

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

HIGHLINE SCHOOL DISTRICT, Employer.	
DAVID ZERE, Complainant, vs. HIGHLINE EDUCATION ASSOCIATION, Respondent.	CASE 141388-U-24 DECISION 14009-A - EDUC ORDER GRANTING MOTION FOR SUMMARY JUDGMENT AND DISMISSAL OF CASE

David Zere, the complainant.

Andy Paroff and *Jada Walker*, Attorneys at Law, Washington Education Association, for the Highline Education Association.

On October 16, 2024, David Zere filed an unfair labor practice complaint against the Highline Education Association (union). Zere filed an amended complaint on November 27, 2024. On December 17, 2024, the union filed a motion to dismiss the amended complaint. I GRANT the motion and dismiss Zere’s amended complaint because it was not served on the union as required by WAC 391-08-120.¹

BACKGROUND

On October 16, 2024, David Zere filed an unfair labor practice complaint against the union using the agency’s electronic filing system. On November 4, 2024, Unfair Labor Practice Administrator, Dario de la Rosa, issued a deficiency notice informing Zere that the complaint did not state a cause

¹ The amended complaint was also not timely filed in response to a deficiency notice. While this could be an independent reason to dismiss, it is unnecessary to reach that issue here, as there is no evidence that the complaint was served on the union. *See Southwest Washington Agency on Aging and Disabilities (OPEIU Local 11)*, Decision 11703-B (PECB, 2013).

of action. The notice further informed Zere that the complaint would be dismissed if an amended complaint was not filed within 21 days.

Zere filed an amended complaint on November 27, 2024, by emailing it to filing@perc.wa.gov. There were no other recipients on this email, and the amended complaint did not contain a certificate of service.

The Unfair Labor Practice Administrator issued a cause of action statement and order of partial dismissal on December 16, 2024. On December 17, 2024, the union filed a motion to dismiss the complaint based upon timeliness and lack of service. The motion was supported with declarations which stated that the union did not receive Zere's amended complaint and only became aware of the amended complaint when it received the cause of action statement and order of partial dismissal on December 16, 2024.

On December 20, 2024, I issued a briefing schedule on the union's motion. Zere did not respond to the motion.

ANALYSIS

Applicable Legal Standard(s)

*Summary Judgment*²

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

² The union's motion was styled as a "motion to dismiss." Because the motion is a dispositive motion, I will apply the agency's summary judgment standard.

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*, 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

WAC 391-45-030 requires the party filing a complaint to serve a copy of the complaint on each party named as a 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)).

Application of Standard(s)

There are no material facts in dispute here. The amended complaint was not served on the union as required by WAC 391-08-120. The union asserts that it did not receive the amended complaint, and there is nothing in the record before me to suggest that Zere served it. On these facts, I am required to dismiss the amended complaint.

CONCLUSION

The union's motion is GRANTED. Zere's amended complaint is dismissed because it was not served on the union as required by WAC 391-08-120.

FINDINGS OF FACT

1. On October 16, 2024, David Zere filed an unfair labor practice complaint against the Highline Education Association (union) using the agency's electronic filing system.
2. On November 4, 2024, Unfair Labor Practice Administrator, Dario de la Rosa, issued a deficiency notice informing Zere that the complaint did not state a cause of action. The notice further informed Zere that the complaint would be dismissed if an amended complaint was not filed within 21 days.
3. Zere filed an amended complaint on November 27, 2024, by emailing it to filing@perc.wa.gov. There were no other recipients on this email, and the amended complaint did not contain a certificate of service.
4. The Unfair Labor Practice Administrator issued a cause of action statement and order of partial dismissal on December 16, 2024.
5. On December 17, 2024, the union filed a motion to dismiss the complaint based upon timeliness and lack of service. The motion was supported with declarations which stated that the union did not receive Zere's amended complaint and only became aware of the amended complaint when it received the cause of action statement and order of partial dismissal on December 16, 2024.

6. On December 20, 2024, I issued a briefing schedule on the union's motion. Zere did not respond to the motion.

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 Zere served the amended complaint on the union.
3. Based upon findings of fact 4, 5, and 6, Zere did not comply with the requirement of WAC 391-08-120(3) to serve the amended complaint on the union.

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is dismissed.

ISSUED at Olympia, Washington, this 29th day of January, 2025.

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.