

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF)	
KENNEWICK SCHOOL DISTRICT,)	
)	
Complainant,)	CASE 7567-U-88-1588
)	
vs.)	DECISION 3330-A - PECB
)	
KENNEWICK SCHOOL DISTRICT,)	
)	
Respondent.)	DECISION OF COMMISSION
)	
)	

Eric T. Nordlof, General Counsel, appeared on behalf of the complainant.

Robert D. Schwerdtfeger, Labor Relations Consultant, appeared on behalf of the respondent.

On October 31, 1989, Examiner William A. Lang issued his findings of fact, conclusions of law and order in the above-entitled matter, holding that the employer committed unfair labor practices in violation of RCW 41.56.140 and ordering remedies.

On November 22, 1989, the Commission received documents entitled "Employer's Petition for Review" and "Certificate of Mailing" from the Kennewick School District.

The Executive Director issued a letter to the parties on November 27, 1989, acknowledging filing of the petition for review on November 22, 1989 and pointing out that it appeared to be untimely under WAC 391-45-350. That rule provides:

The examiner's findings of fact, conclusions of law and order shall be subject to review by the commission on its own motion, or at the request of any party made within twenty days

following the date of the order issued by the examiner. The original and three copies of the petition for review shall be **filed with the commission at its Olympia office** and the party filing the petition shall **serve a copy on each of the other parties** to the proceeding. Such petition for review shall have attached to it any appeal brief or written argument which the party filing the petition for review desires to have considered by the commission. Other parties to the proceeding shall have fourteen days following the date on which they are served with a copy of such petition for review and accompanying brief or written argument to file a responsive brief or written argument. The commission, the executive director or his designee may, for good cause, grant any party an extension of the time for filing of its brief or written argument. If a party presents an issue which requires study of a statute, rule, regulation, or finding of fact, the party should set out the material portions of the text verbatim or include them by facsimile copy in the text or in an appendix to the brief. In the event no timely petition for review is filed, and no action is taken by the commission on its own motion within thirty days following the examiner's final order, the findings of fact, conclusions of law and order of the examiner shall automatically become the findings of fact, conclusions of law and order of the commission and shall have the same force and effect as if issued by the commission.

(emphasis supplied)

The 20-day period permitted by WAC 391-45-350 for the filing of a petition for review had been reiterated by reference on the signature page of the Examiner's decision, and a 20-day period prescribed for compliance with the Examiner's remedial order.

On December 4, 1989, the Kennewick School District filed a letter with the Commission, challenging the Executive Director's characterization of its petition for review as "untimely". In that letter, the employer acknowledged that the 20-day period for appeal of the Examiner's decision had ended on November 20, 1989. The

employer asserts, however, that it effected timely "service" of the petition for review on the Commission, by depositing the document in the United States Mail on November 18, 1989.¹ The employer contends, further, that WAC 391-45-350 does not specifically require that the petition for review be received within 20 days following the issuance of the decision being appealed. It advances, instead, that the rule governing appeals to the Commission actually allows 30 days for receipt of a petition for review.

Dating back to at least 1977, the Commission has maintained a distinction in its rules between "filing" and "service" of papers. The rule in effect when this case commenced provided:

WAC 391-08-120 SERVICE OF PROCESS--
FILING AND SERVICE OF PAPERS.

(1) All notices, pleadings, and other papers **filed with the presiding officer** shall be **served upon all counsel and representatives of record** and upon parties not represented by counsel or upon their agents designated by them or by law.

(2) Service shall be made personally or, unless otherwise provided by law, by first class, registered, or certified mail, or by telegraph.

(3) Service by mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed, and by telegraph when deposited with a telegraph company properly addressed and with charges prepaid.

(4) **Papers required to be filed with the agency or with the presiding officer shall be deemed filed upon actual receipt during office hours at any office of the agency or of the presiding officer.**

(5) Where proof of service is required by statute or rule, **filing the papers with the presiding officer, together with either an acknowledgment of service or the following certificate shall constitute proof of service:**

¹

The certificate of service filed on November 22, 1989 had also indicated that the document was mailed to the Commission on November 18, 1989.

"I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by delivering a copy thereof in person to (names) or by mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent.

Dated at _____ this ... day of _____, 19....

(signature)"

[Statutory Authority: RCW 34.04.022, 41.58.050, 41.56.090, 41.59.110 and 28B.52.080. 83-24-031 (Order 83-01), §391-08-120, filed 12/1/83, effective 1/1/84; Order 77-1, §391-08-120, filed 1/27/77.]

(emphasis supplied)

The employer erroneously relies on the portion of the rule regulating service of papers on other parties, where the rule regulating filing of papers with the Commission is applicable here.

The distinction between "filing" and "service" is well-established in Washington administrative practice. At the time this case was filed, the state's Chief Administrative Law Judge was empowered to adopt the rules that governed all contested case proceedings from the issuance of a notice of hearing to the issuance of the initial decision. Chapter 10-08 WAC was adopted for that purpose, and WAC 10-08-110 was identical to our WAC 391-08-120.

Responding to calls for further standardization of practice and procedure before Washington's administrative agencies, the legislature recently passed a new Administrative Procedures Act.² RCW 34.05.010 specifies, inter alia:

² Chapter 288, Laws of 1988 (House Bill 1515), codified as Chapter 34.05 RCW.

34.05.010 Definitions. The definitions set forth in this section shall apply throughout this chapter, unless the context clearly requires otherwise.

(6) "Filing" of a document that is required to be filed with an agency means delivery of the document to a place designated by the agency by rule for receipt of official documents, or in the absence of such designation, at the office of the agency head.

(18) "Service," . . . means posting in the United States mail, properly addressed, postage prepaid, or personal service. Service by mail is complete upon deposit in the United States mail. Agencies may, by rule, authorize service by electronic telefacsimile transmission, where copies are mailed simultaneously, or by commercial parcel delivery company.

The Commission has recently adopted emergency rules permitting "service" by electronic telefacsimile, and is in the process of receiving comment on permanent adoption of those and other rules changes to conform our procedures to the new law, but the traditional distinction between "filing" and "service" continues.

WAC 391-45-350 specifies our Olympia office as the place for filing of a petition for review. Deposit of a copy of the employer's petition for review in the mail on November 18, 1989, with proper address and postage, was sufficient to effect service on the other party to the case, but it was not sufficient to achieve a timely filing with the Commission.

The employer's claim of a "30 day" period for review is also rejected. The period for a party to initiate review in this case ended on November 20, 1989. The Commission has only rarely exercised its authority under WAC 391-45-350 to review a case on its own motion. No such circumstance is presented here, and no such action was taken prior to the expiration of the 30-day period allowed by the rule for Commission action.

Consistent with long-standing Commission policy and precedent, the petition for review must be dismissed. The policy has been applied equally to pro se claimants and to experienced labor and management advocates. See: Port of Seattle, Decision 2661-B (PECB, 1988); City of Seattle, Decision 2230-A (PECB, 1985); Seattle Public Health Hospital (American Federation of Government Employees), Decision 1781-B (PECB, 1984); Port of Ilwaco, Decision 970-A (PECB, 1980); Spokane School District, Decision 310-A (EDUC, 1978); and, most recently, City of Seattle, Decision 3199-A (PECB, 1989).

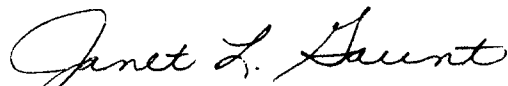
NOW, THEREFORE, it is

ORDERED

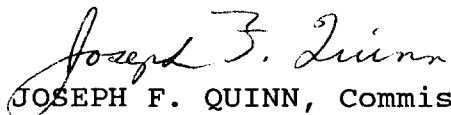
1. The petition for review is dismissed as untimely.
2. Kennewick School District shall notify the Executive Director, in writing, within ten (10) days following the date of this Order of the steps taken to comply with the Order issued by Examiner William A. Lang.

ISSUED at Olympia, Washington, this 22nd day of December, 1989.

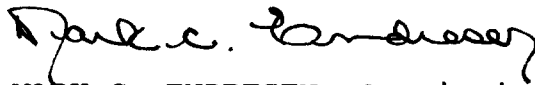
PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANET L. GAUNT, Chairperson



JOSEPH F. QUINN, Commissioner



MARK C. ENDRESEN, Commissioner