

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KIRK CALKINS,

Complainant,

vs.

CITY OF SEATTLE,

Respondent.

CASE 135066-U-22

DECISION 13532-A - PECB

DECISION OF COMMISSION

Kirk Calkins, the complainant.

Sarah Tilstra, Assistant City Attorney, City Attorney Ann Davison, for the City of Seattle.

On May 2, 2022, Kirk Calkins (complainant) filed an unfair labor practice complaint alleging the City of Seattle (employer) unilaterally changed overtime policies. Unfair Labor Practice Administrator Dario de la Rosa (ULP Administrator) reviewed the complaint and issued a deficiency notice. On June 13, 2021, the complainant filed an amended complaint.

On July 19, 2022, the ULP Administrator issued *City of Seattle*, Decision 13532 (PECB, 2022) dismissing the complaint against the employer. That same day, Calkins sent an email to the ULP Administrator requesting that the Commission review the decision and the complaint. The agency treated the July 19, 2022, email as an appeal.

The complainant did not include a representative for the employer on the July 19, 2022, email. On July 21, 2022, the Appeals Administrator sent an email to all parties stating an appeal had been filed and identifying the rules governing appeal briefs. Following the July 21, 2022, email, the complainant sent two additional emails. The employer did not file a brief on appeal.

ISSUES

There are two issues before the Commission. First, assuming all facts true and provable, does the complaint state a cause of action? Second, do the complaint and notice of appeal comply with WAC 391-08-120?

After reviewing the complaints, we affirm the ULP Administrator. The complaints do not state a cause of action. We dismiss the complaint because the complaint and appeal do not comply with WAC 391-08-120.

ANALYSIS

Applicable Legal Standards

Standard of Review

In unfair labor practice proceedings, the ultimate burden of pleading, prosecution, and proof lie with the complainant. *State – Office of the Governor*, Decision 10948-A (PSRA, 2011) (citing *City of Seattle*, Decision 8313-B (PECB, 2004)). An unfair labor practice complaint is reviewed under WAC 391-45-110 to determine whether the facts, as alleged, state a cause of action. At the preliminary ruling stage, all facts are assumed true and provable. *Whatcom County*, Decision 8245-A (PECB, 2004).

Service Requirements

WAC 391-08-120(3) requires documents filed with the agency “shall be served upon all parties on the same day the documents are filed. Service shall be upon counsel and representatives of record, or upon unrepresented parties or upon their agents designated by them or by law.”

The appealing party must contemporaneously serve all other parties with the notice of appeal. WAC 391-08-120(3); *King County*, Decision 7221-A (PECB, 2001). Failure to serve the opposing party on the same day documents are filed with this agency is grounds for dismissal. *Clover Park School District*, Decision 377-A (EDUC, 1978); *Federal Way School District*, Decision 13010-A (PECB, 2019); *Washington State University*, Decision 12396 (PSRA, 2015).

Application of Standards

We reviewed the complaints to determine whether they state a cause of action. The complainant alleges the employer unilaterally changed the overtime policy. The duty to bargain exists only between the employer and the exclusive bargaining representative of the employees. RCW 41.56.030(4). *King County*, Decision 13162-A (PECB, 2020) (citing *Renton School District (United Classified Workers Union, Local 1)*, Decision 6300-A (PECB, 1998)). Individual employees within a bargaining unit are third-party beneficiaries to the collective bargaining relationship. *King County*, Decision 13162-A; *Renton School District (United Classified Workers Union, Local 1)*, Decision 6300-A. The enforcement of the collective bargaining statute against the employer rests with the union. *See King County*, Decision 13162-A. Individual employees do not have standing to file refusal to bargain unfair labor practice complaints. *King County*, Decision 13162-A; *Renton School District (United Classified Workers Union, Local 1)*, Decision 6300-A. Calkins does not have standing to pursue allegations that the employer unilaterally changed overtime.

The Commission applies its rules equally to complainants represented by counsel and those appearing pro se. *City of Bellingham (Washington State Council of County and City Employees, Council 2)*, Decision 11422-A (PECB, 2013); *Port of Seattle (IBEW, Local 46)*, Decision 7604-A (PECB, 2002); *Seattle Public Health Hospital (American Federation of Government Employees, Local 1170)*, Decision 1781-B (PECB, 1984). We reviewed the emails the complainant sent when he filed documents with the agency. When the complainant filed his complaint, amended complaint, and notice of appeal, he did not serve a representative for the employer on the correspondence and did not include a certificate of service. Therefore, we dismiss the complaints against the employer for failure to comply with WAC 391-08-120(3).

CONCLUSION

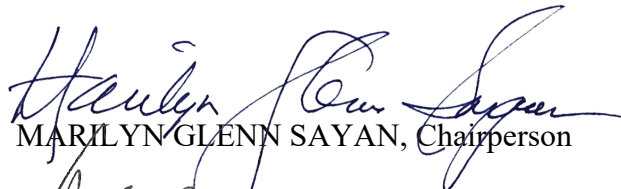
The complaints do not state a cause of action. The May 2, 2022, complaint; the June 13, 2022, amended complaint; and the notice of appeal did not comply with WAC 391-08-120(3). We affirm the Unfair Labor Practice Administrator.

ORDER

The Order of Dismissal issued by Unfair Labor Practice Administrator Dario de la Rosa is AFFIRMED.

ISSUED at Olympia, Washington, this 13th day of September, 2022.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



MARK BUSTO, Commissioner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under RCW 34.05.542.



RECORD OF SERVICE

ISSUED ON 09/13/2022

DECISION 13532-A - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE 135066-U-22

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