STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RETAIL CLERKS UNION, LOCAL #1612, Complainant,	CASE NO. 1308-U-78-165
vs.	DECISION OF COMMISSION ON PETITION TO REVIEW AND AFFIRMING EXAMINER
CITY OF BENTON CITY, WASHINGTON, Respondent.	DECISION NO. 436-A,PECB

This matter is before the Commission on a petition to review a decision and order entered herein June 7, 1978 by Alan R. Krebs, Examiner, on the ground that the Respondent, City of Benton City was denied fairness, justice and its consitutional rights by being denied a hearing on the merits of the complaint after failing to answer.

The notice of hearing with a copy of the amended complaint attached was received by the mayor of respondent on March 13, 1978. The notice of hearing was issued in the name of the Public Employment Relations Commission, stated the time and place of the hearing, and stated further:

> You are further notified that the person or organization complained of here may make Answer to such Complaint by filing an Answer thereto with the Public Employment Relations Commission. The original and three (3) copies of such Answer shall be served on the Commission on or before:
>
> March 23, 1978
>
> And on the same date a copy thereof shall be served on:
>
> Retail Clerks Union, Local #1612
> 1305 Knight Street-P. O. Box 159
> Richland, Washington 99352

The amended complaint attached thereto alleged that respondent had violated RCW 41.56.140, the particulars in which respondent was alleged to have done so and the relief sought.

Thus the notice and complaint, served together by mail, completely satisfied RCW 34.04.090(b). They were admittedly received by respondent on March 13, 1978.

No answer was filed or served until June 26, 1978.

RCW 41.56.170 provides, insofar as pertinent:

> The person so complained of shall have the right to file an answer to the original or amended complaint within five days after the service of such original or amended complaint and to appear in person or otherwise to give testimony at the place and time set in the complaint.

WAC 391.21.520 provides:

> ANSWER--CONTENTS AND EFFECT OF FAILURE TO ANSWER. An Answer filed by a respondent shall specifically admit, deny or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. The failure of a respondent to file an answer or the failure to specifically deny or explain in the answer a fact alleged in the complaint shall, except for good cause shown, be deemed to be an admission that the fact is true as alleged in the complaint, and as a waiver of the respondent of a hearing as to the facts so admitted.

The statute is similar to, but not identical with, the pertinent portion of section 10(b) of the National Labor Relations Act, Title 29 U.S.C. §160(b), which provides:

> The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint.

The NLRB rule is section 102.20 of NLRB Rules and Regulations Series 8, 41 F.R. 1478 _et seq_. and reads:

> Answer to complaint; time for filing contents; allegations not denied deemed admitted.-- The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

Thus while the NLRB rule grants ten days to answer and the state statute grants only five, the statutes and rules are substantially alike.

In fact, the notice in the instant case allowed ten days for respondent to answer instead of the statutory five. It might well be questioned whether or not the Commission has authority to extend the time for answer, but that issue does not arise here in view of the conclusion we reach.

The hearing was held according to notice on April 18 and 19, 1978. At the request of the respondent's mayor, the hearing was continued from 10:00 a.m. to 1:30 p.m. on April 18. At that time respondent's mayor appeared and asked for time to obtain legal counsel. His request was granted and the hearing was adjourned until 9:30 a.m. on April 19.

On April 19 the hearing resumed with the mayor and respondent's legal counsel in attendance. Still no answer was filed.

The complainant moved that all facts alleged in the complaint be deemed admitted to be true as alleged in the complaint

and that the respondent be deemed to have waived any hearing on the facts so admitted. Testimony on that motion was taken and reported. The mayor admitted having received the notice and complaint. It appeared that such receipt had been at least three weeks prior to the hearing. The only excuse offered for not having filed an answer was "oversight."

The examiner granted the union's motion, rendered a decision thereon, made findings of fact and conclusions of law and entered a remedial order, the details of which have not been challenged on review.

The respondent argues in its petition for reivew that it was deprived of a fair hearing. A fair hearing is defined in a case cited on behalf of respondent as follows:

> A 'fair hearing' is required by the due process provisions of the United States and the Washington State Constitutions. The constitutional elements of procedural due process, and thus of a fair hearing, are: notice; an opportunity to be heard or defend before a competent tribunal in an orderly proceeding adapted to the nature of the case; an opportunity to know the claims of opposing parties and to meet them; and a reasonable time for preparation of one's case. Cuddy v. Dept. of Public Assistance, 74 Wn.2d 17, 19.

All these elements of due process were accorded to the respondent. There was no excuse for its failure to file an answer on the morning of April 19 under any circumstances.

Complainant argues in its brief and cites authority for the proposition that the city is not entitled to due process of law. Regardless of the force such an argument might have in proceedings between the city and its citizens as such, it would be unthinkable for this Commission to apply such a doctrine to the public employers who are required by law to appear before it. We hold that all parties who appear before this Commission and its

agents are entitled to all the elements of due process of law or fundamental fairness. We hold that respondent received all those elements and, perhaps more indulgence than RCW 41.56.170 allows, in the instant case.

This conclusion comports with National Labor Relations Board precedent, L. E. Beck & Son, Inc., 159 NLRB 1564, 1565; Cavalier Spring Co., 193 NLRB 829, 830; Aaron Convalescent Home, 194 NLRB 750. In the last cited case the Board said at page 751:

> As the Respondent has not filed an answer within 10 days from the service of the complaint, and as no good cause to the contrary has been shown, in accordance with the rule set forth above, the allegations of the complaint herein are deemed to be admitted to be true and are so found to be true.

And see later cases collected at 1978 CCH, NLRB ¶19,028 and ¶19,291.

The petition for review is denied and the decision of the Examiner is affirmed.

DATED this 14th day of July, 1978.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Mary Ellen Krug, Chairman

Michael H. Beck, Commissioner

Paul A. Roberts, Commissioner