

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

WILLIS ABEGGLEN and MARY
ABEGGLEN,

Plaintiffs,

v.

TOWN OF BELOIT, JOHN WILSON,
BOB MUSEUS, GREG GROVES,
SHANNON LADWIG, PHIL TABER,
DICK LAMONTE and DAVID
TOWNSEND,

Defendants.

OPINION AND ORDER

10-cv-110-wmc

The court held a final pretrial conference May 3, 2011, during which the court decided a number of defendants' motions in limine (dkt. #132) for reasons stated on the record. In light of those rulings and subsequent submissions by the parties,

IT IS ORDERED that:

- 1) Defendants' motions in limine 1, 10, 11 and 12 are GRANTED IN PART AND DENIED IN PART. Any testimony based on speculation, rumors, or conjecture is excluded. Plaintiffs may present testimony concerning specific instances involving statements by Daphne Fischer which were demonstrably untrue or grossly inaccurate *provided* they were committed in the performance of her official duties *and* known to John Wilson prior to alleged retaliatory acts undertaken by Wilson in reliance on information provided by Fischer. Also excluded is any testimony about information contained in Fischer's psychological report or her mishandling of a case *unless* bearing directly on her truthfulness or accuracy, and then only to the extent known to John Wilson prior to alleged retaliatory acts undertaken by Wilson in reliance on information provided by Fischer.
- 2) Defendants' motion in limine 2 is GRANTED IN PART AND RESERVED IN PART. Any evidence of other lawsuits alleging retaliation by defendants is excluded unless defendants open the door. Evidence offered to demonstrate defendants' propensity to retaliate against others is also excluded unless

offered to prove the Town's "custom or practice" of taking adverse actions against employees who objected to Wilson's racial slurs.

- 3) Defendants' motion in limine 3 is GRANTED. Damages testimony during the liability phase of the trial is excluded unless directly relevant to matters in dispute on liability (e.g. alleged cost savings the Town claims to have realized by means of its February 2009 resolution).
- 4) The following motions in limine are GRANTED without opposition: 4, 9, 14, and 16.
- 5) Defendants' motion in limine 5 is GRANTED. Testimony and other evidence of alleged sexual harassment by John Wilson are excluded pursuant to Federal Rule of Evidence 403.
- 6) Defendants' motions in limine 6 and 19 are GRANTED IN PART AND DENIED IN PART. Plaintiffs may elicit testimony regarding Wilson's use of racial slurs and conduct (assuming the proper foundation has been laid) to explain their protected activities, but such evidence will be excluded to the extent cumulative or unreasonably inflammatory and prejudicial. For example, any testimony concerning Wilson's presence when a black man fell off of a roof is excluded pursuant to FRE 403.
- 7) Defendants' motions in limine 7 and 8 are GRANTED. Testimony concerning Wilson's and Museus's alleged abuse of authority is excluded unless it bears directly on the issues in this case with regard to the Abegglen's.
- 8) Defendants' motions in limine 13 and 15 are GRANTED. Testimony concerning Felger's abuse of authority and other improper activities is excluded unless defendants open the door to such testimony. Specifically, if defendants claim similar conduct by the Abegglen's justified adverse employment actions, then plaintiffs may offer evidence that Felger's abuse of authority and other improper activities did not result in discipline.
- 9) Defendants' motion in limine 17 is GRANTED. Hearsay testimony regarding the Town Board giving Wilson authority to fire plaintiffs is excluded.
- 10) Defendants' motion in limine 18 is GRANTED IN PART AND RESERVED IN PART. Evidence concerning Mary Abegglen's cancer and cancer treatments is excluded during the liability phase. The court reserves on its admissibility during the damages phase.
- 11) Defendants' motion in limine 20 is RESERVED. The court will address defendants' concern in the jury instructions.

- 12) Defendants' motion in limine 21 is RESERVED. The court will address the admissibility of newspaper accounts in reviewing objections to exhibits.
- 13) Defendants' motion in limine 22 is GRANTED IN PART AND DENIED IN PART. As a general matter, witnesses should not wear police uniforms while testifying. In other words, witnesses should not wear uniforms solely for the purpose of testifying. If a witness is coming directly from work or going directly to work, the court will not bar the witness from wearing his or her uniform, though will advise the jury to give no weight to the wearing of uniforms.
- 14) Defendants should review their objections to plaintiffs' exhibits to see if any of their objections have been addressed by the court's decisions on the motions in limine. Defendants should provide the court with a revised list of objections and suggested redactions, if any, by end of day Thursday, May 5, 2011.
- 15) The court will continue the final pretrial conference on Friday, May 6, 2011 at 10:00 a.m. The conference will be held telephonically. Plaintiffs are responsible for setting up the call to chambers at (608) 264-5087.

Entered this 5th day of May, 2011

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge