

DISCUSSION:Filing of Petition For Review

Although petitions for review are normally signed, our rules do not require that such documents be either signed or verified. WAC 391-45-350. Thus far, the only jurisdictional requirements established by Commission rulings regarding a petition for review is that they must be timely filed (See: Spokane School District, Decision 310-A (EDUC, 1978)) and they must be served on opposing parties (See: Clover Park School District, Decision 377-A (EDUC, 1978)). Respondent's motion to dismiss the Petition for Review is therefore denied.

Acceptance of Late Answer

At the outset of the hearing, at the conclusion of his opening statement, the Examiner and the representative of the complainant engaged in the following exchange recorded at page 5 of the transcript:

"(Examiner Krebs:) Prior to going on the record the Respondent submitted three copies of its answer to the Complainant to the Examiner, and indicated that a copy of the answer was submitted to the Complainant last Friday.

Is there any objection by the Complainant to the acceptance of the answer at this time?

MR. PROVOST: No, there is not.

EXAMINER KREBS: In that case, the answer is received."

Having waived its objection to the late answer at the hearing, the complainant will not be heard at this late date to object to its acceptance. Had there been an objection at the hearing, WAC 391-45-210 would have afforded the Respondent an opportunity to show good cause for its failure to answer. The Examiner acted within the scope of his authority conferred by WAC 391-08-003 in the absence of any objection or claim of prejudice.

Motion to Dismiss Procedure

At page 70 of the transcript, it is recorded that the respondent made a motion to dismiss immediately upon the conclusion of the complainant's case in chief. After hearing the motion and the complainant's response, the Examiner recessed the hearing to consider the motion, after which the hearing was resumed and the motion to dismiss was granted.

Whether or not a party can sustain its burden of proof in an unfair labor practice proceeding is precisely why a hearing is held, with an Examiner issuing a decision. A motion to dismiss by the responding party is not necessary to an Examiner's finding that the complainant has failed to sustain

its burden of proof. The close of the complainant's case in chief is a customary point in the procedure for making a determination as to whether the complainant has made a prima facie case.

The Examiner's Ruling

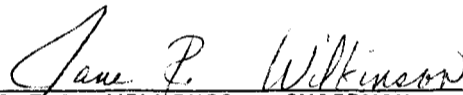
We have reviewed the record of the hearing and the findings of fact, conclusions of law and order of the Examiner, and we find that the record supports the Examiner's conclusion that the petitioner failed to sustain its burden of proof.

ORDER

The findings of fact, conclusions of law and order of the Examiner are affirmed.

DATED this 16th day of June, 1981.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANE R. WILKINSON, CHAIRMAN



R. J. WILLIAMS, COMMISSIONER



MARK C. ENDRESEN, COMMISSIONER