

BACKGROUND:

The Icicle Irrigation District, with headquarters in Cashmere, Washington, operates approximately 40 miles of irrigation canals supplying water to farmers, fruit growers and producers in an area generally to the West of the city of Wenatchee. Monroe Mashburn is Manager of the district.

Gene Cheeks was hired by the district on July 6, 1978 as a canal patrolman. While so employed, he was provided district-owned housing. On February 21, 1979, Cheeks was terminated by Mashburn, and was advised to turn in any district-owned tools and equipment to the Foreman. He was further notified that he was to vacate the district-owned quarters on or before March 24, 1979.

On February 22, 1979, Teamsters Union, Local 148 hand-delivered a letter to the district office, addressed to Mashburn, informing him that the union "represents all your employees except supervisors and office personnel" and was requesting a meeting to commence negotiations on a contract.

As a result of the Cheek termination, the union filed the complaint charging unfair labor practices with the Commission on March 14, 1979.

PERTINENT STATUTORY PROVISIONS:

41.56.010 Declaration of purpose. The intent and purpose of this chapter is to promote the continued improvement of the relationship between public employers and their employees by providing a uniform basis for implementing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in matters concerning their employment relations with public employers.

41.56.140 Unfair labor practices for public employer enumerated. 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;
- (2) To control, dominate or interfere with a bargaining representative;
- (3) To discriminate against a public employee who has filed an unfair labor practice charge;
- (4) To refuse to engage in collective bargaining.

DISCUSSION:

On July 6, 1978, Gene Cheeks signed an employment agreement which set forth, in some detail, his duties as patrolman of Icicle Irrigation District's Beat No. 4. These duties were discussed with him by Manager Mashburn prior to his employment. During the period July 6, 1978 through February 21, 1979,

Cheeks' performance came to management's attention, adversely, a number of times.

During his first month on the job, Cheeks' performance was rated as "just fair" by Mashburn. He stated that Cheek was instructed repeatedly by both himself and Sid Goyne (District Foreman) as to what was expected of him and how to accomplish the tasks assigned.

Mashburn rated Cheeks' performance during the month of August as "below par". At the August meeting of the Board of Directors, Mashburn reported that Cheeks didn't appear to want to apply himself on the job and stay with it, that he apparently was taking shortcuts, that he was going home early, and that Mashburn and Goyne had to keep a close eye on the beat once or twice a day. The Board responded with directions to Mashburn to keep a patrolman on the beat, on schedule, attentive and responsible, citing the dangers of not having someone that's responsible to do the job. Mashburn and Goyne were further directed to take care of the situation until they could get someone they could depend on.

During the month of September 1978, Mashburn rated Cheeks' performance as terrible, listing his failure to follow orders regarding canal bank brush clearing and reports regarding his failure to patrol the canal properly. At the September Board meeting, Mashburn again reported Cheeks' job performance. The Board responded that if Cheeks was not improving, Mashburn should get somebody that could do the job. Mashburn stated that he didn't discharge Cheeks at this juncture because Cheeks had a family and needed the job and he (Mashburn) hoped that Cheeks' job performance would improve.

Mashburn characterized Cheeks' performance during October as "lacking, below par". He stated that he had received complaints from some of Cheeks' fellow employees concerning working with him. At the October Board of Directors meeting, Cheeks' performance was reported, as was it in November, December and January 1979, the response from the Board was as before.

The incident that precipitated Cheeks' discharge occurred on February 21, 1979. He was involved in a verbal altercation with one of his fellow employees on a job site. When asked by Mashburn what was going on, he replied in an insolent manner. Mashburn relieved him of his duties and sent him back to the district's office. Cheeks was issued a written termination notice effective as of 4:00 p.m., February 21, 1979.

The complainant has the burden of proof in any unfair labor practice case. See WAC 391-45-270. To establish a discriminatory discharge of an employee for engaging in union organizational activity or other protected activity, it must be shown that the employer's action was motivated by anti-union animus. In order to have such motivation, the employer must have knowledge that protected activity exists. The complainant established that Cheeks initially contacted the union and that a union meeting was held at his

home on February 19, 1979. The respondent was notified by hand-delivered letter on February 22, 1979 that the complainant wished to be recognized as the collective bargaining representative. The record is devoid of evidence that the respondent had any notice of the complainant's organizational drive prior to the delivery of the February 22, 1979 letter. The complainant did not establish that the respondent was aware of Cheeks' activity on behalf of the complaining party, either by direct evidence or circumstantial evidence.

The record is completely silent as to any anti-union animus by the respondent. The Examiner is convinced that the respondent's motive in the firing of Gene Cheeks was not based on anti-union animus. Based on the foregoing the Examiner finds that the true reason for the discharge of Cheeks was because he was consistently an unsatisfactory employee and because of his role in the incident which occurred on February 21, 1979. Having considered the evidence, testimony, arguments and post hearing briefs, the Examiner now makes the following.

FINDINGS OF FACT

1. The Icicle Irrigation District is a "public employer" within the meaning of RCW 41.56.020 and RCW 41.56.030(1), located in Chelan County, Washington.
2. Truck Drivers, Warehouseman and Helpers Local Union No. 148 is a "labor organization" within the meaning of RCW 41.56.010 and is a "bargaining representative" within the meaning of RCW 41.56.030(3).
3. Gene Cheeks was an employee of Icicle Irrigation District from July 6, 1978 to February 21, 1979.
4. During his tenure, Cheeks' performance was rated by the District Manager, Monroe Mashburn, as fair for the first month and at below standard for the ensuing months. Cheeks was discharged on February 21, 1979 immediately following a verbal altercation with another employee and his supervisor.
5. Cheeks' discharge on February 21, 1979 was not based on anti-union animus. The true reason for Cheeks' discharge was because he was an unsatisfactory employee.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. The respondent, Icicle Irrigation District, did not violate RCW 41.56.010 and RCW 41.56.140 in discharging Gene Cheeks.

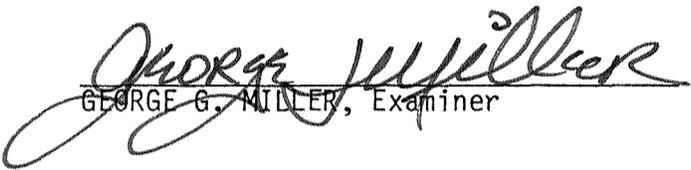
On the basis of the foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following

ORDER

The complaint charging unfair labor practices filed in the above entitled matter is dismissed.

DATED at Spokane, Washington this 8TH day of June, 1981.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


GEORGE G. MILLER, Examiner