

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

JENNIFER AMREN,
Complainant

vs.

STATE – DEPARTMENT OF
CORRECTIONS,

Employer.

CASE 22439-U-09-5730
DECISION 10456 - PSRA

JENNIFER AMREN,

Complainant,

vs.

WASHINGTON FEDERATION OF
STATE EMPLOYEES,

Respondent.

CASE 22440-U-09-5731
DECISION 10457 - PSRA

ORDER OF DISMISSAL

Jennifer Amren appeared on her own behalf.

Younglove & Coker, by *Edward Younglove*, for the union.

Attorney General Rob McKenna, by *Kari Hanson*, for the employer.

On April 30, 2009, Jennifer Amren filed two complaints, one charging the Department of Corrections (employer) with interference and one charging the Washington Federation of State Employees (union) with interference. On May 6, 2009, the unfair labor practice manager issued preliminary rulings in each case. With respect to the employer, a cause of action was found for

employer interference with employee rights in violation of RCW 41.80.110(1)(a). With respect to the union, a cause of action was found for union interference with employee rights in violation of 41.80.110(2)(a). The Commission assigned Charity Atchison as the Hearing Examiner. The Hearing Examiner consolidated these cases for processing.

ISSUE

Should the cases be dismissed for lack of service?

The Examiner dismisses the cases because the complainant was unable to show proof of service.

APPLICABLE LEGAL STANDARDS

WAC 391-08-120(3) states, "A party which files 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 the filing." WAC 391-08-120(3)(a)-(e) outlines how a complainant may make and complete service: personally; first class, certified, or registered mail; commercial parcel delivery company; fax; or e-mail.

Proof of service is required in cases in which sufficiency of service has been contested. Under WAC 391-08-120, proof of service may be made

(4) On the same day that service of any papers is completed under subsection (3) of this section, the person who completed the service shall:

(a) Obtain an acknowledgment of service from the person who accepted personal service; or

(b) Make a certificate stating that the person signing the certificate personally served the papers by delivering a copy at a date, time and place specified in the certificate to a person named in the certificate; or

(c) Make a certificate stating that the person signing the certificate completed service of the papers by:

(i) Mailing a copy under subsection (3)(b) of this section; or

(ii) Depositing a copy under subsection (3)(c) of this section with a commercial parcel delivery company named in the certificate; or

(iii) Transmitting and mailing a copy under subsection (3)(d) or (e) of this section.

(5) Where the sufficiency of service is contested, an acknowledgment of service obtained under subsection (4)(a) of this section or a certificate of service made under subsection (4)(b) or (c) of this section shall constitute proof of service.

The complainant bears the burden to show that service has been made. *Port of Bellingham*, Decision 6052 (PECB, 1997). In *Port of Bellingham*, the complaint was dismissed because neither an offer of proof, evidence of actual service, nor any sufficient reason to proceed without proof of service was submitted.

ANALYSIS

On May 20, 2009, the union filed its answer. In its answer, the union alleged that Amren did not serve the union with a copy of the complaint. On May 27, 2009, the employer filed its answer. In its answer, the employer alleged that Amren had not served the employer with a copy of the complaint. On June 2, 2009, the Examiner issued a letter inviting the parties to submit reasons why the case should or should not be dismissed. On June 4, 2009, the union submitted a brief arguing the case filed against it should be dismissed for lack of service. On June 9, 2009, the employer submitted a brief arguing the case filed against it should be dismissed for lack of service. The employer also submitted a declaration of the employer's Labor Relations Manager, Todd Dowler, stating that he had not been served with a copy of the complaint. Amren did not respond to the Examiner's letter.

The Examiner conducted a conference call with all the parties on June 11, 2009. During the conference call, Amren admitted that she did not serve the employer or the union with copies of the

complaint. The complaint must be dismissed because the complainant did not serve the respondents in accordance with WAC 391-08-120(3).

ISSUED at Olympia, Washington, this 24th day of June, 2009.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Charity Atchison", with a long horizontal flourish extending to the right.

CHARITY L. ATCHISON, 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.