STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SHELTON EDUCATION ASSOCIATION Complainant, vs. SHELTON SCHOOL DISTRICT NO. 309 Respondent.	Case No. 884-U-77-108
and	
SHELTON EDUCATION ASSOCIATION Complainant, vs. SHELTON SCHOOL DISTRICT NO. 309 Respondent.	Case No. 662-U-76-74 Decision No. 435-A EDUC DECISION AND ORDER

APPEARANCES:

Judith A. Lonnquist, General Counsel, Washington Education Association, for the complainant.

Heuston & Settle, by Benjamin H. Settle, for the respondent.

Upon consolidated charges filed by the Shelton Education Association (the union) against Shelton School District No. 309 (the district), a hearing was held before Examiner Alan R. Krebs on September 25, 1978. The issue presented is whether the district interfered with, restrained, or coerced employees in the exercise of their rights guaranteed by Chapter 41.59 RCW, in violation of RCW 41.59.140(1)(a). More specifically, it is alleged that the district unlawfully interrogated a job applicant concerning his views on unions and unlawfully threatened another employee in order to discourage membership in the union.

The Alleged Unfair Labor Practices

A. The Hiring Interview

The district's superintendent, Louis Grinnell, conducts the hiring interviews for teacher applicants. During these interviews he uses a form

entitled "Questions for Teacher Interviews". This form contains a series of questions to be asked of the applicants, with spaces between the questions to record the answers. It contains such questions as "Why do you want to teach in Shelton?" and "What is your general philosophy of grading?" It also contains the following: "Strike question--You have heard of W.E.A., N.E.A., A.F.T., haven't you, etc.?"

Craig Johnson applied unsuccessfully for a special education position with the district in the Spring of 1977. He appeared for an interview before Grinnell and John Jones, Director of Curriculum and Special Services. Johnson testified that Grinnell asked him if he was aware of such professional organizations as the Washington Education Association (W.E.A.), the National Education Association (N.E.A.) and the Shelton Education Association (S.E.A.). Johnson replied that he had and that he was currently attempting to join the W.E.A. Grinnell then asked if Johnson would go on strike if those organizations called a strike. Johnson replied that he would not cross a picket line. Grinnell testified that the questions he usually asks applicants and the ones he asked of Johnson are: "Have you ever heard of N.E.A., W.E.A., A.F.T., and organizations of that nature?... Well, let's say you signed a contract to teach in Shelton and April 29, 1979 comes along and the teachers decide to go out on strike because of high class loads, low salaries, some particular reason, and 60% of the teachers are going out on strike and 40% are going to class, what do you think you're going to be doing?"

Grinnell testified that he believes strikes to be illegal and that the answer he receives to the strike question could affect the decision to hire an applicant.

B. Alleged Threat to Shirley Haskell

Since 1973, Shirley Haskell was a district special education teacher and a member of the S.E.A. In January, 1976, Jones' predecessor placed Haskell on probation. Haskell's provisional teaching certificate lapsed in August, 1976. Without the signature of Grinnell, certifying that she had engaged in two years of "successful teaching", she would no longer be certified to teach in the public schools of Washington. In July, 1976, Grinnell wrote to the certification office with a copy sent to Haskell, indicating that he could not certify that she had completed two years of successful teaching. Nevertheless, in that letter he did exercise his option to request a one year extension of Haskell's certificate and said: "Hopefully she will develop into a successful teacher."

On August 10, 1976, Jones wrote to Haskell, and reminded her that she would be on probationary status for the 1976-77 school year. He stated that he would assist her in eliminating the deficiencies that led to her probation and requested that they meet within the next few weeks.

Haskell testified that they met the following week in Jones' office and that during that conversation Jones told her: "Well, Shirley, if you were not an S.E.A. member your probation period would be easier." Haskell testified that she did not respond.

Jones denies saying this. He testified that Haskell told him that she was considering dropping her union membership in order to avoid paying the dues. Jones testified that he then told Haskell that "if the dues were too much for her then maybe it would be a good idea for her to drop it." Haskell remembers telling Jones that the dues were a voluntary thing, but that the savings made by not paying her dues would not make much difference in her financial situation.

Haskell remained a member of the union and resigned her position at the conclusion of the 1977-78 school year. Two weeks prior to her resignation she was informed by a district official that she would be able to keep her teaching credentials if she resigned from her teaching position.

DISCUSSION

The district moved to dismiss the complaint with regard to the alleged threat on the ground that the issue is moot since Haskell has resigned her teaching position. This motion is denied. Haskell's current status with the district is irrelevant with regard to whether the district committed an unfair labor practice. The person who allegedly made the threat still works for the district and as will be discussed, a remedial order is appropriate to prevent any recurrence.

The district further argues that since strikes against governmental agencies are illegal, it has the right to inquire of applicants whether they would commit an illegal act related to their employment. In a recently decided case involving the same parties involved herein, the Commission decided that it was unlawful for the district to ask a job applicant if he would work in the event of a teachers' strike. The Commission said:

> "No strike was imminent. The applicant was not being interviewed as a strike replacement. The questions have an obvious tendency to make an applicant apprehensive about affiliating

> with the parent organizations of the exclusive bargaining representative. Hence, they violated the cited section of the Act. It is not the actual coercive effect of interrogation which renders it repugnant to the statute. It is the tendency of the interrogation to coerce." Shelton Education Association v. Shelton School District No. 309, Decision No. 579 (EDUC, 1979).

The desire of the district to be free of potential law violators must be balanced against the right of employees to be free of coercive conduct which tends to discourage their right to join or assist a bargaining representative. In this regard the Commission has found the rights of the employee to be paramount.

Regarding the differences in the testimony of Jones and Haskell regarding the alleged threat, I find that a credibility resolution is of little importance since both Haskell's version and Jones' version are indicative that Jones engaged in unlawful interference into Haskell's union activities. Jones' statements occurred in the context of a conversation concerning Haskell's probationary status. If the district determined that Haskell did not successfully complete her probation, it had the power to prevent her certification and thus preclude her from practicing her profession. Thus, Jones' admission that he told her during the course of this conversation that "maybe it was a good idea for her" to drop out of the union, because it would save her from paying dues, could be interpreted as his recommendation. In the context of the nature of the meeting, it was coercive. City Supply Corp., 217 NLRB No. 156 (1975).

In any event, I was impressed by Haskell's demeanor and I credit her testimony. Conditioning an employee's employment status on withdrawal from a union constitutes a coercive attempt to reduce support for the union and is an unlawful interference with the rights of the employees in violation of RCW 41.59.140(1)(a). Coca-Cola Bottling Co., 210 NLRB No. 119 (1974). See Barnwell Nursing Home and Health Facility, Inc., 230 NLRB No. 64 (1977).

THE REMEDY

The district will be ordered to cease and desist from questioning applicants regarding their union sympathies and from coercing employees to withdraw support for the union. The union requests that Haskell's personnel file "be expunged of all derogatory material placed therein after Jones' statement to her concerning her probationary status." This request is not granted, since it was not conclusively established that Haskell was subjected to

discrimination subsequent to the coercive conduct. The union's request that the district mail copies of the notices to Johnson and Burnetti is also denied, since neither currently has any ties with the district.

FINDINGS OF FACT

1. Shelton School District No. 309 is an employer within the meaning of RCW 41.59.020(5).

2. The Shelton Education Association is an employee organization within the meaning of RCW 41.59.020(1).

3. In August 1976, John Jones, Director of Curriculum and Special Services for the District, told Shirley Haskell, a certified employee, that her probation period would be easier if she were not a member of the union.

4. In the Spring of 1977, Superintendent Louis Grinnell questioned Craig Johnson, an applicant for employment in a bargaining unit position, regarding the applicant's sympathies for labor organizations.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.59 RCW.

2. By telling an employee that her probation would be easier if she were not a member of the union, the Shelton School District violated RCW 41.59.140(1)(a).

3. By interrogating a job applicant about his union sympathies, the Shelton School District violated RCW 41.59.140(1)(a).

Having found that respondent has engaged in unfair labor practices in violation of RCW 41.59.140(1)(a), 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.

ORDERED

IT IS ORDERED that Respondent, Shelton School District No. 309, its officers and agents, shall immediately:

1. Cease and desist from:

a. Interfering with the right of employees to join and maintain membership in the Shelton Education Association or any other employee organization by interrogation of applicants for employment concerning their attitude toward employee organizations.

b. Coercing employees by promising benefits or threatening reprisals in order to discourage membership in the shelton Education Association or any other employee organization.

c. In any other manner interfering with, restraining, or coercing employees in the exercise of their right to self organization, to form, join, or assist labor organizations and to bargain collectively through representatives of their own choosing.

2. Take the following affirmative action:

a. Post at its premises on the first day that students are present for the 1979-1980 school year, copies of the attached notice to employees marked "Appendix" for a period of sixty (60) days on bulletin boards where notices to employees of the district are usually posted.

b. 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 14th day of June, 1979.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

By: Alan R. Krebs
ALAN R. KREBS, Examiner

"APPENDIX"

PUBLIC EMPLOYMENT RELATIONS COMMISSION

884-U-77-108
Case No. 662-U-76-74 Date Issued June 14, 1979

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, SHELTON SCHOOL DISTRICT NO. 309 HEREBY NOTIFIES OUR EMPLOYEES THAT:

WE WILL NOT interfere with the right of our employees to join and maintain membership in the Shelton Education Association or any other employee organization by interrogation of applicants for employment concerning their attitude toward employee organizations.

WE WILL NOT coerce our employees by promising benefits or threatening reprisals in order to discourage membership in the Shelton Education Association or any other employee organization.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self organization, to form, join, or assist labor organizations and to bargain collectively through representatives of their own choosing.

DATED:_____ SHELTON SCHOOL DISTRICT NO. 309

By:_____

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 PUBLIC EMPLOYMENT RELATIONS COMMISSION, 603 Evergreen Plaza Building, Olympia, Washington. Telephone (206) 753-3444.