BEFORE THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204

STATE OF INDIANA)
) SS
COUNTY OF MARION)

SALVATORE BEVILAQUA,
Complainant,

DOCKET NO. EMno77120882

v.

ALLEN COUNTY HIGHWAY DEPARTMENT,
Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On October 11, 1979, Kenneth W. Maher, Hearing Officer in the above cause, entered his recommendation. Neither party has filed objections to that recommendation within the ten (10) day period prescribed by IC 4-22-1-12 and Ind. Admin. R. and Reg. §(22-9-1-6)-35(A).

Being duly advised in the premises, the Commission hereby adopts as its final Findings of Fact, Conclusions of Law, and Order those recommended in the Hearing Officer's Recommended Findings of Fact, Conclusions of Law, and Order, which is attached hereto and incorporated by reference herein.

Dated: November 16, 1979

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Indianapolis, Indiana 46204

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Respondent.

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The undersigned Hearing Officer was appointed to hear the above-captioned case and both parties were notified of said appointment at the Pre-hearing Conference held in this cause.

Complainant Salvatore Bevilaqua (hereinafter "Bevilaqua") was present at said hearing and was represented by counsel, Ms. Donna Rae Eide and Ms. M.E. Tuke, Respondent Allen County Highway Department (hereinafter "Highway Department"() was represented by counsel, Mr. G. William Fishering.

Having considered the official record, including the Stipulations of fact between the parties, the evidence admitted at the hearing, the arguments of counsel, and being duly advised in the premises, the Hearing Officer hereby recommends the entry of the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. In July of 1976, Bevilaqua filed a Complaint (Docket No 08074) against the Highway Department , and specifically Tobe Partridge, alleging discrimination in employment on the basis of national origin or ancestry, said Complaint being dismissed after a determination of no probable cause on April 12, 1978.
2. On December 20th, 1977, a regularly scheduled workday Bevilaqua was absent from work because of illness.
3. On the 21st day of December, 1977, the Bevilaqua turned in two time sheets, one requesting payment for December 20th 1977, a day that he had not worked, and December 21st 1977, a day he did work.
4. From all evidence presented at the hearing, including but not limited to testimony concerning the standard procedure for filing out time sheets, statements made by various parties at the time of the discovery of the time sheet incident, and based on the Hearing Examiner's determination of the truth and veracity of the various witnesses, it is apparent that the Bevilaqua intentionally falsified his time sheet in an attempt to obtain money he was not entitled to.
5. On December 22, 1977, the Bevilaqua was terminated by Tobe Partridge, his supervisor, with the concurrence of the Respondent's Director, Bill Jones, for falsification of his December 20, 1977, time sheet
6. Such an intentional falsification of time records, constituted an attempted theft of County Property.
7. On January 3, 1078, Bevilaqua filed with Complaint which is the subject of this hearing.
8. During the period immediately proceeding the Bevilaqua's discharge, and specifically on December 7, 1977, Bevilaqua had received raises, as a direct result of the efforts of his Superintendent, Tobe Partridge, said evidence rebutting any presumption of retaliatory motive.

9. Though other time card problems were occurring at the Respondent's north barn at the time of the discharge of the Complainant, all facts indicate that there was no other similar incident (*i.e.,* the intentional falsification of a time record requesting eight hours pay) in at least the previous twenty-two (22) years.
10. Bevilaqua was terminated not a retaliation for filing a complaint, but instead for an intentional falsification of his time record.
11. Because of the absence of an act of retaliation, Bevilaqua has suffered no damages cognizable under IC 22-9-1.
12. Any Conclusion of Law which should have been deemed to be a Finding of Fact is hereby adopted a such.

CONCLUSION OF LAW

1. ICRC has jurisdiction over the subject matter and the parties.
2. The complaint was timely filed.
3. The Highway Department is a "person" as that term is defined in IC 22-9-1-2(a).
4. The Highway Department is an "employer" as that term is defined in IC 22-9-1-3(h).
5. To be successful, in a retaliation complaint as filed herein, the Complainant needs to establish that at the time of discharge, there is pending a Civil Rights Complaint filed by the Complainant against the person who is directly responsible for the subsequent termination of the Complainant, and that such termination is within a sufficiently short span of time subsequent to the filing of the initial complaint so as to give rise to the implication that such subsequent termination is solely the result of the filing of the initial Complaint. The aforementioned test is subject to direct rebuttal in any of its elements, as well as proof that the Complainant was discharged for good cause and not otherwise subject to disparate treatment.
6. The Respondent successfully rebutted the third element, of the Complainant's case by showing that a time period in excess of one (1) year and five (5) months

had elapsed between the filing of the initial Complaint and the subsequent discharge of the Complaint and that during said time the Complainant received raises, as well as all other benefits accorded employees of the Respondent, as a direct result of the action of the person who was responsible for his subsequent firing, Tobe Parttidge.

7. Additionally, the Respondent was successful in showing that Complainant was discharged for an offense, with which it had had no prior similar experience, thereby giving it the right to make an initial decision as to the proper punishment for such offense, which decision was not excessive under the circumstances or unusual as compared to industry as a whole.

8. For these reasons, it is the conclusion of the Hearing Officer, that:
   (a) The Complainant failed to prove a necessary element of his case, and,
   (b) Even if the Complainant had successfully proved all elements of his prima facie case, the Respondent successfully rebutted that case by showing the discharge for a legitimate non-retaliatory reason.

9. If, upon all the evidence, it is found that a person has not engaged in an unlawful discriminatory practice or violation of IC 22-9-1, an order dismissing the complaint should be issued. IC 22-9-1-6(K) (3).

10. Any finding of Fact which should have been deemed a Conclusion of Law is hereby adopted as such.

ORDER

The complaint of Complainant, Salvatore Bevilaqua, shall be dismissed for reasons aforestated.

Dated: October 11, 1979