

City of Mabton, Decision 9992 (PECB, 2008)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS LOCAL 760,)	
)	
Complainant,)	CASE 21469-U-08-5470
)	
vs.)	DECISION 9992 - PECB
)	
CITY OF MABTON,)	
)	
Respondent.)	ORDER OF DISMISSAL
_____)	

Wayne Johnson, business representative, for the union.

The Wesley Group, by *Kevin Wesley*, for the employer.

On January 11, 2008, Teamsters Local 760 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission. The union's complaint named the City of Mabton (employer) as respondent. The union filed an amended complaint on January 25, 2008. Agency staff issued a preliminary ruling under WAC 391-45-110, finding that a cause of action could exist as follows:

Employer discrimination in violation of RCW 41.56.140(1) [and if so, derivative "interference" in violation of RCW 41.56.140(1)], by its lay-off of Frank Tijerina in reprisal for union activities protected by Chapter 41.56 RCW.

The agency assigned Carlos R. Carrión-Crespo as Examiner.

The issue in this case is whether the union's complaint should be dismissed for insufficient service of process upon the employer's counsel of record. The union did not prove it served the complaint and made the requisite contemporaneous proof of service, which WAC 391-08-120 requires. The union's complaint is DISMISSED.

PROCEDURAL HISTORY

The union listed Kevin Wesley as representative of the employer in its complaint, and Wesley's address as P.O. Box 7164, Kennewick, Washington 99336-0616. The complaint alleges facts that occurred in December 2007. The union did not include proof of service with its complaint. On January 11, 2008, the Commission issued and served on all parties a notice of case filing that included Wesley as the employer's representative.

On January 23, 2008, the Commission issued a deficiency notice in this matter. The notice required the union to file and serve an amended complaint within 21 days following the date of the letter. On January 25, 2008, the union filed an amended complaint, which did not include proof of service.

On January 31, 2008, the employer filed a motion to dismiss the complaint because the union had not served the counsel of record with a copy of the complaint. On February 15, 2008, the undersigned issued a show cause directive, directing the union to submit the required proof of service, and to show cause for the union's complaint not to be dismissed for insufficient service of process upon all counsel of record, as is required by WAC 391-08-120. On February 22, 2008, the union submitted copies of receipts of U.S. Postal Service certified mail which indicated that it had sent a document to Mayor Herrera at the City of Mabton, P.O. Box 655, Mabton, WA 98935. Mr. Wesley's name was not mentioned in these documents. The union did not file an explanation of the documents.

DISCUSSION

The Commission processes unfair labor practice cases as formal, adjudicatory proceedings under the state Administrative Procedure Act, Chapter 34.05 RCW. RCW 34.05.437 mandates that a party serve

copies of all papers it files with an agency on all other parties, unless the agency specifies a different procedure.

The Commission has established rules regarding unfair labor practice complaints. WAC 391-45-030 requires the party filing the unfair labor practice complaint to serve a copy on the party named as respondent in the manner that WAC 391-08-120(3) and (4) prescribe: that is, "upon all counsel and representatives of record . . .", and furnish proof of service to the Commission. However, under WAC 391-08-003, the Commission and its agents retain the authority to waive requirements of rules when a party is not prejudiced by such action.

A respondent must raise the defense of insufficient service of process on either its notice of appearance or its answer to the complaint within a reasonable period after the complaint was filed. *City of Seattle*, Decision 8559 (PECB, 2004). Once the respondent has raised the issue, the complainant has the burden of proving that it served the complaint according to the rules. *City of Kalama*, Decision 6276 (PECB, 1998).

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). In *Washington State Patrol*, Decision 8709 (PSRA, 2004), the examiner described the applicable precedent as follows:

Historically, the Commission enforces the service requirements in its rules to further the legislative policy requiring unions and employers to communicate with each another. *Mason County*, Decision 3108-B (PECB, 1991). The Commission has routinely dismissed unfair labor practice complaints upon a record showing inadequate service. *Spokane School District*, Decision 5151-A (PECB, 1995). "It is important to document the proof contemporaneous to the service." *Spokane School District*; see also *City of Seattle*, Decision 5852-A (PECB, 1997).

The Examiner later summarized the public policy behind the rule, as follows:

Proper service encourages effective communication between unions and employers and nurtures the orderly resolution of disputes inherent in the collective bargaining process. By enforcing timely and effective service of process, the Commission ensures that due process is afforded to all parties. In comparison to those substantial public policies, compliance with the service rule is a small imposition on parties. Equally important, compliance with the service rule avoids the need for hearings and decisions on "substantial compliance" claims. *City of Kalama*, Decision 6276.

In a footnote in *King County*, Decision 7221-A (PECB, 2001), the Commission commented on the applicable subsection, as follows:

We need not consider, and do not base our decision on, the "who within the employer" issue raised in this case. The employer asserted the amended complaints should have been served on Lew, its representative of record as indicated on notices issued by the Commission staff. The union responded that its service of Cruz was sufficient, and appears to concede that it did not serve Lew. *We merely note that, under WAC 391-08-120(3), any papers submitted to the agency must be served on all counsel and representatives of record. (emphasis added.)*

The Commission rarely waives its filing and service rules and does so only for limited reasons. For example, in *City of Tukwila*, Decision 2434-A (PECB, 1987), the parties relied on erroneous advice from agency staff; in *Island County*, Decision 5147-C (PECB, 1996), a party substantially complied with a rule that was unclear on its face. The facts of this case do not warrant consideration of a waiver of the rules of service.

Motion to Dismiss

The employer's Motion to Dismiss the Complaint for Insufficient Service of Process relies upon the fact that the complaint was not

served on the representative listed in the complaint. The union limited its response to submitting proof of service on the mayor.

The union has not satisfied the statutory and regulatory requirements to confer jurisdiction by the Commission over the employer. Although the union showed that it had served a copy of the complaint on the mayor of the city of Mabton, the fact remains that the union did not serve the counsel of record with a copy of the amended complaint.

NOW, THEREFORE, it is

ORDERED

The Examiner DISMISSES the complaint filed by Teamsters Local 760 in the above-captioned matter for insufficient service. This dismissal is without prejudice regarding the allegations of the complaint and does not preclude a filing of a complaint on the same facts within statutory time limits.

Issued at Olympia, Washington, the 3rd day of March, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


CARLOS R. CARRIÓN-CRESPO, 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.