STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, LOCAL 1504,	)	
Complainant,	)	CASE 6903-U-87-1399
vs.	)	DECISION 3108-A - PECB
MASON COUNTY,	)	
Respondent.	)	DECISION OF COMMISSION

Pamela G. Bradburn, General Counsel, appeared on behalf of the union.

Gary P. Burleson, Prosecuting Attorney, by Michael Clift, Deputy Prosecuting Attorney, appeared on behalf of the employer at hearing. John H. Buckwalter, Special Deputy, submitted the brief in support of the petition for review.

In June of 1987, Washington State Council of County and City Employees, Local 1504, filed a complaint charging unfair labor practices with this Commission, alleging that Mason County had violated RCW 41.56.140(4) with respect to the adoption of a "smoking policy". The case was heard on November 11, 1987, and Examiner Walter M. Stuteville issued his findings of fact, conclusions of law and order in the matter on January 26, 1989. The Examiner held that the employer committed an unfair labor practice by unilaterally adopting an ordinance banning smoking at work sites of employees represented by the union, without first giving notice to the union and providing an opportunity for bargaining.

A petition for review of the Examiner's decision was timely filed with the Commission on February 15, 1989, by Deputy Prosecuting

Attorney Michael Clift. That petition for review was not served upon the union or its attorney, as required by WAC 391-45-350. In a letter addressed to Pamela G. Bradburn under date of March 30, 1989, Clift stated, in pertinent part:

> Please accept my apology that you were not served earlier as had been my intention. I personally served (sic) the original and three copies on the Commission. My secretary knew this and thought I was also making personal service on you, which was never my intention. That's why you were never mailed your copy.

That correspondence has been called to our attention by Ms. Bradburn, in support of her motion for dismissal of the petition for review. The employer does not dispute the omission of service,[1] but responds that the union had constructive notice of the petition for review on March 20, 1989, and "was not prejudiced".

DISCUSSION

WAC 391-45-350 requires both the filing of an original and three copies of a petition for review with the Commission and service of a copy of the petition for review upon opposing parties. In this case, the employer admits that service was not accomplished in a timely manner, and was only effected when a copy of the petition

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[1] An "affidavit of mailing" attached to the petition for review was not completely executed as an affidavit. A Ms. Margie Olinger, who apparently is a secretary in the office of Mr. Clift, partially executed an affidavit form, altering the language to certify that she had mailed a copy of the petition for review to Pamela G. Bradburn. The document was never notarized. Although dated February 15, 1989, it appears to be inconsistent with both Mr. Clift's March 30, 1989 letter and with Ms. Bradburn's assertion that no such petition for review was received by the union. Accordingly, we do not credit the so-called affidavit of mailing.

for review was enclosed with Clift's letter of March 30, 1989. In Clover Park School District, Decision 377-A (EDUC, 1978), a dismissal order issued by the Executive Director was affirmed by the Commission without comment on the merits, because of the failure of the party filing the petition for review to serve copies on all of the other parties. The Commission held that the failure caused a violation of WAC 391-08-120 and a predecessor of WAC 391-45-350.[2] We see no reason to depart from that precedent now. Both WAC 391-08-350 and WAC 391-45-350 require service of a petition for review on opposing counsel, in addition to filing with the Commission. We believe that such service is a jurisdictional requirement, and is equivalent to the service of a "notice of appeal" from a superior court to the court of appeals.

Although we do not reach the merits in this case, we previously dealt with the duty to bargain "smoking" policies in Kitsap County Fire District No. 7, Decision 2872-A (PECB, 1988), and we are contemporaneously issuing our decision in City of Seattle, Decisions 3051-A, 3052-A, 3053-A, 3054-A (PECB, 1989), indicating that rules restricting smoking in the workplace are mandatory subjects of collective bargaining. We refer the parties herein to those precedents.

NOW, THEREFORE, it is

ORDERED

1. The findings of fact, conclusions of law and order issued in the above-entitled matter by Examiner Walter M. Stuteville are affirmed and adopted as the findings of fact, conclusions of law and order of the Public Employment Relations Commission.

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[2] WAC 391-30-534, referred to in the Clover Park case, was supplanted in 1980 by almost identical language in WAC 391-45-350, which remains in effect.

2. Mason County shall notify the above-named complainant, in writing, within 30 days following the date of this order, as to what steps have been taken to comply herewith, and at the same time provide the above-named complainant with a signed copy of the notice required for posting.

3. Mason County shall notify the Executive Director of the Public Employment Relations Commission, in writing, within 30 days following the date of this order, as to what steps have been taken to comply herewith, and at the same time provide the Executive Director with a signed copy of the notice required for posting.

Issued at Olympia, Washington, the 26th day of July, 1989.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

JANE R. WILKINSON, Chairman

MARK C. ENDRESEN, Commissioner

JOSEPH F. QUINN, Commissioner