

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

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JEANNINE PETTIFORD,  
and  
MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION,

Complainants

Against

Docket No. 99 BEM 1852  
Docket No. 00 BEM 0884

CITY OF NEW BEDFORD  
POLICE DEPARTMENT,

Respondent

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Appearances: Paul J. Griffin, Esq. for Complainant Pettiford  
Joseph L. Tehan, Jr. and Elizabeth R. Corbo, Esq. for Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On July 14, 1999, police detective Jeannine Pettiford (“Complainant”), filed a complaint of gender discrimination with the Massachusetts Commission Against Discrimination (“Commission”) alleging that she was treated differently than male detectives in the Organized Crime and Intelligence Bureau (OCIB) of the New Bedford Police Department. On or around April 5, 2000, Complainant filed a second complaint with the Commission alleging further gender discrimination and a retaliatory transfer.

On November 13, 2000, the Commission granted Complainant's Motion to Consolidate both complaints.

On November 30, 2001, the Investigating Commissioner found probable cause to credit Complainant's allegations. Conciliation efforts were unsuccessful and the matter was certified for a public hearing on May 8, 2002. On or about February 28, 2003, Respondent filed an Emergency Motion to Continue Public Hearing based on a change in representation. The Motion to Continue was denied. The March 13, 2003 Motion to Withdraw Appearance of Respondent's corporation counsel, Arthur J. Carron, was also denied. A public hearing was held on March 10, 11, 14, 18, 20, 27 and 28, 2003. Respondent was represented by new counsel at the trial.

By agreement of the parties, a stenographic transcript was adopted as the official record of the hearing. Complainant introduced 45 exhibits into evidence. Respondent introduced 4 exhibits. Complainant submitted a Motion in Limine relating to injured on duty claims. The motion was granted, in part, to the extent of limiting evidence about such claims to the issue of disparate treatment. Respondent's Motions in Limine to preclude rebuttal evidence and introduction of medical records were denied. Counsel submitted proposed findings of fact and conclusions of law on or around November 6, 2003.

To the extent the parties' proposed findings are not in accord with the findings herein, they are rejected. To the extent the testimony of various witnesses is not in

accord with my findings, such testimony is rejected. Based upon all relevant, credible evidence and the reasonable inferences drawn therefrom, I make the following findings and conclusions.

## I. FINDINGS OF FACT

1. Complainant, Jeannine Pettiford, began her employment with the New Bedford Police Department as a cadet in 1992. She was appointed a police officer in 1995.
2. Chief Arthur J. Kelly was the Chief of the New Bedford Police Department during all times relevant to the allegations in the complaint.
3. Deputy Chief Robert. T. Vital was the Deputy Chief of the New Bedford Police Department during all times relevant to the allegations in the complaint.
4. The Organized Crime and Intelligence Bureau (“OCIB” or the “Unit”) is a unit within the New Bedford Police Department which handles vice and narcotics crimes. OCIB is staffed with a lieutenant, designated as commander of the Unit; two sergeants who function as supervisors; and a number of detectives.
5. Lieutenant Melvin Wotton was appointed commanding officer of OCIB in or around 1996. He served as its commander for the entire time that Complainant worked there.
6. In June of 1996, while Complainant was still a uniformed police officer, she was recruited by Lt. Wotton to work undercover assignments for OCIB. Complainant assisted members of OCIB on an overtime basis performing prostitution stings and hand-to-hand purchases of narcotics. She was very successful in performing undercover work for OCIB between 1996 and 1998, prior to being assigned to the

Unit. Lt. Wotton testified that during the period of time from 1996 to 1998, Complainant's undercover work was excellent.

7. In or around September 1998, Complainant told Lt. Wotton that she wanted to bid for a detective position in OCIB and he told her to, "Bid for it. I hate to say it, but we need a female." Transcript 274. Complainant made a written request to be considered for a position as a detective in OCIB. There were five other candidates. After attending an oral interview, Complainant was selected along with Kurt Dreher. I do not credit the testimony of Lt. Wotton that he recruited Complainant to join OCIB. Transcript 696.
8. At the time Complainant entered OCIB, there were two sergeants in the Unit: Al Pacheco and Fred Borges. The detectives assigned to OCIB when Complainant entered the Unit were: Troy Spirlet; Victor Mendes; Robert Aguiar; John Pereira; Kelly Botelho; Robert Richard; Christopher Dupont; Dennis Ledo; and Paul Oliveira. Michael Martin was the evidence officer. Aside from Complainant, all OCIB personnel were male during the entire time that Complainant worked there.
9. At the time Complainant was hired for OCIB, it was Lt. Wotton's intention to continue to use her primarily for undercover work. However, on or about September 25, 1998, just prior to Complainant joining the Unit, she was posing as a prostitute in an undercover capacity when a suspect fled the scene in his vehicle. During the ensuing police chase, an elderly woman was struck and killed. Complainant's Exhibit 3. As a result of the fatality, prostitution stings did not take place during the time that Complainant was assigned to OCIB. Transcript 1419; 1518.

10. While Complainant was assigned to OCIB, she was not asked by a supervisor to participate in any undercover drug buys except, possibly, on one occasion. Transcript 130; 137; 192; 573-576; 1518; 1530. Respondent's money log indicates that Complainant did not participate in any undercover drug buys between November, 1998 and mid-March 1999. Complainant's Exhibit 33. The only entry in the money log involving Complainant is a \$50.00 entry on March 9, 1999 pertaining to an informant. Id. Complainant could not operate as an undercover officer on her own without a back-up team of detectives. Transcript 131; 263; 1210; 1420. Lt. Wotton did not provide accurate or truthful information when he asserted in Respondent's Position Statement that Complainant participated in undercover work while in OCIB. Complainant's Exhibit 25, pp.4 and 6; Transcript 578-581.
11. Effective October 25, 1998, Complainant and Kurt Dreher were assigned to OCIB. Dreher reported to the Unit on or about October 25, but Complainant did not report to the Unit until October 29 or 30, because of a previously scheduled vacation. Complainant first learned she had been selected for OCIB on October 28, 1998, after she returned from an eight-day cruise. Within hours of returning from the cruise, Complainant called headquarters and was congratulated on receiving the OCIB assignment by an officer who answered the phone. Transcript 119-121. By the time Complainant reported to OCIB, Detective Dreher had already been partnered with Detective Olivera, who was the only detective in the Unit without a partner. Detective Olivera requested to be partnered with Detective Dreher because they had gone to high school together and played

baseball on the same team. When Complainant reported to the Unit several days later, there was no detective available with whom to pair her.

12. Complainant did not have a partner from November 1998 to March 1999. During that time she used a spare cruiser when it was available. The spare cruiser was not available when it was taken out of town for training purposes or was used to replace other vehicles which were being repaired. Complainant sometimes drove an undercover car. She was not assigned one of the new undercover cars that the Unit purchased in January 1999, even though Lt. Wotton testified that he considered Complainant to be the one officer in the Unit “devoted” to undercover work. Transcript 847. He assigned the cars to other members of the Unit. The undercover car that she most often used was a black, Nissan Maxima. The car was known to all of the drug dealers in New Bedford. Transcript 191; 454. On occasion, Complainant sat in the back seat of a cruiser assigned to other detective teams. Complainant testified credibly that sometimes the other detectives would make excuses to avoid taking her out with them. Transcript 179. She also testified to safety concerns about riding in the back seat of cruisers because the rear doors of the cruisers could not be opened from the inside. Transcript 180.

13. OCIB has a history of partnering new detectives with more experienced detectives, although Detectives Richard and Olivera were not immediately assigned partners when they first joined OCIB. Transcript 1262; 1389. Detective Botelho, when asked if a new detective coming into the OCIB could progress without a partner or a cruiser, stated, “Into this particular Unit, no.” Transcript 1530.

14. In February, 1999, Lt. Wotton posted a list of cruiser assignments on a bulletin board in OCIB. Complainant's Exhibit 7. The posting assigned cruisers to four pairs of male detectives. Complainant's name did not appear on the list.
15. Officer Marie David testified credibly that she received a telephone call from Complainant who was upset about the list of cars posted in the unit on which her name was omitted. It sounded to Officer David like Complainant was crying. According to Officer David, Complainant said she felt that she was being treated unfairly and that she was suing. Transcript 1464
16. In mid February 1999, Complainant had two conversations with an individual at the MCAD about her work situation. Transcript 143. Following the conversations, Complainant decided to write a memo to Lt. Wotton about her feelings of being treated differently and singled out. Transcript 145. Complainant believed that Sergeant Pacheco observed her typing the memo so she approached him to discuss her lack of an assignment and a car. Sergeant Pacheco responded by saying that, "Females have always had a hard time in this Unit. . . . It's just not a good place for a female." Transcript 146.<sup>1</sup> Sergeant Pacheco denied making this statement, but I do not credit his denial. Transcript 1207; 1241.
17. Some time in February or early March 1999, a DEA narcotics course was made available to two detectives in OCIB. One of the requirements of entry into OCIB is a willingness to attend the two-week course. According to Lt. Wotton, the two detectives who were scheduled to attend were Detectives Spirlet and Mendes who

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<sup>1</sup> Complainant also testified that Sergeant Pacheco made a similar statement on March 21, 1999 (see finding of fact 26, *infra*) but I find that the statement by Sergeant Pacheco was more likely made in February 1999 than in March 1999.

came into the Unit prior to Complainant and Kurt Dreher. Complainant's Exhibit 25, p. 6. Detective Mendes had to drop out due to a scheduling conflict. Id. Lt. Wotton testified that he was approached by Detective Dreher who asked to fill the vacancy. Lt. Wotton testified that he agreed to allow Detective Dreher attend the course because Dreher asked to do so and because Complainant was attending college several days a week and had not asked to attend the training. Transcript 563-564.

18. On March 5, 1999, OCIB conducted a raid to retrieve guns stolen from a Tewksbury police officer. Lt. Wotton testified that he conducted a briefing on the raid on the night of March 4, 1999 as well as on March 5, 1999, but I do not credit this assertion. Lt. Wotton does not mention the March 4, 1999 briefing in his Position Statement dated August 12, 1999. Complainant's Exhibit 25, p. 7. The Position Statement refers only to a 2:00 p.m. pre-raid briefing on March 5, 1999. Id. In preparation for the raid, a diagram of the operation was put on a large white board in the break room. Transcript 759. Lt. Wotton testified that he did not see Complainant at the March 5, 1999 briefing or at any time prior to 2:30 p.m. that day. Transcript 762.

19. Complainant testified that she was not aware of the raid scheduled for March 5, 1999. She called Lt. Wotton on March 5 to inform him that she would be an hour late. Lt. Wotton did not mention the raid during the phone call. Complainant testified credibly that after she arrived at work on March 5, 1999, she went out in a cruiser without being aware of the raid. Complainant testified credibly that after she passed Detective Richard in her vehicle, she contacted him by phone to ask

what was going on and was told, "Don't worry about it. Go get your nails done." Transcript 149. She was then asked by Detectives Dupont and Ledo to get them coffee, which she did. Some time after 2:30 p.m., Complainant was contacted by Lt. Wotton to meet him on Sawyer Street. Lt. Wotton asked her to drive INS Agent Roger Dupont to the station. On the way to the station, Agent Dupont informed Complainant about the raid. Complainant was upset by the potential danger of driving in her cruiser in the area of a raid involving stolen guns and not being aware of the situation. Transcript 151.

20. At some point on March 5, 1999, Complainant joined in activities relating to the raid. She participated in the search and located evidence. Complainant and the other detectives assigned to OCIB remained on duty until midnight. At the end of the March 5, 1999 tour of duty, members of the Unit were told to fill out overtime slips, with overtime running from 7:30 p.m. until midnight. Complainant filled out an overtime slip along with the other members of the Unit. Complainant's Exhibit 5. After the slips were filled out, Lt. Wotton decided to treat the overtime as running from the front end of the shift (11:30 a.m. until 3:30 p.m. ) rather than the back end of the shift (7:30 p.m. to midnight). Lt. Wotton denied Complainant's overtime slip because he had not seen her at the beginning of the shift.
21. On or shortly after March 5, 1999, Complainant brought her overtime dispute to the attention of Officer Sandra Grace, President of the Police Union. She also informed Officer Grace that she was not being treated the same as the male detectives in the Unit. Officer Grace testified credibly that during this period of

time, Detective Troy Spirlet told her that, “Jeannine [Complainant] wasn’t lying” and that Detective Christopher Dupont said words to the effect that, “things weren’t right in that office.” Transcript 51. Detective Spirlet testified that he told Officer Grace that Complainant wasn’t being utilized correctly because she wasn’t doing undercover work and she wasn’t doing “cases” in a cruiser. Transcript 454; 456. He testified that Complainant wanted to be useful. Transcript 458.

22. On March 8, 1999, Union President Sandra Grace met with Lt. Wotton about Complainant’s concerns that she wasn’t being treated “fairly” in regard to the denial of overtime and about Complainant’s lack of a partner, equipment, and training. Transcript 45; 621; 626. According to Lt. Wotton, Officer Grace used the word “discrimination” in connection with Complainant’s unhappiness in OCIB although Officer Grace does not recall doing so. Transcript 45; 623. Lt. Wotton also acknowledged that he told Officer Grace that Sergeant Pacheco “shouldn’t be saying those things” in response to being told about Sergeant Pacheco’s opinion that, “Females always have a hard time in this Unit. . . . It’s just not a good place for a female.” Transcript 624; 862. Lt. Wotton agreed to compromise with Complainant on the issue of overtime.
23. The day after meeting with Officer Grace, Lt. Wotton made Detective Botelho Complainant’s partner. Detective Botelho had previously been partnered with Detective Richard. As soon as Detective Richard was left without a partner, Lt. Wotton assigned Detective Richard to the spare cruiser. Lt. Wotton posted a

revised list of cruiser assignments which stated that the spare cruiser (Unit 18) was assigned to Detective Richard. Transcript 630; 1346.

24. Complainant testified that the other detectives in the Unit referred to her as “Gladys.” Gladys was a secretary that had worked for the police department for many years. Complainant testified that, “They called me Gladys . . . because I was left in the station all the time to answer the phone and do nothing.” Transcript 141. I credit Complainant’s testimony about being called Gladys. I do not credit the testimony of Lt. Wotton, Detective Spirlet and Detective Olivera that the only person ever to refer to Complainant as “Gladys” was the NEXTEL representative. Complainant’s Exhibit 25, p. 5; Transcript 484;
25. On March 14, 1999, Lt. Wotton issued an interoffice memo stating that work hours were Monday through Friday, 4:00 p.m. to midnight with Saturday and Sunday at the discretion of the commanding officer. Complainant’s Exhibit 2. The memo also stated, among other things, that overtime required prior approval by a superior officer and that time off had to be made through a request form. Id. According to Lt. Wotton, the memo resulted in a cutting back of overtime which angered the men in the Unit. Transcript 634. Complainant testified credibly that Detectives Olivera, Dupont, and Mendes told her that people in the Unit blamed her because overtime dried up. Transcript 300-301. She testified that the day the memo was issued, detectives in OCIB, with the exception of Detectives Spirlet and Dupont, stopped talking to her. Transcript 159. Complainant testified credibly that after the issuance of the memo, there was one occasion when she

found her desk covered in trash and another occasion when her desk was covered with bugs. Transcript 326-327.

26. Lt. Wotton denied that the memo was drafted in response to Complainant's March 5, 1999 conversation with the Union President or to a rumored lawsuit by the Complainant. Transcript 634. Sergeant Pacheco denied that the men blamed Complainant for the memo. Transcript 1190. Sergeant Pacheco testified that the memo was written in response to his complaints about male detectives in OCIB submitting overtime slips for surveillance done without prior approval and search warrants being executed without prior approval. Transcript 1188. I do not find the testimony of Lt. Wotton and Sergeant Pacheco to be credible insofar as they claimed that the memo had nothing to do with Complainant and was due solely to detectives abusing overtime
27. On March 21, 1999, members of OCIB participated in a raid on a house in New Bedford. The purpose of the raid was to arrest members of the Latin Kings gang. In addition to members of OCIB, members of the state police, the state police SWAT team, and officers from surrounding jurisdictions took part in the raid. All of these groups returned to OCIB while prisoners were being processed. After returning to OCIB, Complainant heard Detective Richard yelling that he needed help booking prisoners. Complainant approached Detective Richard and asked him if he needed help or what needed to be done. Detective Richard responded by yelling, "Can't you fucking read? It's on the fucking board. Am I fucking yelling at you? No, I'm yelling at everyone." Transcript 166. During the incident, Complainant never yelled or raised her voice to Detective Richard

(Transcript 171, 431; 462; 1357) but responded to his outburst by stating that she “would like an apology.” Transcript 167. According to Complainant’s credible testimony, Detective Richard answered by saying, “I’m not fucking apologizing to you. I’m not going to treat you differently than the guys. That’s what this whole thing is about, isn’t it? All this shit that is happening. You and your little fucking lawsuit. You want to be treated like a man. Fine. I’ll treat you like a fucking man. First you complain that you’re not treated like one of the guys. Well, I’m giving you what you want. Don’t start complaining.” Transcript 167-168. I find that Complainant’s version of the confrontation is more credible than Sergeant Richard’s<sup>2</sup> version of the confrontation to the extent he testified, “Am I fucking yelling at you? I am fucking yelling at everyone. You aren’t fucking special. . . . All this shit that is happening, isn’t this all because of your little lawsuit.” Transcript 1359. However, I credit Sergeant Richard to the extent he testified members of the OCIB thought Complainant was keeping notes about incidents and that she was going to bring some type of lawsuit. Transcript 1289.

28. Complainant responded to Detective Richard’s tirade by asking, “What did I do to deserve this?” Transcript 168. According to Complainant’s credible testimony, Detective Richard answered that, “You’ve got this whole unit walking on eggshells because of your complaints. Guys around here are even afraid to talk to you because they are afraid to offend you. I will not bow down to you just because you are here.” Transcript 168. I find that Complainant’s version of Detective Richard’s answer is more credible than the following version offered by Sergeant Richard: “Don’t analyze me. It’s not your place. You’ve got people in

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<sup>2</sup> Since the incident, Detective Richard was promoted to sergeant.

this office walking on eggshells because of your complaints. Guys in this office are afraid to even talk to you because they might offend you.” Transcript 1360.

29. Complainant testified credibly that she was “stunned” by Detective Richard’s behavior. She did not file a report about the incident because Sergeant Pacheco had witnessed it. Transcript 413. Lt Wotton testified that he heard about the incident from Detective Richard, but he never required any of the parties to file a report. Transcript 649; 658. Lt Wotton never spoke to Complainant about the incident. Transcript 176.

30. On May 1, 1999, Lt. Wotton held a mandatory meeting for the detectives in OCIB. Lt. Wotton testified that he said at the outset of the meeting that, “Somebody has decided to go outside the Unit and complain about me.” Transcript 636. He testified that he was referring to Detectives Olivera, Ledo and Spirlet and Sergeant Borges because they had complained to other people within the Department about matters within the Unit. Transcript 637. Lt. Wotton testified that, “There wasn’t a problem” with Complainant going to the Union to complain about her treatment in the Unit. Id. I do not find this testimony to be credible. According to Sergeant Pacheco, Lt. Wotton was singling out Complainant, Detective Spirlet, and another detective. Transcript 1196. Complainant testified credibly that Lt. Wotton looked at her when he talked about somebody going outside the Unit to complain. Lt. Wotton also acknowledged saying, “if Jeannine [Complainant] is mad at me or if anyone else is mad at me, I just want to say I’m sorry.” Transcript 640. Lt. Wotton’s testimony that he went

around the room and asked everybody if they were mad at him is not credible.

Transcript 805.

31. On July 12, 1999, Detective Richard handed Complainant a police report he drafted which accused Complainant of placing him in danger by deliberately “keying”<sup>3</sup> her microphone while Detective Richard was on a traffic stop.  
Complainant’s Exhibit 16. When Complainant received the report, Detective Richard and Sergeant Pacheco had already signed it. The report indicates that copies were being sent to Lt. Wotton, Deputy Chief Robert Vital, and the Division of Professional Standards.
32. When she saw the report, Complainant left OCIB in the middle of her shift. She told Sergeant Borges that she was going home sick. Complainant described her injury on her Employee Incident Report as “emotional stress/depression.”  
Complainant’s Exhibit 12. Complainant submitted a physician’s report to support her claim for “injured on duty” (“IOD”) benefits under G. L. c. 41 sec. 111F.  
Complainant’s Exhibit 14. It states that the cause of her injury is “stress at work.” Id. Chief Kelly did not order an Independent Medical Exam for Complainant.
33. Respondent retains Cook & Company to review claims made pursuant to sec. 111F and to recommend whether claims should be paid. Chief Vital submitted Complainant’s claim for injured on duty benefits under sec. 111F to Cook & Company on July 19, 1999, together with his recommendation that the claim be

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<sup>3</sup> The term “keying” a microphone means that an officer who is attempting to make a radio transmission to the dispatcher is interrupted by another officer making a transmission. The second officer’s transmission has the effect of overriding the first transmission and by doing so, potentially posing a danger to the first officer.

denied. Transcript 1002-1003. On July 21, 1999, Cook & Company determined that Complainant's claim should be denied on the basis that "stress is not covered" under sec. 111F. Respondent's Exhibit 3.

34. In 1999, a manual was published by the Massachusetts Criminal Justice Training Council entitled "Chief's Guide to Injured on Duty." It states that IOD benefits may be granted for psychological trauma accompanying physical trauma but not where an employee suffers from stress resulting solely from interpersonal conflicts. Complainant's Exhibit 43, p.1-2. Deputy Chief Vital testified that he came into possession of the document in the early part of 1999 and relied on it in recommending that Complainant's claim for IOD benefits be denied. Chief Kelly testified that he first saw the Chief's Guide in the summer of 1999. Based on the Cook & Company recommendation and the Chief's Guide, Chief Kelly denied Complainant's claim for IOD benefits.

35. Five male officers received IOD benefits for stress prior to Complainant's claim and prior to the Department receiving the Chief's Guide. The officers were: Turgeon; Fredericks; Jorge; Jesus; and Dafonte. Complainant's Exhibits 28-32. Officer Jorge and Sergeant Fredericks were shot at during an armed robbery. Id. Officer Turgeon returned fire and killed a man. Id. Officer DaFonte was involved in a domestic violence dispute. Id. Officer Jesus claimed stress as a result of being called a racist and a liar during a court proceeding. Transcript 1051-1052. Deputy Chief Vital testified after receiving the Chief's Guide, he concluded that the Department made a mistake in granting Officer Jesus IOD benefits. According to the Deputy, the Department did not rescind the IOD

- benefits granted to Officer Jesus because the benefits had already been granted and Officer Jesus was back at work by the time the Department received the Chief's Guide. Transcript 1053. Since receiving the Chief's Guide, the Department has denied requests for IOD benefits for stress leave arising out of interpersonal problems. Transcript 101; 1049.
36. Complainant denies keying her microphone in order to deliberately override Detective Richard's radio transmission on July 12, 1999. An Internal Affairs Investigation report dated November 16, 1999 contains a determination sustaining the keying of the mike accusation against Complainant. The report also states that it was improper for Detective Richard to take it upon himself to confront Complainant with his written complaint because that responsibility rests with a supervisor. The report indicates that Detective Richard's action could be perceived as an attempt to provoke the Complainant. The report suggests that Detective Richard receive supervisory counseling in this matter. Respondent's Exhibit 2. Detective Richard never received counseling and was promoted to Sergeant on January 16, 2000.
37. The Internal Affairs Investigation report was submitted to Chief Kelly who determined on or around April 10, 2000 that the accusation against Complainant relating to keying the microphone was "not sustained." Respondent's Exhibit 2. Chief Kelly testified that he believed the conduct may have occurred, but the requisite level of proof was lacking. Transcript 1156.
38. Complainant was out of work on sick leave from July 12, 1999 to February 7, 2000 as a result of the "keying of the mike" incident. While she was out on sick

leave, Complainant made statements to a newspaper reporter which were published in the January 7 and 9, 2000 editions of the New Bedford Standard Times. Complainant's Exhibit 27; Respondent's Exhibit 1. In the January 7 article, Complainant was quoted as saying, "this kind of discrimination has been going on for a long time within the department. I have just decided to step up to the plate and do something about it." In the January 9 article, Complainant claims that she was framed by a fellow officer in an attempt to oust her from OCIB and that fellow officers backed up Richard's investigation by providing information to implicate her. Complainant was quoted as saying, "[i]f they could frame me on this, what would be next? They could plant drugs or money on me and then I would really be in trouble." Id.

39. Chief Kelly and Deputy Chief Vital decided in late January 2000 that Complainant would be transferred out of OCIB upon her return to duty. Transcript 1024. Neither the Chief nor the Deputy Chief notified Complainant about the transfer at that time the decision was made. Deputy Chief Vital testified officers are generally notified of a transfer prior to it occurring. Transcript 1017-1018.
40. Complainant returned to duty on February 7, 2000. She reported to OCIB which was then under the command of Lt. Vincente. Lt. Vincente gave her a new key to the office and a tactical vest cover. Transcript 1025. Out of the fourteen people who had been assigned to OCIB when Complainant left in July 1999, only five individuals remained. The following individuals had been transferred and/or promoted out of the Unit prior to her return: Lt. Wotton; Sergeants Pacheco and

Borges; Detectives Spirlet, Olivera, Richard, Mendes and Ledo. The only individuals left in the unit were Detectives Aguiar, Dupont, Dreher, Bothello and Periera.

41. After spending approximately three hours in the Unit, Complainant was called to the Deputy Chief's office. The Deputy Chief told Complainant that she was being immediately transferred from the OCIB into the Day Detective Division because the Department couldn't guarantee that nothing would happen to her in OCIB. Transcript 1026; 1057. According to Complainant's credible testimony, Deputy Chief Vital referred to her statements in the newspaper article as expressing a sentiment that she didn't want to go back to OCIB. Transcript 228. Deputy Chief Vital testified that he did not give advance notice to Complainant about her transfer out of OCIB because he was unsure of her return date. Transcript 1022. I do not find this testimony to be credible.
42. Complainant left Deputy Vital's office with Lt. Vincente. According to Complainant's credible testimony, Lt. Vincente told her on the way back to OCIB that he wasn't aware of the transfer and that he was sorry. Transcript 231.
43. Upon arriving back at OCIB after meeting with Deputy Vital, Complainant packed the contents of her desk into a cardboard box in front of the other members of the Unit and reported to the Day Detective Division. She carried all of her belongings with her. Robert Richard had also been assigned to the Day Division of Headquarters in January 16, 2000 when he was promoted to sergeant.
44. Following her transfer from the night shift in OCIB to the Day Detective Division, Complainant lost a three percent salary differential provided to night

detectives, This loss amounts to \$5,000.00 from February 7, 2000 through the day of the public hearing. Complainant's Exhibit 40. Complainant also lost payment for seventeen (17) court days that she would have received had she remained a night detective in OCIB. This loss amounts to \$1,600.00.

45. Complainant testified that detectives in OCIB investigate drug cases whereas day detectives handle "menial" cases such as bicycle thefts. Transcript 259-260.

46. Complainant testified credibly that following her transfer into OCIB at the end of October 1998, there were many occasions when she cried as a result of her treatment at work. In June, 1999, Complainant sought treatment at St. Luke's Hospital emergency room for anxiety due to an incident at work. Complainant's Exhibit 15. She testified that she felt like she was having a nervous breakdown. Transcript 201-202. After the incident with Detective Richard on July 12, 1999, Complainant sought treatment with Dr. Pawal Fichna, M.D., a psychiatrist at Saint Luke's Outpatient Psychiatric Services who diagnosed Complainant on July 14, 1999 as having a major depressive disorder, with findings of depressed mood, low energy, concentration difficulties, weight loss and low interest in daily activities. Complainant's Exhibit 14. Dr. Fichna saw Complainant on nine occasions between July 14, 1999 and October 3, 2000. He prescribed the antidepressants Remeron and Zoloft. Transcript 195-196. Complainant also saw clinical psychologist Dr. Pamela Brown, Ph.D. on four occasions during October and November 1999 for symptoms relating to emotional distress. Complainant's Exhibit 15. Complainant sought treatment by Dr. Bowley on December 8, 1999, as a result of an incident in court involving Detective Richard. While she was out

on sick leave, Complainant sought treatment at the Dartmouth Medical Walk-In Clinic because she thought she was having a nervous breakdown. Complainant's Exhibit 15; Transcript 207-208. Complainant had not been prescribed medications for mental health or participated in therapy for emotional distress prior to her transfer into OCIB. Transcript 403.

47. Complainant's husband, William Pettiford, testified that when Complainant first started working for the New Bedford Police Department, she liked her job and was excited about doing "stings" for the Narcotics Unit. Transcript 1066. He testified that from mid-July 1999 into August 1999 Complainant was a "mess," always crying, sleeping late, not eating and not wanting to go anywhere or do anything. Transcript 1070.

## II. CONCLUSIONS OF LAW

### A. Disparate Treatment

Pursuant to M.G.L. c. 151B, sec. (1), it is unlawful "for an employer, by himself or his agent, because of the . . . sex, . . . of any individual to . . . to discriminate against such individual in . . . in the terms, conditions, or privileges of employment, unless based upon a bona fide occupational qualification." At the outset, Complainant contends that there is direct evidence of disparate treatment discrimination based on comments made by a supervisor and fellow detectives in the OCIB. Complainant's contention is supported by credible evidence that Sergeant Pacheco admitted OCIB "is not a good place for a female." Union President Sandra Grace testified credibly that Detective Spirlet told her, "Jeannine wasn't lying" and Detective Dupont informed her that, "things

weren't right in that office." Detective Spirlet acknowledged at the public hearing that he had informed Officer Grace that Complainant wasn't being utilized correctly because she wasn't doing undercover work or other cases.

Although a prima facie case of disparate treatment can be based on either direct evidence or circumstantial evidence, the comments of Sergeant Pacheco and Detectives Spirlet and Dupont are too general and subjective to stand alone as direct proof of disparate treatment discrimination. See Wynn & Wynn v. MCAD, 431 Mass. 655 (2000); Rolanti v. Boston Edison Corp., 33 Mass. App. 516, 521 (1992). Direct evidence is evidence that, "if believed, results in an inescapable, or at least highly probable, inference that a forbidden bias was present in the workplace." Wynn & Wynn, P.C. v. Massachusetts Commission Against Discrimination, 431 Mass. 655, 665 (2000). In a direct evidence case, the Complainant does not have to adhere to the three-stage burden shifting paradigm because she does not need the benefit of an inference. Based on the foregoing standard, the comments of Complainant's sergeant and fellow officers do not constitute dispositive evidence of her specific claims, but nonetheless serve to bolster the circumstantial evidence cited below.

Apart from direct evidence of discrimination, Complainant may establish a prima facie case through the inferential method adopted by the Commission in Wheelock College v. MCAD, 371 Mass. 130 (1976). See Wynn & Wynn, P.C. v. MCAD, 431 Mass. 655, 655-666 (2000); Blare v. Husky Injection Molding Sys. Boston, Inc., 419 Mass. 437, 444-445 (1995). To establish a prima facie case, Complainant must show

that: 1) she is a member of a protected class; 2) she was adequately performing the duties of the job at issue; 3) she was subject to adverse treatment; and 4) she was treated differently from other employees similarly situated but not members of the protected class. See Abramian v. President and Fellows of Harvard College, 432 Mass. 104, 116 (2000) (elements of prima facie case vary depending on facts).

Once a prima facie case is established, the burden shifts to the Respondent at the second stage of proof to articulate a legitimate, nondiscriminatory reason for its action supported by credible evidence. See Blare v. Huskey Injection Molding Systems Boston Inc., 419 Mass. 437, 441-442 (1995) *citing* McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). If Respondent succeeds in offering such a reason, the burden then shifts back to Complainant at stage three to persuade the fact finder, by a preponderance of evidence, that the articulated justification is not the real reason, but a pretext. See Blare, 419 Mass. at 444-445. Complainants may carry this burden of persuasion with circumstantial evidence that convinces the fact finder that the proffered explanation is not true and that Respondent is covering up a discriminatory motive which is the determinative cause of the adverse employment action. See Lipchitz v. Raytheon Co., 434 Mass. 493 (2001); Blare, 419 Mass. at 445. Even if the trier of fact finds that the reason for the adverse employment action is untrue, it is not required to find discrimination in the absence of the requisite intent. See Abramian v. President and Fellows of Harvard College, 432 Mass. at 117-118.

Insofar as the elements of a prima facie case are concerned, Complainant was the only female detective in OCIB from the effective date of her assignment on October 25, 1998 until July 12, 1999 when she went out on sick leave. Both sides agree that Complainant adequately performed her duties during this period. There is considerable disagreement, however, about whether she was treated differently from the male detectives in the Unit. Complainant alleges that she, alone, of all the detectives was isolated and rendered useless through lack of training and assignments whereas Respondent asserts that Complainant had the capacity to be a fully functioning member of the Unit.

There is credible evidence that when Complainant first came into OCIB, she was not given a partner or assigned to share a cruiser whereas Kurt Dreher, a male officer assigned to OCIB on the same date, was given a partner and assigned to share his partner's cruiser. Complainant expected to perform undercover prostitution stings and drug buys as a detective, but she was not given any undercover assignments during her tenure in the Unit. As the only member of OCIB without a partner, Complainant did not have access to team training or team assignments unlike male detectives who were partnered with more experienced members of OCIB. Complainant was denied the opportunity to attend a two-week DEA course which Detective Dreher was selected to attend. Complainant was also denied injured on duty benefits (IOD benefits) under G.L. c. 41, sec. 111F for sustaining psychological trauma at work even though five male officers received section IOD benefits for stress prior to Complainant's claim. Complainant was singled out to perform menial tasks such as driving Lt. Wotton's friend

to the station and answering phones. Her performance of menial tasks resulted in the male detectives referring to Complainant as "Gladys," -- the Unit's secretary. As the only female in the Unit and the sole member of OCIB denied a partner, a permanent cruiser assignment, training, meaningful work, and IOD benefits, Complainant has made out a prima facie case of disparate treatment discrimination based on gender.

At the second stage of proof, Respondent argues that Complainant was not similarly situated to male Detective Kurt Dreher because Dreher reported to OCIB several days prior to Complainant. At the time Detective Dreher reported for duty on October 25, 1998, an uneven number of detectives were in the Unit, but by the time Complainant reported for work several days later, there were no longer any unpaired detectives. Thus, Respondent attributes to timing, not disparate treatment, the fact that Detective Dreher received a partner and a cruiser assignment while Complainant received neither. Respondent also argues that the only reason why Detective Dreher, rather than Complainant, was allowed to attend DEA training was because Detective Dreher asked to do so in place of another detective who could not attend.

The attempt to distinguish Detective Dreher's situation from Complainant's on the basis of the day each reported for duty in OCIB ignores the fact that both were appointed effective October 25, 1998. Complainant testified credibly that she was unaware that she had been appointed a detective at the time she left for a previously planned cruise and therefore reported to her detective assignment a few days late through no fault of her own. As the commander of the Unit, it was incumbent upon Lt. Wotton to

level the playing field for the two new detectives. Common sense dictates that he could have delayed making any cruiser assignments until both Dreher and Complainant reported for duty.

A second reason relied upon by Respondent for distinguishing Detective Dreher's situation from Complainant's is the fact that Detectives Olivera and Dreher were high school classmates and fellow members of their high school's baseball team. As a result of this shared experience, Detective Olivera asked to be paired with Detective Dreher. Respondent presents this matter as a gender-neutral factor based on a high school friendship, but I conclude that reliance on the shared experiences of the male detectives as a rationale for selecting partners constitutes a gender-linked barrier to Complainant's ability to integrate herself into the Unit as a fully functioning member. The camaraderie among the men in the Unit may also account for Detective's Dreher's knowledge that Detective Mendes had to cancel his DEA training, leaving an opening which Detective Dreher was able to fill. Lt. Wotton assumed that Complainant would not be interested in the DEA training, but did not bother to find out by asking her directly. Lt. Wotton's handling of the training issue, like his handling of the partner and cruiser assignments, indicates that Complainant received less favorable treatment than her male counterpart upon entering the Unit.

The ramifications of leaving Complainant without a partner and training were significant and long lasting. Complainant was denied the opportunity of working with an experienced detective and learning how to conduct drug investigations. Complainant was

deprived of daily access to a regularly-assigned cruiser. Respondent argues unconvincingly that cruiser assignments and partnerships were loose arrangements which did not determine training opportunities. Such an assertion is belied by the fact that, except in unusual circumstances, every male detective was assigned a partner and cruiser and had their assignments posted on a bulletin board in the Unit.

Respondent's assertion that Complainant could ride in the back seat of cruisers assigned to pairs of male detectives is also unconvincing. Such an arrangement relegated Complainant to second class status in the Unit. It presented safety concerns because the rear doors of the cruisers could not be opened from the inside. The arrangement was unreliable as well as unsatisfactory since the evidence establishes that the male detectives sometimes made excuses to avoid taking Complainant out with them.

Without a partner, Complainant also lacked access to a caseload of assignments which an experienced detective is able to generate. Complainant was left on her own without guidance or support. Detective Botelho, when asked if a new detective coming into the Unit could progress without a partner or a cruiser, stated, "Into this particular Unit, no." Complainant's situation was exacerbated by the fact that she was not given any undercover assignments to perform for OCIB during her entire tenure with the Unit. Both before and during the public hearing, Lt. Wotton stressed Complainant's value to the Unit as an undercover officer performing prostitution stings and drug buys. The evidence demonstrates, however, that all such work was performed by Complainant on an overtime basis prior to joining OCIB as a detective. Lt. Wotton testified that he

considered Complainant to be the one officer in the Unit “devoted” to undercover work, yet he declined to assign her one of the new undercover cars that the Unit purchased in January 1999.

Lt. Wotton’s lack of credibility about undercover assignments, in turn, undermines his testimony that Complainant was a fully functioning member of the Unit. Lt. Wotton made untrue assertions in the Position Statement that he drafted on behalf of Respondent such as claiming that he did not have a social friendship with Detective Richard when the evidence establishes that the men are close personal friends. For these reasons, as well as his general demeanor as a witness, I do not find credible his denial that Complainant was referred to as “Gladys” by members of the Unit, his denial that he called Complainant “she” rather than Detective Pettiford, his denial that he treated overtime on March 5, 1999 as running from the front end of the shift in order to avoid paying Complainant, and his denial that the March 14, 1999 memo was drafted in retribution for the problems expressed by Complainant to the Union President. Lt. Wotton’s lack of credibility on all these matters supports Complainant’s allegations of disparate treatment.

Respondent next justifies the denial of IOD benefits to Complainant following the grant of IOD benefits to five male officers on the basis that Complainant’s application for benefits did not have a physical component and derived from stressful office relationships rather than the performance of job duties. It notes that Complainant’s claim for such benefits was rejected by Cook & Company and by the Department on the basis of the

“Chief’s Guide to Injured on Duty” which does not permit purely psychological claims for IOD benefits. To the extent that five male officers received IOD benefits for stress leave prior to Complainant, Respondent notes that those benefits were awarded prior to receipt of the Chief’s Guide by the Department and were awarded for stress related to the performance of job duties, not interpersonal disputes.

Unlike matters relating to partners, cruisers, assignments, training, and overtime, the denial of Complainant’s application for IOD benefits is justified by legitimate, nondiscriminatory reasons, supported by credible evidence, and does not appear to be a pretext for discrimination. Complainant described her injury as “emotional stress/depression.” Complainant Exhibit 12. Her physician’s report states that the cause of her injury was “stress at work.” Complainant’s Exhibit 14. The Department did not challenge Complainant’s diagnosis of stress and thus its failure to order an independent medical exam is irrelevant. More to the point is the Department’s retention of Cook and Company, an independent entity hired to review claims for IOD benefits. Cook and Company determined that Complainant’s claim should be denied. That outcome is supported by the Chief’s Guide to Injured on Duty which states that IOD benefits may be granted where psychological trauma accompanies physical trauma but not where an employee suffers from stress resulting solely from interpersonal conflicts. Each of the five males who received IOD benefits from the Department for purely psychological trauma were performing job-related duties rather than interacting with fellow employees when they were adversely affected by stress. Based on these circumstances, I conclude that the Department did not discriminate against Complainant when it denied her IOD

benefits arising out of Detective Richard's accusation that she deliberately "keyed" her microphone over his.

Notwithstanding my conclusion that the Department did not discriminate against Complainant when it denied her IOD benefits, Complainant's other examples of disparate treatment provide convincing support for her claim of gender discrimination. Respondent has failed to articulate legitimate, nondiscriminatory reasons, supported by credible evidence, to rebut the examples of disparate treatment. See Blare, 419 Mass. at 441-442. The evidence, taken as a whole, convinces me that the proffered explanations of the Respondent are not true and that Respondent is covering up a discriminatory motive which is the determinative cause of the adverse employment actions. See Lipchitz v. Raytheon Co., 434 Mass. 493 (2001); Blare, 419 Mass. at 445.

B. Hostile Work Environment

Complainant also asserts gender discrimination on the basis of a hostile work environment, i.e., gender harassment. See Magill v. Massachusetts State Police, 24 MDLR 355 (2002) (gender harassment where supervisor subjected complainant to profane and demeaning language in reference to women, refused to use her professional title, raised his voice to intimidate her and singled her out for harsh treatment); Brown v. Phoenix and Foxwood, 22 MDLR 160 (2000) (repeated derogatory comments regarding complainant's gender constituted actionable conduct). Harassment in the workplace that is gender-based but not necessarily sexual in nature is a recognized form of discrimination. See Dinsmore & Ford v. Home Security, Inc., 19 MDLR 4 (1997);

Baldelli v. Town of Southboro Police Department, 17 MDLR 1541 (1995). To establish a prima facie case of gender harassment, Complainant must show that: 1) she is a member of a protected class; 2) she was the target of speech or conduct based on membership in the class; 3) the gender-based harassment was sufficiently severe or pervasive to alter the terms or conditions of employment and create an abusive working environment; and 4) the harassment was carried out by a supervisor or by an employee in a situation where the employer knew or should have known of the harassment and failed to take prompt remedial action. MCAD Sexual Harassment in the Workplace Guidelines, p. 30, n. 23 (October 2, 2002); *citing* Fluet v. Harvard University, 23 MDLR 145, 161 (2001); Lazure v. Transit Express, Inc., 22 MDLR 16, 18 (2000).

As with a claim of sexual harassment, gender-based harassment must be objectively and subjectively offensive. *See* Ramsdell v. Western Bus Lines, Inc., 415 Mass. 673, 678 (1993). The objective standard means that the evidence of gender harassment must be considered from the perspective “of a reasonable person in the plaintiff’s position.” *Id.* at 678. The reasonable woman inquiry requires an examination into all the circumstances, including the frequency of the conduct, its severity, whether it is physically threatening or humiliating, whether it unreasonably interferes with the worker’s performance and what psychological harm, if any, resulted. *See* Lazure v. Transit Express, Inc., 22 MDLR 16, 18 (2000).

Complainant’s charge of hostile work environment discrimination derives from her contention that she was ignored during her first five months in OCIB under the guise

of being told to “lay low” for undercover work which never materialized. She asserts that Lt. Wotton not only failed to arrange for her to perform undercover assignments, he did not speak to her about any work-related matters or refer to her by her professional title. Complainant charges that after complaining to Union President Grace about her treatment and Grace conveying her complaints to Lt. Wotton on March 8, 1999, Lt. Wotton issued a memo on March 14, 1999 restricting overtime. According to Complainant, the memo caused the members of OCIB to shun her because they viewed her as the cause of the restricted overtime. Complainant also points to a May 1999 meeting as an example of gender-based harassment. She asserts that Lt. Wotton looked directly at her during the meeting and told the detectives under his command that, “Someone has decided to go outside the Unit and complain about me.” According to Complainant, such a singling out made her feel targeted and offended. Complainant also claims that the “apology” Lt. Wotton made to her at the same meeting serves as an admission that he fostered an abusive environment. Despite Lt. Wotton’s so-called apology to Complainant in May 1999, he did nothing to abate the hostility which members of the Unit expressed towards Complainant following the meeting.

As far as fellow detective Robert Richard is concerned, Complainant cites the following incidents as evidence of a hostile work environment based on gender: 1) Detective Richard telling her on March 5, 1999 to, “Go get your nails done” in response to her query about work-related matters; 2) Detective Richard screaming profanities at her on March 21, 1999 in front of prisoners, fellow officers in the OCIB, members of the press, and out-of-town police officers, with supervisors witnessing the conduct but doing

nothing to stop it other than Sergeant Pacheco telling Richard to “knock it off”; and 3) Detective Richard accusing Complainant on July 12, 1999 of intentionally “keying” him off a radio transmission and confronting her with an unauthorized investigatory report about her alleged conduct. Complainant argues that the close personal friendship between Detective Richard and Lt. Wotton, and Lt. Wotton’s failure to discipline Detective Richard for gender harassment imbues these matters with supervisory dimensions.

I conclude that Complainant was subjected to behavior that satisfies the objective and subjective standards for a hostile work environment. A reasonable woman in Complainant’s situation would have been offended by Lt. Wotton’s failure to assign her work, a partner, and a cruiser, his failure to communicate with her and address her by her professional title, his singling her out at meetings for unwanted attention, and his implicitly blaming her for restricting overtime. A reasonable woman in Complainant’s position would also have been intimidated by Detective Richard’s screaming, profanities, and unauthorized investigation. There is ample evidence that Complainant was, in fact, negatively affected by her treatment in OCIB. She reacted to the hostility by complaining to Union President Grace, filing an MCAD complaint, and taking sick leave for work-related stress.

Since then-Detective Richard was not a supervisor at the time of the alleged acts of gender harassment, Respondent is only liable for his actions if it knew or should have known of the harassment and failed to take reasonable steps to stop it. See College-Town

Division of Interco Inc. v. MCAD, 400 Mass. 156, 163 (1987). The evidence is indisputable that every supervisor in OCIB was aware of Richard's behavior towards Complainant. After observing a tirade by Detective Richard against Complainant, Sergeant Pacheco told him to "knock it off." This ineffectual response, Lt.'s Wotton's knowledge of the hostile treatment which Detective Richard inflicted on Complainant, and Lt. Wotton's own discriminatory conduct towards Complainant, render the Respondent liable for the hostile work environment which permeated OCIB.

### C. Retaliation

Pursuant to M.G.L. c. 151B, sec. 4(4), it is unlawful for any person or any employer "to discharge, expel or otherwise discriminate against any person because he has opposed any practices forbidden under this chapter, or because he has filed a complaint, testified, or assisted in any proceeding under section five." In addition, sec. 4 (4A) makes it unlawful "for any person to coerce, intimidate, threaten, or interfere with another person in the exercise or enjoyment of any right granted or protected by this chapter or to coerce, intimidate, threaten or interfere with such other person for having aided or encouraged any other person in the exercise or enjoyment of any such right granted or protected by this chapter." These sections comprise chapter 151B's prohibition against retaliation. See Kelley v. Plymouth Sheriff's Department, 22 MDLR 208, 215 (2000), *citing* Bain v. Springfield, 424 Mass. 758, 765 (1997).

Retaliation is a separate claim from discrimination, “motivated, at least, in part, by a distinct intent to punish or to rid a workplace of someone who complains of unlawful practices.” Kelley, 22 MDLR at 215 *quoting* Ruffino v. State Street Bank and Trust Co., 908 F. Supp. 1019, 1040 (D. Mass. 1995). In order to establish a prima facie case of retaliation through indirect evidence, Complainant must show that she engaged in a protected activity, that Respondent was aware of that activity, and that Complainant was subsequently subjected to an adverse employment action and, absent other evidence establishing retaliatory intent, the adverse action followed the protected activity within such time that retaliatory intent can be inferred. See Mole v. University of Massachusetts, 442 Mass. 582 (2004); Ruffino, 908 F. Supp. at 1044; Kelley, 22 MDLR at 215; Cimino v. BUT Electronics, 18 MDLR 197 (1996).

Once Complainant has established a prima facie case of retaliation, the burden of production shifts to Respondent to articulate and produce credible evidence to support a legitimate, nondiscriminatory reason for its action. See Weber v. Community Teamwork, Inc., 434 Mass. 761, 768-769 (2002); Wynn & Wynn, 431 Mass. at 665. If Respondent meets this burden, then Complainant must show by a preponderance of the evidence that the proffered reason is not, in fact, the real reason for the conduct at issue and that said conduct was motivated by a retaliatory animus. See Weber, 434 Mass. at 777; Lipchitz v. Raytheon Company, 434 Mass. 493 (2001); Abramian, 432 Mass. at 118.

The Commission interprets Chapter 151B’s anti-retaliation provisions to apply to both formal and informal actions opposing unlawful employment practices. Internal

complaints opposing unlawful employment practices are protected as are formal charges of discrimination. See e.g., Auburg v. American Drug Stores, 21 MDLR 238, 242 (1999) (voicing of informal complaint protected under c. 151B); Proudy v. Trustees of Deerfield Academy, 19 MDLR 83, 88 (1997) (same). The Commission's liberal approach is sufficiently broad to encompass Complainant's grievances against her supervisors and fellow detectives in OCIB, even if some of her complaints do not ultimately prevail. Complainant need only have a reasonable and good faith belief that the conduct she opposes reasonably could be construed as violating c. 151B. See Clark County School District v. Breeden, 532 U.S. 286 (2001).

Complainant took several informal steps to oppose unlawful practices prior to filing formal charges at the MCAD. She told Officer Marie David that she was being treated unfairly and was going to sue the Department; she called the MCAD for advice; she kept a journal of adverse incidents on the advice of the MCAD; she talked to Sergeant Pacheco about her perception that she was being subjected to disparate treatment; and she had Union President Sandra Grace meet with Lt. Wotton to discuss her lack of a partner, equipment, training, and being denied overtime. Lt. Wotton conceded that Officer Grace used the term "discrimination" during their meeting to describe Complainant's concerns about her treatment in OCIB. Complainant also spoke to a newspaper reporter about disparate treatment within the Department. Altogether, these actions constitute protected activity taken by Complainant to protest what she, in good faith, believed to be discriminatory treatment.

The evidence establishes that Respondent was aware of Complainant's various protests about her treatment in OCIB. Lt. Wotton acknowledged at the public hearing that there were rumors about Complainant filing a lawsuit months before she did so. Detective Richard acknowledged an awareness of Complainant's protected activity when he accosted Complainant on March 21, 1999 with a tirade about, "You and your little fucking lawsuit" while booking prisoners after a police raid. Lt. Wotton announced at an OCIB meeting on May 1, 1999 that, "Someone has gone outside of the Unit to complain about me." He looked straight at Complainant when he made this comment. These acknowledgements, as well as Complainant's numerous efforts to reach out to individuals within the Department for help and support, lead to the conclusion that Respondent was on notice about Complainant's protected activity during most of the time Complainant was assigned to OCIB. Following her eight-month stint in the Unit, Complainant spoke to a reporter about her experience in OCIB which led to several articles in the local newspaper between January 7 and 9, 2000. In one article, Complainant was quoted as saying that she "decided" to "do something about" discrimination within the Department and that she was "framed" by a fellow officer in an attempt to oust her from OCIB. These articles lend support to the public nature of Complainant's protests.

Having established that Complainant engaged in protected activity and that supervisors, the Union president, and fellow detectives in OCIB were aware of that activity, the next element of a prima facie case requires that subsequent events constitute an adverse employment action. An adverse employment action includes changes in objective terms and conditions of employment which "materially disadvantage" or

threaten to disadvantage the complaining individual. See Bain v. City of Springfield, 424 Mass. 758, 765-766 (1997); MacCormack v. Boston Edison, 423 Mass. 652, 663 (1996).

Following the conversation that Union President Grace had with Lt. Wotton on March 8, 1999 in which Grace used the term “discrimination” in reference to Complainant’s claims of disparate treatment, a number of events transpired which propelled the downward spiral of Complainant’s work experience in OCIB. On March 14, 1999, Lt. Wotton issued an interoffice memorandum in which he restricted overtime for all members of the Unit. With the exception of Detectives Spirlet and Dupont, the detectives, for the most part, stopped talking to Complainant. On several occasions, Complainant found her desk covered with trash and bugs. On March 21, 1999, Detective Richard screamed obscenities at Complainant as a result of his perception that Complainant was keeping notes about incidents in the Unit in order to bring a lawsuit. On July 12, 1999, Detective Richard accused Complainant of “keying” her microphone over his and conducted an unauthorized investigation into the matter. Complainant was denied IOD status in regard to medical leave induced by the stress related to the “keying” of the mike incident. Finally, upon her return to work in February, 2000, just weeks after the newspaper articles accusing the Department of discriminatory behavior, Complainant was involuntarily transferred, without advance notice, into the Day Detectives Division. These events constitute adverse employment actions following on the heels of Complainant’s protected activity.

Respondent disputes that some of the adverse employment actions were related to Complainant's protected activity. For instance, Lt. Wotton denies that he restricted overtime for members of OCIB in response to his conversation with the Union President or to a rumored lawsuit by the Complainant. According to Sergeant Pacheco, the memo was written in response to his complaints about the male detectives in OCIB submitting overtime slips for surveillance done without prior approval and for search warrants being executed without prior approval. Likewise, Deputy Chief Vital justifies his surprise transfer of Complainant to the Day Detective Division on her first day back at work after months of sick leave as based on the Department's inability to guarantee Complainant's safety in OCIB, as well as on the sentiment allegedly expressed by Complainant in the newspaper articles that she didn't want to return to OCIB and on his uncertainty about Complainant's return date.

None of the explanations offered by Respondent for restricting overtime and transferring Complainant are credible. The more convincing reason for these adverse actions was the one acknowledged by Detective Richard as the reason for screaming at Complainant -- her rumored lawsuit. I conclude that the anticipated lawsuit, along with Complainant's public criticism of the Department in the newspaper, are the real reasons why Deputy Vital never called Complainant to find out when she would be returning to work, never asked her if she would feel more secure working in another unit upon her return to work, and waited until her first day back at work to effectuate her transfer. By that time, Detective Richard, Lt. Wotton, Sergeant Pacheco, and numerous detectives no longer worked in OCIB. Their departure from OCIB supports the disingenuous nature of

Deputy Vital's claim that he transferred Complainant for her own safety. It is also noteworthy that Complainant's transfer to the Day Detectives Division landed her in the same location and on the same shift as Richard, who was promoted to sergeant and transferred to the day division while Complainant was out on sick leave. These circumstances, and the fact that Complainant's transfer followed closely on the heels of her criticisms of the Department, permit an inference of retaliatory intent.

Respondent may have had a legitimate, job-related reason for denying Complainant IOD benefits, but it did not have a legitimate reason for transferring Complainant to the Day Detectives Division. Lt. Vincente, the new commanding officer in OCIB, was not informed of the transfer prior to Complainant's return. He had issued Complainant a new key to the office and a tactical vest cover in anticipation of her rejoining OCIB. Despite these preparations, Deputy Vital ordered Complainant, on her first day back at work, to pack the contents of her desk into a cardboard box and carry her belonging to a new location. Deputy Vital and Chief Kelly claimed to have acted in consideration of Complainant's concerns, but did not discuss the proposed action with her. The transfer was effectuated in a punitive and humiliating manner. These circumstances provide convincing support for the claim of a retaliatory transfer. I therefore conclude that Respondent's action restricting overtime for members of OCIB and involuntarily transferring Complainant out of OCIB were motivated by a retaliatory animus.

#### D. Damages

Upon a finding of unlawful discrimination, the Commission is authorized to award remedies to effectuate the purposes of G.L. c. 151B and to render the injured Complainant whole. Remedies include damages for lost wages and benefits and for emotional distress Complainant has suffered as a direct result of Respondent's discriminatory actions. See Stonehill College v. MCAD, 441 Mass. 549 (2004); College-Town, 400 Mass. at 169; Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182-183 (1988).

Insofar as lost wages are concerned, Complainant lost a three percent salary differential provided to night detectives following her transfer from the night shift in OCIB to the day detectives unit. This loss amounts to \$5,000.00 from February 7, 2000 through the day of the public hearing. Complainant's Exhibit 40. Complainant also lost payment for seventeen (17) court days that she would have been paid for if she had remained a night detective in OCIB. This loss amounts to \$1,600.00.

Turning to the issue of emotional distress damages, Complainant's entitlement to an award of monetary damages does not need to be based on expert testimony; it can be based solely on the Complainant's testimony as to the cause of her distress. See Stonehill College v. MCAD, 441 Mass. 549 (2004); College-Town, 400 Mass. at 169; Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182-183 (1988). Proof of physical injury or psychiatric consultation, while not necessary to sustain an award for emotional

distress, is beneficial. See Stonehill, 441 at 576. An award must rest on substantial evidence that is causally connected to the unlawful act of discrimination and take into consideration the nature and character of the alleged harm, the severity of the harm, the length of time the Complainant has or expects to suffer, and whether Complainant has attempted to mitigate the harm. Id.

Complainant testified credibly that following her transfer into OCIB at the end of October 1998, there were many occasions when she cried as a result of her treatment at work. In June, 1999, Complainant sought treatment at St. Luke's Hospital emergency room for anxiety due to an incident at work. She testified that she felt like she was having a nervous breakdown. After the incident with Detective Richard on July 12, 1999, Complainant sought treatment with Dr. Pawal Fichna, M.D. a psychiatrist at Saint Luke's Outpatient Psychiatric Services who diagnosed Complainant on July 14, 1999 as having a major depressive disorder, with findings of depressed mood, low energy, concentration difficulties, weight loss and low interest in daily activities. Dr. Fichna saw Complainant on nine occasions between July 14, 1999 and October 3, 2000. He prescribed the antidepressants Remeron and Zoloft. Complainant also saw clinical psychologist Dr. Pamela Brown, Ph.D. on four occasions during October and November 1999 for symptoms relating to emotional distress. Complainant sought treatment by Dr. Bowley at on December 8, 1999, as a result of an incident in court involving Detective Richard. While she was out on sick leave, Complainant sought treatment at the Dartmouth Medical Walk-In Clinic because she thought she was having a nervous

breakdown. Complainant had not been prescribed medications for mental health or participated in therapy for emotional distress prior to her transfer into OCIB.

Complainant's husband, William Pettiford, testified that when Complainant first started working for the New Bedford Police Department, she liked her job and was excited about doing "stings" for the narcotics unit. He testified that from mid-July 1999 into August 1999 Complainant was a "mess," always crying, sleeping late, not eating and not wanting to go anywhere or do anything.

Based on the foregoing description of Complainant's emotional state, I conclude that she is entitled to \$75,000.00 in emotional distress damages.

### III. ORDER

Based on the foregoing findings of fact and conclusions of law and pursuant to the authority granted to the Commission under G.L.ch. 151B, sec. 5, Respondent is ordered to immediately cease and desist from further acts of discrimination and retaliation.

Respondent shall pay Complainant, within sixty (60) days of receipt of this decision:

(1) a sum in lost wages consisting of \$6,600.00 and

(2) The sum of \$75,000.00 in damages for emotional distress

The parties shall notify the Clerk of the Commission as soon as the ordered payments have been made. If Respondent fails to comply with the terms of this Order within the time period allotted, Complainant should notify the Clerk of the Commission.

- (3) Respondent shall conduct basic annual training sessions concerning gender issues involving disparate treatment, harassment and retaliation for all employees and supervisors.
  - a. All training sessions must be at least four (4) hours in length. All employees and supervisors are required to attend. Respondent shall repeat this training at least one time for all new supervisors and employees who were hired or promoted after the date of the initial training session.
  - b. Within thirty (30) days of the receipt of this decision, Respondent shall select a trainer to conduct the initial training sessions. The training may be provided by the Commission, or may be provided by a trainer who is a graduate of the MCAD's certified "Train the Trainer" course.  
  
Alternatively, Respondent may submit a resume of a potential trainer to be approved by the Commission's Director of Training. Within one week of Respondent's selection of a trainer, a copy of this hearing decision must be forwarded to the trainer for his or her review.
  - c. At least one month prior to the training date, Respondent must submit a draft training agenda to the Commission's Director of Training for

approval and provide the Director of Training with one-month's advance notice of the training date(s) and location(s). If the Commission decides to send a representative to observe the training session(s), Respondent will provide the Commission representative with unfettered access to the training.

- d. Within one month after the completion of the training, Respondent must submit documentation of compliance to the Commission's Director of Training, signed by the trainer, identifying the training topic(s), the names of persons required to attend the training, the names of persons who attended the training, and the date and time of each training session.
- e. For purposes of enforcement, the Commission shall retain jurisdiction over these training requirements.

This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal of this decision with the Clerk of the Commission within ten (10) days after the receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order.

So ordered this 9<sup>th</sup> day of December, 2004.

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BETTY E. WAXMAN  
Hearing Officer

