STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS UNION, LOCAL 174, Complainant,	)	CASE 14452-U-99-3580
vs.	)	DECISION 7221 - PECB
KING COUNTY, Respondent.	)	ORDER OF DISMISSAL

Schwerin Campbell Barnard, by Dmitri Iglitzin, Attorney at Law, appeared on behalf of the complainant.

Kimberly Lew, Labor Relations Analyst, appeared on behalf of the employer.

This case is before the Examiner for a ruling on a motion for dismissal filed by King County (employer), claiming that Teamsters Union, Local 174 (union) has not effected service of its amended complaint and second amended complaint charging unfair labor practices. The parties filed briefs on the service of process issue. The Examiner concludes that the union has failed to provide proof of service, and dismisses the case.

BACKGROUND

On March 15, 1999, the union filed a complaint charging unfair labor practices under Chapter 391-45 WAC, alleging that the employer violated RCW 41.56.140(1) and (4) by ordering employees to refrain from discussing the status of ongoing disciplinary

investigations being processed under Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985), by refusing to allow union representation at a disciplinary meeting, by refusing to provide information concerning the scheduling of disciplinary interviews, and by changing terms of a settlement reached between the parties to resolve a grievance. A deficiency notice was issued on July 2, 1999, stating that the complaint did not state a cause of action in several aspects, including all references to the Loudermill disciplinary process. The union was given a period of time in which to file and serve an amended complaint, or face dismissal of the case.

On July 14, 1999, the union filed an amended complaint, wherein it clarified a number of elements of the original complaint. A second deficiency notice was issued on January 13, 2000, stating that the amended complaint still did not state a cause of action as to allegations concerning the alleged change of position on the settlement of a disciplinary action. Again, the union was given a period of time in which to file and serve an amended complaint, or face dismissal of the case.

On January 18, 2000, the union filed a second amended complaint, withdrawing certain allegations that did not state a cause of action. A preliminary ruling issued on January 25, 2000, found a cause of action to exist on allegations summarized as:

1. Employer interference with employee rights, in violation of RCW 41.56.140(1), by ordering employees to refrain from discussing the status of ongoing investigations, and by refusing to allow union representation at a disciplinary meeting.
2. Employer refusal to bargain, in violation of RCW 41.56.140(4) and (1), by failing or refusing to provide the union with

> requested information concerning the scheduling of disciplinary interviews.

The preliminary ruling letter also directed the employer to file and serve its answer within 21 days thereafter.[1]

A conference call was conducted on March 29, 2000, at which time the employer stated that it had not been served with the amended complaint filed by the union on July 13, 1999, or with the second amended complaint filed by the union on January 18, 2000. The union argued that it had served those documents, but the parties agreed that the service of process issue must be addressed before any further processing of the matter.[2]

DISCUSSION

Service of process lies at the heart of any legal proceeding, and is a matter of basic fairness. In unfair labor practice proceedings under Chapter 391-45 WAC, parties are directed to serve pertinent documents on one another. See WAC 391-08-120(3) and (4); 391-45-030. It would be patently unfair for one party to supply information to the Commission or an Examiner without giving the other party the same materials. This is particularly true when dealing with a charging document such as an unfair labor practice complaint, which the respondent must have if it is to adequately prepare its defense to the allegations of wrongdoing.

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[1] To date, no answer has been filed.

[2] The Examiner agrees with the parties' stipulation to address the service of process issue separately from the merits of the instant complaint. Indeed, if it is determined that service has not been accomplished, the entire matter must be dismissed, regardless of the substantive claims made in the complaint.

The employer's brief correctly notes that administrative hearings are conducted by the Commission under the general direction of the Administrative Procedure Act (APA), Chapter 34.05 RCW, and the Model Rules of Procedure adopted by the Chief Administrative Law Judge of the State of Washington in Chapter 10-08 WAC. Those impose a state-wide standard which includes service of process.

The Public Employment Relations Commission has adopted specific rules to deal with service of process issues. Chapter 391-08 WAC sets forth general procedural rules applicable in all adjudicative proceedings before the Commission. WAC 391-08-120 includes:

> SERVICE ON OTHER PARTIES
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> (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:
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> (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:
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> (a) Obtain an acknowledgment of service from the person who accepted personal service; or
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> (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.**

[Emphasis by **bold** supplied.]

In the specific context of unfair labor practice proceedings, WAC 391-45-030 specifies:

> Each complaint charging unfair labor practices shall be in writing, and shall be filed at the commission's Olympia office, as required by WAC 391-08-120(1). **The party filing the complaint shall serve a copy on each party**

> **named as a respondent, as required by WAC 391-08-120(3).**
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> [Emphasis by **bold** supplied.]

There is no issue here as to the adoption, terms or effectiveness of those Commission rules.

The union argues that it served the employer, and that the case should not be dismissed. The union maintains that service was effected by mailing the documents to Ricardo Cruz, the director of the King County Office of Human Resources Management. While acknowledging that it did not serve the documents on Kimberly Lew, the employer official directly involved in the processing of the case, the union argues that it made a good faith effort to serve the only employer representative that it was aware of at the time,[3] and that service on Cruz should be sufficient for this administrative proceeding. With that in mind, the union also argues that the employer has not presented compelling evidence that service was inadequate. The union maintains that the employer's motion for dismissal is based on a line of Commission decisions where service was never made, rather than where the service may have been made on the wrong representative.

The union properly notes that service can be made by depositing the document in the United States mail, but its claim that it mailed the documents does not suffice. WAC 391-08-120(5) specifies how proof of service can be established, and the employer has activated that rule by contesting the sufficiency of service. The Commission

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[3] Notice is taken of the Commission's docket records for this case, which include a "Record of Appearance" notice issued to the parties on June 16, 1999, wherein both Kimberly Lew and Ricardo Cruz were listed as representatives of the employer.

re-wrote WAC 391-08-120(5) in 1996 and 1998, to make the pre-existing "contemporaneous record" requirement more visible to agency clientele, and it retained that requirement in 2000. The union has not provided proof that it served the two amended complaints it filed in this case.

The Commission has addressed the "failure of service" issue on several occasions. In Snohomish County, Decision 5781 (1996), a union filed a complaint charging unfair labor practices with the Commission but failed to serve a copy of the complaint on the employer. The Commission ruled that the union failed to comply with the service requirements of WAC 391-45-030, stating:

> The Commission has repeatedly emphasized the importance of good communication to healthy labor relations. In Mason County, Decision 3108-B (PECB, 1991), the Commission wrote:
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> > The collective bargaining statutes administered by the Commission embody a legislative policy requiring employers and unions to communicate to one another. RCW 41.56.030(4); RCW 41.56.100; RCW 41.58.040. The same statutes also establish administrative procedures for bringing an orderly resolution to disputes. RCW 41.56.050 through .080; 41.56.160 through .190; 41.58.020. In this case and in countless others, appeals have been dismissed when employers or unions fail to process their disputes in accordance with those statutes.
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> Reiterating that principle recently in City of Puyallup, Decision 5460-A (PECB, 1996), the Commission stated, "Because of this process of communication embodied in the collective bargaining statutes, the Commission interprets the rules to require service contemporaneous to filing.

The Commission went on to state that the filing party must adhere to a strict interpretation of the service rules:

> The service requirements of Chapters 391-08 and 391-45 WAC, as well as the underlying policy of orderly dispute resolution, would be completely undermined if untimely service due to lack of due diligence were to be excused. See: City of Puyallup, supra; Mason County, supra; Clover Park School District, Decision 377-A (PECB, 1978); Spokane School District, Decision 5151-A and 5152-A (PECB, 1995); and Spokane School District, Decision 5647-B (EDUC, 1996).

The union's contention here is that the Commission should adopt some sort of "substantial compliance" standard for service of process issues. That proposal is not persuasive, as it would contradict the long line of precedent by which the Commission has held parties responsible for communicating with one another through proper service of process.

The original complaint charging unfair labor practices in this matter was found insufficient. The amended complaint and second amended complaint were not properly served on the employer, and must be treated as nullities. The case must be dismissed.

FINDINGS OF FACT

1. King County is a political subdivision of the State of Washington and is a "public employer" within the meaning of RCW 41.56.030(1).

2. On March 15, 1999, Teamsters Union, Local 174, filed a complaint charging unfair labor practices against King County,

alleging that the employer violated had RCW 41.56.140(1) and (4) by certain actions and directives concerning certain employees represented by the union.

3. On July 2, 1999, the Executive Director issued a deficiency notice, stating that the complaint did not state a cause of action as to several issues. The union was given a period of time in which to file and serve an amended complaint which stated a cause of action, or face dismissal of the complaint.

4. The union filed an amended complaint with the Commission on July 14, 1999. The complaint was still deficient, as amended, and a second deficiency notice was issued. The union was given another period of time in which to file and serve an amended complaint which stated a cause of action, or face dismissal of the complaint.

5. On January 18, 2000, the union filed a second amended complaint. The Executive Director issued a preliminary ruling on January 25, 2000, under WAC 391-45-110, setting forth specific allegations from the amended complaint and second amended complaint which were to be the subject of further proceedings under Chapter 391-45 WAC. Kenneth J. Latsch was subsequently designated as Examiner in the matter.

6. On March 29, 2000, the employer asserted that it had never received the amended complaint filed by the union on July 13, 1999, or the second amended complaint filed by the union on January 18, 2000.

7. When called upon to provide proof of service under WAC 391-08-120(5), the union failed to produce either an acknowledgment

of service from the employer or a contemporaneous certificate stating who had served the papers or the method(s) of service.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.

2. King County was entitled, under WAC 391-08-120(1) and 391-45-030, to timely service of the amended complaint and second amended complaint in this matter, and it has filed a timely motion for dismissal, questioning the sufficiency of service of those documents under WAC 391-08-120(5).

3. When called upon to provide proof of service under WAC 391-08-120(5), the union failed to provide proof of service conforming to the requirements of that rule.

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED as procedurally defective.

DATED at Olympia, Washington, this 13th day of November, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

KENNETH J. LATSCH, 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.