate of service be created on the same day as service.

used the e-filing system to file the ULP cover sheet on June 5, 2024. He did not use the e-filing system for his other filings, and so he could not reasonably rely on the e-filing system to serve the other parties with these other documents, which were not “uploaded to the system.”

Ochoa requests leniency as a *pro se* litigant and cites *Snohomish School District*, Decision 750 (PECB, 1979) and *Mabton School District*, Decision 2419 (PECB, 1986). Those cases were both representation cases where defective service was excused on the grounds that “representation proceedings are investigatory, rather than adversary” in nature. *Mabton School District*, Decision 2419. ULP cases, on the other hand, are adversarial, and the Commission requires full compliance with service rules in these cases in order to afford due process to all parties. *City of Mabton*, Decision 9992-A. Insisting on full compliance avoids the need for a hearing on “substantial” compliance issues. *Id.* I cannot excuse Ochoa’s failure to serve the district.<sup>7</sup>

It was the amended complaint filed on June 7, 2024, that was found to state a cause of action for hearing. Because the amended complaint was not properly served on the district, the case must be dismissed.<sup>8</sup>

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<sup>7</sup> Thus, to the extent that Ochoa claims that he reasonably thought, based on conversations with PERC staff, that the e-filing system would still serve the district when documents were filed by email to [filing@perc.wa.gov](mailto:filing@perc.wa.gov), he nonetheless did not serve the district in compliance with WAC 391-08-120. *City of Mabton* precludes an inquiry into whether Ochoa’s reliance on conversations with PERC staff would excuse his failure to properly serve the district.

<sup>8</sup> The district requests that the complaint be dismissed “with prejudice” because the events in Ochoa’s “Timeline of Events” all occurred more than six months ago and would therefore be time barred if he were to refile his complaint. “Dismissal with prejudice” is a term not often used by the Commission, and I will not do anything more than issue a standard “dismissal” here. However, it appears that if Ochoa were to refile his complaint concerning his January 8, 2024, termination, it would be untimely. *Cf. City of Mabton*, Decision 9992-A at 6 n.8. (affirming dismissal for defective service but observing, “[I]t appears that the six-month statute of limitations has yet to expire for this matter, so nothing would preclude the union from properly refiling and serving it[s] complaint.”).

CONCLUSION

Because Ochoa did not prove that he served the district with his amended complaint as required by WAC 391-08-120, the case is dismissed.

FINDINGS OF FACT

1. Pasco School District is a public employer within the meaning of RCW 41.56.030(13).
2. Victor Ochoa is a public employee within the meaning of RCW 41.56.030(12).
3. On June 5, 2024, Ochoa filed an unfair labor practice complaint cover sheet using the Commission's e-filing system. He did not include a statement of facts.
4. On June 6, 2024, Ochoa submitted a "Timeline of Events" to the Commission's filing email inbox, filing@perc.wa.gov. Ochoa did not send a copy to the district at that time.
5. On June 7, 2024, Ochoa emailed a document titled "Statement of Facts / Timeline of Events Amendment - 1" to filing@perc.wa.gov. Ochoa did not send a copy to the district at that time.
6. Ochoa's complaints concerned events occurring between January 4, 2023, and January 8, 2024, when his employment was allegedly terminated by the district.
7. On August 20, 2024, Ochoa submitted copies of his original complaint cover sheet, original "Timeline of Events," and his amended complaint to filing@perc.wa.gov and the district. Ochoa also submitted a certificate of service dated August 20, 2024, stating that he had emailed copies of the "Timeline of Events" and the amended complaint to the district on June 20, 2024.



CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to chapter 41.56 RCW and chapter 391-45 WAC.
2. As described in findings of fact three through seven, Ochoa did not properly serve the district with his amended complaint as required by WAC 391-08-120.

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is dismissed.

ISSUED at Olympia, Washington, this 2nd day of October, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



SEAN M. LEONARD, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.