

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

|                                |   |                      |
|--------------------------------|---|----------------------|
| WASHINGTON STATE - LABOR AND   | ) |                      |
| INDUSTRIES,                    | ) |                      |
|                                | ) |                      |
| Employer.                      | ) |                      |
| -----                          | ) |                      |
| DREW IHLI,                     | ) |                      |
|                                | ) |                      |
| Complainant,                   | ) | CASE 19432-U-05-4933 |
|                                | ) |                      |
| vs.                            | ) | DECISION 9015 - PSRA |
|                                | ) |                      |
| WASHINGTON FEDERATION OF STATE | ) |                      |
| EMPLOYEES,                     | ) |                      |
|                                | ) |                      |
| Respondent.                    | ) | ORDER OF DISMISSAL   |
|                                | ) |                      |
| _____                          | ) |                      |

On April 27, 2005, Drew Ihli (Ihli) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington Federation of State Employees (union) as respondent. Ihli is employed by the Washington State Department of Labor and Industries (employer). The complaint was reviewed under WAC 391-45-110,<sup>1</sup> and a deficiency notice issued on May 26, 2005, indicated that it was not possible to conclude that a cause of action existed at that time. Ihli was given a period of 21 days in which to file and serve an amended complaint, or face dismissal of the case.

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<sup>1</sup> At this 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.

No further information has been filed by Ihli. The Unfair Labor Practice Manager dismisses the complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern unspecified unfair labor practices by the union, related to the posting of a flyer on the union bulletin board.

The complaint has several defects. One, the Commission has adopted the following rule concerning the filing of an unfair labor practice complaint:

WAC 391-45-050 CONTENTS OF COMPLAINT. Each complaint charging unfair labor practices shall contain, in separate numbered paragraphs:

. . . . .  
(2) Clear and concise statements of the facts constituting the alleged unfair labor practices, including times, dates, places and participants in occurrences.

(3) A statement of the remedy sought by the complainant.

. . . . .  
(5) Information concerning the parties' relationships, including:

. . . . .  
(c) The parties' contractual relationship, indicating that:

. . . . .  
(ii) A copy of the current (or most recent) collective bargaining agreement is attached;

. . . . .  
(6) Indication of the sections of the Revised Code of Washington (RCW) alleged to have been violated.

The complaint does not conform to the requirements of WAC 391-45-050.

The deficiency notice stated that if Ihli filed an amended complaint, it would be helpful to review PERC Form U-1 (Complaint Charging Unfair Labor Practices), Chapter 41.80 RCW, Chapters 391-08 (Rules of Practice and Procedure) and 391-45 (Unfair Labor Practice Case Rules) WAC, at the Commission web site: [www.perc.wa.gov](http://www.perc.wa.gov).

Two, on May 5, 2005, the union filed a motion to dismiss the complaint due to lack of service. WAC 391-08-120 provides 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.

#### 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.

Under WAC 391-08-120(3), a party filing papers with the Commission shall serve a copy of those papers upon all other parties to the case. The deficiency notice indicated that if the provisions of this rule had been followed, Ihli must promptly provide proof of service under WAC 391-08-120(4) to the Commission. In *King County*,

Decision 7221-A (PECB, 2001), the Commission affirmed dismissal of a case for insufficient service of process.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in the above captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 28<sup>th</sup> day of June, 2005.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Unfair Labor Practice Manager

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.