

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE POLICE OFFICERS' GUILD,)	
)	
Complainant,)	CASE 16907-U-02-4401
)	
vs.)	DECISION 8559 - PECB
)	
CITY OF SEATTLE,)	
)	
Respondent.)	RULINGS ON MOTIONS
)	
)	

Aitchison & Vick, by *Christopher K. Vick*, Attorney at Law, for the union.

Thomas A. Carr, Seattle City Attorney, by *Erin Overbey*, Assistant City Attorney, for the employer.

This case is before the Examiner for rulings on two dismissal motions. A motion to dismiss the complaint as to an individual named as a respondent is GRANTED. A motion to dismiss for lack of proper service is DENIED.

BACKGROUND

On November 12, 2002, the Seattle Police Officers' Guild (union) filed an unfair labor practice complaint against the City of Seattle (employer) and a named employee of the employer.

A preliminary ruling issued under WAC 391-45-110 on September 8, 2003, found a cause of action to exist on allegations summarized as:

Employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), and domination or assistance of a union in violation of RCW 41.56.140(2), by comments of police department management official Dick Schweitzer to a fire department captain concerning avoidance of use of the police harbor unit dive squad for future interdepartmental diving operations, and comments of Schweitzer to union official Steve Amedan concerning submission of receipts for reimbursement of dive gear, further complaints about fire department, documentation of time spent on union business, collusion with fire department to undermine Schweitzer's authority, work rule changes requested by Schweitzer, strict adherence to manual, and trouble with union in future if Amedan continued to work for union, and involuntary transfer of Amedan from day to less-desirable night shift, in reprisal for Amedan's union activities protected by Chapter 41.56 RCW.

The employer filed its answer on September 29, 2003. Examiner Sally B. Carpenter was assigned to conduct further proceedings in the matter, and a notice was issued scheduling a hearing for June 8, 9 and 10, 2004.

ANALYSIS

The Motion to Dismiss an Individual Respondent

On April 2, 2004, the employer filed a motion seeking to dismiss the complaint as to the complaining police sergeant's supervising lieutenant. The lieutenant was named as a respondent in addition to the employer. The union filed a written response to that motion on April 6, 2004.

Applicable Legal Principles -

Chapter 41.56 RCW prescribes the collective bargaining process for local government employers such as the City of Seattle, their

employees, and the unions representing those employees. RCW 41.56.020 provides, "This chapter shall apply to any county or municipal corporation, or any political subdivision of the state of Washington. . . ." Additionally, "'Public employer' means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter, or any subdivision of such public body. . . ." RCW 41.56.030(1).

Application of Legal Principles -

This case arises under a statute that regulates particular relationships. "The intent and purpose of this chapter is to promote the continued improvement of the relationship between public employers and their employees" RCW 41.56.010. By referring to the means by which a public employer acts, the phrase "or other person acting on behalf of" in RCW 41.56.030(1) reinforces the focus on the obligation of the corporate body which is identified as the public employer. A corporate body necessarily acts through individual persons, and the actions of supervisors and managers can create liability for a public employer, but nothing in the statute creates any independent liability for the agent that can be addressed through unfair labor practice proceedings before the Commission. See *Broadway Center for the Performing Arts*, Decision 7488-B (PECB, 2003).

The employer's answer raised an affirmative defense of lack of jurisdiction over the individual named as a respondent, and its motion for dismissal properly asserts that affirmative defense as a matter of law. The union's failure to address that issue in its written response to the motion is interpreted as a concession that individual employer officials are not proper parties in unfair labor practice proceedings.

The motion to dismiss as to the named individual is granted, but the proceedings will go forward on the case against the employer.

Claimed Insufficiency of Service of Process

On April 2, 2004, the employer filed a motion seeking to dismiss the complaint on the basis that it was not served on the mayor of Seattle. The employer cites RCW 4.28.080 as the basis for its assertion that service of an unfair labor practice complaint must be made on the Office of the Mayor. That statute provides:

RCW 4.28.080 SUMMONS, HOW SERVED. Service made in the modes provided in this section shall be taken and held to be personal service. The summons shall be served by delivering a copy thereof, as follows:

. . . .
(2) If against any town or incorporated city in the state, to the mayor, city manager, or, during normal office hours, to the mayor's or city manager's designated agent or the city clerk thereof.
. . . .

The union's written response addresses this issue by enclosing copies of U.S. Postal Service return cards from certified mail sent to three different employer officials.

Applicable Legal Principles -

The Commission's rules require service of unfair labor practice complaints at WAC 391-45-030, and define service in WAC 391-08-120, as follows:

WAC 391-08-120 Filing and service of papers.
FILING OF PAPERS WITH THE AGENCY

. . . .
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.

. . . .

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

. . . .

(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.

(emphasis added). Nothing in the Commission's rules expressly requires service on the mayor of a city.

Application of Legal Principles -

Chapter 4.28 RCW is not applicable to this proceeding. The Code Reviser has captioned that Chapter "Commencement of Actions." It only regulates how courts acquire jurisdiction over parties in a lawsuit filed in the courts. In other court rules, service of process is generally required to be made by one method - and one method only - personal service on the defendant or its identified agent. Nothing in Chapter 4.28 RCW specifies how administrative agencies acquire jurisdiction for adjudicative proceedings.

Proceedings before the Public Employment Relations Commission are controlled by the Administrative Procedure Act (APA), Chapter 34.05 RCW. That chapter specifically provides a flexible approach to commencement of agency proceedings:

RCW 34.05.413 COMMENCEMENT - WHEN REQUIRED. (1) Within the scope of its authority, an agency may commence an adjudicative proceeding at any time with respect to a matter within the agency's jurisdiction.

. . . .
(3) An agency may provide forms for and, by rule, may provide procedures for filing an application for an adjudicative proceeding.

As noted above, the Commission's rules do not require service on the mayor of a city. Nor do the Model Rules adopted by the Chief Administrative Law Judge in Chapter 10-08 WAC help the employer in this case. WAC 10-08-110 fleshes out RCW 34.05.413 for agencies that have not chosen to adopt rules on the matter,¹ by providing methods of service in administrative adjudicative matters, but that rule does not require service on the mayor of a city. Thus, the service requirements in administrative proceedings are much less stringent and are more in accord with business practice compared to legal practice.

The Commission's rule in WAC 391-08-120(3) only requires service on "all *counsel and representatives of record* and upon unrepresented

¹ The APA expressly permits agencies to adopt rules that vary from the Model Rules. RCW 34.05.220(1) includes:

In addition to other rule-making requirements imposed by law:

(a) Each agency may adopt rules governing the formal and informal procedures prescribed or authorized by this chapter If an agency has not adopted procedural rules under this section, the model rules adopted by the chief administrative law judge . . . govern procedures before the agency.

parties or upon their agents" (emphasis added). Service is made on the representatives of the employer who are directly involved in the issues. In this case, the certified mail receipts provided by the union are acceptable as "an acknowledgment of service" under WAC 391-08-120(4)(a) and (5).²

The employer filed a notice of appearance less than a month after the complaint was filed. The preliminary ruling was issued on September 8, 2003, and the employer filed its answer within that month. Neither the employer's notice of appearance nor its answer raised any question regarding service of process on the employer. This issue was raised six months after filing its answer. The Examiner concludes the employer had actual service and notice of the complaint.

FINDINGS OF FACT

1. The City of Seattle is a municipal corporation and is a "public employer" within the meaning of RCW 41.46.030(1).
2. On November 12, 2002, Seattle Police Officers' Guild (union) filed a complaint charging unfair labor practices against the City of Seattle, and against a named individual supervisor, alleging a violation of RCW 41.56.140 by certain actions and directives concerning an employee represented by the union.
3. On or about November 8, 2002, the union mailed a copy of the complaint, by certified mail, to the police department legal advisor, to the police department labor negotiator, and to the chief of police.

² The Examiner does not place any weight or value on the "certificate of service" signed in April of 2004, as it did not conform to the "same day" requirement of the rule. See *King County*, Decision 7221-A (PECB, 2001).

4. The individually named respondent is not a "representative of record" within the meaning of WAC 391-08-120(3).
5. On December 6, 2002, the employer filed a notice of appearance, and on September 29, 2003 filed its answer. Neither document raised an issue of service of process on the employer. The answer raised an issue of service on the named individual supervisor.
6. On April 2, 2004 the employer filed a motion to dismiss the complaint on the grounds that the mayor is the statutory party to be served with legal process.
7. The union responded on April 6, 2004 by filing a declaration of service and providing copies of the postal certified mail return cards showing service on November 12, 2002.
8. The union certificate of service and postal cards show that service was made on "all counsel and representatives of record" with respect to the City of Seattle Police Department.
9. The union's belated filing of its U. S. Postal Service return receipt cards indicates by the date and signatures thereon that service on the "representatives of record" was acknowledged within the meaning of WAC 391-08-120 (4) (a) and (5).
10. The complaint against the employer should not be dismissed.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Title 391 WAC.

2. The individual supervisor named as a respondent in this case is not a public employer within the meaning of RCW 41.56.030(1), and must be dismissed as a party without prejudice to any union claim that he was acting on behalf of the City of Seattle.
3. The persons served with copies of the complaint in this case are "representatives of record" of the City of Seattle within the meaning of WAC 391-08-120(3), so that the service on the employer was adequate under WAC 391-08-120.

ORDER

1. The complaint against the individually named supervisor is dismissed.
2. The employer's motion to dismiss the complaint against the City of Seattle is denied.

Dated at Olympia, Washington, this 18th day of May, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



SALLY B. CARPENTER, Examiner

Paragraph 1 of this order will be the final order of the agency on the matter covered, unless a notice of appeal is filed with the Commission under WAC 391-45-350.