

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

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MCAD and  
CHRISTOPHER PICCO,  
Complainants

v.

Docket NO. 10 BEM 00986

TOWN OF READING and  
DAVID STAMATIS,  
Respondents  
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Appearances: Cynthia J. Aziz, Esq. for Complainant  
Leonard H. Kesten, Esq. for Respondents

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On April 27, 2010, Christopher Picco ("Complainant") filed charges of employment discrimination with the Massachusetts Commission Against Discrimination ("MCAD") against Respondents Town of Reading and David Stamatis alleging that Stamatis discriminated against him based perceived sexual orientation by subjecting him to a hostile work environment involving homophobic name-calling and a physical assault and that Stamatis engaged in retaliation by filing a charge of discrimination against Complainant.

A probable cause finding was issued on May 5, 2014. The case was certified to public hearing on March 16, 2015.

A public hearing was held on October 2, 5, and 6, 2015. The parties submitted nine (9) exhibits with multiple attachments. The following individuals testified:

Complainant, Retired-Sergeant Francis Duclos, Lt. David Stamatis, Officer Kristin Stasiak, and Chief James Cormier.

Based on all the credible evidence that I find to be relevant to the issues in dispute and based on the reasonable inferences drawn therefrom, I make the following findings and conclusions.

## II. FINDINGS OF FACT

1. Complainant Christopher Picco joined the Reading Police Department as a patrol officer in 1996. Prior to joining the force, Complainant married in 1993 and his marriage lasted ten years. Transcript I at 141. He subsequently dated other women. Transcript I at 143; Joint Exhibit 9D. Complainant's heterosexual relationships were known to members of the Reading Police Department.
2. As a patrol officer, Complainant initially worked the night shift. He reported to different sergeants including Respondent David Stamatis.
3. At some point Complainant became president of the patrol officers' union.
4. In 2000, Complainant was suspended for three days, subsequently reduced to two days, for abuse of sick leave. Transcript I at 137.
5. In 2003, Respondent Stamatis received a picture of a man without pants, shown from the rear with his buttocks exposed, who appears to be holding a barbell by his genitals. Joint Exhibit 1F (last page). The picture contained a handwritten note saying, "Dave Stamatis has been making some terrific gains in the gym. In fact he is much stronger now than before. All the women love you Dave." Id. According to Respondent Stamatis, a handwriting analysis indicates that the note was written by Complainant. Transcript II at 207.

6. In 2005, James Cormier became Chief of Police of the Reading Police Department.
7. In early 2008, Respondent Stamatis became a lieutenant. Joint Exhibit 1E, p. 5. Prior to his promotion, he and Complainant had a good relationship. They would eat together at the station and occasionally golfed together. Transcript I at 36.
8. Shortly after Lt. Stamatis began to work on the day shift as commander of the patrol division, Complainant became the Department's armorer and motor vehicle fleet manager. Complainant's new assignments involved responsibility over police firearms, equipment, and cruisers. In his roles as armorer and fleet manager, Complainant reported to Lt. Cloonan but when Complainant worked as a patrol officer, he reported to Lt. Stamatis.
9. After Lt. Stamatis became a lieutenant, he began to call Complainant names such as "fucking fag," "homosexual," "fucking homosexual," and "gay boy." Transcript I at 39, 41-42; Joint Exhibit 8B, p.2.
10. Complainant testified that he is not gay and that nobody in the Department ever indicated to him that they thought he was gay. Transcript I at 140.
11. Officer Kristen Stasiak testified that she is friendly with Complainant. She has, on occasion, jokingly called Complainant "princess" and, along with other officers, has called him "metrosexual" because of the care he takes with his appearance. Transcript III at 18-19, 22. Other officers in the Department have dubbed Complainant the "big sexy" and "atractivo grande." Transcript I at 140. Complainant testified that he likes these terms. Transcript I at 140-141. At times, he refers to himself as metrosexual. Transcript II at 15.

12. Lt. Stamatis acknowledged that he called Complainant “gay boy,” “homosexual,” and “metrosexual” but maintains that he did so as “friendly banter.” Transcript II at 70.
13. Complainant, along with others at the Department, referred to Lt. Stamatis as “Oprah” (Winfrey) because of his fluctuating weight. Transcript II at 71. According to Lt. Stamatis, his Greek heritage was also the subject of Complainant’s banter. Transcript II at 72. I credit these assertions but do not credit the testimony of Lt. Stamatis that Complainant said, “Kick the queen out of the room before you bend over to grab a coin [because] Dave’s behind you” and “What’s the motto of the Greek army? Never leave your brother’s behind.” Transcript II at 197.
14. On April 11, 2008, Complainant left a detail assignment to assist a fellow officer who was chasing suspects in the direction of the detail. After the event, Lt. Stamatis told Complainant that he had no right to leave his detail assignment without permission from the officer-in-charge and ordered Complainant to write a report about the incident. Lt. Stamatis thereafter retracted the order about writing a report. Transcript II at 90-91; Joint Exhibit 8B.
15. On July 31, 2008, Complainant appeared for a 7:00 a.m. roll call in street clothes rather than in uniform. He was scheduled to go to court that morning. When Lt. Stamatis asked Complainant multiple times about his availability to perform patrol duties that day, Complainant repeatedly said that he was assigned to court but did not address his availability for patrol work after court. Transcript I at 47, 49; II at 103. According to Lt. Stamatis, Complainant persisted in saying,

disingenuously, that he didn't understand the question. Transcript II at 104-105. Complainant attended court for approximately two and one-half hours and then went home claiming that he was sick. Transcript I at 51. Complainant acknowledged on cross-examination that he was not sick but upset. Transcript I at 154-155. Town counsel Ellen Doucette investigated this matter and found that Complainant had been discourteous to Lt. Stamatis. Transcript I at 158.

16. On or around October 29, 2008, Complainant testified in support of Officer Iapicca and against Lt. Stamatis in regard to an incident in which Iapicca alleged untruthfulness on the part of Lt. Stamatis. Transcript III at 38.
17. Retired-Sergeant Francis Duclos<sup>1</sup> testified that on two occasions in the fall of 2009 he heard Lt. Stamatis call Complainant "fucking homo" and "gay boy" and that Complainant responded negatively by making a face and saying, "That's nice." Transcript II at 5, 11-14, 16. According to Sgt. Duclos, Complainant and Lt. Stamatis experienced conflict about whether Complainant's job as armorer took precedence over his patrol officer responsibilities. Transcript II at 16-18. I credit this testimony.
18. On June 27, 2009, there was an annual department cookout held at the Meadowbrook Country Club. Lt. Stamatis and his wife attended the cookout as did Officer Kristen Stasiak, Complainant, and his girlfriend, Stacy Libman. They went to Detective Sergeant Segala's house after the cookout and continued to drink alcohol. Towards the end of the evening, Complainant announced he was leaving. Officer Stasiak teased Complainant for leaving early, calling him a "Sally" and a "wimp" and punched him playfully on the arm. Transcript III at 12.

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<sup>1</sup> Sergeant Duclos retired in February of 2013. Transcript II at 5.

Complainant returned the punch in a playful manner. Transcript III at 13. Seeing this interaction, Lt. Stamatis said, “Don’t hit a girl” and, with the back of his hand, slapped Complainant in his groin area. Transcript III at 13. Complainant testified that he was struck with a “significant amount of force” which sent him “sprawling” to the ground. Transcript I at 71. Officer Stasiak also testified that Complainant fell to the ground after being struck by Lt. Stamatis and that he remained there for “longer than a minute.” Transcript III at 14-16. According to Chief Cormier, Complainant’s girlfriend, Stacy Libman, provided a written statement which made reference to Complainant laughing off the slap. Transcript III at 82-83. Neither side proffered the statement as evidence. I decline to give this assertion any weight.

19. In late November of 2009, Lt. Stamatis circulated to members of the police patrol officers’ union a work schedule proposing that patrol officers work twelve hours shifts in 2010. Joint Exhibit 1 E. Complainant responded to the proposal as president of the patrol officers’ union. Id. He stated that the patrol officers’ executive board did not support the plan and requested that Lt. Stamatis not discuss the issue further with members of the patrol officers’ union. Id. Complainant and Lt. Stamatis engaged in a contentious e-mail exchange over Lt. Stamatis’s continued attempts to convince patrol officers about the merits of the twelve-hour schedule. Transcript I at 32.

20. On or around December 1, 2009, Complainant and four other officers performed a detail at a Reading Memorial High School football game. Chief Cormier

determined that the detail was a non-Town event<sup>2</sup> and that the officers were to bill their time at a non-Town (i.e., lower) rate. Lt. Stamatis directed Sgt. McKenna to communicate this decision to the officers but Complainant and two other officers still submitted slips at the town rate. Joint Exhibit 1E, p. 9. Lt. Stamatis instructed the three officers to revise their slips and the Chief instructed the three officers to submit reports explaining their actions. One of the officers said that he billed at the Town rate because he felt the assignment was a Town detail despite the order otherwise. He received an oral reprimand for insubordination. Complainant and another officer did not receive reprimands because they claimed to have been confused about how to bill the Town.

21. On December 3, 2009, at the conclusion of a discussion between Complainant and the Chief regarding the submission of the incorrectly-completed detail slips, Complainant verbally complained to Chief Cormier about acts of alleged harassment by Lt. Stamatis. Joint Exhibit 1A. The complaint focused on homosexual comments and the back-hand slap to his groin. Joint Exhibits 1A & E.

22. In a December 8, 2009 letter, Chief Cormier notified Lt. Stamatis that he was the subject of an oral harassment complaint brought by Complainant, that the complaint charged that he used derogatory terms in referring to Complainant, and that on one occasion he had physically assaulted Complainant in the genital area. Joint Exhibit 1A. The letter stated that attorney Ellen Doucette would investigate

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<sup>2</sup> The detail officers took the position that because the Reading High School football team was participating in the event, it should be considered a town event whereas the Chief determined that the event was a non-town event because it was a football tournament sponsored by the Massachusetts Interscholastic Athletic Association. The rate of pay for town events is significantly higher than that for non-town events.

the matter and informed him that he would be called to participate in an investigative interview. Joint Exhibit 1A.

23. During the investigation, Complainant was told that he need not attend roll call.
24. On January 11, 2010, Lt. Stamatis submitted a written internal affairs complaint with the Chief and a harassment complaint with the Town Manager charging that Complainant, on December 3, 2009, falsely accused him (Lt. Stamatis) of harassment and that Complainant subjected him to “bullying” and “victimization.” Joint Exhibit 1B. The complaint was forwarded to attorney Doucette.
25. On January 13, 2010, Chief Cormier notified Complainant of the two complaints filed against him by Lt. Stamatis. Joint Exhibit 1B.
26. Attorney Doucette issued a report dated March 1, 2010 finding that Lt. Stamatis had made offensive, profane, and derogatory comments to Complainant and engaged in unprofessional conduct but that Lt. Stamatis’s actions did not meet the legal standards for harassment or hostile work environment. Joint Exhibit 1F at pp. 8, 12. Attorney Doucette also dismissed claims filed by Lt. Stamatis against Complainant. Joint Exhibit 1F at p. 12.
27. Following the issuance of the report by attorney Doucette, an internal affairs investigation was ordered by Chief Cormier per letter of March 12, 2010. Joint Exhibit 1C. The internal affairs investigation concluded that Lt. Stamatis’s actions towards Complainant constituted conduct unbecoming and discourtesy. Joint Exhibit 1D. Lt. Stamatis was suspended for two days but the suspension was grieved and reduced to one day. The internal affairs investigation also



determined that Complainant had been discourteous on the occasion when Lt Stamatis asked about his availability for patrol officer duties after court and that Complainant failed to provide an adequate response. Joint Exhibit 1D at p. 7. No disciplinary action was imposed but Chief Cormier informed Complainant in writing that his conduct was “less than professional” and that he should recommence attending roll call, dress in duty uniform at roll call, be prepared to work as a patrol officer if needed, and contact the officer in charge if late or unavailable. Joint Exhibit 1E.

28. On April 27, 2010, Complainant filed a charge of discrimination with this Commission.
29. On the recommendation of his attorneys, Complainant sought treatment with Kenneth Wilson, PsyD, on or around May 5, 2010. Transcript I at 203; Joint Exhibit 9D. Dr. Wilson’s treatment notes state that Complainant sought treatment for anxiety and stress, including problems sleeping. Joint Exhibit 9D.  
  
Complainant stopped going after a few visits because he found that the sessions weren’t helpful. Transcript I at 232-233.
30. In 2012, Sergeant Duclos received an anonymous card at work which contained a message asking, “What do you get when a guy unzips?” and an answer about a man’s brains “falling out.” Transcript II at 41, 44, III at 86. Complainant did not sign the card but admitted that he sent it. Transcript II at 42. Sgt. Duclos said he wasn’t offended after learning that Complainant sent the card because they were friends and he thought that the card was funny coming from Complainant.  
  
According to Lt. Stamatis and Chief Cormier, Sgt. Duclos had been upset when

he received the card. Transcript II at 203. Lt. Stamatis testified that he instructed Sgt. Duclos to file a complaint but did so prior to knowing that the card was sent by Complainant. Transcript II at 203. Complainant received a reprimand for leaving the card in Sgt. Duclos's box. Transcript I at 192.

31. In December of 2012, Complainant became a candidate for promotion to sergeant.

One part of the promotional process consisted of being interviewed by panels of volunteer sergeants and lieutenants, including Lt. Stamatis. Transcript II at 30.

The volunteers individually-ranked the candidates following the interviews.

Transcript II at 23. The rankings were scored on a scale of one (1) to ten (10) with one (1) being the highest score. Transcript II at 32. Sergeant Duclos gave Complainant a score of two (2) and Lt. Stamatis gave Complainant a score of seven (7). Transcript II at 35-36. Lt. Stamatis testified that the score of seven (7) was only for Complainant's performance on the specific day he was interviewed. Transcript II at 185-188.

32. Chief Cormier testified that he considered the rankings of the volunteer sergeants and lieutenants to be "another piece of data" but "not a determinant." Transcript III at 64.

33. After giving Complainant a score of seven (7), Lt. Stamatis went to the Chief and said that Complainant should be considered as one of the top candidates for promotion to sergeant based on his overall work performance. Transcript II at 185, III at 64.

34. In April of 2013, Complainant was promoted to sergeant.

35. Complainant's sick time usage in 2008 and 2009 did not vary from his sick time usage in other years except for 2013 when it improved after Chief Cormier told Complainant that he should curtail his use of sick time. Transcript I at 123, 201-202; III at 73-74, 78, 87, 89.

## CONCLUSIONS OF LAW

### A. Sexual Harassment

M.G.L. c. 151B, sec. 4, paragraph 16A prohibits sexual harassment in the workplace. See Ramsdell v. Western Bus Lines, Inc., 415 Mass. 673, 676-77 (1993); Doucimo v. S & S Corporation, 22 MDLR 82 (2000). Such harassment is defined as sexual advances and other verbal or physical conduct of a sexual nature that create an intimidating, hostile, or sexually-offensive work environment. M.G. L. c. 151B, sec. 1, para. 18.

Complainant's filing with the MCAD lists the cause of discrimination as "sexual orientation" and "perceived sexual orientation" but the evidence presented at public hearing establishes that Complainant is neither gay nor perceived to be gay by co-workers. Such a discrepancy is not fatal, however, because the crux of the charge is that Complainant was subjected to homophobic names and a sexual assault by Lt. Stamatis. Such a charge merits consideration regardless of Complainant's perceived sexuality. Nothing in Chapter 151B, section 1(18) restricts the gender or sexual orientation of victims of sexual harassment provided they establish the requisite elements of a hostile work environment. See MCAD's Sexual Harassment in the Workplace Guidelines II D (2002) (gender and sexual orientation of victim irrelevant since harassing conduct need not be motivated by "sexual desire"); Melynchenko v. 84 Lumber Co., 424 Mass. 285,

286 (1997) (sexual harassment may be based on vulgar joking even though conduct is not sexually-motivated).

In order to establish a “hostile work environment” based on sexual harassment, Complainant must prove by credible evidence that: (1) he was subjected to sexually-demeaning conduct; (2) the conduct was unwelcome; (3) the conduct was objectively and subjectively offensive; and (4) the conduct was sufficiently severe or pervasive as to alter the conditions of employment and create an abusive work environment. See Sexual Harassment in the Workplace Guidelines at II C; Ramsdell v. Western Bus Lines, Inc., 415 Mass. 673, 677-78 (1993); College-Town, Division of Interco, Inc. v. MCAD, 400 Mass. 156, 162 (1987).

The objective standard of sexually-unwelcome conduct must be evaluated from the perspective of a reasonable person. The reasonable person inquiry requires an examination into all the circumstances, including the frequency of the conduct, its severity, whether it was physically threatening or humiliating, whether it unreasonably interfered with the worker’s performance, and what psychological harm, if any, resulted. See Scionti v. Eurest Dining Services, 23 MDLR 234, 240 (2001) *citing* Harris v. Forklift Systems, Inc., 510 U.S.17 (1993); Lazure v. Transit Express, Inc., 22 MDLR 16, 18 (2000).

The subjective standard of sexual harassment means that an employee must personally experience the behavior as unwelcome. See Couture v. Central Oil Co., 12 MDLR 1401, 1421 (1990) (characterizing the subjective component of sexual harassment as ... “in the eye of the beholder.”). An employee who does not personally experience the behavior to be intimidating, humiliating or offensive is not a victim within the

meaning of the law, even if other individuals might consider the same behavior to be hostile. See Sexual Harassment in the Workplace Guidelines at II C 3; Ramsdell v. Western Bus Lines, Inc., 415 Mass. at 678-679.

Applying the above standards to the credible evidence in the record, I conclude that the names which Lt. Stamatis began to call Complainant in mid-2008 and continued to call him until at least October of 2009 crossed the line from good-natured banter to homophobic slurs and were conveyed in a hostile, not playful, manner. Comments such as “fucking fag,” “fucking homo,” and gay boy” were not uttered in fun, were not welcomed by Complainant and were a manifestation of Stamatis’s anger and hostility toward Complainant. The comments created an intimidating, hostile and sexually-offensive work environment. See Gnerre v. MCAD, 402 Mass 502, 508 (1988) (the more offensive the comments, the fewer the incidents needed to establish harassment). These names differ from the innocent banter, teasing, and joking common in the Reading Police Department which did not offend recipients such as: 1) teasing by co-workers who called Complainant “metrosexual,” 2) a 2003 picture of a naked weightlifter purportedly sent to Lt. Stamatis about which no complaint was lodged; 3) good-natured commentary on packages delivered to the Department; and 4) a note about a guy unzipping his pants which Sgt. Duclos found humorous coming from Complainant. The teasing, the weightlifter picture, and the note to Sgt. Duclos were inoffensive whereas the names that Lt. Stamatis called Complainant were highly offensive from both an objective and subjective standpoint.

Lt. Stamatis’s taunts about Complainant’s sexuality, unlike the light-hearted banter cited above, were homophobic slurs which caused Complainant distress and

anxiety. Complainant did not engage in like behavior and therefore his conduct cannot be equated with Lt. Stamatis's. Contrast Canilire v. Vanson Leather, Inc., 24 MDLR 228 (2002) (where Complainant told dirty jokes and inserted balloons under her shirt at work she was held not to be subjectively offended by nude pictures and massages of others). Lt. Stamatis's hostile taunts sent a demeaning and degrading sexual message even if they were, in reality, motivated by resentment over Complainant's union activities and administrative duties. The taunts, in content and frequency, constituted pervasive sexual harassment. See Kelley v Plymouth County Sheriff's Department, 22 MDLR 208, 214 (2000) (pervasive sexual harassment proven where complainant subjected to "steady barrage" of sexual commentary).

Apart from the pervasive sexual harassment embodied by Lt. Stamatis's words, Lt. Stamatis's back-handed slap to Complainant's genitals was sufficiently severe to independently support a sexual harassment claim. See Gnerre v. MCAD, 402 Mass at 508 (single incident of physical contact may be sufficient to establish a hostile environment). The assault took place during an after-party following a Departmental cookout. Although the party was a social occasion, it was tied to a departmental event and the participants consisted primarily of members of the police department. The assault was perpetrated by a supervisor and the victim was a police subordinate. Under these circumstances, the incident must be considered a work-related matter. See Sexual Harassment in the Workplace Guidelines at II E (conduct taking place outside of workplace may be actionable if at an employer-sponsored function by a supervisor and adversely affects employee's work environment); Johnson v. Boston Edison Co., 19 MDLR 162, 166-167 (1997) (law prohibiting sexual harassment may cover work-

sponsored events outside the workplace but does not cover personal phone calls by a supervisor to employee located in a different city where the parties have no workplace relationship). I conclude that the blow to Complainant by Stamatis was sufficiently severe to knock Complainant to the floor and was not perpetrated in a light-hearted or playful manner but, rather, conveyed anger and hostility on the part of Stamatis towards Complainant.

Respondents dispute the aforementioned conclusions, arguing that the comments/actions directed at Complainant were not objectively and subjectively harassing, did not unreasonably interfere with Complainant's work performance, and were part of a playful give and take among co-workers. According to Respondents, Complainant's participation in sexual joking meant that he did not experience Lt. Stamatis's behavior as intimidating, humiliating, or offensive. I do not agree with this characterization. Complainant may have liked being described by terms that emphasized his careful grooming and attractiveness to females, but such names bear no relationship to unwelcome and stereotypically-negative epithets that mischaracterize Complainant as gay. Complainant's objection to the hostile words and physical contact by Lt. Stamatis is evidenced by his response to Lt. Stamatis's name-calling ("that's nice"), his informal discussions with his union and supervisors about Lt. Stamatis's conduct, his verbal complaint to the Chief in December of 2009, and his filing a charge of discrimination with the Commission in April of 2010.

Notwithstanding the more than year-long period between the initiation of name-calling by Lt. Stamatis in mid-2008 and the filing of an MCAD complaint on April 27, 2010, the matter is timely given the continuing nature of the harassment and the

anchoring event of the June 27, 2009 assault. Following the initiation of the name-calling, Complainant talked with the Chief and others about “growing difficulties” with Lt. Stamatis but was reluctant to initiate formal action on the basis that filing a formal complaint would cause “further anxiety and grief.” Joint Exhibit 8B, p.2. His reluctance was overcome, however, within three hundred days of the June 27, 2009. Accordingly, the MCAD complaint is timely.

#### B. Retaliation

G. L. Chapter 151B, section 4 (4) prohibits retaliation against persons who have opposed practices forbidden under Chapter 151B or who have filed a complaint of discrimination. To prove a prima facie case of retaliation, Complainant must demonstrate that he: (1) engaged in protected activity; (2) Respondent was aware of the protected activity; (3) Respondent subjected Complainant to an adverse employment action; and (4) a causal connection existed between the protected activity and the adverse employment action. See Mole v. University of Massachusetts, 58 Mass. App. Ct. 29, 41 (2003); Kelley v. Plymouth County Sheriff’s Department, 22 MDLR 208, 215 (2000).

The protected activity in this case consists of Complainant informing Chief Cormier on December 3, 2009 that he was the victim of discriminatory conduct by Lt. Stamatis, including homosexual comments and a back-handed slap to the groin. Approximately five weeks later, Lt. Stamatis responded by filing his own internal affairs and harassment charges alleging that Complainant had leveled false accusations of harassment against him, engaged in “bullying” and “victimization,” and made a false claim of retaliation. Lt. Stamatis’s charges -- both in content and timing -- establish an



awareness of Complainant's protected activity and a causal connection between the two, but they do not constitute adverse action for the reasons set forth below.

Following an investigation into the cross-charges brought by both men, Lt. Stamatis was deemed to have committed "conduct unbecoming" and was required to serve a one-day suspension (reduced from a two-day suspension during the grievance process). Complainant experienced no adverse consequences arising out of Lt. Stamatis's accusations against him and subsequently received a promotion to sergeant with the support of Lt. Stamatis.<sup>3</sup> See Bain v. City of Springfield, 424 Mass. 758, 765-766 (1997) (to satisfy the requirement of adverse action, employee must establish a change in conditions of employment which are a "material disadvantage"); Noviello v. City of Boston, 398 F.3d 76, 88 (1st Cir. 2005) (adverse employment action includes discharge, demotion, or reduction in pay). In light of the foregoing, Lt. Stamatis's accusations against Complainant do not constitute adverse action, especially since one of the claims -- discourtesy at roll call -- was upheld by the Chief and is supported by credible evidence in this record. See Psy-Ed v. Klein, 459 Mass. 691 (2011) (subjectively-genuine lawsuit, even if unsuccessful, is not retaliatory)

### C. Liability

Under College-Town, Division of Interco, Inc. v. MCAD, 400 Mass. 156, 162 (1987), an employer is strictly liable for sexual harassment committed by its supervisors, i.e., those on whom it confers authority. See College-Town, 400 Mass. at 165-166. Accordingly, the Respondent Town of Reading is liable for the unlawful actions of supervisory personnel such as Lt. Stamatis. Lt. Stamatis, as well, is individually liable

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<sup>3</sup> Lt. Stamatis initially gave Complainant a low score during a peer review component of the promotional process but later voiced his support for Complainant's candidacy for promotion.

pursuant to G.L. c. 151B, sec. 4 (4A, para.1) because of credible evidence that he interfered with the exercise or enjoyment of Complainant's right to be free from sexual harassment. See Lopez v. Commonwealth, 463 Mass. 696, 707-708 (2012) (retaliation is not the only claim giving rise to individual liability under the first clause of Chapter 151B, section 4 (4A) which permits a claim of interference by "any person"); Woodason v. Town of Norton School Committee, 25 MDLR 62, 64 (2003) (individual liability permitted against individual who has authority or duty to act on behalf of employer and has acted in deliberate disregard of an employee's rights).

#### D. Emotional Distress Damages<sup>4</sup>

Upon a finding of unlawful discrimination, the Commission is authorized to award damages for the emotional distress suffered as a direct result of discrimination. See Stonehill College v. MCAD, 441 Mass. 549 (2004); Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182-183 (1988). The only discrimination that is subject to redress in this case is that pertaining to sexual harassment. Thus, the question is how much emotional distress did Complainant suffer as a result of being called homophobic names and being slapped in the genitals by Lt. Stamatis.

An award of emotional distress damages must rest on substantial evidence that it is causally-connected to the unlawful act of discrimination and must 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. See Stonehill College v. MCAD, 441 Mass. 549, 576 (2004). Complainant's entitlement to an award of monetary damages for emotional distress can be based on expert testimony and/or Complainant's own testimony regarding

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<sup>4</sup> Complainant suffered no loss of income so no back pay damages are awarded.

the cause of the distress. See Stonehill College v. MCAD, 441 Mass. 549 (2004); Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182-183 (1988). Proof of physical injury or psychiatric consultation provides support for an award of emotional distress but is not necessary for such damages. See Stonehill, 441 at 576.

Complainant testified credibly that he suffered from emotional distress as a result of Lt. Stamatis's hostile name-calling over a several-year period. The barrage of homophobic slurs conveyed in a hostile manner was such as to undermine the well-being of any reasonable person and, according to Complainant, he felt "pretty hopeless." The slap to his genitals by Lt. Stamatis, apart from the name-calling, was both humiliating and physically painful. The emotional distress which Complainant suffered at the hands of Lt. Stmatis is worthy of some compensation.

On the other hand, the evidence does not support Complainant's assertion that he missed work as a result of stress and anxiety caused by adverse interactions with Lt. Stamatis. It is noteworthy that Complainant's sick time usage in 2008 and 2009 (the years of sexual harassment) was not worse than his sick time usage in other years of employment. Complainant maintains that it was not his overall amount of sick or vacation time that reflects his emotional distress but, rather, the manner in which he used it, i.e., leaving work in short bursts to avoid harassment by Lt. Stamatis. There is, however, little or no evidence in the record to support this assertion.

Insofar as Complainant asserts that he required therapeutic treatment for symptoms of emotional distress, I likewise reject this claim. To be sure, Complainant sought treatment for anxiety and stress from Kenneth Wilson, PsyD, but he did so based on the recommendation of his attorneys, and he stopped going after a few visits because

he found that the sessions weren't helpful. The assertion that Complainant experienced atrial fibrillation due to stress must also be rejected since Complainant failed to produce records in support of this claim. Finally, it is possible that Complainant experienced some headaches as a result of emotional distress due to sexual harassment but his documented history of headaches since high school fails to support this claim.

Based on the foregoing, I conclude that Complainant is entitled to \$ 7,000.00 in emotional distress damages.

#### IV. ORDER

In accordance with the foregoing findings of fact and conclusions of law and pursuant to the authority granted to the Commission under G. L. c. 151B, sec. 5, Respondent is ordered to:

- (1) Cease and desist from all acts of gender discrimination that create a sexually-hostile work environment;
- (2) Pay Complainant the sum of \$ 7,000.00 in emotional distress damages with interest at the rate of twelve per cent per annum. Said interest shall commence on the date that the complaint was filed and continue until paid or until this order is reduced to a court judgment and post-judgment interest begins to accrue;
- (3) Conduct, within one hundred -twenty (120) days of the receipt of this decision, a training of the members of the Reading Police Department, including all members of its supervisory staff. Such training shall focus on gender discrimination and the avoidance of a sexually-hostile work environment. Respondent shall use a trainer provided by the Massachusetts Commission Against Discrimination or a graduate of the MCAD's certified "Train the Trainer." The trainer shall submit a draft

training agenda to the Commission's Director of Training at least one month prior to the training date, along with notice of the training date and location. The Commission has the right to send a representative to observe the training session. Following the training session, Respondent shall send to the Commission the names of persons who attended the training.

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 26th day of February, 2016.

A handwritten signature in black ink, appearing to read "Betty E. Waxman", followed by a long horizontal flourish.

Betty E. Waxman, Esq.,  
Hearing Officer