

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

VICTOR OCHOA,

Complainant,

vs.

PASCO SCHOOL DISTRICT,

Respondent.

CASE 139098-U-24

DECISION 13969-A - PECB

DECISION OF COMMISSION

Victor Ochoa, the complainant.

F. Chase Bonwell, Attorney at Law, Porter Foster Rorick LLP, for Pasco School District.

SUMMARY OF DECISION

Victor Ochoa appeals the Examiner's decision dismissing his unfair labor practice complaint for failing to properly serve the unfair labor practice complaint on Pasco School District (district or employer). The Examiner concluded that Ochoa did not properly file and serve his full complaint within the six-month limitation period provided in RCW 41.56.160(1) because neither his June 6 nor his June 7 statement of facts was served on the district. Based on the facts of the case, we exercise our discretion and waive WAC 391-08-120(3) with respect to the June 6 statement of facts only and find that Ochoa may proceed on his June 5 unfair labor practice complaint form and his June 6 statement of facts. We affirm the Examiner's conclusion that the June 7, 2024, statement of facts was not timely served upon the district. Inasmuch as it appears that the Executive Director did not rule on whether the June 6 statement of facts should proceed, we remand the case to the Executive Director to determine whether the June 6, 2024, filing states a cause of action, without consideration of the June 7 filing.

STATEMENT OF THE CASE

On June 5, 2024, Ochoa used the agency's e-filing system, which is an online portal, to file an unfair labor practice complaint against his employer, the district. The June 5 filing included only the unfair labor practice complaint form but did not include the required statement of facts constituting the basis of the cause of action. In the online submission, Ochoa selected "Yes" in the "System Service" box, which prompts the system to automatically send a copy of the filing to all the parties identified by the complainant. Accordingly, on June 5, 2024, the e-filing system sent an email stating that a case was filed to the district's Executive Director of Employee Services, Dr. Robert Smart; a representative for the union; and Ochoa. The email contained a link to the unfair labor practice complaint form submitted by Ochoa.

On June 6, 2024, Ochoa emailed the agency's filing email, which is an acceptable means of filing documents with the agency. In his email, Ochoa requested the agency upload a document entitled "Timeline of Events" to his file and explained that he was not able to upload the document when he filed his case. Ochoa spoke with an agency staff member who "guided" him to send the statement of facts to the filing email. Ochoa did not include the district on his email requesting the agency add the statement of facts to the case. In the "Timeline of Events," Ochoa alleged the district unlawfully discharged him on January 8, 2024. Ochoa did not receive, nor did he request, any confirmation that the emailed documents had been served upon the district.

On June 7, 2024, Ochoa emailed the agency's filing email requesting that the agency upload a new document entitled "Statement of Facts/Timeline of Events - Amendment 1." Ochoa did not include any representative of the district on the June 7 email submission. The amended statement of facts contained the same allegation regarding Ochoa's discharge date. Ochoa did not receive, nor did he request, any confirmation that the emailed documents had been served upon the district.

On June 11, 2024, the Executive Director issued a cause of action statement based on the June 7, 2024, amended complaint. The agency served the district and Ochoa with the cause of action statement.

On July 2, 2024, the district filed an answer to the June 7 amended unfair labor practice complaint. In its affirmative defenses, the district asserted that Ochoa failed to serve the district with the complaint and the amended complaint in violation of WAC 391-08-120(3) and WAC 391-45-050. The district asserted that it did not have notice of the complaint until the agency served the district with the cause of action statement.

On August 2, 2024, the district filed a motion to dismiss asserting the complainant did not serve the district with the unfair labor practice complaint and the alleged facts were outside the statute of limitations.¹ On August 20, 2024, Ochoa responded to the motion to dismiss. By email on August 20, 2024, Ochoa filed an amended complaint and served the district. On August 26, 2024, the district filed a reply brief.

On September 9, 2024, the Examiner notified the parties that he would grant the district's motion to dismiss. The Examiner concluded that Ochoa's August 20, 2024, filings complied with WAC 391-08-120. *Pasco School District*, Decision 13969 (PECB, 2024) at 5. However, the Examiner further found Ochoa did not file a complaint and perfect service within the statute of limitations. *Id.* Specifically, by the time Ochoa filed the amended unfair labor practice complaint on August 20, 2024, the facts alleged occurred outside the six-month statute of limitations and could not be found to state a cause of action. *Id.*

The Examiner concluded, although Ochoa filed and served the district with the unfair labor practice complaint form on June 5, the unfair labor practice complaint was defective without a statement of facts. *Id.* at 6. Ochoa subsequently filed the timeline of events, or statement of facts, via email but did not serve the district. *Id.* The subsequently filed June 7, 2024, amended complaint was similarly filed via email without serving the district. *Id.* Even if Ochoa was advised by agency staff that the e-filing system would serve the other party, Ochoa did not use e-filing to file his documents. *Id.* at 6-7. The Examiner dismissed the complaint because Ochoa did not properly serve the district. *Id.* at 7-8.

¹ The district's motion was dated July 1, 2024, but it was not filed with the agency until August 2, 2024.

ANALYSIS

Applicable Legal Standards

Documents may be filed with the agency using the e-filing system on the agency's website or by sending an email to the agency. WAC 391-08-120(2)(a-b). If a party chooses to use the e-filing system, "[f]iling is complete when a legible copy of the document is successfully uploaded to the e-filing system. Service is complete upon receipt of the entire electronic transmission by the recipient." WAC 391-08-120(4)(a). When the e-filing system is used, the filer may request that the agency serve the other parties, and if requested, the agency will do so. WAC 391-08-120(6)(a). If a party chooses to file by email, "[f]iling or service is complete upon receipt of the entire electronic transmission by the recipient." WAC 391-08-120(4)(b). If email is used, the filer is solely responsible for service. WAC 391-08-120(6)(b).

"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) (citing *King County*, Decision 6329 (PECB, 1988); *Thurston County*, Decision 5633 (PECB, 1996)). "The requirement for service of process is well-defined, and subsequent awareness of a filing does not satisfy the procedural requirement." *King County*, Decision 7221-A (citing *King County*, Decision 6329; *Tacoma School District*, Decision 5337-B (PECB, 1995); *Spokane School District*, Decision 5151-A (PECB, 1995)). Failure to serve other parties is grounds for dismissal. *Clover Park School District*, Decision 377-A (EDUC, 1978); *Federal Way School District*, Decision 13010-A (PECB, 2019) (noting that failure to serve an appeal on opposing parties is a reason for dismissal).

The "rules adopted by the commission are liberally construed to effectuate the purposes and provisions of" Washington State's collective bargaining laws. WAC 391-08-003. "The agency may waive any requirement of the rules unless a party shows that it would be prejudiced by a waiver." *Id.* Under WAC 391-08-003, the Commission has reserved the authority to waive the application of its rules. The exercise of that authority has been conditioned on the waiver "effectuating the purposes and provisions of the applicable collective bargaining statute." *Valley Communications Center*, Decision 6097-A (PECB, 1998) (refusing to waive the time limit for

filing a notice of appeal). The only condition explicitly stated in WAC 391-08-003 is “lack of prejudice.” Nonetheless, waiver is not automatic when there is no prejudice. *Valley Communications Center*, Decision 6097-A

Application of Standards

On appeal, Ochoa asserts that he sought assistance from agency staff with his initial filing. Ochoa understood that by filing his unfair labor practice complaint using e-filing, the system would serve the district. Ochoa argues that because he selected system service when he initiated an unfair labor practice complaint in e-filing that all documents subsequently filed with the agency would be served on the other parties through the e-filing system. The district argued Ochoa did not complete service as required by WAC 391-08-120(3).

In limited circumstances that fulfill its obligations to promote peace in labor relations, such as ambiguity in the Commission’s rules or reliance upon staff advice, the Commission will waive its rules. *Island County*, Decision 5147-C (PECB, 1996) (waiving the time for filing an appeal); *City of Tukwila*, Decision 2434-A (PECB, 1987) (waiving the time for filing election objections based upon a statement of the due date from agency staff). In *Island County*, the employer faxed a notice of appeal to the Commission’s office approximately two hours before the deadline to file an appeal. After receiving the fax, the Executive Director’s secretary telephoned the employer’s representative and informed him that a notice of appeal could not be filed by fax. The employer filed the original petition for review one day later. The Commission examined its rules and found that the rules did not clearly exclude filing by fax. The employer properly served the union with the notice of appeal within the time for appeal. Based on the employer’s attempts to comply with the rules, the Commission determined waiver was appropriate.

Based on the facts in this appeal, we waive WAC 391-08-120(3) and WAC 391-45-030 requiring Ochoa to serve the June 6, 2024, statement of fact on the district. Ochoa properly filed the unfair labor practice complaint form on June 5, 2024, and selected system service. In response, the system emailed a notice of case filing to the district and Ochoa. Accordingly, the district was properly notified the complaint was filed. If Ochoa had been able to successfully upload the

statement of facts at the same time, then he would have perfected the filing within the statute of limitations. However, Ochoa was unsuccessful in uploading the statement of facts on June 5, 2024.

Ochoa made a reasonable effort to complete e-filing and service within the statute of limitations. The next day, Ochoa attempted to complete filing by contacting the agency about his inability to e-file the statement of facts and was guided to email the statement of facts. Thus, he could have reasonably believed that the document would be filed and served as if he were able to successfully e-file it. Ochoa did not understand that by emailing this statement of facts, rather than uploading the document through the e-filing system, the system would not serve the other party. Based on Ochoa's representations and reasonable reliance on staff advice, we waive the rule and deem the June 6, 2024, statement of facts properly filed as if it were e-filed and served through the e-filing system.

The waiver of the service requirement in this case extends only to the June 6, 2024, statement of facts. This waiver does not extend to subsequent filings because there is no evidence that Ochoa had any later inability to use e-filing. Rather, Ochoa continued to use the agency's filing email address and did not include the district on those filings as required by WAC 391-08-120.

We do not find the district will be prejudiced by waiving the service requirement for the June 6, 2024, unfair labor practice complaint. The agency notified the district that the complaint was initiated. The agency will provide the district with the statement of facts filed on June 6, 2024.

In all cases, the waiver depends upon the facts before the Commission. This decision should not be read to allow parties who are unsuccessful in uploading documents through e-filing to email documents to the agency without sending those documents to the other party. Rather, this decision should put all parties on notice that sending documents to the agency's filing email does not result in system service. System service is only available through successfully uploading documents in e-filing and selecting system service.

The June 11, 2024, cause of action statement was based on the June 7, 2024, amended statement of facts, which was not served on the district. We remand the case to the Executive Director to review the June 6, 2024, statement of facts to determine if a cause of action exists.

ORDER

The findings of fact entered by Examiner Sean Leonard are AFFIRMED and adopted as the findings of fact of the Commission.

Conclusion of law 1 entered by Examiner Sean Leonard is affirmed and adopted as a conclusion of law of the Commission. Conclusion of law 2 issued by the Examiner is vacated, and the following conclusion of law is substituted:

2. Based on findings of fact 3 through 7, WAC 391-08-120 is waived with respect to the June 6, 2024, statement of facts.

The complaint is remanded to the Executive Director to determine if the June 6, 2024, unfair labor practice complaint states a cause of action.

ISSUED at Olympia, Washington, this 18th day of June, 2025.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK LYON, Chairperson



ELIZABETH FORD, Commissioner



HENRY E. FARBER, Commissioner