

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

REBECCA J. FAUDE, Complainant,

vs.

CLARK COUNTY, Respondent.

Case ID: 362.0000

Case Type: COMP-MP

DECISION NO. 35793-B

Appearances:

Rebecca J. Faude, N16248 River Avenue, Withee, Wisconsin, appearing on her own behalf.

Andrew T. Phillips and Patrick C. Henneger, von Briesen & Roper, S.C., 411 E. Wisconsin Avenue, Suite 1000, Milwaukee, Wisconsin, appearing on behalf of Clark County.

ORDER ON REVIEW OF EXAMINER'S DECISION

On March 21, 2016, Examiner Lauri A. Millot issued Findings of Fact, Conclusions of Law and Order in the above matter concluding that Clark County had committed prohibited practices within the meaning of §§ 111.70 (3)(a)1 and 3, Stats., when it terminated Rebecca J. Faude. Examiner Millot ordered the County to reinstate Faude and make her whole.

On April 8, 2016, the County filed a petition with the Wisconsin Employment Relations Commission seeking review of the Examiner's decision. The parties thereafter filed written argument and the record was closed on June 20, 2016, upon receipt of Clark County's reply brief.

Having reviewed the record, consulted with Examiner Millot as to witness demeanor, and being fully advised in the premises, we conclude that Clark County did not commit any prohibited practices when it terminated Rebecca J. Faude and we make and issue the following:

ORDER

A. The Examiner's Findings of Fact are set aside and the following Findings are made:

1. Rebecca J. Faude was employed by Clark County at its Health Care Center from approximately 2006 until her November 16, 2014 termination.

2. For at least three years prior to her termination, Rebecca J. Faude and fellow employee Bernard Rusch met with Health Care Center management representatives as union stewards to present and discuss employee workplace concerns.

3. In June and July 2014, Rebecca J. Faude engaged in workplace misconduct.

4. When it terminated Rebecca J. Faude, Clark County did not act out of any hostility toward the activity described in Finding of Fact 2.

B. The Examiner's Conclusions of Law are set aside and following Conclusions are made:

1. By her conduct described in Finding of Fact 2, Rebecca J. Faude was exercising her right under § 111.70(2), Stats., to engage in lawful concerted activity for the purpose of mutual aid or protection.

2. By terminating Rebecca J. Faude's employment, Clark County did not commit a prohibited practice within the meaning of §§ 111.70(3)(a)1 or 3, Stats.

C. The Examiner's Order is set aside and the following Order is made:

The complaint is dismissed.

Signed at the City of Madison, Wisconsin, this 18th day of August 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner

MEMORANDUM ACCOMPANYING ORDER ON
REVIEW OF EXAMINER'S DECISION

In her complaint filed February 4, 2015, Rebecca J. Faude asserts that Clark County terminated her employment at the Health Care Center in November 2014 in retaliation for her aggressive advocacy as a union steward¹ raising workplace issues. In subsequent communications with Examiner Millot, Faude limited the scope of her complaint to exclude any retaliation that may have occurred due to her contact with / appearance before the Clark County Board regarding employee workplace issues.²

Examiner Millot concluded that although there were “legitimate bases for Faude’s termination,” the County was partially motivated³ to terminate her by hostility toward her lawful concerted activity as a union steward and thereby violated §§ 111.70(3)(a)1 and 3, Stats. On review, we conclude otherwise and have dismissed the complaint.

The record establishes that Faude was an aggressive advocate when raising workplace issues. But the record also establishes that she had been so without negative employment consequences for at least three years prior to being placed on leave in August 2014 and ultimately terminated in November 2014. Further, as found by Examiner Millot, during the months immediately prior to being placed on leave, Faude had engaged in workplace misconduct by disrupting shift change meetings and vocally criticizing the medical judgments of the Health Care Center physician. Given the foregoing, we conclude that the County did not act out of hostility toward Faude’s lawful concerted activity when it terminated her employment and have dismissed the complaint.⁴

Signed at the City of Madison, Wisconsin, this 18th day of August 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

¹ We take notice of the fact that at the time of Faude’s termination, Teamsters Local 662 was the collective bargaining representative of County Health Care Center employees for the purpose of bargaining over base wages.

² Faude was placed on administrative leave with pay on the same day that management at the Health Care Center learned of her contact with a County Board member.

³ See *Employment Relations Dept. v WERC*, 122 Wis.2d 132, 361 N.W.2d 660 (1985).

⁴ When reaching our conclusion, we have considered Faude’s argument that the County’s unusually extensive pre-termination investigation and use of legal counsel are indicative of illegal hostility. We do not find that argument to be persuasive and instead conclude that the County was being more cautious than usual in anticipation of the litigation that termination might (and did) produce.

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner