

State - Information Services (Washington Federation of State Employees), Decision 8903-A (PSRA, 2005)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE -)	
INFORMATION SERVICES,)	
)	
Employer.)	
-----)	
CARLENE COVEY)	
)	
Complainant,)	CASE 19160-U-05-4872
vs.)	
)	DECISION 8903-A - PSRA
WASHINGTON FEDERATION)	
OF STATE EMPLOYEES)	
)	ORDER OF DISMISSAL
Respondent.)	
_____)	

On January 27, 2005, Carlene Covey filed a complaint charging unfair labor practices with the Public Employment Relations Commission, naming the Washington Federation of State Employees (union) as respondent. Covey is employed by the Washington State Department of Information Services (employer). Covey served her January 27, 2005 complaint on the union. On February 22, 2005, the unfair labor practice manager issued a deficiency notice. That notice, in bold print, invites Covey to "[f]ile and serve an amended complaint within 21 days following the date of this letter."

On March 10, 2005, Covey filed an amended complaint. No proof of service was filed with the amended complaint. On April 1, 2005, the unfair labor practice manager issued a partial dismissal of the amended complaint, but found that a cause of action was stated with respect to:

Union interference with the rights of Carlene Covey in violation of RCW 41.80.110(2)(a), by failing to provide adequate notice and allowing all bargaining unit employ-

ees to participate in a contract ratification vote, failing to make a copy of the contract available before the vote, and misleading employees by failing to disclose and explain the consequences of union security provisions of the contract.

On April 11, 2005, the union filed its answer to the complaint "as apparently amended." The union did not respond to statements made in the amended complaint. The union states in its answer, "No copy of any Amended Complaint has ever been served on or received by the WFSE [Washington Federation of State Employees]." The answer consists of a motion for dismissal of the amended complaint. The union also seeks costs and reasonable attorney's fees.

On April 26, 2005, this Examiner sent a show cause directive to Covey and the union, advising that the amended complaint would be dismissed if Covey does not provide proof of proper service of the complaint. Covey was given 14 days to provide such proof. There has been no response of any kind to the show cause directive.

DISCUSSION

Service of an unfair labor practice complaint upon other parties is specifically required by WAC 391-45-030, which includes: "The party filing the complaint shall serve a copy on each party named as a respondent, as required by WAC 391-08-120 (3) and (4)". Service of documents filed with the Commission is 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 complaint in this case indicated that the union was the respondent, thus the union was entitled to service of any amended complaint.

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 391-08-120 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 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. Failure to provide proof of service has consistently been cause for dismissal of a complaint. *Weltzer v. State Department of Corrections*, Decision 8772-A, (PSRA, 2005).

Because the petitioner has apparently not served the amended complaint, or because the petitioner has not provided a contemporaneous record of service, the entire complaint must be dismissed.

NOW THEREFORE, it is

ORDERED

The unfair labor practice manager found no cause of action stated in the first complaint. The amended complaint filed in the

above-entitled matter is hereby DISMISSED for failure to serve the union, or for failure of the petitioner to provide proof of service.

Issued at Olympia, Washington, this 20th day of June, 2005.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script that reads "Sally B. Carpenter".

Sally B. Carpenter, 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.