

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD & SUSAN ROTTENBERG,
Complainants

v.

DOCKET NO. 03-BEM-01359

THE COMMONWEALTH OF
MASSACHUSETTS &
MASSACHUSETTS STATE POLICE,
Respondents

Appearances:

Nicole Horberg Decter, Esquire for Susan Rottenberg
Michael B. Halpin, Esquire for the Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On or about May 20, 2003, Susan Rottenberg filed a complaint with this Commission charging Respondent with discrimination on the basis of her gender, in violation of M.G.L.c.151B§4. The Investigating Commissioner issued a split decision finding probable cause on Complainant's claims of sex discrimination and lack of probable cause on her claim of retaliation. The matter was certified for public hearing on February 7, 2006. Attempts to conciliate the matter failed and the case was certified for public hearing. A public hearing was held before me on July 31-August 3, 2006. At the commencement of the public hearing, Complainant withdrew all but one of her remaining claims, proceeding solely on the claim that she experienced disparate treatment because of a lack of access to the male Sergeants' lounge and her having no separate changing area and locker. After careful consideration of the entire record in this matter and the

post-hearing submissions of the parties, I make the following findings of fact, conclusions of law, and order.

II. FINDINGS OF FACT

1. Complainant Susan Rottenberg is a 51 year old woman who resides in Lakeville, Massachusetts.
2. Complainant was hired by Respondent Massachusetts Department of State Police as a State Trooper in 1982. Complainant was promoted to the rank of sergeant in 1996. She remained a sergeant until her retirement in August 2005.
3. In March 2002, Complainant was temporarily assigned as a Duty/Patrol Sergeant to “Troop F,” located at Logan Airport. In September 2002, her assignment to Troop F was made permanent. At the time of her transfer, Complainant was pleased to be assigned to Troop F.
4. Complainant was the only female sergeant among the 20 to 25 Duty/Patrol Sergeants assigned to Troop F.
5. As a Duty/Patrol sergeant, Complainant was in charge of staffing the duty desk, located on the first floor of the Troop F barracks in Terminal D. This required her to perform an array of administrative recordkeeping tasks, in addition to dealing with the public, and responding to all emergencies, traffic issues and law enforcement issues, supervising 25 to 30 troopers and dispatching them via radio to the scene of any incident. Complainant also worked detail assignments.
6. Lieutenant Thomas Elias supervised all Duty/ Patrol Sergeants assigned to Logan and was Complainant’s direct supervisor. In 2002, Elias reported to Troop Captain Martha Catalano who in turn reported to Troop Major Thomas Robbins. In

March 2003, Captain Catalano was promoted to the rank of Major and assigned to command Troop C in Central Massachusetts. Captain Scott Pare was then promoted to the rank of Captain, replacing Catalano as Executive Officer or second-in-command under then Major Thomas G. Robbins. In June 2004, Pare was promoted to Major, replacing Robbins.

7. Complainant was assigned to the evening shift from March 2002 to April 2003, but often worked a double shift, as did the other Duty/Patrol Sergeants. After April 2003, Complainant was assigned to the day shift and continued to work overtime on a regular basis and worked occasional details.

8. Prior to Complainant's transfer to Logan, there were only four female troopers and superior officers assigned to Logan.

9. At the time of Complainant's transfer to Logan, there existed a room located on the second floor of the Troop F Barracks, known as the "training room." In the training room were lockers, a large television, several lounge chairs, a refrigerator, a telephone and several other amenities. It was common knowledge among Sergeants and Duty Lieutenants that many male Sergeants regularly used the training room to change their clothes, take breaks, and eat meals. By all accounts, the room came into existence around 1997, when Sergeants began moving lockers and furniture into the room from other locations and unofficially took over the previously unoccupied space.

10. Also on the second floor of Troop F Barracks were a women's bathroom, a men's bathroom and a block of administrative offices including those of Troop Major Thomas Robbins and Troop Captain Martha Catalano.

11. In 2002, while there were other rooms available for Sergeants and others at Troop F to take breaks, relax, watch television, or eat meals, including a “Sergeants’ Room” and a “Lunch Room” located on the barracks’ first floor and two “Conference Rooms” on the second floor. However, the training room was used exclusively by Sergeants and was the only area in the barracks containing lockers for them.

12. In around March 2002, all State Police personnel assigned to Logan Airport had access to facilities at the airport known as “Quarters,” which was a five to 10 minute drive from the Troop F facilities.

13. Quarters is exclusively assigned to State Police personnel and consists of a fitness/workout area, a kitchen and separate sleeping facilities, showers, and locker rooms for male and female personnel. Complainant was familiar with “Quarters” and used the facility to workout, sleep and change clothes.

14. At the time of her transfer to Logan, Lieutenant Elias gave Complainant a set of keys that opened most doors in the Barracks, including the training room. However, Elias did not tell Complainant about the training room, nor did any other supervisor or peer.

15. Lt. Elias was responsible for assigning lockers to the duty/patrol Sergeants. He did not assign Complainant a locker in the training room because he was aware that male Sergeants used the training room to change their clothes.

16. Shortly after her temporary assignment to Logan Airport, in or around March 2002, Captain Martha Catalano asked Complainant whether she needed a locker at the Troop F facilities. Complainant told Catalano that she did not need a locker and would use the facilities at Quarters when she needed a locker. Complainant was not aware of

the training room at the time. She traveled to and from work in her cruiser and therefore was required to travel in her uniform. After her discussion with Catalano and after Complainant found out about the training room, she never again discussed with Catalano any concerns about access to, or use of, the training room or the need for a locker. She did not tell Catalano of her complaints about the training room.

17. Complainant testified that in May 2002, she learned for the first time about the existence of the training room after accompanying Sergeants Flynn and O'Leary on a break. Complainant testified that the room contained 20 to 25 lockers, with names of the Sergeants attached. In addition, there were several recliners, a large television, a refrigerator and a telephone. The floor to ceiling windows on one side of the room had been covered with brown packaging paper. On the lockers and chairs were male officers' clothes and off-duty shoes.

18. Complainant testified that in May 2002, she asked Lt. Elias about obtaining access to the training room. According to Complainant, Elias either shrugged his shoulders or nodded his head. Over the next 11 months, Complainant attempted to use the training room once or twice; each time she used the room there was no one else present. Complainant testified credibly that she was uncomfortable using the room for breaks or meals because she knew that male Sergeants used the room to change clothes. She observed male officers going in with civilian clothes on and leaving in uniform. She never used the room to change clothes for fear that a male co-worker might walk in on her. She changed her clothes at home or in the public bathroom located in the Barracks, and stored her personal belongings in her cruiser. She testified that she felt isolated from her male colleagues because she did not have access to this area where they ate and

socialized and felt humiliated that her peers knew that she did not have equal access to the training room. I credit her testimony.

19. In around September 2002, Complainant entered the training room and found Sgt. Jack Gillespie in the process of changing his clothes. Complainant was embarrassed by this incident and subsequently did not use the room for any purpose. She did not report the incident with Gillespie to anyone. Complainant would change in a women's bathroom located on the first floor of the barracks adjacent to a small lunch room near her desk. She would sometimes eat alone at the desk, or in another lunch room on the second floor of the barracks. Complainant took breaks at airport hotels or in her cruiser. She believed she was entitled to the same amenities as her colleagues. I credit her testimony.

20. On April 20, 2003 Complainant wrote to Major Robbins to complain, among other things, of Respondent's failure to provide her with equal locker and break facilities.
(C-2)

21. Four days later, on April 24, 2003, Captain Pare issued a memorandum to Lt. Elias stating that the Sergeants would have to vacate the training room in order to make the space available for training, conferences and seminars. Pare testified that in addition to the need for training space, he considered the closing of the training room to be a response to Complainant's complaint that she was the only Sergeant without a storage locker. Pare testified that his memorandum did not mention Complainant's situation as a reason for the room closing because he did not want the other Sergeants to blame her for the room's closure. I credit his testimony.

22. On or about April 24, 2003, after receiving Pare's memorandum, Lt. Elias conveyed the information about the training room's closing to all Sergeants, including Complainant.

23. On or around May 14, 2003, Complainant filed a formal discrimination complaint with Respondent's Harassment Unit stating, among other things, that she had no locker. (Exh. C-3) On May 20, 2003, Complainant filed her MCAD complaint.

24. A number of Sergeants complained to Lt. Elias and Captain Pare about the decision to close the training room. Because of their complaints, Respondent opened a new locker/break area in another location on the second floor of the Barracks on or about June 23, 2003.

25. The new locker/break area consisted of two rooms. In the front room, off the hallway, were lockers sufficient for every Sergeant, including Complainant. The front room lead to a back room containing a television, several lounge chairs, a telephone and a refrigerator. A door with a slide bolt lock separated the two rooms.

26. On June 26, 2003, Captain Pare issued a memorandum to all Sergeants regarding the use of the second locker/break area. The memorandum stated that sergeants should use the locked back room to change clothes and use the front room to store their clothes only. They were directed not to change clothes in the front room, and were told they could also change in the men's and women's bathrooms next door. The memorandum specified that duty lieutenants would perform random inspections to ensure compliance with the policy. (Exh. C-4) Lieutenant Dill testified that Captain Pare informed those attending a weekly Lieutenants' meeting in or around April or May 2003 that the new locker/break area had been created in response to Complainant's complaint.

At the meeting the Lieutenants discussed how to prevent Sergeants from changing clothes in the area, by means of random inspections by supervisors. I credit Dill's testimony.

27. When the new locker/break area was first created in June 2003, Complainant stored uniform parts, equipment and other items in her locker. However, after a short while, Complainant observed clothing, shoes and other items in the locker area, leading her to conclude that Sergeants continued to change clothes at their lockers. Complainant felt uncomfortable using the back break room because she would have to enter and exit through the front room and would have to knock on the back room door when it was closed to avoid walking in on somebody changing. Complainant testified that she did not observe duty Lieutenants inspecting this area. Complainant discontinued using the new locker/break area because of these reasons. Until June 2004, she used the downstairs bathroom or quarters to change or simply went home in uniform. She took her breaks in her cruiser, at her desk, at a hotel, or sometimes in the terminals.

28. Sometime after July 26, 2003, Complainant told one of her duty supervisors, Lt. Dill that she still did not have access to the locker/ break area.

29. Approximately one year later, on June 24 and 25, 2004, Complainant gave interviews to the Boston Globe and several local television stations regarding her complaints of discrimination. On the morning of June 25, 2004, Complainant advised Major Pare that news reports concerning her complaints about the locker were imminent. This was the first time she had ever discussed the issue with Pare, who testified Complainant told him she was unhappy with her evaluation and observation reports. She also told him she was still uncomfortable with the locker/ break room and believed that

the men would be changing there. Pare asked Complainant how he could better configure the area, but she did not respond. I credit his testimony.

30. An article appeared in the Boston Globe on June 24, 2004 regarding Complainant's complaint as well as similar complaints voiced by female members of the Boston Police. (Exh. C-5)

31. On June 26, 2004, Major Pare ordered a reconfiguration of the locker/break area in order to provide a small changing/locker room for Complainant's use. Construction began the same day and was completed in about two weeks.

32. As reconfigured, the furniture and television formerly in the back room were moved into the front room off the hallway, and the Sergeants' lockers were moved into the back room, allowing Complainant to enter the break room without first going through the locker area. Additionally, a small room containing a locker was constructed directly off the Sergeants' break area and designated as a female Sergeant's locker room.

33. Subsequent to the reconfiguration of the break room in June 2004 and up until her retirement in August 2005, Complainant used the break area frequently, and occasionally used the female locker room. Complainant testified that she was satisfied with the creation of her private and exclusive space and suffered no damages after that date.

34. Lt. Maryann Dill testified that she was transferred to Logan in the late 1990s because of a need for female supervisors at this site, in the wake of a lawsuit by a female trooper named Maureen Wessinger, who successfully sought a women's locker room at Quarters. Dill was the first woman with rank to be stationed at Logan; Captain Martha Catalano followed her in the summer of 1999. Dill stated that in the substation Lt. Elias

supervised Troopers and Sergeants, who reported to her only in his absence. In 2002 and 2003, Dill worked the evening shift.

35. Dill testified that she was aware of the training room, but never went inside because it was a men's locker room. According to Dill, Sergeants used the room on a regular basis, and that Sergeants were sometimes called on the telephone while in the training room. I credit her testimony.

36. Dill has her own office with a closet on the second floor of the barracks. Dill changes her clothes in the closet. She eats meals at a room on the second level of the barracks where most of the lieutenants eat, although it is not exclusively a lieutenant's room, and is used by others to eat and hold meetings. Occasionally, Dill will eat downstairs "with the guys."

37. Dill testified that in 2002, Lt. Elias approached her and stated that he might have to ask her to give up her closet for Complainant's use as a changing facility. Dill was very upset about the possibility of sharing her closet and went to Catalano, who assured Dill that her closet would not be taken. I credit her testimony.

38. Dill testified that Pare told the Lieutenants at a weekly meeting in 2003 to walk through the new locker/break area to make sure Sergeants were not changing in the front room and were not taking unwarranted breaks while on duty. Dill testified that she never entered the locker/break area because she felt the male lieutenants should inspect the area. Dill recalled that sometime after the new locker/break area was created in 2003, Complainant told her that she still did not have a place to change. I credit Dill's testimony in its entirety.

39. Lt. Charles McPhail, who is currently stationed at Leominster, worked at Logan Airport from 2001 to 2004, as a desk/patrol Sergeant. He has known Complainant since they attended the same academy class 25 years ago. McPhail usually worked the day and evening shifts, plus two details per week and overtime.

40. McPhail testified that he used the training room on a daily basis, changed clothes there occasionally and used to take breaks and eat lunch there if it was quiet. McPhail stored his uniform parts in the locker. He stated that sometimes one or two other people were present in the room, and sometimes he was alone, depending on the time of day. He observed other Sergeants changing, watching T.V. and eating meals in the break area. He saw Complainant in the training room approximately four times.

41. McPhail testified that he did not remember being told not to change in the new locker/break area in 2003. He did not recall receiving the memorandum, but acknowledged that the officers received memoranda on a daily basis. He used the area to change clothes on occasion and also watched T.V., took breaks, and used the phone. He saw Complainant use the room once or twice. She had a locker in the second locker/break area. He stated that he had a locker room with his name on it in both the training room and the new locker/break area, but that he was not assigned a locker and would just grab an open locker. McPhail testified that he used the kitchen on the first floor more often than the locker break area, because he liked to sit and bond with the troopers. McPhail also had a locker at the men's gym at Quarters where he stored his gym gear.¹ He transferred to the Hanscom barracks in September or October 2004.

¹ To McPhail's memory, the second locker/break area was configured with the break area off the hall and the lockers in the back room, and the rooms were reversed when Complainant's locker room was built. The parties stipulated that the sequence of events was the reverse of McPhail's testimony.

42. Sgt. Brian Duffy has been employed by the state police for 25 years, and has been stationed at Logan Airport since the early 1990s. Duffy testified that he has known Complainant for 30 years, as they attended high school together. He described Complainant as a nice, funny person. He is presently assigned as a Duty/ Patrol Sergeant. From 2002 to 2005, although based at Logan, Duffy was assigned to other special projects that took him away from Logan for days at a time. He testified that Complainant was not happy at work and was involved in some court action while stationed at Norwell, before her transfer to Logan. Duffy stated that Complainant was happy when she was a trooper.

43. Duffy testified that he had a locker in the training room that he used every six months when the Sergeants' uniform changed. He stated that he took breaks there once or twice a month and sometimes watched T.V., but never ate meals there. Duffy testified that when others were present he talked with them and also discussed official business. He stated that he saw Complainant there once or twice. He stated that he usually changed at Quarters, where he occasionally slept and worked out, because it is cleaner, better and bigger than the training room.

44. Duffy testified that in 2003, he observed Sergeants change in the new locker/break area. He stated that he could not recall Complainant complaining to him about anything and he never saw Complainant in the new locker break area. I credit Duffy's testimony in its entirety.

45. Lt. Thomas Elias has been the Station Commander at Logan Airport since 1999. He supervised from nine to 12 duty sergeants, including Complainant, Brian Duffy, O'Leary, Dana Pagley, Charles McPhail and Steve Hynes.

46. Elias testified that he told Complainant about the training room when she first arrived at Logan. He denied asking Dill whether Complainant could use her closet. He stated that Dill talked to Complainant, who told her a locker wasn't necessary because she had facilities available at Quarters. I do not credit Elias' testimony that he told Complainant about the training room when she arrived at Logan.

47. Elias testified that he raised the issue of accommodating Complainant's needs when she arrived at Logan by meeting with Catalano about the matter. Catalano told him at a meeting two weeks after Complainant's arrival that she had spoken with Complainant who had said she was commuting in uniform and would change at Quarters if necessary. He testified that from her arrival until April 2003, Complainant never complained to him. He did not address the issue because he did not think it needed to be addressed. I credit this testimony.

48. Elias testified that after receiving the memorandum from Captain Pare in June 2003, he told the Sergeants to clean out the training room. Elias testified that Complainant never complained to him after the creation of the second locker/break area, until she informed him that she had gone to the media. He then told her to take up the matter with Pare. I credit this testimony.

49. Sergeant Steven Hynes has worked at Logan airport for four years. He previously had a locker in the training room, where he occasionally changed clothes late at night when he was the only one on duty. If others were present or if he knew Complainant was working, he would change in the men's room next door. Hynes observed other Sergeants changing in the training room and only saw Complainant enter that room on one occasion. He had observed Sergeants changing in the training room.

50. Hynes testified that in the second locker/break area, all Sergeants were instructed not to change in the front room. He stated that he would change in the back room, locking the slide bolt, as did many other Sergeants. Hynes continued to use the room every day for meals and to read the newspaper, until he was assigned to lead the Community Action Team and was given his own office. I credit Hynes' testimony.

51. Sergeant Dana Pagley has been stationed at Logan since 2001. He stated when the training room was in existence, he would dress quickly by his locker; he did not linger if he knew that either Complainant or Lt. Dill was in the building. He observed other Sergeants changing in the training room as well.

52. Pagley testified that he never saw Complainant in the new locker/break area. He worked the midnight shift and only saw her when he worked overtime, a frequent occurrence in the months following 9/11. Pagley was unhappy when the training room closed, as it was a convenient place to change.

53. Pagley testified that after the new locker/break area was created in 2003, he would change clothes in the back room, locking the slide bolt, and watch T.V. for five minutes before starting his shift. He stated that if the door to the back room was locked, he knocked on the door and was let in by whoever was inside. Pagley stated that he infrequently saw other Sergeants in the new locker/break area because at that point in time, they were no longer assigned to 12-hour shifts. Pagley was unaware of any Sergeant who violated the directive to change only in the back room. He stated that on rare occasions, a Lieutenant would enter the new locker/break room. Pagley has had his own office since April 2004 transferring to the aerodrome unit. I credit Pagley's testimony in its entirety.

54. Major Martha Catalano was Captain and executive officer at Logan from 2000 to 2003. She testified that shortly after Complainant's transfer to Logan Airport, Lt. Elias came to her to discuss obtaining a locker for Complainant and mentioned the possibility of Complainant sharing Lt. Dill's closet. Catalano corroborated Dill's testimony that Dill voiced her objections concerning this possible arrangement to Catalano, who assured her that it would not come to pass. Catalano testified that shortly after speaking with Elias, she called Complainant into her office and asked her if she wanted a locker. Complainant said no, that she could commute back and forth in her uniform. Catalano told Complainant that there was a women's room at Quarters that she never used, and that was rarely used by Lt. Dill, and that it was "was hers for the taking." Complainant acknowledged what Catalano told her and never again discussed the issue of lockers with Catalano. I credit her testimony.

55. Major Scott Pare has been with the state police for 25 years and has been a troop commander over two years. In March 2003 he was promoted to the rank of Captain, replacing Catalano who was promoted to Major. In June 2004 he was promoted to Major, replacing Robinson, under whom he served while a Captain. Pare testified that the training room was intended as a Sergeants' break and storage room. Pare testified that he did not consider the training room a locker room as there were no showers or toilets. Pare never observed anyone changing in the training room.

56. In April 2003, Pare called Complainant in to tell her she had violated the rules by leaving her shift early, something that was not typical of her. She told him that Sergeants on the day shift frequently left early. Pare told her to document this claim in writing so that he could address the matter. Pare testified that in April 2003, Complainant

came to him to discuss an “observation report” that she had received. At that time Complainant did not raise the claim that she had been denied equal access to the training room.

57. Pare testified that, because Respondent needed a place to perform anti-terrorism training for 10 to 12 officers, after the Complainant’s April 20 letter to Robinson, Robinson asked him to look into the possibility of using the training room as an actual training room. Pare, who described the Sergeants as “squatters,” who had simply moved in and taken over the training room, testified that the situation presented an opportunity for Respondent to take over the room for two purposes; to create the needed training area as well as resolve Complainant’s complaint. Pare did not openly acknowledge Complainant’s situation as a reason for taking over the room as he did not want the other Sergeants to blame her for losing their room.

58. Pare testified that conversations regarding anti-terrorism training began shortly after his assignment to Logan and pre-dated Complainant’s complaints about the training room. He stated that Complainant’s complaint simply speeded up the process, and the training room was vacated and cleared out within a short period of time.

59. Pare testified that after closing the training room, two or three Sergeants approached him and requested a place to store their coats and hats. He stated that Robbins had been approached as well. He agreed to accommodate all the Sergeants. He insured that there were lockers for all the Sergeants. He wanted the first door open, and then the Sergeants could go in the back to change. He would periodically have Lieutenants monitor the room to make sure the officers weren’t either changing or hanging out there.

60. Pare testified that he was aware of Complainant's internal sexual harassment complaint, including a complaint about not having a locker; however, he believed the issue had been addressed by the creation of the second locker/break area in 2003. I credit Pare's testimony.

61. Complainant testified that during this period, she felt like a second class citizen because she did not have the same working conditions and benefits as her male peers. She was embarrassed and depressed and she did not feel that she was getting equal respect from Respondent. Complainant testified that she was "heartbroken" about the treatment she had received. She had been alienated from superior officers and colleagues. She stated that she felt like "a second-class citizen," and a "worn out penny on the side of the road." She stated that her subordinates told her she "must like abuse." I credit Complainant's testimony regarding her feelings about her treatment.

Complainant testified that as a result of her treatment at Respondent, she suffered physical problems, including an exacerbation of a pre-existing condition wherein her tongue would swell and develop sores. She also testified that she had insomnia and lost significant weight. She acknowledged on cross-examination that she did not see a physician during her time at Logan. She also acknowledged that in her deposition, she mentioned no medical symptoms relative to her stress on the job. I am not convinced that Complainant's physical symptoms resulted from work-related stress, as she mentioned them for the first time at the public hearing.

62. Patty Tardiff was Complainant's neighbor for 21 years. Tardiff testified that Complainant told her she had to go through the men's lockers to retrieve her belongings and endure comments as she passed through. Tardiff observed that Complainant was

upset and crying, had sores on her tongue, could not eat and lost weight. She also observed that Complainant was frequently up late at night working out to work off stress. However, Tardiff stated that the locker room was not Complainant's main focus and that other, unspecified work-related issues were more troublesome to Complainant. I credit her testimony.

III. CONCLUSIONS OF LAW

M.G.L.c.151B§4(1) prohibits an employer from discriminating against an employee in the terms and conditions of employment on the basis of gender. In order to establish a prima facie case of gender discrimination, Complainant must show that she is a member of a protected class, that she was subjected to adverse treatment and that similarly situated persons not of her protected class were treated differently. Abramian v. President & Fellows of Harvard College, 432 Mass 107, 116 (2000); Wheelock College v. MCAD, 371 Mass 130 (1976). Complainant has established the first prong of her prima facie case by virtue of her gender, female. She has also established that she was adequately performing her job. Complainant has established that for the first year of her assignment to Logan Airport she was denied access to a storage locker and break room that was available to similarly situated male Sergeants. Therefore, I conclude that Complainant has established a prima facie case of discrimination on the basis of gender with respect to the first two years of her assignment to Logan Airport.

Once Complainant has established a prima facie case of discrimination, the burden shifts to Respondent to articulate legitimate, non-discriminatory reasons for its conduct. In this case, Respondent argues that Complainant turned down the offer of a locker upon her arrival at Logan, absolving it of any responsibility for providing such an

amenity. Respondent also argues that Complainant was aware of, and had a key, to the training room, and also had numerous other places to change clothes and take breaks throughout the airport.

Once Respondent has articulated legitimate, non-discriminatory reasons for its conduct, the burden shifts to Complainant to establish that the reasons articulated by Respondent are pretext for discrimination. Abramian v. President & Fellows of Harvard College, supra. Complainant has convinced me that Respondent's articulated reasons for effectively excluding Complainant from the training room demonstrate a lack of awareness and a deliberate disregard of the importance of equal access to rank-specific amenities, and are therefore a pretext for gender discrimination.

Complainant alleges that Respondent failed to provide her equal access to locker and break facilities utilized by her male counterparts assigned to Troop F at Logan Airport, for a two year period from 2002 until 2004, when a locker and break room were reconfigured to include a separate area for Complainant to change her clothes.

Respondent asserts that Complainant had a variety of choices of locations to change clothes and eat meals and that she initially told Respondent that she did not require a locker. Respondent's argument is unavailing for the following reasons.

When Complainant first arrived at Logan Airport and declined the offer of a locker by Captain Catalano, she was unaware of the existence of the training room, an improvised break and locker area created by Sergeants around 1997 for their exclusive use. After learning of the training room's existence, Complainant asked her direct superior, Lt. Elias, for access to the area. Notwithstanding Respondent's attempt to characterize the training room as a "storage area," it was widely known that some

sergeants frequently changed their clothes in that room. This made Complainant uncomfortable and effectively prevented her from utilizing the area for breaks and meals. I conclude that it was Respondent's responsibility to make Complainant aware of the existence of the "training room," to provide her with a locker near her place of work, and to configure the room so that she could access the break area without worrying about men changing near her. I do not concur, as Respondent asserts, that because Complainant turned down the offer of a locker, Respondent was absolved of the responsibility to provide her with equal access to a locker and break room. Nor do I concur that the existence of alternative locations for Complainant to eat and to change relieved Respondent from its responsibility to provide Complainant with equal access to the locker break room. As important as Complainant's ability to store her gear in a location close to her worksite, was her right to have equal access to the location where she could relax and socialize with her peers, and utilize the amenities including a large-screen television, lounge chairs, telephone and refrigerator. The training room as it originally existed, effectively created a men's clubhouse that excluded women. Therefore I conclude that the existence of the training room, from 2002 to 2003, which effectively excluded Complainant, constituted unlawful discrimination on the basis of gender.

After closing down the training room, Respondent opened a new locker/break area in June 2003. The new area consisted of two rooms, a front room containing lockers for all Sergeants, including Complainant, and a break room that doubled as a changing area when locked. Sergeants, including Complainant, were instructed to change only in the break room, which was located behind a door with a slide-bolt. Many witnesses

testified to adhering to this instruction and changing behind the locked door, however this still effectively excluded Complainant from the room and made her uncomfortable.

While the majority of witnesses testified that they were aware of the policy regarding changing behind the bolted door and abided by that rule, this was still a design that effectively excluded Complainant. Pare's order made it clear that Sergeants were not to change by the lockers in the storage area; and by many accounts they did not do so, but changing in the back room meant that Complainant was denied access to the break area, and sometimes Sergeants continued to change in the locker area. Therefore, I conclude that the second locker/break area, created in June, 2003, constituted a continued violation of M.G.L.c.151B. Not until the final locker/break area was created in June 2004, did Complainant have equal access to a storage locker and a break room. Therefore, I conclude that Respondent is liable for unlawful sex discrimination, in violation of M.G.L.c.151B§4.

IV. DAMAGES

A. Emotional Distress

The Commission is authorized to award damages for emotional distress resulting from unlawful discrimination. Stonehill College v. Massachusetts Comm'n Against Discrimination 441 Mass. 549 (2004) Bournewood Hosp., Inc. v. Massachusetts Comm'n Against Discrimination, 371 Mass. 303(1976); Buckley Nursing Home, Inc. v. Massachusetts Comm'n Against Discrimination, 20 Mass. App. Ct. 172(1985). Such emotional distress damages should be fair and reasonable, and proportionate to the distress suffered. Stonehill, supra, at 576. Some of the factors to be considered are; the nature and character of the alleged harm, the severity of the harm, the length of time the

Complainant has suffered and reasonably expects to suffer and whether the complainant has attempted to mitigate the harm. Id. The Complainant must show a sufficient causal connection between the Respondent's unlawful act and the Complainant's emotional distress. Id.

Complainant testified that when she became aware of the existence of the training room, she felt isolated from her male colleagues and humiliated because her peers knew that she did not have equal access to the same amenities. Complainant was embarrassed upon walking in on Sergeant Gillespie changing clothes, causing her to discontinue using the training room. However, Complainant's testimony regarding the physical manifestations of her distress was inconsistent with her deposition testimony regarding the same subject and there was testimony that other stressors at work contributed to Complainant's emotional distress. Notwithstanding, I conclude that the unequal terms and conditions of employment caused Complainant emotional distress and made her feel embarrassed and like a second class citizen, because she did not have the same working conditions and benefits as her male peers. She was embarrassed and depressed and felt she was not getting equal respect from Respondent and was "heartbroken" about the treatment she had received. Complainant felt alienated from superior officers and colleagues, and even subordinates told her she must "like abuse." She felt like a "worn out penny on the side of the road." Complainant was effectively denied access to a rank-specific locker and break area over a period of approximately two years, until a locker/break area was reconfigured in June 2004. I conclude that an award of damages in the amount of \$20,000.00 is appropriate to compensate her for the distress she suffered as a direct result of feeling alienated from her peers, feeling like a second-class citizen and

being unable to enjoy the same amenities provided to male Sergeants, including enjoying the break room, eating and socializing with her peers.

V. ORDER

For the reasons stated above, Respondent is hereby ordered;

1. To cease and desist discriminating on the basis of gender.

2. To pay to Susan Rottenberg the sum of \$20,000.00 for emotional distress, plus interest at the statutory rate of 12% per annum from the date of the filing of her complaint until this order is reduced to a judgment and post-judgment interest begins to accrue.

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

This order constitutes the final order of the hearing officer. Any party aggrieved by this order may file a Notice of Appeal to the full commission within ten days of receipt of this order and a Petition for Review to the full commission within thirty days of receipt of this order.

SO ORDERED, this 23rd day of May, 2007.

JUDITH E. KAPLAN,
Hearing Officer