

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SONJA McCLURE,

Complainant,

vs.

DAIRYLAND GREYHOUND PARK, INC.

Respondent.

Case 6
No. 51031 Ce-2153
Decision No. 28134-D

Appearances:

Ms. Sonja McClure, Suite 18, 1530 15th Avenue, Kenosha, Wisconsin, 53140, appearing on her own behalf.

Michael, Best & Friedrich, Attorneys at Law, by Mr. Jonathan O. Levine, 100 East Wisconsin Avenue, Suite 3300, Milwaukee, Wisconsin, 53202-4108, appearing on behalf of Dairyland Greyhound Park, Inc.

ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On September 5, 1996, Examiner Richard B. McLaughlin issued Findings of Fact, Conclusions of Law and Order with Accompanying Memorandum in the above matter wherein he concluded that Respondent Dairyland Greyhound Park, Inc. had not violated Secs. 111.06(1)(a), (b) or (c), Stats., by disciplining and ultimately discharging, Complainant Sonja McClure. He therefore dismissed the complaint.

Complainant timely filed a petition with the Wisconsin Employment Relations Commission seeking review of the Examiner's decision pursuant to Sec. 111.07(5), Stats. Neither party thereafter filed a brief in support of or in opposition to the petition and the record was closed December 6, 1996.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

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ORDER 1/

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- 1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(Footnote 1 continues on page 3)

(b) The petition shall state the nature of the petitioner's interest, the facts showing

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The Examiner's Findings of Fact, Conclusions of Law and Order are affirmed.

Given under our hands and seal at the City of Madison, Wisconsin,
this 7th day of February 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
James R. Meier, Chairperson

A. Henry Hempe, Commissioner

(Footnote 1 continued from page 2)

that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

...

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

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DAIRYLAND GREYHOUND PARK, INC.

MEMORANDUM ACCOMPANYING
ORDER AFFIRMING EXAMINER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Complainant alleged that Respondent disciplined and ultimately discharged her because of Respondent's hostility toward her lawful concerted activity protected by Sec. 111.04, Stats. The Examiner found that although McClure had engaged in an "extended course of lawful, concerted activity," the evidence did not support a conclusion that Respondent was hostile to said activity (in the sense connoted by Sec. 111.06(1)(c), Stats.) nor that Respondent disciplined McClure based on any factor other than its Shortage/Overage Policy. He therefore dismissed the complaint. The Examiner concluded his decision with the following comment:

Litigation of the complaint has been protracted. The conclusions stated above, in my opinion, accurately apply governing law to the evidence. Sometimes the apparent ease of applying law to fact obscures the depth of feeling surrounding those facts. It is worthy of note that the most compelling facts surrounding this litigation are that McClure, on any view of the evidence, was good at her work and respected by her colleagues. Her testimony was sincere and credible. The sole issue posed here, however, is whether the path leading to her discharge points to hostility proscribed by WEPA. The evidence manifests not this type of hostility, but the application of a policy her organizational effort was, conceivably, aimed to address. This irony cannot, however, provide the evidence of hostility otherwise lacking in the record.

We have reviewed the record and conclude that the Examiner's careful analysis of law and fact should be affirmed in all respects. As we cannot improve upon his analysis and because Complainant has not pointed us toward any specific alleged error which merits any specific comment, we will say no more.

Given under our hands and seal at the City of Madison, Wisconsin,
this 7th day of February 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
James R. Meier, Chairperson

A. Henry Hempe, Commissioner