

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:)	
)	
DANIEL LARSON)	CASE 19355-E-05-3062
)	
Involving certain employees of:)	DECISION 8920 - PSRA
)	
COMMUNITY COLLEGE)	
DISTRICT 17 - SPOKANE)	ORDER OF DISMISSAL
)	
_____)	

On April 1, 2005, Daniel Larson filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission under Chapter 321-25 WAC, seeking to decertify the Washington Federation of State Employees (WFSE) as exclusive bargaining representative of certain employees of Community College District 17 - Spokane.

On April 11, 2005, the WSFE filed a motion with the Commission, seeking dismissal of the petition for lack of proper service. A deficiency notice was issued on April 11, 2005, giving the petitioner until April 25, 2005, to show good cause why the petition should not be dismissed. The petitioner responded by letter filed on April 22, 2005, in which he acknowledged that service had not been provided on the parties.

Discussion

Service of a representation petition upon other parties is specifically required by WAC 391-25-050, which includes: "The party filing the petition shall serve a copy of the petition (excluding

any showing of interest) on the employer and on each employee organization named in the petition has having an interest in the proceedings, as required by WAC 391-08-12-(3) and (4)". Service of documents filed with the Commission is generally required by WAC 391-08-120, as follows:

SERVICE ON OTHER PARTIES

(3) A party which files any papers with the agency shall serve a copy of the papers upon all counsel and representatives of record and upon unrepresented parties or upon their agents designated by them or by law. Service shall be completed no later than the day of filing, by one of the following methods:

(a) Service may be made personally, and shall be regarded as completed when delivered in the manner provided in RCW 4.28.080;

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

(c) Service may be made by commercial parcel delivery company, and shall be regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

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

(e) Service may be made by e-mail attachment, and shall be regarded as completed upon transmission, together with same day mailing of a copy of the papers, postage prepaid and properly addressed, to the person being served.

The petition in this case indicated that the WFSE is the incumbent exclusive bargaining representative of the employees involved, so the employer and WFSE were both clearly entitled to service of any petition seeking to upset the status of the WSFE as exclusive bargaining representative.

Contemporaneous Service Required

The obligations to make a contemporaneous record of service, and to produce a record of service on demand, have been included in WAC 391-08120 since that rule as first adopted in the 1970's. The rule was amended in 1996 and 1998 to give greater visibility to the contemporaneous record requirement, as follows:

PROOF OF SERVICE

(4) On the same day that service of any papers is completed under subsection (3) of this section, the person who completed the service shall:

(a) Obtain an acknowledgment of service from the person who accepted personal service; or

(b) Make a certificate stating that the person signing the certificate personally served the papers by delivering a copy at a date, time and place specified in the certificate to a person named in the certificate; or

(c) Make a certificate stating that the person signing the certificate completed service of the papers by:

(i) Mailing a copy under subsection (3)(b) of this section; or

(ii) Depositing a copy under subsection (3)(c) of this section with a commercial parcel delivery company named in the certificate; or

(iii) Transmitting and mailing a copy under subsection (3)(d) or (e) of this section.

(5) Where the sufficiency of service is contested, an acknowledgment of service obtained under subsection (4)(a) of this section or a certificate of service made under subsection (4)(b) or (c) of this section shall constitute proof of service.

Compliance with that simple requirement is a small imposition on parties to formal adjudicative proceedings under the Administrative Procedure Act, Chapter 34.05 RCW. The Commission's rule avoids the need for hearings and decisions on "substantial compliance" claims.

Because the petitioner has not provided a contemporaneous record of service in this case, the petition must be dismissed.

NOW THEREFORE, it is

ORDERED

The petition for investigation of a question concerning representation filed in the above-entitled matter is hereby, DISMISSED for failure of the petitioner to provide the parties with proper service.

Issued at Olympia, Washington this 25th day of April, 2005

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-25-660.