

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
LAUREL RADWIN,

Complainants,

v.

DOCKET NO. 10-BEM-01145

MASSACHUSETTS
GENERAL HOSPITAL,

Respondent

Appearances: Dahlia C. Rudavsky, Esq. for Complainant
Laurie F. Rubin Esq. and Kristen Knuuttila, Esq. for Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On May 14, 2010, Complainant, Laurel Radwin filed a complaint with this Commission alleging that Respondent, Massachusetts General Hospital (MGH) had discriminated against her because of her religion (Jewish). On September 14, 2010, Complainant amended her complaint to assert a claim of retaliation for her having noted or protested the scheduling of certain events by MGH between 2007 and 2009, on Jewish holidays. Specifically, Complainant alleged that her termination from Respondent in January 2010 was motivated by religious discrimination and retaliation for engaging in protected activity. The Investigating Commissioner found probable cause to credit the allegations of the complaint. Efforts at conciliation were unsuccessful and a Hearing was held before the undersigned Hearing Officer on June 15-17, 24-26, 29-30, and July

23, 2015. The parties submitted post-hearing briefs in October of 2015. Having reviewed the evidence in the record and the post-hearing submissions of the parties, I make the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

1. Complainant, Laurel Radwin, R.N., Ph.D., is a nurse researcher who was employed at MGH's Munn Center for Nursing Research from the fall of 2006 until January of 2010. Immediately prior to coming to the Munn Center, Complainant was a tenured associate professor of nursing at the University of Massachusetts, Boston. She had earned a Ph.D. from Boston College School of nursing and had served as an RN at MGH. (Tr. Vol. I, pp. 30-33 ,43) By 2005, Complainant had achieved a significant record of publications and was recognized as a leading scholar in nursing research. (Ex. 37, C-11, Tr. Vol. V, p. 1099)
2. In 2007, the Munn Center was a newly-created organization devoted to nursing research within a larger organization at MGH, the Institute for Patient Care, (IPC). (Tr. Vol. I, p. 42; Vol. 7, pp. 1328-1330) Dorothy Jones was the first Director of the Munn Center. (Tr. Vol. 7, pp. 1323-24). Guardia Bannister, who began working at MGH in August of 2007, was the Executive Director of the Institute for Patient Care. (Tr. Vol. 3, p. 544) Bannister reported to Jeannette Ives Erickson, the Senior Vice President for Patient Care Services and Chief Nurse, the highest nursing position at MGH. (Tr. Vol. 3, p. 545) Erickson reported to Peter Slavin, President of MGH. (Tr. Vol. 3, p. 546)
3. In addition to serving as the Munn Center Director, Dorothy Jones maintained a regular faculty appointment at Boston College, where she was a full professor of Nursing. (Tr. Vol. 7, pp. 1331-1332) She spent approximately half of each week at the Munn Center. Jones had been

a member of Complainant's Ph.D. dissertation committee at Boston College and suggested an area of research to Complainant that became Complainant's area of focus. Jones recruited Complainant to come to the Munn Center and advocated for her hire. (Tr. Vol. II, pp. 193-195)

4. During Complainant's tenure at MGH, the Munn Center had approximately eight employees, several of whom were engaged in research or related activities. The Center also employed an administrative assistant, Linda Lyster, a professional development coordinator, Elaine Cohen, and beginning in the summer of 2008, a grants manager, Janice Kiley. (Tr. Vol. I, p. 60; Vol. 3, pp. 432, 433; Vol. 5, pp. 901-902; Vol. 7, pp. 1350-1357; Joint Ex. 66)

5. Complainant's title at the Munn Center was Yvonne L. Munn Nurse Researcher. She was one of two employees with the title of Nurse Researcher. The other was Diane Carroll, who had worked at MGH for decades before transferring to the Munn Center. (Tr. Vol. I, p. 43-44; Tr. Vol. 2, p. 284. Complainant had worked at MGH previously for nine years as a registered nurse and "unit teacher." (Tr. Vol. I, pp. 31-32)

6. Complainant and Elaine Cohen, the professional development coordinator, are both Jewish. (Tr. Vol. I, p. 45, 59-60). Complainant described herself as an observant Jew somewhere in the middle of the spectrum between orthodox and very liberal. (Tr. Vol.1, pp. 45-46) Cohen testified that she grew up in a very Jewish community and went to Hebrew School. (Tr. Vol. 9 p. 1902) Cohen has a baccalaureate in nursing and Master of Science degree in psychiatric nursing from Boston University, worked for the Department of Health and Human Services Division of Nursing for some 25 years, ending her career there as a Branch Chief, and was recruited to MGH by Head Nurse Jeanette Ives Erickson. (Tr. Vol. 9, pp. 1782, 1784-1786, 1789-1792)

7. Jones testified that she was not aware of Complainant's religion at the time Complainant came to the Munn Center, but learned Complainant was Jewish when Complainant's father passed away in February of 2007 and Complainant was engaged in the Jewish mourning rituals. (Tr. Vol. 7, pp. 1342-1345; Ex. 5) Jones was supportive of Complainant at this time, and Complainant wrote to Jones thanking her for her "support and love." (Tr. Vol. 2, pp. 196-197, 203; Jt. Ex. 5) Complainant testified that Guardia Bannister also was aware of the fact that she was Jewish because they discussed the Jewish holiday of Passover in a meeting in July of 2009. Although Bannister did not recall this conversation, I find that it likely that she knew Complainant was Jewish.

8. In 2007, Complainant referenced her religion publically in a Munn-sponsored meeting, noting that a lecture by a visiting scholar at another organization within the Institute for Patient Care had been scheduled on the Jewish New Year, Rosh Hashanah, and that she and other Jewish nurses would be unable to attend. (Tr. Vol. 1, p. 48) Shortly thereafter, Jones' administrative assistant, Linda Lyster, circulated an email proposing a date for a meeting between the Munn Center and another MGH research entity that presented a conflict for Complainant because it fell on a Sabbath when she wanted to attend services. Complainant noted this in her response to Lyster but made the decision to attend the meeting when she was advised it was not possible to change the date. (Tr. Vol. 1, pp. 52-23) (Ex. 28) Complainant testified that she learned a "collaborative governance" nursing group (open to all MGH nurses) was scheduled for Rosh Hashanah in 2007 but was rescheduled when the conflict came to light.

9. In her second year at the Munn Center, Complainant sent Jones the dates of the Jewish High Holidays of Rosh Hashanah and Yom Kippur in advance, noting that she could not attend an event scheduled on the latter holiday. In September of 2008, Lyster offered some dates for an

Operations Research meeting noting parenthetically that two of the offerings were on Yom Kippur. Complainant emailed Jones that she was “uncomfortable” that Yom Kippur was being offered as a meeting date and wanted to let Jones know. (Tr. Vol. 1, p. 55; Joint Ex. 28) Jones testified that Lyster sent out the email without Jones’ reviewing it. Jones’ perception was that Lyster was pointing out the conflict with Yom Kippur to steer them away from that date and the meeting was not scheduled on that date. (Tr. Vol. 7, p. 1361-1364)

10. In her first year at the Munn Center, Complainant completed work on a multi-year project funded by the National Institutes of Health (NIH) which she had brought over from UMass. She applied for two Oncology Nursing Society grants that year and published a scholarly article. (Ex. 12 at Part IV) In her second year at the Munn Center, Complainant applied for three NIH grants, one of which was funded and an internal MGH Clinical Innovations Award (CIA). This proposal was ultimately funded by Partners, the parent corporation of MGH, following a presentation by Complainant to members of Partners’ leadership. (Tr. Vol. 1, ppp.65-67; Exs. 34, 40) During her first two years at the Munn Center, Complainant received favorable reviews from Jones in the fall of 2007 and 2008. (Tr. Vol. 1, p. 62-63; Joint Ex. 12; Tr. Vol. 1, p. 64; Jt. Ex. 31) She was enthusiastic about her job and working with Jones and Bannister, who both felt similarly. (Tr. Vol. 2, pp. 264-278; Jt. Exs. 5, 13, 14,17,18, 21,34).

11. During Complainant’s first two years at the Munn Center, she had primarily worked on completing research projects that she had begun at UMass Boston for which she did not need administrative support. (Tr. Vol. 1, pp. 44-45, Vol. 3, p. 536) In November of 2008, Complainant learned that a grant application she had submitted in September of 2008 had been approved. (Tr. Vol. 1, p. 64) The grant involved studying the effects of prayer on the outcomes

of cancer patients (prayer study) and working with a co-Principal Investigator, who was a professor at UMass Boston. (Tr. Vol. 2, p. 381) Work on this grant required Complainant to work with grants personnel and the administrative support staff at the Munn Center.

12. The process for submitting grants at MGH required all grant proposals to go through a central office known as Grants and Contracts for approval before being submitted to the funding source. (Tr. Vol. II, p. 389; Tr. Vol. III, pp. 419-420; Tr. Vol. V, p. 907) Progress reports also needed to be reviewed by Grants and Contracts before going to the funding source. (Tr. Vol. V, p. 975) Jones also needed to review all grant applications prior to being signed off by Head Nurse Jeanette Ives Erickson. (Tr. Vol. VII, pp. 1450-1453) There was testimony about Complainant's failure to follow established protocols regarding grants. Complainant resisted providing Jones with full copies of her proposals for review because she was reluctant to share with Jones a copy of her "science" which she viewed as proprietary. (Tr. Vol. II, p. 371) Edita Mirkovic from the Grants and Contracts Department testified that Complainant failed to provide copies of her full proposals, including her science, to Grants and Contracts. (Tr. Vol. 6, p. 1167)

13. Jones testified that in 2009 Complainant's need for administrative support in the submission and follow-through of grant applications resulted in a number of increasing challenges around Complainant's completing documentation, including forms that needed to be signed, and her lack of clarity about the information associated with the budget process. Jones stated there were repeated attempts to clarify the expectations required of Complainant to complete the process of grant submission and multiple requests to Complainant to prepare information and submit data to the appropriate people. (Tr. Vol. 7, pp. 1393-1394). These challenges often came to Jones' attention through a numerous emails sent between Complainant and administrative staff, an enormous sequence of emails from Complainant to Jones requesting

meetings, and many meetings requiring Jones to intervene to resolve the conflicts presented. Jones testified that she had never received so many emails from one individual over the course of time or around one incident. Jones felt that many of these conflicts could be resolved by Complainant and were resulting in significant demands on Jones' time to the exclusion of her other obligations. (Tr. Vol. 7, pp. 1452-1454) Jones also began to have some concerns about Complainant's behavior involving her interactions with administrative support staff at the Munn Center.

14. In the Spring of 2009, Complainant applied for an award to conduct research on racial and ethnic disparities in cancer care to be funded by the National Institutes of Health (NIH) through a contract with the Dana Farber Cancer Institute. This was referred to as the "Nodal Award," and required the submission of documents by Dana Farber and documents required by MGH. Guardia Banister offered Complainant the services of her personal administrative assistant to assist with the preparation of documents to be submitted to the funder and Complainant testified that the process was productive. (Tr. Vol. 1, p. 80, Vol. 9, pp. 1934-35, Vol. 6, pp. 1235-1236, 1241-1242; Ex. C-23)

15. In the Spring of 2009, Jones also learned about complaints from the administrative support staff at the Munn Center that Complainant was treating them in a disrespectful way, they felt bullied by her, and she was placing an inordinate amount of demands on their time. (Tr. Vol. 7, 1449-1450) On April 21, 2009, Grants Manager, Janice Kiley emailed Jones and Complainant informing them that she intended to seek the assistance of Human Resources because she perceived Complainant's conduct towards her as demeaning and felt that Complainant belittled her competency. (Tr. Vol. 2, p. 297-298; Joint Ex. 54) Kiley sent this notice after receiving an email from Complainant characterizing Kiley's response to her as not helpful and demanding

they meet at a particular time to go over budget information that Kiley had prepared for Complainant's Nodal application . (Tr. Vol. 2, p. 306: Jt. Ex. 54) Complainant also criticized Kiley for delivering a draft budget for the Nodal application by slipping it under her door, notwithstanding that Complainant had asked Kiley not to email her budgets with salary information. (Jt. Ex 53) Similar communications and exchanges wherein Complainant was critical of Kiley continued in a series of emails to Jones in April of 2009. (See Jt. Exs. 55, 60, 61, 69, 77) Complainant testified that Kiley had miscalculated the principal investigators' salaries in her budget reaching the incorrect conclusion that Complainant was over-budget and requested Kiley meet with her. In a prior March email regarding a dispute about budget information, Complainant communicated to Kiley that she did not find Kiley's failure to provide her with a blank budget form helpful. (Tr. Vol. 1, p. 111-112) Kiley had sought information about why Complainant needed the form, asked a number of questions, and offered to meet with Complainant to discuss what was needed, but Complainant stated she would not have time to review this material. (Tr. Vol. 2, pp. 315-320)

16. Kiley felt that the Complainant's criticism of her was unwarranted but Complainant testified that she felt her emails were matter of fact, not demanding, and an attempt to be collegial. (Tr. Vol. 2, pp. 306-307, 319) Kiley testified that Complainant treated her in a demeaning and bullying manner on multiple occasions, by the tone of her voice and the manner of interaction, and that this was very stressful and upsetting to Kiley. (Tr. Vol. V, pp. 934-935, 937-938) She testified to one occasion where she was attempting to assist Complainant and Complainant flung some documents back at her stating she already had them. (Tr. Vol. V, p. 937) On another occasion Complainant pounded on her door with a full fist and Kiley did not open the door because she felt afraid. (Id. p. 943) Kiley testified that she had never approached

Human Resources about another employee. She became so upset at Complainant's behavior that she refused to meet alone with her. (Tr. Vol. V, pp. 915, 941; Ex. 56) Kiley's distress was very apparent as she testified about these issues and I credit her testimony about Complainant's demeaning manner and tone in their interactions.

17. Kiley testified that she interacted successfully with a number of other researchers at the Munn Center and stated that others were more transparent in their dealings with her. She stated that others were more willing to give her information and to allow her to help them, whereas Complainant frequently would not provide her with responses to basic questions that needed to be included in grant applications. She also discussed other specific problems around getting information from Complainant who would often state that she did not understand what Kiley needed or felt that Kiley should be responsible for a task. (Tr. Vol. V, pp. 924-932; 942-943)

18. Complainant testified in her previous position at UMass she had been responsible primarily for writing the "science," and grants, while administrative personnel handled the form pages and other administrative portions of grant applications. This level of assistance was not available at the Munn Center. Complainant sought assistance from Cohen, Kiley and Lyster with typing her grant pages and with other administrative support that they were not charged with providing, and Complainant was advised certain tasks were her responsibility. (Tr. Vol. I, pp. 37-39, Tr. II, p. 395-96, 398). She claimed there was no clear policy about the responsibility for administrative tasks such as completing forms and discovered this through trial and error. (Tr. Vol. II, pp. 377-78; 399, 402-404) The evidence indicates there were numerous issues with Complainant's completion of form pages and of Munn Center personnel directing her to complete certain tasks which she did not do. (Tr. Vol. V, pp. 948-953; Tr. Vol. VII, pp. 1429-1443; Tr. Vol. 9, pp. 1824-1839; Jt. Exs. 47, 48, 49, 50, 54, 67, 70, 71, 72, 74, 75, 89, 90,; Ex. R-

3) Complainant claimed and reported to Mattson that this confusion resulted from lack of clarity around roles and responsibilities at the Munn Center. (Tr. Vol. II, pp. 377-78; 399, 402-404, Tr. Vol. III, p. 489-90; Ex. 172) Kiley brought her concerns about Complainant to Jones. (Tr. Vol. 5, p. 978) Jones also heard from the administrative assistant Linda Lyster that she was having difficulty dealing with Complainant. (Tr. Vol. 7, p. 1446) Co-worker Elaine Cohen testified that she observed Complainant treat both Kiley and Lyster in a demeaning fashion. I found Cohen to be a very credible witness and grant credence to her assessment. Kiley and Cohen also expressed their concerns to Banister about what they perceived as Complainant's demeaning communication style. (Tr. Vol. 4, p. 739) Bannister testified that she heard from Kiley and Cohen that Complainant was demeaning and minimizing the contributions of some staff. (Tr. Vol. 4, p. 740)

19. Jones also testified that there was difficulty getting information from Complainant, that she received complaints from the Grants and Contract division about forms not being completed, and often did not receive the grant submission herself. According to Jones, forms were generally simple, and with repeated discussion about expectations and no follow-through, Complainant's conduct became "ridiculous" and "excessive." (Tr. Vol. VII, p.1455) Jones testified that Complainant was very reluctant to share any information with her regarding the "science" of her projects because she felt this was proprietary information and feared that it might be misappropriated. Jones needed to have some basic information about the "science" to offer feedback as the Director and to discuss with Jeannette Ives Erikson, who was the final sign off on grants, and to determine if the studies were an appropriate focus for the Center and would be funded by the appropriate source. Jones stated that any materials Complainant regarded as proprietary would be kept protected and confidential. (Tr. Vol. 7, pp. 1447, 1450-1452)

20. Jones testified that she made efforts to facilitate a discussion with Kiley and Complainant in an attempt to resolve some of their challenges. Complainant denied that Jones offered to facilitate such a meeting and testified that Jones never reached out to her to hear her perspective after receiving Kiley's April 21st email stating that she would seek the intervention of HR. (Tr. Vol. 1. p. 114) Complainant later admitted that Jones did meet with her and did seek her perspective. (Tr. Vol. II, pp. 325-335; Ex. 55; 57) I credit the testimony that Jones communicated with Complainant in an attempt to improve Complainant's relationship with Kiley, but that Complainant was not entirely receptive to her efforts.

21. Jones had begun sharing her concerns about Complainant's conduct with Banister in early 2009, but did not seek her assistance. (Tr. Vol. 4, pp. 728, 731-732; 734) Sometime in the Spring of 2009, Jones informed Banister that the situation was not improving. Banister sought guidance from Human Resources personnel, first in the Spring of 2009, from Generalist Rod Mattson, and later from HR Director, Steve Taranto. (Tr. Vol. 4, pp.740-741; Tr. Vol. 5, p. 1054)

22. Jones and Banister met with Complainant on June 3, 2009 as suggested by Matson to discuss her interaction with colleagues and the areas of concern about her behavior. (Tr. Vol. 4, p. 748, 756; Tr. Vol. VII, pp. 1447-1449) At the June meeting, Jones and Banister stressed that they valued Complainant's scholarship, her talents as a researcher and were looking to her to be a leader at the Munn Center. (Tr. Vol. 1, p. 15; Tr. Vol. 2, pp. 363-364) Jones testified that she had hopes that Complainant might potentially take over as director of the Munn Center. (Tr. Vol. 7, p. 1458) They also discussed their concerns about Complainant's communication style, her need to be mentor, and the difficulties that some of the Munn Center staff were experiencing with her style. (Tr. Vol. 2, p. 365; Ex. 92) Jones' agenda also reflects that they sought to discuss

the need for Complainant to work collaboratively with others at the Munn Center, her excessive emails and demands on Jones' time, and the Center's inability to provide the level of administrative support Complaint expected with tasks she needed to complete independently. (Ex. 92) They also discussed stress management since Complainant had been heard banging file cabinet doors loudly in her office when she was feeling stress over deadlines and completion of work. On the one occasion where Jones overheard such banging she intervened to ask Complainant if everything was alright. (Tr. VII, pp. 1454-55)

23. Complainant made notes of that meeting and her notes reflect discussion of her behavior being perceived as disrespectful and of complaints that she thought she was better than others at the Center and too good to do certain tasks. According to Complainant there was also discussion of the need for her to share more information with Jones and to get Jones out of the middle, presumably a reference to Jones being called upon frequently to arbitrate and settle issues arising between Complainant and others. Complainant tried to explain that some of the difficulties were caused by confusion around expectations and the need to clarify roles and responsibilities at the Munn Center. (Jt. Ex. 93) Banister asked why Complainant could not do her own typing and Complainant responded that she had difficulty with forms. Banister stated that they could not facilitate a full time assistant for Complainant, and that Banister's prior loan to Complainant of her administrative assistant was a one-time thing. (Ex. 93; Tr. V. 1, pp. 114-116) Both Jones and Bannister felt the meeting had gone well and testified that Complainant was receptive and not defensive. (Tr. Vol. 4, p. 757; Tr. Vol. VII, pp. 1457-58) Banister left the meeting optimistic that Complainant would address the issues that they discussed. (Tr. Vol. 4, p. 763-764) Complainant stated that there was no discussion of disciplinary action at the June 2009

meeting and she denied any discussion of a follow-up meeting with Jones and Bannister. (Tr. Vol. 1. p. 121)

24. Complainant testified that she had no understanding that her conduct was inappropriate or belittling to Kiley and she did not understand Kiley's concerns. (Tr. Vol. II, pp. 311, 324, 336) She did not recall ever acting disrespectfully or in a demeaning way to any Munn Center employee. She claimed that Kiley blamed the entire situation on her and Kiley would not accept shared responsibility. (Ex. 105) She did not apologize to Kiley or try to understand Kiley's concerns, stating that considering other's perceptions without specific "behavioral indicators," was not something she did. (Tr. Vol. II, pp. 324-325; Tr. Vol. III, p. 487-488)

25. Complainant testified that upon reflection, some of the things that Bannister said about her behavior during the June meeting made her uncomfortable because they reminded her of the stereotype of an "entitled Jewish woman." The comments Complainant referred to were about her acting like she was better than everyone else, that she expected other people to do things that others did for themselves, that she was perceived as too good to do certain things, and as disrespectful. After the June meeting Complainant also did an internet search, finding a definition of "Jewish American Princess" that she felt echoed the substance of what Bannister had said about her conduct and others' perceptions. (Ex. C-5) She stated that this phrase is intended to promote a stereotype about young women who are spoiled...self-absorbed, high-maintenance... and snobby."

26. Complainant's concerns about Bannister's comments and how her behavior was being perceived caused her to reach out to Mattson in HR for advice after the June 2009 meeting. (Tr. Vol. I, pp. 116 -118) She had initially communicated with Mattson in May of 2009. (Tr. Vol. III, p. 480-482) Mattson's notes of this initial meeting reflect that they discussed a number of

topics, including Complainant's concerns about sharing information about her research projects with Jones, her relationships with Munn employees and taking ownership of her "incivility."¹ They also discussed her frustration in pinning down meeting times with Jones, and her lack of clarity around roles. (Joint Ex. 172; Tr. Vol. III, p. 482-485) Complainant recalled discussing some of these topics in her meetings with Mattson but did not recall discussing taking ownership of her own "incivility." (Tr. Vol. III, pp. 482-485) Mattson's notes also reflect that in the latter meeting he told Complainant that she had a strong personality, and that she asked him if it was too late for her to recover after alienating so many people. Complainant claimed not to recall this piece of their discussion. (Jt. Ex. 172, entry for week of 6/22/09; Tr. Vol. III, p. 490) I find it unlikely that Mattson would have fabricated certain topics of their discussion in his notes.

27. Complainant continued to meet regularly with HR Generalist Mattson between May and November of 2009, and she telephoned and emailed him on occasion. (Tr. Vol. III, p. 488, 493; Jt. Ex. 152, 172) Human Resources Director, Steve Taranto, testified that as an HR Generalist, Mattson was responsible for supporting approximately 900 employees, and that it was unusual for him to spend as much time with one person as he did with Complainant. (Tr. Vol. V, pp. 1063, 1072) Complainant continued to seek Mattson's advice about ongoing issues that arose with her colleagues and his assistance in addressing others' negative perceptions about her. (Tr. Vol. III, p. 489, Vol. I, p. 119) Despite her numerous communications with Mattson regarding difficulties she was experiencing with some of her colleagues, Complainant claimed not to understand why some colleagues perceived her treatment as disrespectful. (Tr. Vol. III, p. 493) She testified that she understood from Mattson's coaching that she should maintain utmost civility with her colleagues and should just remain silent if someone said something she did not like. (Tr. Vol. III, pp. 493, 496-498) Complainant claimed that after the June meeting she made

¹ Mattson's notes were admitted into evidence because he died prior to the public hearing.

every effort not to ask support staff for clerical assistance and did so only with Jones' permission. (Ex. 167) She testified and wrote in a self-assessment that she attempted to limit the number of emails she sent to Jones and to deal directly with staff rather than copy Jones on emails. (Tr. I, p. 119; Ex. 167) Jones and Complainant worked out a method of sharing information that eased Complainant's concerns about sharing proprietary information. (Tr. Vol. IX, pp. 1961-1962)

28. After the June meeting, Jones met repeatedly with Complainant, sometimes alone and sometimes with Kiley and others. (e.g. Tr. Vol. VII, p. 1462; Jt. Exs. 97, 105, 108, 118, 123, 124) These meetings focused on the progress of on-going work and performance and office issues. Complainant generally kept detailed and voluminous notes of meetings. Her notes reflect discussion of ongoing friction between her and Kiley, and quote Jones as stating on July 16, 2009, "this has to stop." (Jt. Ex. 105) On at least two occasions in the summer of 2009, Complainant sought to meet alone with Kiley, despite Kiley's stated wish not to meet one on one with her. Complainant could not understand Kiley's reticence to meet alone with her. (Tr. Vol. III, pp. 503, 504) Complainant's notes of the July 16th meeting also reflect that Jones asked her if she would consider a meeting with Kiley facilitated by Mattson and that Complainant responded she would prefer to just move on and not meet with Kiley. (Tr. Vol. III, p. 505. Jt. Ex. 105) Complainant's notes of this meeting also indicate that she raised some concerns about Elaine Cohen's interactions with her. (Tr. Vol. III, p. 518- 519; Jt. Ex. 105)

29. Complainant received news in July of 2009 that she had received the Nodal award. She received widespread congratulations on this award and a card and flowers from Banister. (See e.g. Ex. 100, 102, 104; Tr. IV, 774; Ex. 101) Banister neglected to include notice of Complainant's award of the Nodal Grant in the announcements section of the agenda for the next

meeting of the Institute for Patient Care which she chaired monthly, but stated that this was not intentional. (Tr. Vol. IV, pp. 770-771; Ex. 98)

30. Shortly thereafter Complainant learned of an opportunity to seek additional funds for the Prayer Study which NIH had initially been funded in 2008. Complainant prepared the application papers and forwarded them to Edita Mirkovic, the Munn Center's contact in the MGH's Office of Grants and Contracts. (Tr. Vol. I, p. 123; Tr. Vol. VI, pp. 1206-1207; Ex. 107) In late July of 2009, Complainant, Jones, Kiley and Mirkovic had to meet to clarify and resolve certain questions that had arisen relative to the Prayer Study's budget, the time Complainant would spend on the project, and a cost-sharing question, information that needed to be included in a progress report to the NIH. (Exs. 4, 5; Tr. Vol. II, pp. 382-387; Tr. Vol. III, p. 560) The budget Complainant presented to Grants and Contracts for her Prayer Study grant was different from the budget her co-principal investigator provided to the funding source. This resulted in confusion which necessitated the meeting with Grant and Contracts. Complainant had a number of explanations for the discrepancy including that she lacked both sets of budgets and disclaiming her responsibility to ensure that the information she provided to Grants and Contracts was consistent with the information she provided to the funding source. (Exs. 4, 5; Tr. Vol. II, pp. 382-387; Tr. Vol. III, p. 560)

31. The progress report on the NIH prayer study grant was due on June 1st and Mirkovic asked Complainant for the progress report on June 9, 2009. The report was not finalized until September 25, 2009. (TR. Vol. VI, p. 1172, 1146, 1173; Jt. Ex. 146) Complainant also failed to meet the internal ten-day deadline for providing Grants and Contracts with her Nodal proposal. (Tr. Vol. II, pp. 388-389) Complainant's failure to comply with these deadlines made Kiley's job more difficult and created a crisis environment where Munn Center employees were often

scrambling at the last minute to meet grant submission deadlines. (Tr. Vol. V, p. 939-941)

Kiley's attempt to assist Complainant with procedural requirements were often fraught with conflict and difficulty. Kiley frequently had to send emails to Complainant reminding her that her materials were overdue. (e.g. Joint Ex. 71) These issues were exacerbated by Complainant's lack of availability, since she often worked from home and frequently claimed that her internet was down and she could only be reached by telephone. (e.g. Tr. Vol. V, p. 945-946)

32. In late July of 2009, Complainant learned that a Partner's "Inaugural Conference on Nursing and Spirituality" had been scheduled on one of the Jewish High Holidays in September of 2009. This conference committee included high-level nurse managers at MGH and Brigham and Women's Hospital. Complainant learned of the conference from a colleague who pointed out that it was scheduled during Rosh Ha Shana and she learned that Banister was on the planning committee. Complainant sent Banister an email, attaching her colleague's email and noting that because of the date, Jewish nurses could be unable to attend the conference. Banister emailed Complainant that the Committee was aware of the conflict, that she had not been at the meeting when the conflict was discussed, but that she would follow-up and get back to Complainant. (Ex. 110) Complainant also had communications about this issue with another colleague who contacted Jeanette Ives Erickson. After a series of email exchanges, Erickson acted quickly to cancel and reschedule the conference and apologized for the oversight in an email to a large number of recipients. (Tr. Vol. III, pp. 602-603; Tr. Vol. I, pp. 130-131; Ex. 115) Banister forwarded a cancellation notice to Complainant on July 31, 2009, together with her own apology "for our insensitivity." (Ex. 117) Banister claimed she was not an official member of the committee and her involvement in the conference was peripheral. (Tr. Vol. IV, p. 862-863) No one associated with the Munn Center was involved in the scheduling of this

conference. On July 31, 2009, two days after Complainant's complaint about the scheduling of the nursing and spirituality conference, Banister met with her to learn about her Nodal project and Complainant testified that the meeting was positive and cordial. (Tr. Vol. II, pp 273-275) Later that day, Complainant and Banister exchanged emails and Banister wrote, "Again, congratulations on your wonderful accomplishments." (Joint Ex. 116)

33. Earlier, on July 22, 2009, Complainant reported to Mattson that she had had a recent meeting with Jones, Kiley and Cohen that had not gone well, that she was constantly interrupted and treated disrespectfully. (Ex. 152) On July 27, 2009, Jones had a private meeting with Mattson on another matter but they also discussed Complainant's challenges with other Munn Center staff. Jones relayed to Mattson that she had conveyed expectations, clarified roles, and described processes to Complainant multiple times. (Ex. 109) According to Mattson, Jones stated that Complainant is highly intelligent but "scattered" and easily overwhelmed when responsible for multiple tasks. Mattson noted Jones' concern that Complainant struggled with comprehension and retention of basic information regarding adherence to process requirements and that Jones had no similar issues with other members of her staff. (Ex. 172, entry for week 7/27/09; Ex. 152 entry for 7/29/09) Jones testified that she had more meetings with Complainant than with any other member of her staff. (Tr. Vol. VII, p. 1454) Notwithstanding, Complainant was frustrated that Jones was not always available to meet with her and she wanted Jones to respond more promptly to her emails and phone calls. (Tr. Vol. III, pp. 513-514) Complainant appeared to have little understanding of why these heightened expectations resulted in her being perceived as "entitled."

34. Complainant, Kiley and Cohen continued to have conflicts regarding grant requirements in August of 2009 and on August 10th Complainant requested that Kiley meet alone with her to

discuss certain issues. Kiley refused to meet with Complainant without Cohen present. According to Complainant's own notes, at that meeting Cohen told Complainant that she had never worked with a Principal Investigator like Complainant and that Jones should not be required as an intermediary on all of Complainant's issues. (Ex. 123) Complainant's notes reflect that there continued to be on-going disagreements and conflict regarding their interactions in the grants process. (Ex. 123, 124) Kiley noted in a communication about the August 10th meeting that Complainant was upset with her for not meeting alone, but stated after "more than 400 emails and 3 dozen meetings" she continued to find Complainant, "bullying, demeaning, and often times disrespectful." (Ex. 126)

35. On August 10, 2009 Banister wrote to Mattson in HR that Complainant's behavior in the Munn Center continued to be problematic and that based on her conversations with Jones, there did not seem to be any improvement. She sought a meeting with Mattson to discuss options. On August 12th Complainant met with Mattson and complained that both Kiley's and Cohen's conduct was offensive to her. (Tr. Vol. III, pp. 518-519) Mattson, Bannister and Jones met the week of August 17, 2009. Neither Jones nor Bannister could recall the specifics of their discussion with Mattson. Mattson's notes of the meeting indicate that they articulated on-going frustration with Complainant and her inability to meet expectations and were beginning to think she might not be a good fit. Mattson indicated that he wished to continue working with Complainant, because he felt she was trying to be "better, to be kind and civil and was motivated to do so." He planned to review a comprehensive improvement plan with Complainant the next week. (Ex. 172)

36. In September of 2009, Complainant reported to Mattson that she was having continuing difficulties dealing with Kiley, Cohen and Lyster, and was concerned that Jones might appoint a

“go-to” person for the Munn Center in Jones’ absence who would not understand the conflict. (Tr. Vol. 3, p. 521; Jt. Ex. 144) Complainant also claimed that her office space at the Munn center was inferior and in late September 2009, she again requested a change in her office. She claimed that she did not receive a positive response to her request.

37. Mattson sent an email to Jones on September 16, 2009 offering his assistance in bringing some harmony to the relationship between Complainant and Kiley, noting that Complainant understood she had gotten off on the wrong foot with Kiley and wanted to apologize and attempt to develop a better working relationship. (Ex. 143; 172) Jones testified that she was hesitant to accept significant intervention by Mattson because she and Bannister had already initiated a process of coaching Complainant regarding their expectations and her issues with colleagues in the Munn Center and because Mattson appeared to have what she characterized as more of a “therapeutic” or counselor relationship with Complainant and would not be a neutral facilitator. (Ex. 152, pp. 566, 571; Tr. Vol. VII p. 1470-1471) Bannister testified that she felt Mattson’s strategy of having more meetings with Complainant to discuss the on-going conflicts would not work. (Tr. IV, p. 792)

38. Sometime in late September of 2009, Bannister sought advice from Mattson’s boss, Steve Taranto, who was the Director of HR. (Tr. IV, p. 793; Tr. Vol. V, pp. 1072-73; Tr. Vol. VIII, p. 1716) Both Bannister and Taranto testified that a mediated meeting with Mattson did not occur because Kiley felt intimidated by Complainant, and Taranto specifically mentioned reports of Complainant banging or slamming doors or throwing things in her office. (Tr. IV, p. 876; Tr. VIII, p. 1731-32) While Taranto may have exaggerated the latter, the reason for not having such a meeting is not inconsistent with Kiley’s expressed view of how she felt about meeting with Complainant. Neither Kiley nor anyone else testified that they feared for their safety because of

Complainant's behavior, and Bannister did not believe that anyone was in danger from this conduct. (Tr. Vol. IV, p. 826) Reports of Complainant's behavior are, however, consistent with Kiley and Cohen's testimony that they often heard loud banging from Complainant's office (Tr. Vol.V, p. 943; Tr. Vol. IX, pp. 1858-1860) and Jones' view that Complainant did not manage stress well, a subject Complainant discussed with Mattson and which was on Jones' agenda for the June meeting with Complainant. It was clear by the Fall of 2009, that Jones and Banister felt that Complainant's difficulties with interpersonal relationships at the Munn Center was creating an unpleasant and unsustainable workplace environment.

39. In October of 2009, Complainant complained to Jones about Lyster in connection with Lyster providing credentials to research assistants on one of Complainant's projects. She sought Jones' intercession stating she was unable to deal with Lyster on her own. (Tr. Vol. VII, pp. 1473-1477; Jt. Ex. 150) During the week of October 10, 2009 Complainant expressed concern to Mattson about the conduct of Kiley and Cohen which she found offensive and about ongoing difficulties. She claimed, among other things, that she believed they were laughing at her. Mattson suggested that she remain civil, work on managing her stress and refrain from paranoia. (Ex. 172)

40. Greer Glazer, former Dean of the School of Nursing at UMass and currently Dean of the University of Cincinnati, (Tr. Vol. VI, p. 1097), testified that Complainant's scholarship was outstanding, but that she had issues with interpersonal skills, was high strung and had difficulty working with some people, including the Dean's former assistant. She stated that Complainant had very, very high expectations of others that were oftentimes unrealistic. (Tr. Vol. VI, pp. 1099, 1100-1106) According to Glazer, when conflict arose, Complainant refused to accept responsibility for what happened and always felt it was the other person's fault. (Tr. VI, pp.

1100, 1105) Glazer also testified that Complainant's reputation in the community was that she was difficult to get along with. (Tr. Vol. VI, pp. 1107-1108). She gave specific examples of complaints about Complainant from students and others. I find Glazer's assessment of Complainant to be entirely consistent with reports of her behavior at the Munn Center.

41. Complainant suggested that Kiley caused many of the problems that created conflict and tension between them, but this view is not supported. Edita Mirkovic, the Munn Center's contact at the office of Grants and Contracts testified that she found it more difficult to work with and communicate with Complainant than with the other Munn Center employees seeking funding for their research. She testified there seemed to be a disconnect when it came to Complainant getting information to her office. (Tr. Vol. VI, pp. 1143, 1146-1148) Mirkovic testified that Kiley was very effective and responsive and that she had an excellent working relationship with Kiley. (Tr. Vol. VI, p. 1148) Mirkovic also stated that she had no indication that Kiley was refusing to assist Complainant. (Tr. Vol. VI, p. 1208) Jones testified that Kiley continued to provide support to Complainant despite Kiley's concerns about Complainant's demeaning behavior and the difficulties working with her. (Tr. Vol. VII, pp1411-1228, 1488) Jones was not aware of Kiley needing to provide the same level of support to other principal investigators that she provided to Complainant. (Tr. Vol. VII, p. 1425) Jones also testified that she received compliments about Kiley from others who had submitted grants. (Tr. Vol. VII, p. 1404) I found this testimony to be credible.

42. Cohen testified that she worked closely with Kiley and that Kiley was very bright, learned quickly, was highly competent, enthusiastic and helpful. Cohen had worked with numerous grants managers and administrators during her career and stated the Kiley was superb and a nice person to work with. (Tr. Vol. IX, p. 1810-1812). Cohen also testified specifically

about Complainant's behavior at the Munn Center. She stated that the documents related to Complainant's grant applications were often not sufficient or not fully prepared and that she would seek assistance from Cohen or Kiley on matters they were not expected to help with. (Tr. Vol. IX, pp. 1802-1805; 1814-1818). She described Complainant as rude at times to Kiley and "sort of bossy and demeaning" in her tone with both Kiley and Lyster. According to Cohen, Complainant treated Kiley as an "employee" rather than as a "team member" who was collaborating with her. (Tr. Vol. IX, pp. 1843-1844) She stated that Complainant definitely wanted things done in her time frame and done the way she wanted it and made others feel like her work was the priority for the office at the moment Complainant felt it was. (Tr. Vol. IX, p. 1848) She described Complainant as not being very nice to Kiley and wanting Kiley to be available at certain times when it was convenient for Complainant. (Tr. Vol. IX, p. 1843-1845; 1849-1850) She discussed times when Complainant used flattery to cajole her to do Complainant's work. (Tr. Vol. IX, pp. 1852-1853; 1835-36; 1843-1844) Finally, she stated numerous times how frustrating it was for her and Kiley to work with Complainant. I found Cohen to be an extremely credible and forthright witness.

43. Complainant offered testimony from some professional colleagues who had relationships and interactions with her outside the Munn Center and in her prior positions. These witnesses spoke to her brilliant scholarship, her talent and creativity as a researcher and her professional collegiality. While I do not discount their testimony about Complainant's behavior and professionalism in these other contexts, I find that it has little bearing on her conduct with administrative colleagues at the Munn Center.

44. Jones and Banister had some communication with Taranto in HR on three occasions in September and October of 2009, as reflected by Taranto's Outlook Calendar. According to

Taranto, they contacted him to discuss some options on how to proceed with Complainant.

Taranto gave Jones and Bannister a range of options, from a performance improvement plan to discharge, but no decision was made at that meeting with respect to termination. (Tr. Vol. V, pp.1081-1082) Taranto testified that Jones and Banister decided to meet with Complainant again to hear her perspective before deciding on a course of action. (Id., Tr. Vol. IV, p. 793) Jones did not prepare an annual review for Complainant in the Fall of 2009 and did not ask Complainant for a self-evaluation as she had in prior years. (Tr. Vol. I, p. 142)

45. On November 20, 2009, Jones and Banister met with Complainant. (Jt. Ex. 168) Complainant claimed she did not know what the meeting was about until she arrived. (Tr. Vol. 1, p. 142) Mattson's notes for 11/9/09 indicate that she told him she was feeling stressed and had been asked to meet with Jones and Bannister to review the expectations laid out in their June meeting, but she did not recall stating this to Mattson. (Jt. Ex. 172; Tr. Vol. III, pp. 528-529) In preparation for this meeting, Complainant wrote a self-assessment, which portrayed her accomplishments and interactions in a positive light and did not discuss ongoing issues of conflict at the Munn Center. (Tr. Vol. I, p. 143; Jt. Ex. 167) Banister testified that Complainant's perception was that things were improving and that she was trying very hard to make things better. (Tr. Vol. IV, p. 799) Complainant's presentation at this meeting did not comport with what she had told Jones one week earlier in a meeting on November 12, 2004. During that meeting they had discussed Complainant's dissatisfaction with the processes and the people at the Munn Center and Jones' concern that she had heard Complainant was reported complaining about the Center. (Tr. Vol. VII, p. 1482) In that meeting Jones had asked Complainant if she thought this was the right job for her. (Tr. Vol. III, p. 521-524; Jt. Ex. 163) Jones testified that she had had similar discussions with Complainant over her dissatisfaction

with the employees of the Munn Center at other times. (Tr. Vol. VII, pp. 1482-1483) Jones was described as a manager and mentor who provided guidance and supervision, always made herself available, and was a very caring and supportive person. (Tr. Vol. IX, pp. 1860-1861)

46. At the November meeting, Jones and Banister told Complainant that others' perceptions of her behavior had not changed and the situation was not sustainable. Complainant responded that she could not respond to people's perceptions but only to specific examples of her behavior. She was told there would be another meeting involving Human Resources Director Taranto who would need to be involved in whatever forthcoming decisions were made about Complainant's employment. (Tr. Vol. 1, p.145; Tr. Vol. VII, pp. 1492-1493; Ex. 168). The day after the November meeting, after consulting with the MGH Director of Diversity, Complainant emailed Jones and Banister, asking, "what behaviors do I need to exhibit that would indicate to you that I have actualized the recommendations you made in our June meeting?" (Tr. Vol. I, p. 142; Jt. Ex. 171) Taranto advised them not to address the specifics of this email but to acknowledge its receipt and discuss scheduling a follow-up meeting with Complainant to discuss her employment issues. (Tr. Vol. V, p. 1084; Tr. Vol. VII, pp. 1696, 1697; Jt. Ex. 171). Taranto also outlined options, including a performance improvement plan and discharge. (Jt. Ex. 171).

47. In late November or early December, Jones and Banister discussed Complainant's employment status. By this time, Jones had no hope that continuing Complainant's employment would lead to improvement, because she did not see any substantive change in Complainant's behavior and they continued to deal with a lot of conflict, tension and disruption. (Tr. Vol. VII, pp. 1490-1491, 1495) Complainant's presentation at, and response to the November meeting contributed significantly to the decision to terminate her employment because she failed to recognize or acknowledge that there were issues she needed to address. Jones felt that change

could not occur if Complainant did not understand that there was a problem. Banister testified that Complainant seemed to have a lack of insight as to her involvement in issues that caused conflict. (Tr. Vol. VII, p. 1489,1492; Tr. Vol. IV, p. 809) Complainant's follow-up email reinforced their belief. They testified that it was problematic to learn that Complainant did not understand her behavior, despite the June meeting, months of counseling with Mattson, and months of follow-up meetings with Jones. (Tr. Vol. VI, p. 1313, Vol. VII, p. 1489-90; Jt. Ex. 171) Complainant's post-meeting email echoed the similar problem with grants preparation, where there would be meetings to discuss the allocation of responsibilities, and Complainant would later claim a lack of clarity and that she did not know what was expected of her. (Tr. Vol. VII, p. 1490,1491).

48. Sometime in late November or early December, Jones reached the conclusion that Complainant's employment should be terminated. Banister and Taranto concurred with this decision. (Tr. Vol. IV, p.809; Vol. V, p.1086-1087; Vol. VIII, p. 1705) They did not consider the other options Taranto had laid out such as a warning, further time to improve, or notice to Complainant to give her time to make alternative arrangements. (Tr. Vol. VIII, pp. 1663-1665) As a result of the upcoming holidays and vacation plans, a decision was made to delay the termination until sometime after the new year. (Tr. Vol. IV, p. 808) Complainant was notified of her termination on January 22, 2010. At the termination meeting, Taranto told Complainant that she had the option of resigning and would be paid for eight weeks, a benefit not usually offered to employees who are terminated. (Tr. Vol. V, pp. 1087, 1088) Complainant did not accept the offer to resign and she was asked to hand over her employee ID and her keys. She protested that because she was "key personnel" on two federal grants and the contact person for

patient protection and could not be summarily terminated without consequences for patient confidentiality and for the continuation of the grants. (Tr. Vol. I, pp. 156-159).

49. Complainant grieved her termination. (Tr. Vol. III, p. 531; Ex. R-1) As part of her grievance, she claimed that she was terminated because of being Jewish. She also offered another motivation for the termination, claiming that it was concerns she raised about protecting her intellectual property. (Tr. Vol. III, p. 532-534; Ex. R-1). Complainant also claimed that Respondent had not complied with personnel policies by not following the corrective action plan and by not providing her with her third year performance review. (Ex. R-1) Jones testified that she relied on the advice of the Human Resources Department since she had never placed an employee on a performance improvement plan, nor had she ever terminated anyone's employment. (Tr. Vol. VII, pp 1486-1488, 1493-1495). Taranto testified that the corrective action plan did not apply to an individual at Complainant's position, grade and salary level and that utilizing corrective action is a guideline and not mandatory. Moreover both Jones and Mattson had been had been working with Complainant on corrective action for some six months and providing Complainant with feedback. (Tr. Vol. VII, pp. 1701-1707). The President of MGH, Peter Slavin, upheld the decision to terminate Complainant's employment and denied her grievance. (Tr. Vol. III, p. 532) Jones prepared summaries for Human Resources describing the reasons for Complainant's termination. Tr. Vol. VII, pp. 1680-1681; Jt. Ex. 188, 190) Complainant disputes these reasons and contends she was discharged because she is Jewish.

50. In her complaint filed with the Commission, Complainant alleged she was discriminated against because she is Jewish only in connection with the scheduling of some meetings or events that conflicted with Jewish holidays and the fact that she had to go through Kiley to get prior approval from Jones to work at home on Christmas day in 2009. Her grievance to her discharge

also relied on these same events. Subsequently, at hearing, Complainant raised a number of other issues she viewed as discrimination, including not being invited to an Academy of Nursing Meeting in Washington, D.C. in November of 2007 (Tr. Vol. 1, p. 105; Tr. Vol. VII, p. 1368; Joint Ex. 198); not being invited in 2007 to a luncheon honoring Yvonne Munn, a former head nurse at MGH for whom the Munn Center was named, (Tr. Vol. VII, p. 1370); not being included in a number of photos on the wall of the Munn Center (Tr. Vol. 1, p. 108); and being given inferior office space that did not have an outer window. (Tr. Vol. p. 98) Respondent articulated reasonable, legitimate, non-discriminatory responses to these allegations that do not reflect any adverse intention against Complainant or bias because of her religion.

III. CONCLUSIONS OF LAW

General Laws c. 151B s. 4 (1) makes it an unlawful practice to discharge from employment or otherwise discriminate against an employee because of religious creed. Section 4 (4) makes it an unlawful practice to discharge or otherwise discriminate against any person who has opposed unlawful practices forbidden by c. 151B. Complainant, who is Jewish, alleges that she was subjected to different terms and conditions of employment because of her religion and that she was discharged from her employment as a senior nurse researcher at MGH's Munn Center in retaliation for raising the issue that certain events and meetings were scheduled on or around Jewish holidays. The primary focus of her charge is discriminatory/retaliatory termination which will be addressed first.

In order to prove a prima facie case of retaliation, Complainant must demonstrate: (1) she engaged in a protected activity: (2) her employer was aware of that she engaged in protected

activity; (3) she was subjected to an adverse employment action; and (4) a causal connection exists between the protected activity and the adverse employment action.

If Complainant establishes a prima facie case, the Respondent must articulate a lawful reason or reasons for the adverse employment decision and produce some credible evidence to show that the reason or reasons advanced were the real reasons. *Abramian v. President and Fellows of Harvard College*, 432 Mass. 107, 116-117 (2000) quoting *Blare v. Huskey Injection Molding Sys. Boston, Inc.*, 419 Mass. 437, 444-445 (1995). Complainant has established that she is a member of a protected class based on her religion and that she suffered an adverse employment action. She claims that her termination was in retaliation for having called Respondent's attention to the scheduling of certain events on Jewish holidays. For the reasons stated below, Complainant has failed to establish a causal connection between the activity she claimed was protected and her termination.

If Respondent succeeds in producing credible evidence to support the adverse employment action, it rebuts the presumption of discrimination/retaliation created by the establishment of a prima facie case, and the burden shifts back to Complainant to prove "by a preponderance of the evidence that Respondent's facially proper reasons given for its actions...were not the real reasons, but that Respondent acted with discriminatory/retaliatory intent, motive or state of mind. *Lipchitz v. Raytheon*, 434 Mass. 493, 504 (2001). This burden is commonly referred to as proving pretext, i.e. that Respondent's reasons are a sham and that the real reason is discrimination/retaliation.

Respondent denies that Complainant was terminated for engaging in protected activity. It asserts that Complainant's employment was terminated only after she was counseled over a period of many months for inappropriate, demeaning and disrespectful behavior towards

colleagues, particularly grants administrator, Janice Kiley; her inability or refusal to follow protocol with respect to grants processes; her difficulties in assisting with the preparation of certain grant application materials that required information from the principal investigator; her resistance to providing necessary information to Jones and others regarding her grant proposals; her inability to resolve minor disputes with Kiley or the grants management personnel without sending voluminous numbers of emails and/or requesting meetings with Jones to act as mediator; her excessive demands for others' time at her convenience; and her inability to manage stress in the workplace, an issue that created tension at the Munn Center and a crisis atmosphere around grant submissions.

These problems, as amply articulated by all of Respondent's witnesses, demonstrate that the primary difficulty with Complainant was her demeanor toward her peers, her attitude regarding the importance and priority of her projects and her time, and her inability to navigate the grant application process in collaboration with the grants administration personnel. Kiley, Murkovic, Cohen and Jones all testified to the myriad problems and conflicts that arose with Complainant surrounding the grants application and reporting processes. Her conduct caused frequent disruption within the Munn Center and created an atmosphere of crisis around grant submission deadlines.

Complainant repeatedly engaged in conduct that reflected a lack of sensitivity toward support staff, and by others' accounts was demanding, demeaning and bossy. It is apparent from the evidence, especially the overwhelming volume of emails she sent, that Complainant considered her time, her work and her schedule a priority, and lacked sensitivity to the overriding demands she placed on others' time. There are numerous emails from Complainant to grants administration staff demanding that tasks be done on her schedule and at her convenience and

emails to Jones seeking assistance in resolving disputes. Complainant's actions made it clear that she viewed her work as taking precedence and that others needed to be flexible and respectful of her limited time, while she did not demonstrate similar flexibility toward others' busy schedules. Her actions were compounded by a remarkable lack of insight into her interpersonal relations with support staff at the Munn Center and the inability to perceive how her behavior impacted others. The tone of many of her emails came across as demeaning and demanding even to an objective and unbiased observer. Given this conduct, Complainant was justifiably perceived as difficult and disrespectful.

The evidence also suggests that Complainant was tense, high strung and impatient with those she did not perceive as her intellectual equals. There was ample testimony that Complainant did not manage stress well and was sometimes heard banging doors in her office when she was anxious. This contributed to the tension and unpleasant atmosphere in the Munn Center. Her behavior toward Kiley was so unsettling that Kiley refused to meet with her alone after a number of very unpleasant encounters. Kiley felt demeaned by Complainant and believed that Complainant was unjustly critical of her efforts to assist Complainant with grant submissions. By the Spring of 2009, Kiley felt she had no other option but to file a formal complaint with Human Resources about how Complainant was treating her, something she had never done before. It was apparent from her demeanor and testimony at the hearing that she was greatly upset by these circumstances. I conclude that the credible evidence produced by Respondent demonstrates that there were legitimate non-discriminatory reasons for terminating Complainant's employment and that this action was not retaliatory.

Complainant claims that the reasons Respondent articulated for her termination are a pretext for retaliation and religious discrimination. She denied that her behavior was

inappropriate or problematic or that her conduct resulted in an inhospitable and unpleasant working environment at the Munn Center. She asserts that the conflicts between her and Kiley or others were the result of Respondent's failure to articulate and clarify the roles and expectations of Munn Center employees. She also asserts she was subjected to religious bias because of her co-workers perception of her as entitled and demanding, concepts she viewed as associated with negative stereotypes of Jewish women. Complainant suggests this description of others' perceptions of her work-style and personality coupled with the scheduling of events on Jewish holidays is evidence of pretext for discrimination. She also claims that her raising the latter issue was largely the cause of her termination, and that there is sufficient evidence of causation to suggest unlawful retaliation for her protesting prohibited practices. Finally, she asserts that she should have been afforded notice that her employment was in jeopardy and given the opportunity to engage in a performance improvement plan. She claims that Respondent's failure to follow its progressive discipline procedure is evidence of retaliatory motive.

First, as to Complainants raising the issue of events being scheduled on or around Jewish holidays, there is no evidence that this was anything but an oversight or at worst insensitivity on the part of schedulers. Two of these instances were in 2007, years before Complainant's termination. In all but one instance, the meetings or events were rescheduled to accommodate Complainant's needs and she received apologies for the oversight. Complainant cannot claim that this demonstrates animus against her based on her religion or that she had a good faith belief in the unlawfulness of Respondent's conduct. I conclude that a reasonable person would have viewed the scheduling issues as an oversight or insensitive but not as unlawful activity prohibited by c.151B. Moreover, Complainant's attendance at the events in question was not mandated. The laws related to religious accommodation do not prohibit the scheduling of work-related

events on religious holidays, but only require that no employee be required to violate or forgo a practice of her religion and that she be granted a reasonable accommodation to the needs of her religion. G.L. c. 151B, s. 4(1)(A). Thus, a reasonable fact-finder could conclude that Complainant has failed to demonstrate that she engaged in cognizable protected conduct.

However, accepting Complainant's assertion that she protested the scheduling of events on Jewish holidays and that this can be fairly construed as protected activity, there is no causal connection between the Complainant's protests about scheduling and her termination. Neither Jones nor Banister, the individuals who made the decision to terminate, played any direct role in the scheduling of events outside the Munn Center. The scheduling of Partners' events was entirely unrelated to Complainant's inter-personal conflicts with personnel and her difficulties surrounding the grants process at the Munn Center. Complainant claims that after she raised the scheduling conflict with Banister in late July 2009, Kiley refused to meet alone with her and Kiley and Cohen laughed at her. She also claimed that Banister failed to announce her receipt of the Nodal Award in the September Institute for Patient Care meeting or the Clinical Innovations Award in the October meeting.

There is no evidence that Kiley and Cohen knew about Complainant's email to Banister regarding the scheduling of the nursing conference. Cohen credibly denied that she and Kiley engaged in any demeaning behavior toward Complainant and Kiley had stopped meeting alone with Complainant as early as mid-June. There is also no credible evidence that Banister's neglecting to announce Complainant's award was anything but an oversight, and Jones had already previously announced the award to everyone in the IPC group. Complainant was always heartily congratulated on her awards and Banister even sent her flowers and a card one occasion.

There is no evidence to suggest that anyone sought to diminish Complainant's accomplishments before or after she complained about the scheduling of events.

Complainant claims that Bannister initiated her termination in the Fall of 2009 by going directly to Steve Taranto the Director of Human Resources, within a short time after Complainant complained about the scheduling of a major nursing conference. Complainant would have me draw the inference that Banister and other highly placed officials at MGH were so embarrassed and inconvenienced by the need to reschedule the nursing conference that they retaliated against her for daring to raise the issue of the Jewish holidays. On the contrary, there is no evidence of hostility toward Complainant or that anyone was offended by Complainant raising the scheduling issue; reactions were instead sympathetic and swiftly apologetic.

Complainant's allegation that Respondent failed to follow the progressive discipline policy ignores the sad fact that Jones and Banister had been dealing with and counseling Complainant for her problematic behavior and the resulting disruption at the Munn Center for some time prior to the scheduling event. Complainant's continuing behavioral issues and Jones' frustration with the ongoing conflict are well documented and these issues predated the alleged protected activity. See, e.g. *Mole v. University of Massachusetts*, 442 Mass. 582, 592-594 (2004). Jones and Banister sought assistance from Human Resources as early as the Spring of 2009 and Jones and Mattson had continued to coach Complainant over a period of many months without measurable improvement. Taranto testified that under these circumstances, progressive discipline was discretionary and not necessarily applicable to an individual of Complainant's professional stature. Jones and Banister viewed Complainant as a leader and mentor at the Munn Center, encouraged her in that role, and had high hopes that she would succeed in moderating her behavior and becoming a positive role model. Over a period of time it became clear that this was

would not occur. The primary problem for Jones had become personnel management rather than the Center's desired focus on project management.

There is no evidence to suggest that Jones or other Munn Center staff concocted behavioral issues to conceal animus against Complainant on account of her religion or to retaliate against her. This is particularly true of Elaine Cohen, a Jewish colleague in the Munn Center who spoke forthrightly and credibly about Complainant's demeaning and disrespectful behavior and the frustrations and difficulties of dealing with her. In contrast, Cohen had great praise for Jones as a leader and mentor, and noted her compassionate and collaborative working style. The fact that Complainant viewed Jones' and Banister's concerns as suggestive of anti-Semitic stereotypes does not prove that they harbored religious bias. Instead, the views conveyed were an accurate barometer of Complainant's behavior at the Munn Center measured by the observations of those who dealt directly with her in the grants administration process. Jones and Banister were responding to Complainant's behavior regardless of whether it comported with any perceived stereotype.

Complainant also alleges that she was the victim of disparate treatment on account of her religion because she was not invited to certain events sponsored by the Munn Center or attended by some of its employees. In addition she claims she was assigned an inferior office with no window. She claims these slights are evidence of discrimination and retaliation.

Complainant may establish a prima facie case of discrimination under the burden shifting model adopted by the courts. *Blare, supra.*; *Wheelock College v. MCAD*, 371 Mass. 130 (1976). She is a member of a protected class based on her religion. In terms of the substantive work that Complainant was hired to perform, there is no dispute that she secured a number of prestigious grants for her research projects at the Munn Center and that her scholarship was widely

recognized. All who testified concurred that Complainant is a brilliant and gifted nurse researcher whose work was well respected by her academic and research peers. Complainant's dedication to her research and the quality of her scientific work is not in question.

Complainant's allegations that she was not invited to a conference in 2007 and a luncheon in 2008 and the assignment of her office space are not sufficient evidence of pretext for discrimination based on religion or unlawful retaliation. Respondent had perfectly logical explanations for how it chose the invitees to these events, and Jones played no role in this. As to the claim of inferior office space, Jones and Banister did not assign offices; this was done by a direct report to Head Nurse, Ives Erickson. Complainant had also expressed a preference for a room by herself and was assigned a one-person office. Respondent had to juggle assignment of offices to a number of part-time researchers who shared space and also considered seniority in assigning offices. The other nurse researcher who had a private office with a window had greater seniority than Complainant. The evidence does not support the claim that Complainant was excluded from events or denied more desirable office space for reasons that are suspect.


Given all of the above, Complainant has not proven that reasons articulated by Respondent for the alleged disparate treatment and for her termination are a pretext for discrimination or retaliation in violation of G.L. c. 151B §§ 4(1) and 4(4).

IV. ORDER

This case is hereby dismissed. 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 receipt of this Order and a Petition for Review within

thirty (30) days of receipt of this Order.

So Ordered this 29th day of April, 2016.

A handwritten signature in cursive script, reading "Eugenia M. Guastaferrri". The signature is written in black ink and is positioned above the printed name and title.

Eugenia M. Guastaferrri
Hearing Officer