

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| SPOKANE SCHOOL DISTRICT, |) | |
| |) | |
| Employer. |) | |
| ----- |) | |
| JERRY M. HUGHES, |) | CASE 12449-U-96-2950 |
| |) | |
| Complainant, |) | DECISION 5647-B - EDUC |
| |) | |
| vs. |) | |
| |) | |
| SPOKANE EDUCATION ASSOCIATION, |) | |
| |) | |
| Respondent. |) | ORDER OF DISMISSAL |
| |) | |
| |) | |

The complaint charging unfair labor practices filed with the Public Employment Relations Commission on April 18, 1996, has been subject of previous orders. As originally filed, the complaint did not indicate service upon any union official or union attorney.

Each of five allegations was reviewed separately in a letter issued on July 17, 1996,¹ pursuant to WAC 391-45-110, and it was noted that two allegations did not state claims for relief available through unfair labor practice proceedings before the Commission. The complainant was given 14 days in which to file and serve amendments to the complaint which would state causes of action.

On July 31, 1996, the complainant submitted amendatory materials in a timely fashion. Nothing filed with the amendatory materials

¹ The original complaint alleged that the Spokane Education Association had interfered with employees rights, in violation of RCW 41.59.140, in five different ways concerning the manner in which a "charter election" was conducted for the Ferris High School Site Council.

indicated that copies were being served upon any union official or union attorney.

The amendatory materials were reviewed under WAC 391-45-110, and a partial order of dismissal was issued August 30, 1996.² An amended order was issued September 12, 1996.³ Examiner Katrina I. Boedecker was assigned to conduct further proceedings under Chapter 391-45 WAC on the allegations which stated a cause of action.

On August 15, 1996, Faith Hanna filed a notice of appearance with the Commission, as the attorney for the Spokane Education Association. The documents indicated that copies were being served on the Spokane School District (Cynthia Lambrath) and Jerry Hughes.

On September 20, 1996, Hanna filed a motion to dismiss, claiming that Hughes had failed to serve the complaint on the Spokane Education Association. The motion was supported by sworn declarations of several SEA officials: President Lynn Jones, Immediate Past President Jerry Hopkins, UniServ Representative Dolores Humiston, Uniserv Representative John Kostecka, Field Assistant Tammi Bouchard, and Field Assistant Doris Guelich, as well as Hanna herself. Each declarant stated that he or she had not been served a copy of the complaint or any amendments by Jerry Hughes.

The Examiner, thereafter, directed Hughes to furnish proof of service. In response, Hughes supplied a declaration of mailing

² Spokane School District Decision 5647 (EDUC, 1996) dismissed allegations concerning "coding of ballots" and a "deceptive ballot question" as failing to state a cause of action. Allegations concerning "authorized circumvention of the union", "prejudice to transfer rights", and "partial abandonment of bargaining rights" were found to state causes of action.

³ Spokane School District Decision 5647-A (EDUC, 1996) contained an analysis of the second allegation, which had been inadvertently omitted from the previous order.

signed by Hughes and dated "October 12".⁴ It showed that the complaint, the amendment, and the cover letter for the declaration of mailing had been sent to Jerry Hopkins, Lynn Jones, Mark Anderson, and John Kostecka in the care of Faith Hanna. Though there is no exact statement of what date the documents were mailed, the implication is that they were all sent on October 12, 1996.

DISCUSSION:

Requirement for Contemporaneous Service

In his argument in support of his proof of service, Hughes contends that there is no authority for the proposition that service must be simultaneous with filing. This argument is incorrect.

Unfair labor practice proceedings are formal, adjudicative proceedings under the Administrative Procedure Act (APA), Chapter 34.05 RCW. Reinforcing the definitions set forth in that statute, WAC 391-08-120 provides:

WAC 391-08-120 Filing and service of papers.

FILING OF PAPERS FOR ADJUDICATIVE PROCEEDINGS

(1) Filing of documents with the agency for adjudicative proceedings under the administrative procedure act (cases under Chapters 391-25, 391-35, 391-45 and 391-95 WAC) shall be deemed complete upon actual receipt of the original document and any required copies during office hours at the agency office designated in this rule. Electronic telefacsimile transmissions shall not be accepted as filing for such documents, unless RCW 34.05.010-(6) or WAC 10-08-110 is amended to permit filings by electronic telefacsimile transmission.

⁴ This was presumably intended to mean October 12, 1996, although no year was listed.

(a) Petitions or complaints to initiate adjudicative proceedings shall be filed in the Olympia office;

(b) Documents to be filed with the executive director or with the agency generally shall be filed in the Olympia office;

(c) Documents to be filed with a presiding officer can be filed in the Olympia office or in the office of the presiding officer;

(d) Documents to be filed with the Commission, including any petitions for review or objections, shall be filed in the Olympia office.

[Provisions on "SUBMISSION OF PAPERS
FOR NON-ADJUDICATIVE PROCEEDINGS omitted]

SERVICE ON OTHER PARTIES

(3) **All notices, pleadings, and other papers filed with the agency or 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.** Service shall be by one of the following methods:

(a) Service may be made personally, in the manner provided in RCW 4.28.080;

(b) Service by first class, registered, or certified mail shall be regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service by telegraph or by commercial parcel delivery company shall be regarded as completed when deposited with a telegraph company or parcel delivery company properly addressed and with charges prepaid.

(d) Service by electronic telefacsimile transmission shall be regarded as completed upon production by the telefacsimile device of confirmation of transmission, together with same day mailing of a copy postage prepaid and properly addressed to the person being served.

PROOF OF SERVICE

(4) **Where the sufficiency of service is contested,** the timely filing of the papers under this section, together with one of the following shall constitute proof of service:

(a) An acknowledgement of service by the person who accepted service.

(b) **A certificate signed on the date of service,** stating that the person signing the certificate personally served the papers upon all parties of record in the proceeding by delivering a

copy thereof in person to (names) at dates, times and places specified in the certificate.

(c) **A certificate signed on the date of service**, stating that the person signing the certificate completed service of the papers upon all parties of record in the proceeding by:

(i) Mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent; or

(ii) Depositing a copy thereof with a telegraph or parcel delivery company named in the certificate, properly addressed with charges prepaid, to each party to the proceeding or to his or her attorney or authorized agent; or

(iii) Transmitting a copy thereof by electronic telefacsimile device, and on the same day mailing a copy, to each party to the proceeding or his or her attorney or authorized agent.

[Emphasis by **bold** supplied.]

The declarations attached to the respondent's motion to dismiss in this case clearly contest the sufficiency of service. Once the employer in Thurston County Decision 5633, (PECB, 1996), raised a claim of defective service, the burden was on the union to prove that it had served the employer and/or to effect service on the employer. WAC 391-08-120(4). A letter filed by a union representative was excluded from consideration in that case, because of a failure of service. WAC 391-08-120(3).

The Commission has held repeatedly that healthy labor relations depend upon communication between the parties. In Mason County, Decision 3108-B (PECB, 1991), the Commission said:

The collective bargaining statutes administered by the Commission embody a legislative policy requiring employers and unions to communicate to one another. RCW 41.56.030(4); RCW 41.56.100; RCW 41.58.040. The same statutes also establish administrative procedures for bringing an orderly resolution to disputes. RCW 41.56.050 through .080; 41.56.160 through .190; 41.58.020. In this case and in countless others, appeals have been dismissed

when employers or unions fail to process their disputes in accordance with those statutes.

In City of Puyallup, Decision 5460-A (PECB, 1996) the Commission wrote "Because of this process of communication embodied in the collective bargaining statutes, the Commission interprets the rules to require service contemporaneous to filing." The Commission has routinely dismissed petitions for review for failure to effect proper service, particularly where the only "cause" of the untimely service was a lack of due diligence. If untimely service were to be excused for lack of due diligence, service requirements of WAC 391-45-350 and the underlying policy of orderly dispute resolution would be completely undermined. See: City of Puyallup and Mason County, supra.⁵

Hughes has not proved that he made contemporaneous service on the Spokane Education Association at the time he filed the unfair labor practice complaint with the Commission. His complaint is subject to dismissal on that basis.

Request for Waiver of Service Requirement

Under WAC 391-08-003 and Mason County, supra, the Commission has the authority to waive certain requirements when a party is not prejudiced by such action.⁶ Hughes asserts that the SEA's motion fails to demonstrate any prejudice by lack of contemporaneous filing and service, but the exercise of the Commission's authority to waive rules under WAC 391-08-003 is based on whether such a waiver effectuates the purposes and provisions of the applicable collective bargaining statute.

⁵ See, also, Clover Park School District 400, Decision 377-A (PECB, 1978); and Spokane School District, Decision 5151-A and 5152-A (PECB, 1995).

⁶ See, Central Kitsap School District, Decision 3671-A (PECB, 1991); and Forks Community Hospital, supra.

The Commission has waived its rules in cases where a party's procedural error has resulted from reliance on erroneous agency advice, as in City of Tukwila, Decision 2434-A (PECB, 1987). In Island County, Decision 5147-C (PECB, 1996), the Commission waived its rules, in part because the rules themselves were not particularly clear on their face, and in part because there was substantial compliance with the rule. In City of Puyallup, supra, the Commission did not find erroneous agency advice or substantial compliance, just an inadvertent error. The Commission has found in the past that inadvertent error is no justification for waiver.

This order specifically does not address arguments regarding the statute of limitations, ripeness of dispute vis-a-vis an individual member of the bargaining unit who claims injury in the future due to "authorized circumvention of the union", "prejudice to transfer rights", or "partial abandonment of bargaining rights".

NOW THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in the above-entitled matter is hereby DISMISSED.

Dated at Olympia, Washington, this 1st day of November, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


KATRINA I. BOEDECKER, Examiner

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.