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 DECISION OF COMMISSION DECISION NO. 485-B EDUC
SHELTON EDUCATION ASSOCIATION, Complainant, vs. SHELTON SCHOOL DISTRICT NO. 309, Respondent.	Case No. 662-U-76-74

Judith A. Lonnquist, General Counsel, Washington Education Association, appeared on behalf of the complainant.

Heuston & Settle, by B. Franklin Heuston, attorney at law, appeared on behalf of the respondent.

Respondent has petitioned for review of the examiner's order in these consolidated cases. It has also petitioned for dismissal of Case No. 662-U-76-74 on the ground that the individual supervisor whose acts were complained of, and the individual employee with respect to whom they had occurred are no longer employed by the respondent and, therefore, the issue is moot.

THE FINDINGS OF FACT ON CASE NO. 662-U-76-74

While we respect the opinion of the Superior Court of New Jersey in Galloway Township v. Board of Education, 147 N.J. Super. 352, 373 A.2d 1014, it is not in point here. The court said:

> "PERC concedes that the affirmative relief ordered by it was in fact met by the agreement of April 6, 1976. It seeks enforcement of its order to cease and desist from interference with or coercion of employees in the exercise of the right of collective negotiating, from refusal to negotiate collectively in good faith and from unilateral alteration of the terms and conditions and employment during collective negotiations. At oral argument counsel for PERC urged that the appeal was not moot because of the precedential effect of the cease and desist order, if enforced, as tending in another proceeding to show anti-union animus.

> PERC jurisdiction to issue unfair labor practice cease and desist orders is to protect the statutory right of collective negotiating. At the time of its order under appeal there was no controversy before it, no pending unfair labor practice. In its brief appellant board argues:
>
> 'P.E.R.C. should have declined to rule on the issues presented and should have declared the matter moot by reason of a voluntary negotiated agreement between the parties.'" We agree.

At the time of the hearing in the instant case, both employees were employed by the Respondent. As far as we know, both were so employed at the time the order appealed from was entered.

RCW 41.59.110 (2) requires us to follow National Labor Relations Board precedents, provided they are consistent with RCW 41.59.

The fortuitous circumstance that neither the supervisor nor the employee is now, three years later, employed by the respondent does not render the complaint moot. Carpenters, etc., 224 NLRB No. 26, 179-80 CCH NLRB 16, 231; Leonard Refineries, Inc., 147 NLRB 488; United Steelworkers of America, 146 NLRB 71. In the last cited case the Board said, "it is 'settled law that the discontinuance of unfair labor practices does not dissipate their effect and does not obviate the need for remedial order.'" 146 NLRB 72.

The employee had been placed on probation by respondent. The supervisor was one of the administrators charged with responsibility for assisting her in meeting the terms of her probation. As Director of Curriculum and Special Services he, as well as the building principal, was her immediate supervisor. He was still employed by the respondent at the time of the hearing in September 1978.

There is a sharp conflict in the testimony as to what he said to the employee in a private interview touching her probationary status and other matters. She testified that he said, "Well, S_____, if you were not an SEA member your probation period would be easier." He stoutly denies saying any such thing and insists that the employee raised the subject of her financial plight and that she herself suggested that she was considering dropping SEA because of the dues. His recollection is that he observed that if the dues were too much for her, then maybe it would be a good idea for her to drop it.

The Hearing Examiner saw and heard the witnesses and found that the employee's version of the conversation was true. No basis for setting aside this finding has been called to our attention.

Accordingly, Finding of Fact #3 is supported by the evidence. The supervisor was the voice of the respondent speaking to its employee. The utterance found to have been made by that voice tended to discourage membership in SEA,

the employee organization representing her in regard to her tenure of employment and to interfere with and coerce her in the exercise of her rights guaranteed in RCW 41.59.060, all in violation of RCW 41.59.140(1) (a) and (c).

THE FINDINGS OF FACT ON CASE NO. 884-U-77-108

Petitioner contends that Finding of Fact #4 is not supported by the evidence. This finding reads;

> 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.

Respondent's Exhibit 4 is the sheet the respondent used in an interview with applicant J_____ for a teaching position in Shelton. Question 8 and J_____'s reply as noted by the superintendent read:

> 8. Strike question - You have heard of W.E.A., N.E.A., A.F.T., haven't you - etc.
>
> Answer: If I belonged to organization I don't know, wouldn't cross the picket line; if not in I would probably go. Depends on issue.

In response to questions by Counsel for Complainant the superintendent testified:

> Q (by Ms. Lonnquist): Do you recall interviewing Craig Johnson?
>
> A: Yes.
>
> Q. You were using the interview questionnaire at the time you interviewed Mr. Johnson?
>
> A: Yes, I was.
>
> Q. Did you ask him question number eight?
>
> A. I would say yes.

In response to questions by counsel for Respondent the superintendent testified:

> A: At that time when were interviewing candidates -- this has been March of '77, the question went, "Have you ever heard of NEA, WEA, AFT and organizations of that nature? Let's say you signed a contract" -- they usually say yes -- and it goes, "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 percent of the teachers are going out on strike and 40 percent are going to class, what do you think you're going to be doing?"
>
> Q: Is that basically the question that you directed to Mr. Johnson?
>
> A: That was the question, the essence of the question that we used at that time, right.

Q: Is this "have you heard of WEA, NEA, AFT, haven't you, etc.," is that a lead-in to the strike question; is that basically what that is?

A: Generally, yes.

Finding of Fact #4 is supported by substantial evidence.

THE CONCLUSIONS OF LAW

Respondent suggests that Conclusion of Law #2 constitutes an incorrect interpretation of the statute law therein referred to and is unsupported by a "properly developed" finding of fact. Conclusion of Law #2 is fully supported by Finding of Fact #3 discussed above and is defective only in failing to conclude that clause (c) of RCW 41.59.140(1) had been violated as well as clause (a).

Respondent makes the same attack on Conclusion of Law #3. The Conclusion is amply supported by Finding of Fact #4 and is correct. No strike was imminent. The applicant was not being interviewed as a strike replacement. The purpose of interrogating him as to his knowledge of the named organizations in a context of hypothetical strike activity tended to warn the applicant about such organizations and to interfere with his statutory rights with respect to them.

As a last ground for review the Respondent urges that the entire decision is affected by error and contrary to law. We have reviewed the entire record and find no substantial error except with respect to the remedies which we now correct.

In addition to the affirmative action ordered by the Examiner, the Respondent must be ordered to delete from its applicant interview questionnaire question 8 and any other question having like effect.

AMENDED ORDER

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 or discriminating against employees in regard to probation or

any other condition of employment 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. Delete from its applicant interview questionnaires the question which reads:

> "8. Strike question - You have heard of W.E.A, N.E.A., A.F.T., haven't you - etc."

and any other question which probes an applicant's acquaintenance with or attitude toward employee organizations, as defined in RCW 41.59.020 (1), or their parent or affiliated organizations.

b. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix", Such notices shall, after being duly signed by an authorized representative of Shelton School District No. 309, be and remain posted for sixty (60) days. Reasonable steps shall be taken by Shelton School District No. 309 to ensure that said notices are not removed, altered, defaced or covered by other material.

c. Notify the Executive Director of the Commission, in writing, within twenty (20) 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 by the preceeding paragraph.

DATED this 29th day of November, 1979.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Mary Ellen Krug
MARY ELLEN KRUG, Chairman

Don E. Olson 11/29/79
DON E. OLSON, Commissioner

R. J. Williams
R. J. WILLIAMS, Commissioner

"Appendix"

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

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

WE WILL NOT interrogate our employees or applicants for employment concerning their attitude toward the Shelton Education Association or any other employee organization.

WE WILL NOT coerce our employees by promising benefits or threatening reprisals or discriminate against employees in regard to probation or any other condition of employment 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.