

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

JO CRAVENS,

Complainant,

vs.

BEN FRANKLIN TRANSIT,

Respondent.

CASE 136197-U-23c

DECISION 13664-A - PECB

ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT AND
DISMISSAL OF CONSOLIDATED
CASE

Jo Cravens, the complainant.

Shannon E. Phillips and Tréja Miranda, Attorneys at Law, Summit Law Group PLLC, for Ben Franklin Transit.

On September 23, 2022, complainant Jo Cravens filed an unfair labor practice complaint against Ben Franklin Transit (employer). Cravens did not file a certificate of service with the complaint. On May 23, 2023, the employer filed a motion for summary judgment with supporting declarations seeking to dismiss Cravens' complaint. The employer asserted that Cravens did not comply with the agency's service requirements. A briefing scheduled was issued.

Cravens did not respond to the employer's motion. There is nothing in the record to show that Cravens complied with the mandatory requirement to serve the complaint on the employer, therefore, the employer's motion is GRANTED. Cravens' complaint against the employer is DISMISSED.

BACKGROUND

Cravens' complaint was filed on September 23, 2022, by email to filing@perc.wa.gov. There were no other recipients listed in Cravens' email to the agency. Cravens' complaint included the agency's standard form including the instructions regarding filing and service of the complaint. The employer received notice of Cravens' complaint via an email from the agency on

September 26, 2022. The notice went into a junk email folder and was not discovered by the employer until November 3, 2022.

On February 10, 2023, the complaint was consolidated with a complaint Cravens filed against Teamsters Local 839 (union).¹

On May 23, 2023, the employer filed a motion for summary judgment in the consolidated case asserting a “lack of service.”² A briefing schedule was issued. Cravens did not respond to the employer’s motion.

ANALYSIS

Applicable Legal Standards

Summary Judgment Standard

Summary judgment motions are considered under WAC 10-08-135, which states that a “motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” A “material fact” is one upon which the outcome of the litigation depends. *State – General Administration*, Decision 8087-B (PSRA, 2004). A motion for summary judgment calls upon the examiner to make final determinations on a number of critical issues without the benefit of a full evidentiary hearing and record. The granting of such a motion cannot be taken lightly. *Port of Seattle*, Decision 7000 (PECB, 2000). The party moving for summary judgment has the burden of demonstrating the absence of any genuine issue as to a material fact. “A summary judgment is only appropriate where the party responding to the motion cannot or does not deny any material fact alleged by the party making the motion. Entry of a summary judgment accelerates the decision-making process by dispensing with a hearing where none is needed.” *Pierce County*,

¹ Cravens’ complaint against the union was dismissed on May 16, 2023. Decision 13664 (PECB, 2023).

² The employer’s motion also alleges a “failure to otherwise comply with WAC 391-45-050. [Contents of Complaint].” Because the complaint against the employer is dismissed for lack of service, it is unnecessary to address this allegation.

Decision 7018-A (PECB, 2001) (citing *City of Vancouver*, Decision 7013 (PECB, 2000)). Pleadings and briefs can be sufficient to determine if there is a genuine issue of material fact. *Pierce County*, Decision 7018-A (citing *City of Seattle*, Decision 4687-A (PECB, 1996)).

*Service Requirements*³

WAC 391-45-030 requires the party filing a complaint to serve a copy of the complaint on each party named as respondent. The rules for service and how to show proof of service are contained in WAC 391-08-120 and are included as part of the agency's standard complaint form. WAC 391-08-120(3) specifies that documents filed with the agency shall be served upon all parties on the same day. Service shall be upon counsel and the representative of record or upon their designated agents.

WAC 391-08-120(5) requires contemporaneous preparation of a certificate of service or proof by obtaining acknowledgment of service by the respondent. Where the sufficiency of service is contested, WAC 391-08-120(6) provides that acknowledgment of service obtained under subsection (5)(a) or a certificate of service under subsection (5)(b) shall constitute proof of service.

The Commission's rules are in place to encourage effective communication between all parties and to nurture the orderly resolution of disputes. Timely and effective service is enforced to ensure due process is afforded to all parties. *City of Mabton*, Decision 9992-A (PECB, 2008). Service of the complaint is a jurisdictional requirement. *Tacoma School District (International Union of Operating Engineers, Local 286)*, Decision 5337-B (PECB, 1996). Where a party raises a claim of defective service, the burden is on the party that filed the document to prove that it served the other party or parties. *King County*, Decision 7221-A (PECB, 2001). Failure to provide proof of service will result in the dismissal of a complaint. *Washington State University*, Decision 12396 (PSRA, 2015) (citing *State – Fish and Wildlife*, Decision 11748 (PSRA, 2013); *City of Kirkland*, Decision 8822-A (PECB, 2005)).

³ The Commission revised the rules cited below effective January 1, 2023. For the purposes of this motion, I am applying the rules that were in effect when Cravens filed her complaint against the employer.

Application of Standards

There are no disputed facts regarding service in this case. Thus, summary judgment is appropriate. There is nothing in the record indicating that Cravens complied with WAC 391-08-120(3)'s requirement to serve the complaint on the employer. The email to the agency filing the complaint contains no other recipients, and there is no evidence before this Examiner that Cravens actually served the complaint, prepared a certificate of service, or obtained acknowledgement of service as required by WAC 391-08-120(6). On these facts, I am required to dismiss Cravens' complaint.

FINDINGS OF FACT

1. Ben Franklin Transit is an employer within the meaning of RCW 41.56.030(13).
2. Complainant Jo Cravens was employed by the employer.
3. Cravens' complaint was filed on September 23, 2022, by email to filing@perc.wa.gov. There were no other recipients listed in Cravens' email to the agency.
4. Cravens did not file a certificate of service with her complaint.
5. Cravens' complaint included the agency's standard form including the instructions regarding filing and service of the complaint.
6. The employer received notice of Cravens' complaint via an email from the agency on September 26, 2022. The notice went into a junk email folder and was not discovered by the employer until November 3, 2022.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under chapter 41.56 RCW and chapter 391-45 WAC.
2. No genuine issue of material fact remains as to whether Cravens complied with WAC 391-08-120(3)'s requirement to serve the complaint on the employer.

3. Based upon findings of fact 3 and 4, Cravens did not comply with WAC 391-08-120(3)'s requirement to serve the complaint on the employer.

ORDER

The complaint charging unfair labor practices in Case No. 135930-U-22 is DISMISSED.

ISSUED at Olympia, Washington, this 21st day of June, 2023.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



LOYD J. WILLAFORD, 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.



RECORD OF SERVICE

ISSUED ON 06/21/2023

DECISION 13664-A - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

CASE 136197-U-23c

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