

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KIRKLAND POLICE OFFICERS GUILD,	)	
	)	
Complainant,	)	CASE 17298-U-03-4468
	)	DECISION 8822-A - PECB
vs.	)	
	)	CASE 17320-U-03-4472
CITY OF KIRKLAND,	)	DECISION 8823-A - PECB
	)	
Respondent.	)	DECISION OF COMMISSION
	)	
	)	

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Cline & Associates, by *George Merker*, Attorney at Law,  
for the guild.

*William R. Evans*, Assistant City Attorney, for the  
employer.

This case comes before the Commission on an appeal filed by the Kirkland Police Officers Guild (union) seeking to overturn findings of fact, conclusions of law, an order issued by Examiner Claire Collins.<sup>1</sup> The City of Kirkland (employer) moved for dismissal of the appeal based on the failure of the union to properly serve the employer with the notice of the union's appeal. We grant the employer's request and dismiss the appeal.

BACKGROUND

On March 10, 2003, the union filed an unfair labor practice complaint alleging the employer unilaterally changed employee co-pays for health insurance benefits without providing an opportunity for bargaining. The Examiner issued her decision on January 7,

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<sup>1</sup> City of Kirkland, Decision 8822 (PECB, 2005).

2005, dismissing the union's complaint on the merits. The union purported to file a timely notice of appeal with the Commission on January 25, 2005, but its filing by electronic mail (e-mail, as allowed under WAC 391-08-120(2)(c)(i)) was not perfected by mailing the original papers to the Commission (as required by WAC 391-08-120(2)(c)(ii)). On February 9, 2005, the union filed its appeal brief with the Commission and the employer in apparent compliance with the provisions of Chapter 391-08 WAC.

The employer filed a motion to dismiss the union's appeal on February 22, 2005, arguing the union failed to serve it with the union's January 25, 2005, notice of appeal. On March 2, 2005, the union admitted that it failed to serve the employer with its notice of appeal, but nevertheless requests that the Commission waive its rules and allow its appeal.

#### DISCUSSION

WAC 391-08-120(3) requires parties filing any papers with this agency to serve a copy of those papers upon all counsel and representatives of record. The collective bargaining statutes administered by this agency embody a legislative policy requiring employers and unions to communicate with one another. *Mason County*, Decision 3108-B (PECB, 1991).

Commission precedents dating back to *Clover Park School District*, Decision 377-A (EDUC, 1978), support dismissing the union's appeal. In that case, an order issued by the Executive Director was affirmed by the Commission without comment on the merits, because of the failure of the party filing the appeal to serve copies on all of the other parties. *See also Mason County*, Decision 3108-B. We see no reason to depart from that precedent now.

In the alternative, the union asks the Commission to exercise its authority and waive the requirement because the employer has not shown it was prejudiced by the lack of service. We disagree. Although WAC 391-08-003 grants the Commission the discretion to waive its rules to effectuate the purposes and provisions of the statutes it administers, it has done so infrequently and under limited circumstances. In *City of Tukwila*, Decision 2434-A (PECB, 1987), the Commission waived the time for filing where the party filing untimely objections had relied upon erroneous advice from an agency staff member. In *Island County*, Decision 5147-C (PECB, 1996), the Commission waived the time for filing based on a conclusion that a then-existing rule prohibiting filings by "fax" was not clear. Such is not the case here. The union's failure to perfect service as required under Chapter 391-08 WAC was entirely through its own fault.<sup>2</sup>

The union's failure to serve its notice of appeal in and of itself prejudiced the employer. Waiver of the service requirements in Chapter 391-08 WAC would not effectuate the purposes of those rules, would neither further the statutory policies of "communication" and "orderly dispute resolution", nor promote peace in labor relations. *Mason County*, Decision 3108-B. The employer's motion to dismiss is granted, and the union's cross-motion is denied.

NOW, THEREFORE, it is

ORDERED

The findings of fact, conclusions of law, and order issued in the above-captioned matter by Examiner Claire Collins will stand as the

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<sup>2</sup> Further exacerbating the union's situation is its failure to send the Commission the original papers of its notice of appeal as required by WAC 391-08-120(c)(ii).

findings of fact, conclusions of law and order of the Commission in this case.

Issued at Olympia, Washington, the 15th day of March, 2005.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARILYN GLENN SAYAN, Chairperson

  
PAMELA G. BRADBURN, Commissioner

DOUGLAS G. MOONEY, Commissioner

Commissioner Douglas G. Mooney did not take part in the consideration or decision of this case.