STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| RETAIL CLERKS UNION, LOCAL 1612, Complainant, vs. CITY OF BENTON CITY, WASHINGTON, Respondent. | ) | CASE NO. 1308-U-78-165<br>DECISION NO. 436-PECB<br>DECISION AND ORDER |

APPEARANCES:

MICHAEL E. DE GRASSE, (Critchlow, Williams, Ryals & Schuster) Attorney at Law, for the complainant.

ART BINGMAN, (Blechschmidt, Bingman & Maxwell, P.S., Inc.) Attorney at Law, for the respondent.

STATEMENT OF THE CASE

Upon a charge and an amended charge filed by the Retail Clerks Union, Local 1612, herein called complainant or union, pursuant to the Public Employees Collective Bargaining Act, RCW 41.56 (herein called the Act), a complaint was issued by the Public Employment Relations Commission. The issue presented is whether City of Benton City, Washington, herein called respondent, reduced the hours of its employee, LaVonne Morton, and subsequently discharged her and also discharged its employee, Barbara Reed, because of their support for the union, and thereby interfered with, restrained, or coerced public employees in the exercise of rights guaranteed in RCW 41.56.150(1).

On March 9, 1978, a notice of hearing was mailed to respondent, which set the hearing for April 18, 1978 at 10:00 a.m. and provided:

> "* * *
>
> 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.

* * *"

To this day, no answer has been filed by respondent. At 10:00 a.m. on April 18, 1978, a representative of respondent phoned the Trial Examiner at the premises where the hearing was to be held, and stated that as a result of respondent's misunderstanding, respondent could not be present. The Trial Examiner then postponed the start of the hearing until 1:30 p.m. on the same day.

The hearing was opened at 1:30 p.m. at which time, counsel for the union moved, pursuant to Washington Administrative Code provisions 391-21-516 and 391-31-520, "to have all matters in the complaint be admitted as against the respondent" and ". . . to have the hearing stricken (sic) with respect to the respondent's right to contest any matters set forth in the complaint" based on respondent's failure to file an answer. Respondent, through its mayor, Webb Batemen, acknowledged receiving the notice of hearing and complaint on March 13, 1978. When asked why no answer was filed, Bateman responded:

> "I would say it's my fault why it wasn't answered. It wasn't that I just wanted to ignore it, but there was so many things going on that I overlooked it."

Bateman testified that he doesn't remember reading the language in the notice of hearing with regard to filing an answer. The hearing was then adjourned until the following morning in order to permit respondent to obtain legal representation. When the hearing resumed on April 19, 1978, counsel for respondent argued that the union's motion should be denied inasmuch as the notice of hearing does not specifically warn respondent that failure to provide an answer will result in a default. Further, respondent alleges that there is no proof of service on respondent.

DISCUSSION

At hearing, the union's motion was granted for the following reasons.

WAC 391-21-516 provides:

> "NOTICE OF HEARING. The examiner shall issue and cause to be served on the parties a notice of hearing at a time and place specified therein. The notice of hearing shall specify the date for the filing of an answer

> which shall be five days after service of the complaint. Any such notice of hearing may be amended or withdrawn before the close of the hearing."
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> 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." (Emphasis added).

Respondent's "overlooking" its obligation to provide an answer is not good cause for failure to provide an answer.

The notice of hearing provides a date on which an answer "shall" be served on the Commission and the union. Further, the testimony of the mayor of respondent establishes that respondent's failure to provide an answer was not caused by any misinterpretation of language contained in the notice of hearing.

> WAC 391-08-140 provides:
>
> "Service upon parties shall be regarded as complete: By mail, upon deposit in the United States mail properly stamped and addressed; . . ."

Respondent's mayor acknowleges timely receipt by mail of the notice of hearing.

Therefore, respondent's failure to file an answer must be "deemed to be an admission that the fact[s]. . . . [are] true as alleged in the complaint and as a waiver of the respondent of a hearing as to the facts so admitted." Thus the facts alleged in the complaint serve as the basis for the Trial Examiner's Findings of Fact.

## FINDINGS OF FACT

1. Respondent is, and has been at all times material herein, a public employer within the meaning of RCW 41.56.030(1).

2. The union is, and has been at all times material herein, a bargaining representative within the meaning of RCW 41.56.030(3).

3. On or about January 3, 1978, respondent decreased the hours of its employee, LaVonne Morton, from forty hours per week, during the period in which a representation election was pending. Respondent was aware that LaVonne Morton supported the union.

4. On or about February 16, 1978, LaVonne Morton was terminated because she actively supported the union during a representation election.

5. On or about February 21, 1978, Barbara Reed, an employee of respondent, was terminated because she actively supported the union during a representation election.

## CONCLUSIONS OF LAW

1. Respondent's reduction of the hours worked by LaVonne Morton because of her union activities constitutes a violation of RCW 41.56.140 which provides that:

> ". . . It shall be an unfair labor practice for a public employer:
>
> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter.
>
> * * *."

These "rights" are enumerated in RCW 41.56.040 which provides:

> "No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of their right under this chapter."

2. Respondent's discharge of LaVonne Morton and Barbara Reed because of their union activities constitutes a violation of RCW 41.56.140(1).

3. Having found that respondent has engaged in unfair labor practices in violation of RCW 41.56.140(1), respondent must be ordered to cease and desist from violation of the Act and to take certain affirmative action designed to effectuate the policies of the Act.

## ORDER

IT IS ORDERED That respondent, City of Benton City, its officers and agents, shall immediately:

1. Cease and desist from:

a. Discouraging membership in Retail Clerks Union, Local No. 1612, or any other labor organization, by discharging or refusing to reinstate any of its employees, or by reducing the hours of any of its employees, or in any other manner discriminating in regard to hire or tenure of employment, except to the extent permitted by RCW 41.56.140(1).

b. In any other manner interfering with, restraining or coercing its employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining.

2. Take the following affirmative action:

a. Offer its employees LaVonne Morton and Barbara Reed immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges.

b. Make its employees LaVonne Morton and Barbara Reed whole for any loss of pay or benefits they may have suffered by reason of the discriminatory reduction in hours and discharges, by payment of the amounts they would have earned as employees, from the dates of the discriminatory actions taken against them until the effective date of an unconditional offer of reinstatement made pursuant to this Order. Deducted from the amounts due shall be amounts equal to any earnings such employees may have received during the period of the violation, calculated on a quarterly basis. Also deducted shall be an amount equal to any unemployment compensation benefits such employees may have received during the period of the violation, and respondent shall provide evidence to the Commission that such amounts have been repaid to the Washington State Department of Employment Security as a credit to the benefit record of the employees. Money amounts due shall be subject to interest at the rate of eight (8) per cent from the date of the violation to the date of payment.

c. Post immediately at its premises copies of the attached notice to employees marked "Appendix" for a period of sixty (60) days on bulletin boards where notice to employees of respondent are usually posted.

d. Inform the Public Employment Relations Commission, in writing, within twenty (20) days from the date of this Order, as to the steps taken to comply herewith.

DATED at Olympia, Washington this 7th day of June, 1978.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Alan R. Krebs

ALAN R. KREBS, Examiner

# PUBLIC EMPLOYMENT RELATIONS COMMISSION

APPENDIX

# NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, CITY OF BENTON CITY, WASHINGTON HEREBY NOTIFIES OUR EMPLOYEES THAT:

WE WILL NOT discourage membership in Retail Clerks Union, Local No. 1612, or any other labor organization by discharging or refusing to reinstate any of our employees, or by reducing the hours of any of our employees, or in any other manner discriminate in regard to hire or tenure of employment, except to the extent permitted by RCW 41.56.140(1).

WE WILL NOT in any other manner interfere with, restrain or coerce our employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining.

WE WILL offer our employees LaVonne Morton and Barbara Reed immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges.

WE WILL make employees LaVonne Morton and Barbara Reed whole for any loss of pay or benefits they may have suffered by reason of the discriminatroy reduction in hours and discharges, by payment of the amounts they would have earned as employees, from the dates of the discriminatory actions taken against them until the effective date of an unconditional offer of reinstatement made pursuant to this Order.

CITY OF BENTON CITY, WASHINGTON

DATED:_____ By:_____

(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Commission's office, 603 Evergreen Plaza, Olympia, Washington 98504. Telephone: (206) 753-3444.