

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:

SHERRI CLARKE

Involving certain employees of:

WASHINGTON STATE UNIVERSITY

CASE 27141-E-15

DECISION 12396 - PSRA

DECISION OF COMMISSION ON
ELECTION OBJECTIONS

Sherri Clarke, the decertification petitioner.

Younglove & Coker, P.L.L.C., by *Edward Earl Younglove III*, Attorney at Law, for
the Washington Federation of State Employees.

Attorney General Robert W. Ferguson, by *Donna J. Stambaugh*, Senior Counsel,
for the Washington State University.

On April 2, 2015, Sherri Clarke filed a petition to decertify the Washington Federation of State Employees (union) as the exclusive bargaining representative for employees of the Washington State University (employer) Western Washington and Wenatchee Tree Fruit Research and Extension Centers. The agency conducted an election and tallied the ballots on June 12, 2015. The tally resulted in the employees decertifying the union. On June 19, 2015, the union filed election objections. The union did not serve the election objections on all parties on the day it filed the objections as required by WAC 391-08-120(3). It served the election objections on Clarke on June 22, 2015.

The issue is whether the election objections should be dismissed for failure to properly serve all parties as required by the rule. We dismiss the election objections. A party is required to serve all parties on the same day it files documents with the Commission. Here the union did not serve the decertification petitioner until the next business day.

ANALYSIS

Legal Standards

A party filing "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 . . .” WAC 391-08-120(3). Failure to serve other parties is grounds for dismissal. *Clover Park School District*, Decision 377-A (EDUC, 1978). The agency has applied its service rules equally to parties represented by counsel and those representing themselves. *See State – Administrative Hearings*, Decision 12328 (PSRA, 2015), and *State – Fish and Wildlife*, Decision 11748 (PSRA, 2013).

Election objections must be filed no later than seven days after the tally of election. WAC 391-25-590.

Application of Standards

Representation Case Administrator Dario de la Rosa conducted an investigation conference by e-mail and issued an investigation statement on May 8, 2015. The agency conducted a mail ballot election and tallied the ballots on June 12, 2015.

On June 19, 2015, the last day election objections could be timely filed, the union filed election objections. The union served the employer but did not serve the decertification petitioner.

On June 23, 2015, the Executive Director issued a letter granting the parties until July 14, 2015, to respond to the objections.

On June 25, 2015, the union filed an amended proof of service. The amended proof of service showed that the union served Clarke with the election objections on June 22, 2015.

On July 10, 2015, the Executive Director issued a show cause directive letter asking for responses as to why the election objections should not be dismissed for failure to comply with the service rules and suspending the time for responding to the election objections. On July 16, 2015, the union filed a response and an amended proof of service.¹

In its response to the show cause directive, the union asserts that no party raised the issue of service, that the agency has previously refused to apply a strict application of its service requirements, and that the Commission may waive its rules where no party has suffered prejudice. The union alleges that no claim of prejudice has been made in this case.

¹ The union initially did not serve Clarke with its response to the show cause directive; however, later the same day the union served Clarke and filed an amended proof of service.

The service requirements are not onerous. WAC 391-08-120(3) requires a party to serve papers on other parties of record the same day papers are filed with the agency. Service may be made in person, by mail, by commercial parcel delivery company, by fax, or by e-mail. WAC 391-08-120(3)(a)–(e). The union did not comply with WAC 391-08-120(3) as it failed to serve Clarke with the election objections on the day it filed the election objections with the agency. The union attempted to correct its error by serving Clarke with the election objections on June 22, 2015, long after timely election objections could have been filed with the agency. The union serving Clarke at a later date does not negate the fact that the union did not complete service as required by WAC 391-08-120(3).

The union asserts, “As PERC has noted in *State – Fish and Wildlife*, Decision 11748 (PSRA, 2013), it has refused to apply a strict application of its service requirements in a representational proceeding such as this.” We disagree with the union’s interpretation of that case.

In *State – Fish and Wildlife*, the Washington Federation of State Employees (WFSE), the same union in this case, filed a motion to dismiss for failure to properly serve. There the Washington Association of Fish & Wildlife Professionals (WAFWP) filed a petition to represent employees who were represented by WFSE. WAFWP did not serve WFSE with a copy of the petition. WFSE filed a motion to dismiss for failure to serve. WAFWP alleged that it had served WFSE and that there was no harm. The Executive Director dismissed the petition because WAFWP had not served WFSE. Contrary to the union’s argument, *State – Fish and Wildlife*, Decision 11748, does support a strict application of the service requirements.

This case is similar to *City of Kirkland*, Decision 8822-A (PECB, 2005). In *City of Kirkland*, the union filed its appeal by e-mail, but did not perfect service by filing the original papers. The employer moved for dismissal, arguing the union did not serve the employer with the notice of appeal. The union admitted it did not serve the employer. The Commission reasoned that the union’s failure to serve the employer prejudiced the employer and waiver of the Commission’s rules would not further the purpose of the statute.

The union correctly points out that the Commission has authority to waive its rules where no party has been prejudiced and no party has alleged prejudice. Typically, issues of service are contested.

Even though no party has raised the issue of service or alleged prejudice, we decline to waive the rule. The union's failure to perfect service resulted in not all of the parties being served with the election objections as required by rule and within the timeframe specified by the rules for filing election objections. The Commission's rules apply equally to all parties.

CONCLUSION

The union filed timely election objections but did not serve all parties of record as required by WAC 391-08-120(3). We dismiss the election objections for failure to comply with the rules.

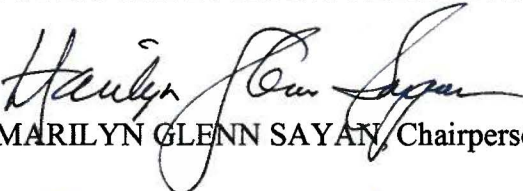
NOW, THEREFORE, it is

ORDERED

The election objections are DISMISSED.

ISSUED at Olympia, Washington, this 11th day of August, 2015.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARILYN GLENN SAYAN, Chairperson


THOMAS W. McLANE, Commissioner


MARK E. BRENNAN, Commissioner



PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
THOMAS W. McLANE, COMMISSIONER
MARK E. BRENNAN, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 08/11/2015

DECISION 12396 - PSRA has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:


BY: VANESSA SMITH

CASE NUMBER: 27141-E-15

EMPLOYER: WASHINGTON STATE UNIVERSITY
ATTN: KENDRA WILKINS-FONTENOT
139 FRENCH ADMIN BLDG 1014
PO BOX 641014
PULLMAN, WA 99164
kfonten@wsu.edu
(509) 335-4521

REP BY: DONNA STAMBAUGH
OFFICE OF THE ATTORNEY GENERAL
1116 W RIVERSIDE AVE
SPOKANE, WA 99201-1194
donnas@atg.wa.gov
(509) 458-3521

PARTY 2: SHERRI CLARKE
6024 ELM ST SE
TUMWATER, WA 98501
dsclarke1@comcast.net
(360) 259-6340

PARTY 3: WA FEDERATION OF STATE EMPLOYEES
ATTN: LEWIS WOODS
1212 JEFFERSON ST SE STE 300
OLYMPIA, WA 98501-2332
lewisw@wfse.org
(800) 562-6002

REP BY: EDWARD EARL YOUNGLOVE III
YOUNGLOVE & COKER, P.L.L.C.
1800 COOPER PT RD SW, BLDG 16
PO BOX 7846
OLYMPIA, WA 98507-7846
edy@ylclaw.com
(360) 357-7791