

**American Arbitration Association  
Voluntary Labor Tribunal  
Case No. 11-390-01115-11**

---

**IN THE MATTER OF ARBITRATION BETWEEN**

**BOSTON POLICE SUPERIORS OFFICERS FEDERATION**

**AND**

**CITY OF BOSTON**

**(Grievant: Lieutenant Stephen Cawley)**

---

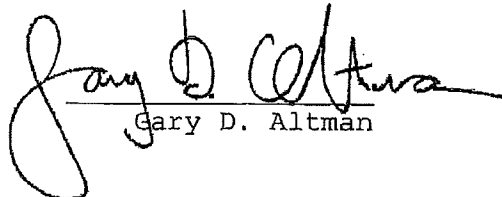
**AWARD OF THE ARBITRATOR**

The Undersigned Arbitrator, having been designated in accordance with the arbitration agreement entered by the above named parties and having been duly sworn and having duly heard the proofs and allegations of the parties AWARDS as follows:

For the reasons set forth in the attached Decision. The Department did not violate the Agreement when it placed Lieutenant Cawley on paid administrative leave effective April 30, 2011 and continued him on paid administrative leave through May 17, 2012. Accordingly, no monetary relief is awarded for the time period that Lieutenant Cawley was on administrative leave.

The Department did not have just cause to discharge the grievant Stephen Cawley from his position as a Lieutenant with the Boston Police Department. Lieutenant Cawley shall be reinstated to the position of Lieutenant, and made whole for lost wages and benefits from the date of his discharge until he is reinstated to his position. Interim earnings, including any unemployment compensation shall be deducted from said amount.

April 16, 2013  
Boston, Massachusetts

  
Gary D. Altman

**American Arbitration Association  
Voluntary Labor Tribunal  
Case No. 11-390-01115-11**

---

**IN THE MATTER OF ARBITRATION BETWEEN**

BOSTON POLICE SUPERIORS OFFICERS FEDERATION

AND

CITY OF BOSTON

(Grievant: Lieutenant Stephen Cawley)

---

**ARBITRATION DECISION AND AWARD**

**Introduction**

The City of Boston Police Department ("City" or "Department") and the Boston Police Superiors Officers Federation ("Union") are parties to a Collective Bargaining Agreement ("Agreement"). Under the Agreement, grievances not resolved during the grievance procedure may be submitted to arbitration under the rules of the American Arbitration Association. The parties presented their case in Arbitration before Gary D. Altman, Esq., on October 18, December 5, 17, and 19, 2012. The Union was represented by Leah M. Barrault, Esq. The City by Nicole Taub, Esq., and Robert Boyle, Esq. The parties had the opportunity to examine and cross-examine witnesses and to submit documentary evidence. The parties submitted written briefs after the close of the hearing.

**Issue**

The arbitration proceeding involves two issues. The first issue concerns the Boston Police Department's decision to place Lieutenant Cawley on Administrative Leave. The Union contends that the issue should read:

Did the City's action in placing Lieutenant Cawley on administrative leave during the time period of May 2, 2011 to May 17<sup>th</sup> 2012 violate Article 4 of the parties' Collective Bargaining Agreement.

The City asserts that the issue should read as follows:

Did the Department appropriately remove Lieutenant Cawley from the workplace and place him on paid administrative leave while serious charges of sexual harrassment were pending against him?

The parties were unable to agree to the phrasing of the issue but agreed that the Arbitrator would have the authority to frame the language of the issue. An appropriate rendition of the issue is as follows:

Did the Department violate the parties' Agreement by placing Lieutenat Cawley on paid Administrative Leave for the period of May 2, 2011 through May 17<sup>th</sup> 2012.

The second issue concerns the City's decision to discharge Lieutenant Cawley from his position. The parties agreed that the issue to be decided is as follows:

Was the termination issued to Lieutenant Cawley for just cause? If not, what shall be the remedy?

### **Facts**

The grievant, Lieutenant Stephen Cawley, began working with the Boston Police Department in 1983. Mr. Cawley started as a police cadet and was then hired as a sworn patrol officer, and in 1988 he was promoted to Sergeant. In 2001, while a Sergeant, Mr. Cawley was suspended for thirty days; ten of the days were served, and twenty days were held in abeyance, to be imposed if he engaged in any other discipline during a one-year period. Mr. Cawley stated that he was not required to serve the remaining twenty days. In

2010 Mr. Cawley was promoted to a Lieutenant's position. Lieutenant Cawley explained that his prior discipline had caused him to be by-passed for promotion to the rank of Lieutenant on at least two occasions.

Lieutenant Cawley testified that soon after he was promoted to Lieutenant he was assigned to the [REDACTED] station. Lieutenant Cawley acknowledged that he had received training in Rule 114, and also inappropriate behaviors at the workplace.<sup>1</sup> Initially, Lieutenant Cawley worked the last shift, 11:45 pm to 7:30 am, and in the fall of 2010, using his seniority, he bid and was assigned to work the day shift where he then worked from 6:30 am to 3:00 pm. As a Lieutenant assigned [REDACTED] he worked as the Duty Supervisor also known as the Shift Commander, and was responsible for between twenty to twenty-five employees, sworn officers and one civilian employee, [REDACTED], who worked as a clerk, and was assigned to work at the front desk. Lieutenant Cawley explained that [REDACTED] would normally be assigned to work with a sworn officer, and she would be responsible for answering the phone, taking reports, and responding to persons who came to the Station. Lieutenant Cawley testified that the front desk, where [REDACTED] was assigned, was in the front of the Station and out of the direct sight of his office.

[REDACTED] began working with the Boston Police Department [REDACTED] [REDACTED] stated that [REDACTED] she worked [REDACTED] shift, and would be assigned to [REDACTED] where she would respond to civilians who came in from the street, and also answer the phone and prepare and file reports. [REDACTED]

<sup>1</sup> Those rules were introduced in this proceeding. Rule 114 is the Department's Harassment Policy. The Policy prohibits sexual harassment.



[REDACTED] stated that she would be assigned to work with a uniformed officer, who would also be assigned [REDACTED]

[REDACTED] stated that she would report to the Duty Supervisor for the shift, who would either be a sergeant or lieutenant, and that she worked for many supervisors during her [REDACTED] [REDACTED] stated that she met Lieutenant Cawley when he was first assigned to work as the Duty Supervisor for the day shift in September of 2010.

[REDACTED] testified that at first her interactions with Lieutenant Cawley were fine, but a week or two after Lieutenant Cawley came to work [REDACTED] she was at the Xerox machine, when Lieutenant Cawley came by and said to her that she "smelled good". [REDACTED] stated that it then became a frequent occurrence that in the mornings Lieutenant Cawley would tell her she "looked nice." [REDACTED] [REDACTED] stated that at some point Lieutenant Cawley's comments and the way that Lieutenant Cawley looked at her made her feel uncomfortable, and that she never had a supervisor say those things or look at her that way. [REDACTED] [REDACTED] stated that she thanked Lieutenant Cawley for his comments, and never told him that his comments were not welcome.

Lieutenant Cawley testified that he had no recollection of saying these things to [REDACTED] Lieutenant Cawley testified that in the fall, soon after he started [REDACTED] told him that she worked as a [REDACTED]

[REDACTED] and invited him to come for a drink sometime after work. Lieutenant Cawley stated that he considered this as a "date offer", but he did nothing, as he was already in a relationship. Lieutenant Cawley stated that he knew of no Department rule that prohibited employees in the Department

from dating, and knew some superior officers who dated officers of a lower rank, and that superior officers even dated civilian employees.



one day she came to get a summons from her mailbox and she noticed that Lieutenant Cawley was sitting in his chair bending down and appeared to be looking under her dress. [REDACTED] stated that she got angry and said to him "fuck you, and that "he was sick". [REDACTED] in her direct testimony in this proceeding could not recall when this incident occurred, but when she was showed her testimony at Lieutenant Cawley's Trial Board, she recalled that the incident occurred in September 2010. Lieutenant Cawley, in his testimony, denied engaging in any such conduct.

[REDACTED] stated that sometime in the fall of 2010, Lieutenant Cawley told her that he had broken up with his girlfriend, and asked her to go out after work and have a drink with him. [REDACTED] stated that she never accepted Lieutenant Cawley's offer. [REDACTED] stated that in October of 2010 she was going to a relative's birthday party in [REDACTED] and while at work, she was asking for directions to the party. [REDACTED] stated that Lieutenant Cawley knew how to get there, and gave her directions. [REDACTED] stated that Lieutenant Cawley then asked if he could also come to the party. [REDACTED] stated that later that

evening Lieutenant Cawley texted her and asked, "how is your night going".<sup>2</sup> [REDACTED] testified that she did not respond to Lieutenant Cawley's text messages.<sup>3</sup> [REDACTED] stated that soon thereafter Lieutenant Cawley texted her stating "coming by later?" [REDACTED] testified that she did not respond to Lieutenant Cawley's text message, and that she showed his text message to patrol officers on her next day of work. [REDACTED] claimed that Lieutenant Cawley, on one other occasion, invited her to come to his home, but she refused.<sup>4</sup>

Lieutenant Cawley testified on October 29, 2010 that [REDACTED] told him that she was going to a party in Roslindale, and he asked her if she wanted to get together

---

<sup>2</sup> [REDACTED] stated that Lieutenant Cawley had previously given her his phone number, and she assumed that he had looked up her cell-phone number from Department records. Lieutenant Cawley stated that it was not unusual for him to give his cell phone number to employees of the Station.

<sup>3</sup> [REDACTED] also told the Internal Affairs Division that she did not respond to Lieutenant Cawley's text message of October 29, 2010. Lieutenant Cawley's phone records, however, indicate that [REDACTED] did respond to his first text message. In addition Lieutenant Cawley's phone records indicate that [REDACTED] also texted Lieutenant Cawley on November 16, 2010. At the Arbitration hearing [REDACTED] could not recall what she texted to Lieutenant Cawley on these two occasions. Lieutenant Cawley also stated that he could not recall the contents of [REDACTED] text message on November 16.

<sup>4</sup> Officer Shawn West has been a Police Officer for sixteen years with the Boston Police Department. Officer West stated that [REDACTED] showed her the two text messages. Mr. West also testified that [REDACTED] told him in the fall of 2010 that Lieutenant Cawley had asked her out. Officer West told Internal Affairs that he heard Lieutenant Cawley ask [REDACTED] when was she going to ask him over for dinner, and [REDACTED] stated she "did not cook anymore". Officer West also testified that he observed Lieutenant Cawley look at [REDACTED] on a couple of occasions like he was "ogling her". Officer West acknowledged that he made no mention of Lieutenant Cawley looking at [REDACTED] during the Internal Affairs Investigation.

Officer West also testified that when [REDACTED] first spoke with him about Lieutenant Cawley, she was not distressed and that "she was talking about more like a joke" Officer West stated that at some point it seemed that Lieutenant Cawley was no longer as friendly towards [REDACTED] but that he never saw him yell at her or demean her. Officer West also testified that he never told IAD that he ever observed Lieutenant Cawley make any sexual comments or any advances towards [REDACTED].



after the party. Lieutenant Cawley stated that [REDACTED] gave him her phone number and told him to call her. Lieutenant Cawley testified that when he finished work he called her, and that she then told him to text her later. Lieutenant Cawley stated that he texted her, asking how her night was going and [REDACTED] responded; Lieutenant Cawley testified that [REDACTED] responded that she had gotten to the party late, and did not know how long she would be there. Lieutenant Cawley testified that he later texted [REDACTED], asking her if she wanted to get together later. Lieutenant Cawley stated that [REDACTED] never responded to his second text. Lieutenant Cawley stated that he assumed that [REDACTED] did not want to get together, and he never again asked [REDACTED] to go out, or to get together after work.

[REDACTED] stated that she recalled that on another occasion she called or texted Lieutenant Cawley to wish him a happy birthday. This was in December of 2010. She stated that she did so to be nice to him because he was making her life "hell" and "putting me through so much anger."

Lieutenant Cawley stated that in December 2010 the Station had a Christmas party, and he called [REDACTED] to tell her that he was going to the party, and that if [REDACTED] wanted to go he would save her a seat. Lieutenant Cawley also stated that December was his birthday, and at the Station [REDACTED] said to him "maybe you'll get something special on your birthday from me."

[REDACTED] stated that on another occasion Lieutenant Cawley stuck his tongue out with his fingers around his mouth, which she considered to be disrespectful towards

her.<sup>5</sup> [REDACTED] said that she got mad and said to Lieutenant Cawley "fuck you", and that he responded, "that's what I have been trying to do since I got here." [REDACTED] could not remember when this incident occurred, but recalled that she was standing by the CAD machine which was outside of the Duty Supervisor's office where Lieutenant Cawley worked, and that it was sometime in the fall of 2010. [REDACTED] stated that nobody else was present when this occurred. Lieutenant Cawley denied engaging in this conduct.

[REDACTED] testified that after she rejected Lieutenant Cawley's request to go out with him, his attitude changed toward her. [REDACTED] recalled that on one occasion she was late to work, went to his office to tell him why she was late, and that he told her that he was mad at her. [REDACTED] also stated that she and her [REDACTED] were involved as [REDACTED]

[REDACTED] stated that Deputy Linskey had told her that whenever there was [REDACTED] someone from the Department would drive her [REDACTED] stated that Lieutenant Cawley refused and said to her "what did you ever do for me". [REDACTED] stated that she then called a Sergeant from another station to take her to court. [REDACTED] believed that this event took place sometime in the fall of 2010.

---

<sup>5</sup> [REDACTED] stated that [REDACTED] mentioned this incident to her.

<sup>6</sup> [REDACTED] stated that the case was a gang related criminal case, and that she and her [REDACTED] were involved. [REDACTED] stated that she was being questioned about intimidation of a witness. [REDACTED] stated that this court proceeding, which had been ongoing, was very stressful for her and her family,

her.<sup>5</sup> ██████ said that she got mad and said to Lieutenant Cawley "fuck you", and that he responded, "that's what I have been trying to do since I got here." ██████ could not remember when this incident occurred, but recalled that she was standing by the CAD machine which was outside of the Duty Supervisor's office where Lieutenant Cawley worked, and that it was sometime in the fall of 2010. ██████ stated that nobody else was present when this occurred. Lieutenant Cawley denied engaging in this conduct.

██████ testified that after she rejected Lieutenant Cawley's request to go out with him, his attitude changed toward her. ██████ recalled that on one occasion she was late to work, went to his office to tell him why she was late, and that he told her that he was mad at her. ██████ also stated that she and her ██████ were involved as witnesses in a criminal murder and witness intimidation case, that there was a court date, and that she asked Lieutenant Cawley if someone from the Station could drive her to the courthouse.<sup>6</sup> ██████ stated that Deputy Linskey had told her that whenever there was a court appearance someone from the Department would drive her to the courthouse. ██████ stated that Lieutenant Cawley refused and said to her "what did you ever do for me". ██████ stated that she then called a Sergeant from another station to take her to court. ██████ believed that this event took place sometime in the fall of 2010.

<sup>5</sup> ██████ stated that ██████ mentioned this incident to her.

<sup>6</sup> ██████ stated that the case was a gang related criminal case, and that she and her ██████ were involved. ██████ stated that she was being questioned about intimidation of a witness. ██████ stated that this court proceeding, which had been ongoing, was very stressful for her and her family,

Lieutenant Cawley stated that he knew that [REDACTED] was involved in [REDACTED] as she told him that she was under a lot of stress. Lieutenant Cawley recalled that [REDACTED]

[REDACTED] and that when she asked, all the officers were busy, and that he told her that as soon as an officer was available, he would have an officer drive her [REDACTED]. Lieutenant Cawley stated that [REDACTED] told him that she would call someone else for a ride, and she did so.

[REDACTED] stated that on another occasion a young boy had been arrested and was in the station. The youngster was [REDACTED], as is [REDACTED], and she began talking to the boy near the CAD machine, [REDACTED] was also standing. [REDACTED] testified that Lieutenant Cawley came over to her when she was talking to the boy and said to her words to the effect that she was too old to have sex and that she was a grandmother. [REDACTED] stated that she got angry and called Lieutenant Cawley an "asshole." Lieutenant Cawley stated that he never made these comments to [REDACTED].<sup>7</sup>

[REDACTED] stated that on another occasion a couple came in to [REDACTED] and wanted to file a report on an alleged road rage incident. [REDACTED] testified that she had never done a road rage report, and that Officer Smith, who was also present, said that he would take care of it for her. [REDACTED] stated that Lieutenant Cawley came by and saw the couple standing in the waiting room, asked what was happening, and got very angry. [REDACTED] stated that the Officer then said to Lieutenant Cawley that it was no big deal and he would take the report. [REDACTED]

---

<sup>7</sup> Officer Pires was interviewed in the IAD proceeding. He did not testify in the arbitration proceeding.

stated that she went to generate a case number for the complaint, and Lieutenant Cawley was very angry with her.

Lieutenant Cawley testified that he was at the front of the station and that Officer Smith was helping a citizen and that there was also a couple waiting for assistance, while [REDACTED] was sitting at the front desk doing nothing. Lieutenant Cawley stated that he asked the couple if they were being helped and they said that they wanted to file a report about an alleged road rage incident.

Lieutenant Cawley stated that he asked [REDACTED] why she was not assisting these people, and she responded that she had never done a road rage report, and that Officer Smith would do the report. Lieutenant Cawley stated that after the people left, he approached [REDACTED], expressed his disappointment, and told [REDACTED] that it was just like filling out any other report. Lieutenant Cawley testified that [REDACTED] did not take constructive criticism well; and that he believed that since she had been there for so many years she knew what to do, and wanted to do things her way.

[REDACTED] stated that Lieutenant Cawley said to her at one time that she "was very needy", and that she was always calling in late. [REDACTED] stated that [REDACTED], who also worked [REDACTED] during the first half shift, told her that Lieutenant Cawley told Officer Smith that whenever she called he was not to take her calls but instead she had to speak directly to Lieutenant Cawley.<sup>8</sup> [REDACTED] stated that never in the past

---

<sup>8</sup> Officer Phillips worked the first half shift, which meant that he overlapped a half hour in the morning with [REDACTED] work shift. Officer Phillips confirmed that Lieutenant Cawley told him that if [REDACTED] called to be late or called in sick that she was to call him. Officer Phillips also stated that Lieutenant Cawley did not do this for any other



Lieutenant Cawley stated that he knew that [REDACTED] was involved in [REDACTED], as she told him that she was under a lot of stress. Lieutenant Cawley recalled that [REDACTED] asked him if someone could drive her to the courthouse, and that when she asked, all the officers were busy, and that he told her that as soon as an officer was available, he would have an officer drive her to the court. Lieutenant Cawley stated that [REDACTED] told him that she would call someone else for a ride, and she did so.

[REDACTED] stated that on another occasion a young boy had been arrested and was in the station. The youngster was [REDACTED] as is [REDACTED], and she began talking to the boy near the CAD machine, Officer Miguel Pires was also standing. [REDACTED] testified that Lieutenant Cawley came over to her when she was talking to the boy and said to her words to the effect that she was too old to have sex and that she was a grandmother. [REDACTED] stated that she got angry and called Lieutenant Cawley an "asshole." Lieutenant Cawley stated that he never made these comments to [REDACTED].<sup>7</sup>

[REDACTED] stated that on another occasion a couple came in to the [REDACTED] and wanted to file a report on an alleged road rage incident. [REDACTED] testified that she had never done a road rage report, and that Officer Smith, who was also present, said that he would take care of it for her. [REDACTED] stated that Lieutenant Cawley came by and saw the couple standing in the waiting room, asked what was happening, and got very angry. [REDACTED] stated that the Officer then said to Lieutenant Cawley that it was no big deal and he would take the report. [REDACTED]

---

<sup>7</sup> Officer Pires was interviewed in the IAD proceeding. He did not testify in the arbitration proceeding.

stated that she went to generate a case number for the complaint, and Lieutenant Cawley was very angry with her.

Lieutenant Cawley testified that he was at the front of the station and that Officer Smith was helping a citizen and that there was also a couple waiting for assistance, while [REDACTED] was sitting at the front desk doing nothing. Lieutenant Cawley stated that he asked the couple if they were being helped and they said that they wanted to file a report about an alleged road rage incident. Lieutenant Cawley stated that he asked [REDACTED] why she was not assisting these people, and she responded that she had never done a road rage report, and that Officer Smith would do the report. Lieutenant Cawley stated that after the people left, he approached [REDACTED], expressed his disappointment, and told [REDACTED] that it was just like filling out any other report. Lieutenant Cawley testified that [REDACTED] did not take constructive criticism well; and that he believed that since she had been there for so many years she knew what to do, and wanted to do things her way.

[REDACTED] stated that Lieutenant Cawley said to her at one time that she "was very needy", and that she was always calling in late. [REDACTED] stated that [REDACTED] who also worked [REDACTED] during the first half shift, told her that Lieutenant Cawley told Officer Smith that whenever she called he was not to take her calls but instead she had to speak directly to Lieutenant Cawley.<sup>8</sup> [REDACTED] stated that never in the past

---

<sup>8</sup> Officer Phillips worked the first half shift, which meant that he overlapped a half hour in the morning with [REDACTED] work shift. Officer Phillips confirmed that Lieutenant Cawley told him that if [REDACTED] called to be late or called in sick that she was to call him. Officer Phillips also stated that Lieutenant Cawley did not do this for any other

was she required to call the Duty Supervisor when she was going to be late to work. [REDACTED] stated that she could not recall when this event took place, but it occurred some time in early 2011. [REDACTED] stated that the only other time a supervisor spoke to her about her not being at the desk during her shift was Lieutenant [REDACTED] but it was a misunderstanding, because another Sergeant had allowed her to take a break. [REDACTED] stated that she did not complain to the Captain at [REDACTED] about Lieutenant Cawley's directive, and further stated that she was never denied sick leave or disciplined for not calling in if she was going to be late.

Lieutenant Cawley acknowledged that he did ask that if [REDACTED] was going to be late or be absent that she call the Duty Supervisor, and report the matter. Lieutenant Cawley stated that [REDACTED], if she was going to be late or absent would simply call the front desk and tell the officer working that she would be late, sick or taking a personal day. Lieutenant Cawley stated that his understanding was that personal days were to be requested in advance. Lieutenant Cawley recalled that on one occasion, [REDACTED], called the officer and said that she was going to be out sick, but he never received the message. Lieutenant Cawley stated that if [REDACTED] was going to be absent this impacted staffing because somebody else had to cover the front desk. Lieutenant Cawley stated

---

employee who called in sick or late. Officer Phillips further stated that [REDACTED] told him that Lieutenant Cawley was attracted to her, and later claimed that Lieutenant Cawley was giving her a hard time. Officer Phillips also testified that occasionally Lieutenant Cawley would call the front desk when he was on duty and ask who was working as the Duty Officer for the day. Officer Phillips stated that he never observed any direct interactions between Lieutenant Cawley and [REDACTED], and that at times Lieutenant Cawley would come by the front desk to see if [REDACTED] was at work.

that he directed [REDACTED] that to call either him, or if he was not working, then the Duty Supervisor, who was on duty, if she was going to be absent. Lieutenant Cawley recalled that this occurred sometime in the fall of 2010, but he was not sure of the exact date, and could not state how often [REDACTED] was absent from work. Lieutenant Cawley stated that he also told this to the Duty Supervisor working the night shift.<sup>9</sup>

[REDACTED] stated that in her many years of work at the [REDACTED] she had never been responsible for logging in evidence, but twice, under the supervision of Lieutenant Cawley, she was directed to do so. [REDACTED] testified that it was her understanding that civilian employees were not supposed to log in evidence; that this was a responsibility of sworn officers. [REDACTED] stated that she did not know how to prepare the reports to login evidence and that Lieutenant Cawley was very critical of her. [REDACTED] stated that another officer working at the Station instructed her how to fill out the report. [REDACTED] stated that she also had to make an entry in a logbook, which was kept in Lieutenant Cawley's office, but that another officer actually filled in the logbook for her. [REDACTED] acknowledged that the items that she was being directed to login, were not items from a criminal case, but were, rather, things brought into the Station and left at the front desk, such as lost wallets or found property.

Lieutenant Cawley testified that there were no written procedures in the Station for how lost property or evidence

---

<sup>9</sup> The Department introduced [REDACTED] records that indicate she was sick one day in September and also took one personal day. For October, [REDACTED] took one vacation day.

was to be handled and logged in. Lieutenant Cawley stated that only sworn officers would handle evidence from a crime scene. Lieutenant Cawley stated that if items such as lost wallets were brought into the station, they were left at the front desk, and a 1-1 report would be completed. The items would be brought back to the Duty Supervisor's office, and the items would be logged-in, in a book in the office. A supervisor would then put the items in the evidence locker, which was also in the office. Lieutenant Cawley stated that there was nothing that prohibited a civilian employee from completing the report, and logging in the evidence for an item that was lost property. Lieutenant Cawley recalled that on one occasion there was no patrolman at the front desk, and someone brought in a lost wallet. Lieutenant Cawley stated that the booking officer was busy, and [REDACTED] walked back to his office with the wallet; she filled out the 1-1 report, and he then asked her to fill out the logbook, which was also located in his office. Lieutenant Cawley testified that he believed that another officer actually filled out the logbook, and placed the wallet into the locker. Lieutenant Cawley stated that he found it unusual that [REDACTED] had never logged in lost items in her many years of work at the front desk.

[REDACTED] stated that on March 8, 2011 she was at work at the front desk, but she was not feeling well. [REDACTED] testified that she was working with Eric Bradshaw, a police officer from another District. [REDACTED]

[REDACTED] to cover for one another. [REDACTED] stated that on that day Officer Bradshaw had an errand to run in the morning, and that when he came back she spoke with Officer Bradshaw and told him that she was not feeling well; he



stated that it was all right for her to leave early, and she left around 9:30 am to 10:30 am in the morning.<sup>10</sup>

██████████ stated that she went to find Lieutenant Cawley to tell him that she was not feeling well and leaving early but she could not find him, and she left for the day. ██████████ stated that Lieutenant Cawley then called her later that day on her cell phone, and asked why she was not at work. ██████████ stated that she told Lieutenant Cawley the reasons why she left early, but that Lieutenant Cawley directed her to fill out a Form 26, when she came to work the next day. ██████████ stated that she had never before had to complete a Form 26, and she met with ██████████ to help her complete the Form. ██████████ completed the Form 26 on March 10, 2011. ██████████ testified at the arbitration hearing that she was not particularly upset about filling out the Form 26.<sup>11</sup> ██████████ testimony at the Trial Board, however, was that she was upset about having to complete the Form 26.

Lieutenant Cawley stated that on March 8, 2011 he was the Duty Supervisor, and that ██████████ and a patrol officer were assigned to the front desk. Later that morning he went by the front desk and ██████████ was not there; he asked Officer Bradshaw about ██████████ whereabouts, and he said that she was sick, and that he let her go home. Lieutenant Cawley testified that he told Officer Bradshaw that as a patrol officer he did not have the authority to let civilians leave work early.<sup>12</sup> Lieutenant Cawley stated

---

<sup>10</sup> ██████████ hours of work for that day were 7:00 am to 3:00 pm left for the day and she left in the morning but did not put in for personal leave or sick time for that day.

<sup>11</sup> At the Arbitration hearing she indicated that she was "happy" to fill out the Form 26.

<sup>12</sup> Officer Bradshaw was not directed to complete a Form 26.

that he asked the two sergeants on duty if they knew [REDACTED] whereabouts, and they told him that they had not spoken with [REDACTED]. Lieutenant Cawley stated that he then retrieved [REDACTED] phone number, called her and left a message that she would have to fill out a Form 26 when she returned to work.<sup>13</sup>

Lieutenant Cawley stated that on March 11, 2011 he spoke with Captain [REDACTED] who was in charge of the Station about the incident and he told him that he, too, should fill out a Form 26 to document the incident. Lieutenant Cawley stated that Captain [REDACTED] also sent him a number of Form 26's that Lieutenant [REDACTED] the former Duty Supervisor, had prepared regarding his interactions with [REDACTED].

Lieutenant Cawley testified that he and Lieutenant Thomas met with [REDACTED] to discuss the incident.<sup>14</sup> Lieutenant Cawley stated that he also provided [REDACTED] with copies of the Form 26's that Captain [REDACTED] had provided him, which had been prepared by Lieutenant [REDACTED] the prior Day Shift Supervisor.<sup>15</sup> Lieutenant Cawley stated that nothing more came of this incident. Lieutenant Cawley testified that after this meeting [REDACTED] would no longer talk to him, and instead would address any concerns with the patrol officers on duty.

---

<sup>13</sup> [REDACTED] testified that she helped [REDACTED] complete the Form 26.

<sup>14</sup> [REDACTED] declined to have a Union Steward with her during the interview.

<sup>15</sup> Captain [REDACTED] testified that Lieutenant Cawley came to him in March of 2011 to report that he had an issue with [REDACTED] leaving work early. Captain [REDACTED] stated that he advised Lieutenant Cawley to have [REDACTED] prepare a Form 26, to document the event. Captain [REDACTED] further stated that it would not be appropriate for a civilian or a patrol officer to simply leave the shift early without informing a supervisor. Captain [REDACTED] testified that Lieutenant Tarantino had emailed the Form 26s that he had prepared regarding [REDACTED] work performance, and at some point he forwarded them to Lieutenant Cawley.

Lieutenant Cawley testified that at no time during his time at [REDACTED] did anybody, including [REDACTED], ever tell him that his conduct was unacceptable.

[REDACTED] stated that she decided that she could no longer take Lieutenant Cawley's mistreatment, and she called Sergeant Woodley and told him that Lieutenant Cawley had been mistreating her. [REDACTED] testified that she told Sergeant Woodley that Lieutenant Cawley was making passes at her, that she did not want to go out with him, and that ever since then Lieutenant Cawley had been mistreating her. [REDACTED] stated that she called Sergeant Woodley for support, because he was a friend, and did not want to file a formal complaint. [REDACTED] stated that she told Sergeant Woodley that she was thinking of retiring, and did not want to file a report against Lieutenant Cawley, since he was a Lieutenant, and she was only a [REDACTED] testified that Sergeant Woodley told her that she should not resign.<sup>16</sup>

[REDACTED] stated that on April 19, 2011, she called Deputy William Gross to tell him of Lieutenant Cawley's mistreatment. [REDACTED] stated that Deputy Gross came to the Station, and she met him in his car with Rowena Wesley. [REDACTED] stated that she started to cry and began to tell Deputy Gross about Lieutenant Cawley's conduct toward her, and spoke about perhaps getting a leave of absence. [REDACTED] stated that Deputy Gross took her to speak to

---

<sup>16</sup> Sergeant Woodley was interviewed by IAD. Sergeant Woodley, at the time of the arbitration hearing, was deployed on active duty in Afghanistan. The parties agreed that Sergeant Woodley's IAD interview would be admitted as evidence in this proceeding. Sergeant Woodley, in his IAD interview, denied having any conversation with [REDACTED] with respect to any of her allegations of Lieutenant Cawley's misconduct, but that [REDACTED] had called him to ask about advice about how to work with someone who was hard to work with.



someone at Human Resources, and eventually she also spoke with the Department's Internal Affairs on April 21, 2011, and again on May 16, 2011.

William Gross has worked for the Boston Police Department since 1983; he has progressed through the ranks and has served as the Deputy Superintendent for Field Support Services for the past four years. Deputy Gross, while a police cadet in 1984, worked in [REDACTED] at the time [REDACTED] was working the front desk. Deputy Gross later was assigned as a Sergeant in [REDACTED] Deputy Gross stated that he never had any issues, nor had he been told of any issues regarding [REDACTED] work performance. Deputy Gross further stated that while serving as the Zone Commander for [REDACTED] he had an office in the [REDACTED] station. Deputy Gross stated that he moved out of the Station in November 2010, and that prior to that time he never witnessed Lieutenant Cawley engage in any inappropriate conduct, nor did [REDACTED] report to him that Lieutenant Cawley had engaged in any inappropriate conduct.

[REDACTED] testified that she has worked at [REDACTED] for thirteen years, and works as the clerk to the Deputy Superintendent. [REDACTED] testified that she has known [REDACTED]

[REDACTED] from when she was hired with the Department. [REDACTED]

[REDACTED] stated that she also serves as the Union Steward for [REDACTED]

[REDACTED] stated that her office is not near Lieutenant Cawley, nor the front desk. [REDACTED]

[REDACTED] stated that she never attended any disciplinary meetings with respect to [REDACTED] work performance. She recalled

that at one time Lieutenant [REDACTED] had a meeting to

discuss [REDACTED] lunch breaks, as Lieutenant [REDACTED]

thought that the civilian employees had a half hour lunch,

like patrol officers, and he was told that civilians had an hour break. [REDACTED] stated that no discipline resulted from this matter.

[REDACTED] stated that sometime between November 2010 and January 2011, [REDACTED] spoke to her about taking a leave of absence and relocating to another city. [REDACTED] stated that [REDACTED] appeared to be under a great deal of stress. [REDACTED] stated that [REDACTED] never did take a leave of absence. [REDACTED] also stated that around this time [REDACTED] also told her that "he" was treating her badly; [REDACTED] stated that [REDACTED] did not state who "he" was but she "presumed" it was Lieutenant Cawley. Ms. [REDACTED] stated that the protocol for [REDACTED] calling and reporting her absences was to report this to the front desk. [REDACTED] stated that she learned that this practice changed when Lieutenant Cawley directed that [REDACTED] was to call the Duty Supervisor directly to report her absences.

[REDACTED] testified that in April 2011 [REDACTED] came to her and told her that she could no longer take it, that she was going to quit. [REDACTED] stated that [REDACTED] mentioned that Lieutenant Cawley was treating her badly especially on Fridays when she was left at the front desk alone. [REDACTED] stated that she then called Deputy Gross, and only when [REDACTED] was speaking to Deputy Gross did she learn of [REDACTED] allegations of sexual harassment.<sup>17</sup>

[REDACTED] stated that she never personally observed Lieutenant Cawley engage in any inappropriate conduct toward [REDACTED] [REDACTED] stated that she did observe Lieutenant Cawley yelling, but not at [REDACTED]; that he "tended to yell a lot", and talk down to other police officers. [REDACTED] testified that she told IAD that police officers and other civilians [REDACTED] did not like Lieutenant Cawley.

Deputy Gross stated that in April of 2011 he received a call from [REDACTED] from [REDACTED], and asked him to come to the Station to talk. Deputy Gross stated that he came to the Station and went to [REDACTED] office, and that [REDACTED] and [REDACTED] were present. [REDACTED] stated that she wanted to speak to him but that she was uncomfortable speaking inside the Station. Deputy Gross stated that he and [REDACTED] and [REDACTED] then went out to his car. Deputy Gross stated that [REDACTED] told him that she was uncomfortable working with Lieutenant Cawley, that he was disrespectful, and belittling to her in front of other people. [REDACTED] told her that she physically could not take it anymore, that she was getting sick. Deputy Gross stated that [REDACTED] was crying in the car. Deputy Gross stated that he told [REDACTED] that he would speak to Deputy [REDACTED] in charge of the District. Deputy Gross stated that he then spoke with Deputy [REDACTED] and they both to report the matter to Superintendent Evans. After speaking with Superintendent Evans Deputy Gross later spoke with Robin Hunt, Director of Personnel, and relayed to her [REDACTED] allegations. Deputy Gross stated that he accompanied [REDACTED] to meet with Ms. Hunt, and later to a meeting with Internal Affairs.

Robin Hunt, Director of Human Resources, testified that on April 19, 2011 Superintendent Gross came to her to tell her that [REDACTED] had asked to talk to her about a complaint that Lieutenant Cawley had been mistreating her at work. Ms. Hunt stated that Deputy Gross in this initial conversation, made no reference to a sexual harassment complaint. Ms. Hunt stated that on April 20, [REDACTED], [REDACTED], and Superintendent Gross came to her office. Ms. Hunt stated that [REDACTED] told her about the

perceived mistreatment, and then mentioned that Lieutenant Cawley had asked her out on dates, and about various instances in which [REDACTED] claimed that Lieutenant Cawley had made sexual references that made her feel very uncomfortable. Ms. Hunt stated that she convened a meeting with other management employees of the Police Department and it was decided to transfer Lieutenant Cawley out of the [REDACTED], and to convene an Internal Affairs Investigation.

Ms. Hunt testified that she met with [REDACTED] the next day, and told her that an Internal Affairs Investigation would occur. Ms. Hunt also told [REDACTED] that Lieutenant Cawley would be transferred out of the [REDACTED]

Superintendent Daniel Linskey has worked for the Boston Police Department for twenty-seven years, and currently serves as the Superintendent-in-Chief of the Boston Police Department. Superintendent Linskey is second in command of the Department answering directly to Commissioner Edward Davis. Superintendent Linskey testified that he went to the Academy with Lieutenant Cawley, and they have had various assignments together during the years. Superintendent Linskey stated that in April of 2011 he had learned from Robin Hunt the allegations that Lieutenant Cawley had created a hostile work environment for [REDACTED], a long time civilian employee of the Department.

Superintendent Linskey testified that he had known [REDACTED] from working with her during his various duty assignments with the Department during his tenure. Superintendent Linskey stated that [REDACTED] had come to him about her [REDACTED] role as a witness in a homicide



case, and that her daughter was due to testify. Superintendent Linskey stated that the [REDACTED] had been a witness for the Department and the family had received death threats regarding her testimony, and that this was placing a great deal of stress on [REDACTED] and her family. Superintendent Linskey stated that he had offered [REDACTED] an opportunity to move out of [REDACTED] to a less busy assignment, but that [REDACTED] declined; she wanted to stay in [REDACTED]. This conversation took place before [REDACTED] brought forth the allegations against Lieutenant Cawley.

Superintendent Linskey stated that soon after the allegations arose against Lieutenant Cawley on April 22, 2010, the Department decided to reassign Lieutenant Cawley to [REDACTED]. Superintendent Linskey testified that Lieutenant Cawley never actually went to [REDACTED] as he was on vacation when the decision to reassign him was made. Superintendent Linskey testified that before Lieutenant Cawley returned, it was decided to place Lieutenant Cawley on administrative leave.

Superintendent Linskey explained that because of the allegations of sexual harassment, the Department did not want to have Lieutenant Cawley supervise any other female employees or even have him work around female members of the public. Superintendent Linskey explained that at times situations arise in which an officer of the Department is being investigated, and that the investigation "might have an impact on other employees of the Department", and to maintain order it is best to place an employee on administrative leave, and not actually be at work. Superintendent Linskey testified that at the time the decision was made to place Lieutenant Cawley on administrative leave, [REDACTED] had come forward to

express her allegations of sexual harassment to Robin Hunt, the Personnel Director, and Deputy Superintendent Gross. In addition IAD had conducted its first interview of [REDACTED]. When Lieutenant Cawley was placed on administrative leave had not met yet with IAD or provided any explanation for any of [REDACTED] allegations. Superintendent Linskey explained that when an employee is placed on administrative leave the employee is still paid their weekly pay, but cannot work overtime or details.<sup>18</sup>

[REDACTED]

[REDACTED] never went back to work. [REDACTED]

[REDACTED] stated that she continued to be paid during her time away from work, and she eventually retired. [REDACTED] stated that she filed MCAD complaints against the City, and that in June of 2012 the matter was settled. The Settlement called for [REDACTED] to resign from her position effective in July of 2012, and she was paid \$120,000. [REDACTED] then retired from her position.

Sergeant LaTeisha Adams, from Internal Affairs, was assigned to investigate the allegations of sexual harassment against Lieutenant Cawley. The parties stipulated that Ms. Adams, in addition to interviewing [REDACTED]

---

<sup>18</sup> Lieutenant Cawley, while he was on administrative leave, requested permission that he be allowed to work as a process server. The request was denied.

[REDACTED] and Lieutenant Cawley, interviewed sixteen other Department employees, including supervisory officers working at the station, patrol officers working at the station, and one other civilian employee. Sergeant Adams testified that no one actually observed any of the allegations made by [REDACTED] against Lieutenant Cawley. Sergeant Adams testified that she interviewed [REDACTED] on two occasions, and Lieutenant Cawley on one occasion. Sergeant Adams stated that during the first interview there were a number of people present in the room, and that this made it more difficult for her to get at what really happened.<sup>19</sup> Sergeant Adams testified that she later interviewed [REDACTED] on May 16, 2011, and that based on the two interviews, it appeared to her that there might have been mutual interactions between [REDACTED] and Lieutenant Cawley at the outset, but that after [REDACTED] rebuffed Lieutenant Cawley's advances, her work assignments were changed.

Sergeant Adams stated that she also interviewed Lieutenant Cawley. Sergeant Adams stated that Lieutenant Cawley admitted that he asked [REDACTED] out and about getting together after work. Sergeant Adams also stated that Lieutenant Cawley said that he thought [REDACTED] was pretty and remarked on her clothes. Sergeant Adams testified that she asked Lieutenant Cawley about the allegation that he had stuck his tongue between his fingers and made this gesture to [REDACTED]. Sergeant Adams stated that Lieutenant Cawley did not deny this conduct, and remarked that it would not be inappropriate if the other person laughed about it or engaged in the same conduct.

---

<sup>19</sup> Also present in the room were Deputy Superintendent Michael Cox, Deputy Superintendent Gross, Robin Hunt from Human Resources, and [REDACTED]

Sergeant Adams stated that it demonstrated to her, Lieutenant Cawley's "lack of sensitivity towards inappropriate and offensive" workplace conduct. Sergeant Adams also testified that Lieutenant Cawley also exhibited a nervous laugh throughout the interview, Sergeant Adams stated that based on her investigation she concluded that Lieutenant Cawley had created a hostile work environment and engaged in "unreasonable judgment". Sergeant Adams believed that the final report was completed in October or November of 2011.

Superintendent Linskey stated that the Internal Affairs Investigation took six to seven months to complete, and he had the opportunity to review the final investigative report. On March 1, 2012 IAD prepared five charges against Lieutenant Cawley. The charges were as follows:

#### SPECIFICATION I

Lieutenant Cawley made unwanted advances and inappropriate comments to [REDACTED] employee under his command. When the [REDACTED] employee rejected his advances, Lieutenant Cawley began embarrassing her in front of others and yelling at her in the work place. Such behavior constitutes conduct which reflects negatively upon the Department, tends to indicate that the employee is unable or unfit to continue as a member of the Department, or tends to impair the operation of the Department. Such conduct is in violation of Rule 102 §3 (Conduct).

#### SPECIFICATION II

Lieutenant Cawley attempted to engage a [REDACTED] subordinate employee in a personal dating relationship. Such conduct is in violation of Rule 102 §4 (Unreasonable Judgment).

#### SPECIFICATION III



During his interview with the Internal Affairs Division, Lieutenant Cawley's responses indicated a lack of awareness and understanding as to what type of behavior would be considered inappropriate in the workplace. Such conduct is in violation of Rule 102 §4 (Unreasonable Judgment).

#### SPECIFICATION IV

Lieutenant Cawley made unwanted advances and inappropriate comments to a [REDACTED] subordinate employee under his command. When the [REDACTED] employee rejected his advances, Lieutenant Cawley changed her working conditions. Such conduct is in violation of Rule 114 §2A (Quid Pro Quo).

#### SPECIFICATION V

Lieutenant Cawley made unwanted advances and inappropriate comments to a [REDACTED] employee under his command. This behavior interfered with the [REDACTED] subordinate employee's ability to perform her job and created a hostile work environment. Such conduct is in violation of Rule 114 §2B (Hostile Work Environment).

On May 17, 2012 Police Commissioner Edward Davis wrote to Lieutenant Cawley stating that Specifications I, IV, and V had been sustained, and that he had violated Rules 102 § 3 and Rule 114 §§ 2A and 2B, and that he was being terminated from his position.

Superintendent Linskey testified that he was involved with the Commissioner's decision to impose discipline on Lieutenant Cawley. Superintendent Linskey stated that he was familiar with Lieutenant Cawley's prior discipline record, and that he had received a suspension in 2001.<sup>20</sup>

---

<sup>20</sup> In 2000 charges were brought against then Sergeant Cawley. The charges were that on two occasions Sergeant Cawley was assigned to work paid details in the fall of 2010. On these occasions Sergeant Cawley left the detail assignment to conduct his own personal affairs. The Department and Sergeant Cawley entered into a settlement agreement with

Superintendent Linskey stated that because of Lieutenant Cawley's prior suspension he had been bypassed on several occasions for promotion to Lieutenant. Superintendent Linskey stated that the Department decided that discharge was the appropriate level of discipline for Lieutenant Cawley.

#### OTHER TESTIMONY

Lieutenant James [REDACTED] has worked for the Boston Police Department for fourteen years. Lieutenant [REDACTED] stated that from February 2010 to September 2010<sup>21</sup> he was the day shift Duty Supervisor; in September 2010 Lieutenant Cawley took over the day shift and he then moved to the midnight shift. Lieutenant Tarantino stated that during his work as the Day Shift Supervisor he oversaw [REDACTED] who was assigned to the front desk. Lieutenant [REDACTED] testified that [REDACTED] would at times not stay at the front desk, that she would "frequently extend her break into an hour or hours at her lunch", and that it was a "frequent problem." Lieutenant [REDACTED] also stated that [REDACTED] was not receptive or helpful to the public when the public came to the front desk.

Lieutenant [REDACTED] testified that on at least four to six occasions he used a Form 26 to memorialize events with respect to [REDACTED] performance. Lieutenant [REDACTED] stated that he would record events as they

---

respect to the charges. It was agreed that the charges of exercising unreasonable judgment in conducting personal business while on duty were sustained, and for purposes of progressive discipline, a thirty-day suspension was imposed. The charges did not involve sexual harassment or creating a hostile work environment. The record reflects that up until the time of the present case no other discipline was imposed on Lieutenant Cawley. He was promoted to Lieutenant in 2010.

<sup>21</sup> Lieutenant [REDACTED] had a break in time when he worked the day shift.

happened, and that he forwarded the Form 26s to Captain [REDACTED] when he left the day shift and went to the midnight shift, so that the Captain would have a record of [REDACTED] performance.<sup>22</sup> These forms were not put in [REDACTED] personnel files. Lieutenant [REDACTED] also testified that other police officers that worked with [REDACTED] complained about [REDACTED] work performance.

Lieutenant Terry Thomas has worked for the Boston Police Department for approximately sixteen years. Lieutenant Thomas explained that he works as the Administrative Lieutenant for the day shift [REDACTED] and his office is in the back of the building, away from the front desk. Lieutenant Thomas stated that he is generally responsible for running the day-to-day operations, such as day off requests for civilian employees, whereas the Duty Supervisor is responsible for the shift. Lieutenant Thomas stated that at times he has been called upon to work as the Duty Supervisor. Lieutenant Thomas stated that he worked under Lieutenant Cawley, and he was known as an authoritarian supervisor, and pretty strict.

Lieutenant Thomas testified that he had never heard or seen Lieutenant Cawley engage in any inappropriate comments or engage in any inappropriate conduct towards [REDACTED] but acknowledged that he had very limited interactions with [REDACTED]. Lieutenant Thomas stated that in March of 2011,

---

<sup>22</sup> Five Form 26's were introduced into evidence. These forms were written by Lieutenant [REDACTED], and relate to specific instances in which Lieutenant [REDACTED] had issues with [REDACTED]'s work performance. He wrote that "she is confrontational and condescending when dealing with members of the public". Another time he wrote about "disruptive behavior in the Station". In another Form 26 had to do with [REDACTED] taking an extended meal break. In another Form 26 Lieutenant [REDACTED] wrote that [REDACTED] did not have "the skills or temperament to interface with the public." Lieutenant [REDACTED] could not recall if he brought all of these concerns to [REDACTED] attention.

Captain [REDACTED] directed him to attend a meeting on March 11 between Lieutenant Cawley and [REDACTED]. Lieutenant Thomas stated that the meeting had to do with a Form 26 that Lieutenant Cawley had asked [REDACTED] to complete regarding her leaving work early. Lieutenant Thomas stated that he was never interviewed during the Internal Affairs Investigation.

Sergeant Kenneth Gaines has worked for the Boston Police Department for eighteen years. Sergeant Gaines explained that he worked at [REDACTED] from April 2010 through May of 2012, and at that time he served as Patrol Supervisor for the day shift, the same shift that [REDACTED] and Lieutenant Cawley worked. Sergeant Gaines stated that he knew of no rule that prohibited a civilian employee from logging in lost property that was brought into the Station. Sergeant Gaines stated that any such property would be recorded in a book that was kept in the Duty Supervisor's office. Sergeant Gaines stated that civilian employees were not allowed to handle evidence from a crime scene.

Sergeant Gaines stated that he never saw or hear Lieutenant Cawley say any inappropriate comments or take any inappropriate actions towards [REDACTED]. Sergeant Gaines acknowledged that he was not often in the Station, as his duties required him be on patrol out of the Station.

Sergeant Richard Driscoll was hired as a Boston Police Officer in 2000, and was promoted to Sergeant in 2010. Sergeant Driscoll began working in [REDACTED] in June of 2010, and was assigned to the day tour and worked under the supervision of Lieutenant Cawley. Sergeant Driscoll stated that Lieutenant Cawley was a strict supervisor, and that it was not unusual for other officers on the shift to complain

about Lieutenant Cawley's authoritative and condescending manner. Sergeant Driscoll stated that he was mostly working on patrol, and not often in the Station, but when he was in the Station he never witnessed any inappropriate comments of Lieutenant Cawley towards [REDACTED]. Sergeant Driscoll further stated that he did not know of any rule that would prohibit a civilian employee from logging-in any lost items that were brought into the Station.

Captain John [REDACTED] has worked for the Boston Police Department for twenty-four years, and is currently the Captain for [REDACTED] and works the day shift, 7:30 am to 4 pm. Captain [REDACTED] is responsible for the Division, and explained that a Lieutenant generally serves as the Duty Supervisor, and is responsible for deploying the officers to their various assignments, and is responsible for the shift. Captain [REDACTED] testified that Lieutenant Cawley first came to [REDACTED] and was the Duty Supervisor for the late shift, and then went to the day shift in the fall of 2010. Captain [REDACTED] stated that Lieutenant Cawley was a good administrator, and got things done, but that his management style was abrasive, and at times officers complained that he was condescending towards them.

Captain [REDACTED] testified that during the time period that Lieutenant Cawley was serving as the Shift Commander on the night and day shifts no one ever complained to him that Lieutenant Cawley had acted inappropriately towards [REDACTED]. Captain [REDACTED] stated that neither any superior officers nor [REDACTED] ever came to him to report any alleged harassment or inappropriate sexual comments. Captain [REDACTED] testified that he saw no inappropriate conduct by Lieutenant Cawley towards [REDACTED], but acknowledged that his desk was in the back of the Station

and that he would not often be in the front, where [REDACTED] was assigned.

Captain [REDACTED] stated that he knew of no prohibition or rule against a civilian employee, such as [REDACTED] receiving items that were brought into the front desk and logging the information into the logbook. Captain [REDACTED] stated that the logbook is kept in the Duty Supervisor's office, and once the material was logged-in the Duty Supervisor would put the item in the gun locker for safekeeping. Captain [REDACTED] stated that there would be no problem with a civilian employee logging the items in the book and the Duty Supervisor placing the item in the gun locker. Captain [REDACTED] stated that [REDACTED] never came to him to complain that she had to log in the lost items.

Captain [REDACTED] also recalled that Lieutenant Cawley came to him in March of 2011 to report that he had an issue with [REDACTED] leaving work early. Captain [REDACTED] stated that he advised Lieutenant Cawley to have [REDACTED] prepare a Form 26, to document the event. Captain [REDACTED] further stated that it would not be appropriate for a civilian or a patrol officer to simply leave the shift early without informing a supervisor. Captain [REDACTED] testified that Lieutenant [REDACTED] had emailed a number of Form 26's that he had prepared regarding [REDACTED] work performance, and at some point he forwarded them to Lieutenant Cawley.

Luis Cruz has worked for the Boston Police Department for twenty-five years and holds the position of Lieutenant Detective. Lieutenant Cruz stated that he worked at the [REDACTED] and was the Duty Supervisor on both the day shift and night shift from 2004-2009, the position later held by Lieutenant Cawley. Lieutenant Cruz stated that while he

worked the day shift, [REDACTED] also worked the day shift. Lieutenant Cruz testified that it was a "challenge" to supervise [REDACTED], that she had an "attitude" and did not easily accept any criticism. Lieutenant Cruz testified that when he first began [REDACTED] there were two [REDACTED] assigned to the front desk, [REDACTED] and another employee, and he observed that at times that neither of the two [REDACTED] employees would be at the front desk at 10:00 am, and at times they were not there at lunch time. Lieutenant Cruz stated that he changed the starting time, and times for lunch breaks of the civilians to ensure that there would be coverage at the front desk.

Lieutenant Cruz testified that at time he counseled [REDACTED] about her work performance but never issued her any formal discipline. Lieutenant Cruz recalled one incident when a civilian employee came to the Station to file a report; the person spoke [REDACTED], and he asked [REDACTED], who spoke [REDACTED], if she would help the man. Lieutenant Cruz stated that initially [REDACTED] would not help, because she was going to lunch. Lieutenant Cruz stated that he directed [REDACTED] to stay and help the civilian, and that she could then extend her lunch break. Lieutenant Cruz stated that [REDACTED] was not happy, and that she and her Union Representative then filed a complaint about him to IAD, but that nothing ever came of [REDACTED] complaint.

Haseeb Hosein began employment with the Boston Police Department in 1988, and has been promoted through the ranks to his current position as a Lieutenant assigned to District [REDACTED] where he works as a Shift Commander. Lieutenant Hosein also has held various positions with the Union. Lieutenant Hussein explained that

he was assigned to [REDACTED] in 1992 when the red-book or the log in book for evidence first came into existence. Lieutenant Hosein stated that the book is used to record evidence of any criminal proceeding as well as items that may have been found and brought into the station, and the book is simply a diary to keep track of evidence and lost items. The book is kept in the Duty Supervisor's office.

Lieutenant Hosein explained that for all items, whether for criminal actions or simply lost goods, an incident number ("CC") is generated, and the number and a description of the item are then logged into the red book. Lieutenant Hosein stated that he went back to [REDACTED] station and checked the red book from the fall of 2010 through April 2011, and nowhere did he find [REDACTED] name as having logged in any entries in the red book.

#### Positions of the Parties

##### Summary of the Employer's Arguments

##### I. Administrative Leave

The Department initially argues that the decision to place the grievant on administrative leave is not arbitrable. The Department states that Rule 109 \$10 provides that administrative leave is not a disciplinary action, and is a decision made by the Department to maintain the efficiency of the Department. The Department states that employees who are placed on administrative leave receive their weekly base pay, and there is no provision in the Agreement that employees on administrative leave will receive overtime or detail pay, which are payments made only to employees who are actually working. The Department maintains that an arbitration decision requiring payment of overtime and detail pay, would,



therefore, be inconsistent with the Department's rules. Moreover, the Department citing court decisions, asserts that the decision as to whether an employee is fit for service, and should be on active duty or administrative leave, is a decision that is vested exclusively with the Police Commissioner.

The Department states that even assuming that the decision to place Lieutenant Cawley on administrative leave can be grieved, the Union has a high burden and must prove that the decision was arbitrary, capricious, or made in bad faith. In the present case the Department maintains that there were very serious allegations of sexual harassment made against a ranking officer by a long-term employee, and that it was reasonable and proper for the Department to place Lieutenant Cawley on administrative leave pending the outcome of the investigation. The Department maintains that while charges were pending, the Department did not want to take the risk and assign the grievant to a situation that could subject the Department to liability. The Department further argues that in the present case the Department investigated the charges in good faith before taking disciplinary action against the grievant. Specifically, the Department states that in view of the number of witnesses to interview and the extent of the investigation, the investigation did not consume an unreasonable length of time. The Department concludes that it did not violate the Agreement by placing the grievant on administrative leave pending the outcome of the sexual harassment investigation.

## II. Sexual Harassment

The Department contends that there was just cause for the dismissal of Lieutenant Stephen Cawley from his position with the Boston Police Department. The Department

asserts that the evidence demonstrates that the grievant continually harassed [REDACTED], a [REDACTED] employee under his command, for the time period during which he was the day shift Supervisor [REDACTED]. The Department states that the evidence demonstrates that Lieutenant Cawley engaged in quid pro quo sexual harassment and also created a hostile work environment for [REDACTED]. The Department states that there can be no dispute that Lieutenant Cawley sought to date [REDACTED]; he sent her text messages seeking to meet her after work and come to his house, and that [REDACTED] refused Lieutenant Cawley's advances. The Department maintains that after [REDACTED] rebuffed Lieutenant Cawley, he changed her working conditions and repeatedly made inappropriate sexual comments that resulted in [REDACTED] having to leave her position, a position that she held for thirty-five years.

The Department states that [REDACTED] credibly testified that soon after Lieutenant Cawley transferred to the day shift, he began noticing her appearance, and often made comments that she looked and smelled nice. The Department contends that [REDACTED] was uncomfortable with Lieutenant Cawley's attention and the fact that he sent the text messages to her in October. The Department states that [REDACTED] was so uncomfortable with Lieutenant Cawley's conduct that she showed the text messages to Officer Sean West, and other officers.

The Department states that Officer West testified that he counseled [REDACTED] at the time, that Lieutenant Cawley's conduct could be considered as sexual harassment and that she should complain about Lieutenant Cawley's conduct. The Department further states that Officer West testified that Lieutenant Cawley appeared to pay close

attention to [REDACTED], asking her to invite him to dinner, and staring at [REDACTED] as if he wanted her. Similarly, the Department states that Officer Myron Phillips testified that that Lieutenant Cawley often checked on the whereabouts of [REDACTED] during the day. The Department states that the testimony of those two officers corroborates [REDACTED] testimony that Lieutenant Cawley continually watched and harassed her.

The Department further argues that [REDACTED] credibly testified as to Lieutenant Cawley's sexually offensive conduct. Specifically, the Department states that [REDACTED] credibly testified that he stuck his tongue through his fingers and directed the gesture to [REDACTED], that he tried to look up her skirt, that he said to [REDACTED] that she was too old to have children, and told [REDACTED] that she looked and smelled good. The Department states that Lieutenant Cawley then he mentioned to her that he had broken up with his girlfriend, and then asked her to come over to his house. The Department argues that Lieutenant Cawley's consistent pattern of conduct created a hostile work environment for [REDACTED].

The Department maintains that not only did Lieutenant Cawley's comments create a hostile work environment for [REDACTED], but he also modified her working conditions and added new responsibilities for [REDACTED]. Specifically, the Department argues that Lieutenant Cawley changed [REDACTED] working conditions because he was upset with [REDACTED] for not going out with him. For example, the Department asserts that Lieutenant Cawley made [REDACTED] call him directly if she was going to be late or absent. The Department states that there had been a longstanding practice for [REDACTED] to call the front desk to report if

she was going to be absent or late. The Department states that there was no legitimate reason for Lieutenant Cawley to change the longstanding practice. Specifically, the evidence demonstrates that in the fall, [REDACTED] was absent on only a couple of occasions; nothing that would warrant a change in protocol, and was clearly intended to harass [REDACTED].

In addition, the Department states that Lieutenant Cawley made [REDACTED] log in evidence in his office, a task that is not performed by civilians, and had never been performed by [REDACTED]. The Department states that Lieutenant Cawley did this so that [REDACTED] would have to come to his office to complete the task.

The Department further asserts that on March 8, 2011, Lieutenant Cawley again treated [REDACTED] in a harassing manner. The Department states that [REDACTED] was not feeling well, and needed to leave work; she looked for Lieutenant Cawley, and when she could not find him, Officer Phillips told her that it was alright for her to go home and that he would cover the desk. The Department states that Lieutenant Cawley then made [REDACTED] complete a Form 26, and was counseled for leaving work but Officer Phillips was not required to submit a Form 26 nor did he receive any discipline for allowing [REDACTED] to leave. The Department states that all of these changes amount to quid pro quo sexual harassment.

The Department argues that [REDACTED] complaints of harassment should be considered credible. In particular, the Department states that [REDACTED] charges were thoroughly investigated by the Department's Internal Affairs Division. The Department maintains that Detective Adams, a seasoned investigator who often worked with

victims, found that [REDACTED] statements were believable and consistent; whereas Ms. Adams testified that Lieutenant Cawley's interview was evasive, and he had a nervous laugh during the interview. Moreover, the Department maintains that Lieutenant Cawley did not deny the gesture of sticking his tongue through his fingers, and then stated that such conduct was not inappropriate. The weight of the evidence the Department contends, demonstrates that Lieutenant Cawley engaged in the conduct complained of by [REDACTED]. The Department states that when [REDACTED] could no longer endure Lieutenant Cawley's harassment she brought the matter to the attention of Department officials. The Department maintains that [REDACTED] suffered panic attacks and did not want to come to work, a place where she had worked for thirty-five years and considered work to be like her family.

The Department states that the Union's attempt to characterize [REDACTED] as a poor worker, must fail. Specifically, the Department contends that [REDACTED] had worked more than [REDACTED] in [REDACTED], and had been commended for her work effort.

The Department maintains that Lieutenant Cawley's conduct was egregious. The Department states that this was not simply a situation of an overbearing supervisor, but a supervisor whose persistent harassment caused [REDACTED] to be hospitalized, and then required her to resign from her position. The Department contends that the grievant was the supervisor in charge of the shift, and was supposed to protect all employees under his supervision, not subject them to sexual harassment. The Department states that Lieutenant Cawley had previously received a disciplinary suspension for lack of judgment, and failure to perform his



supervisory duties. The Department maintains that it had no other recourse but to discharge Lieutenant Cawley from his position, that there was just cause for his discharge, and that the grievance must be dismissed.

#### Summary of the Union's Arguments

##### I. Administrative leave

The Union argues that the City violated Article 4 of the parties' Agreement when it placed Lieutenant Cawley on Administrative Leave from May 2, 2011 through May 17, 2012. The Union states that pursuant to Rule 109 Section 10, Lieutenant Cawley was placed on Administrative Leave. The Union states that there can be no question that the Commissioner has the managerial discretion to place an officer on administrative leave. The Union states that when an employee is placed on administrative leave, the terms and conditions of employment are negatively impacted; the employee cannot earn overtime and is not able to participate in paid details.

The Union states that it has been previously determined, in the Dunn Award, that the application of any Rule, including Rule 109 Section 10, must be applied in a reasonable manner. The Union argues that placing Lieutenant Cawley on administrative leave for more than a year was totally unreasonable and cannot be justified. The Union asserts that the City rushed to get rid of Lieutenant Cawley, and it did so without even interviewing Lieutenant Cawley, or corroborating any of [REDACTED]'s allegations; it had only interviewed [REDACTED] when it decided to place Lieutenant Cawley on administrative leave. The Union states that Lieutenant Cawley had been working for the Boston Police Department for more than twenty-five years, had and never had been accused of sexual harassment.

The Union states that as opposed to denying Lieutenant Cawley overtime and paid details, the Department could have transferred Lieutenant Cawley to another District during the pendency of the investigation. Indeed, the Union states that initially the City intended to transfer Lieutenant Cawley to another District, but without any explanation changed its mind, and placed Lieutenant Cawley on administrative leave.

The Union further states that after May 5, 2011 [REDACTED] [REDACTED] never returned to active work for the Boston Police Department. Thus, it was not even possible for Lieutenant Cawley to have encountered [REDACTED] at the work place after May 2011, yet the City still kept Lieutenant Cawley on administrative leave. Moreover, the Union states that the IAD completed its last interview on July 27, 2011, and it then took the City ten more months before it decided to discharge Lieutenant Cawley. This extraordinary length of time to take action against Lieutenant Cawley was totally unreasonable, and denied Lieutenant Cawley the opportunity to earn overtime and work paid details until the City finally decided to unjustly discharge him from employment in May 2012, a year later. The Union argues that it was unreasonable to initially place Lieutenant Cawley on administrative leave and to then keep him on administrative leave for more than a year, and he should be made whole for the Department's action.

## II. Sexual Harassment

The Union maintains that there was not just cause to discharge the grievant Lieutenant Stephen Cawley, from his employment with the Boston Police Department. The Union contends that the City has not proven that the grievant altered [REDACTED] working conditions as a result of her

declining to go on a date with Lieutenant Cawley or that he in any way created a hostile working environment for [REDACTED].

[REDACTED]

The Union states that one of the reasons cited for Lieutenant Cawley's discharge is that he engaged in quid pro quo sexual harassment, where he allegedly changed [REDACTED] working conditions because she rebuffed his advances for a personal relationship. The Union states that there is no dispute that Lieutenant Cawley did, in fact, ask [REDACTED] out on date. The Union states that the evidence shows that this was only on one occasion in October, and the circumstances surrounding this request were not coercive, and appeared, in fact, to be mutual. Specifically, the Union states that when Lieutenant Cawley first moved to the day shift as the Duty Supervisor [REDACTED] [REDACTED] told him that she worked for a bar and that he should come by for a drink. The Union states that in October, [REDACTED] told Lieutenant Cawley that she was going to a party, and Lieutenant Cawley called her after he got out of work, and then followed up with a text to see if she wanted to get together later that evening after the party. The Union asserts that when [REDACTED] did not respond to Lieutenant Cawley's text, he never again asked her out. Indeed, any further calls initiated by Lieutenant Cawley, and there were only two, specifically related to Departmental matters. Further, the Union states that it must also be remembered that [REDACTED] stated that she never texted Lieutenant Cawley, when the evidence demonstrates that she texted him once on October 29, 2010, and again in November, and then called him to wish him a happy birthday.

The Union further asserts that the Department's contention that Lieutenant Cawley changed [REDACTED] working conditions, supposedly because she refused his advances, have not been proven by any standard of proof. The Union asserts that Lieutenant Cawley was simply enforcing rules and policies of the Department and simply sought [REDACTED] to perform the duties that she would have normally performed as a civilian employee working at the front desk. The Union states that the Department's concern that Lieutenant Cawley required [REDACTED] to call the Duty Supervisor's phone line if she was going to be absent was due to the fact that [REDACTED] would simply call the front desk, and speak to a non-supervisory employee if she was not coming to work. The Union states that Lieutenant Cawley credibly testified that on one occasion [REDACTED] was out of work, and the message that she was not reporting to work never got to Lieutenant Cawley. The Union asserts that as the superior officer in charge of making duty assignments, he should certainly know the whereabouts of his subordinate employees. Specifically, the Union states that if [REDACTED] [REDACTED] was going to be absent, it was Lieutenant Cawley's responsibility to find another employee to staff the front desk. Requiring [REDACTED] to inform her supervisor that she would be absent from work was a legitimate action. Moreover, the Union states that this requirement can hardly be considered as out of the ordinary, an adverse employment action, or a disciplinary action.

The Union asserts that the City's contention that Lieutenant Cawley by having [REDACTED] log in a lost wallet imposed a new duty in retaliation for [REDACTED] not going out with him is also unfounded. The Union states that it must be remembered that it was [REDACTED] who brought the

lost wallet to Lieutenant Cawley's office, and that all evidence of lost items must be brought back to the Duty Supervisor's office, so that the items can be logged in, and placed in the locker. The Union further asserts that all that Lieutenant Cawley asked was that [REDACTED] login a description of the item in a book that was kept in the office. Again, the Union maintains that this was hardly a difficult task, and although [REDACTED] may never had done this task before, it can hardly be considered an onerous task or a duty that was outside the normal duties of front desk clerk; there was no rule that prevented a civilian employee from logging in lost items. Moreover, the Union states that [REDACTED] could not recall when Lieutenant Cawley asked [REDACTED] to perform this task and it appears that it only occurred one time during the time period during Lieutenant Cawley supervised [REDACTED]. Finally, the Union states that a review of the logbook shows that [REDACTED] did not even perform the task, as her name never appeared in the logbook as having recorded any items.

The Union contends that the Department's assertion that Lieutenant Cawley did something wrong by having [REDACTED] fill out a report by a citizen on road rage is similarly misplaced. The Union states that because Lieutenant Cawley's annoyance with [REDACTED] because she refused to complete a road rage report was not an act of sexual harassment. Again, the Union states that [REDACTED], as the front desk clerk, was expected to respond to civilians who came to the station. The Union argues that completing a report by the civilian was certainly within [REDACTED] job duties; this was not a new duty, and requiring her to perform this task was not an act of quid pro quo harassment. The Union contends that Lieutenant



Cawley did not discipline [REDACTED] for her inaction, and this incident was an example of [REDACTED] becoming upset and critical when her supervisor asked to her perform a task that she did not want to complete.

The Union states that the Department made much of the fact that in March of 2011 Lieutenant Cawley was upset with [REDACTED] because she left work early without telling a supervisor. The Union states that the Employer seems to be stating that civilian employees, like [REDACTED] may leave work whenever they want, without supervisor approval. The Union contends that Department officials testified that employees do not have the ability to leave work whenever they want. The Union maintains that Lieutenant Cawley acted as would any supervisor, wanting to know who gave [REDACTED] permission to leave, and did nothing improper by asking her to complete a Form 26 to explain her leaving work without permission. Moreover, the Union asserts that Lieutenant Cawley asked his supervisor, Captain Davis, for advice on how to address this issue. The Union states that [REDACTED] conduct was not an infrequent occurrence, as the prior Duty Supervisor had similar issues with [REDACTED]. The Union thus argues that it cannot be concluded that Lieutenant Cawley took this action because he intended to harass [REDACTED] for not going out with him six months ago. The Union argues that the evidence, taken as whole, does not demonstrate "quid pro quo" sexual harassment.

Lieutenant Cawley was also charged with creating a hostile work environment towards [REDACTED]. Again, the Union maintains that the City has failed to prove this allegation. Specifically, the Union states that there must be some proof that the conduct was of a sexual nature and unwelcome, and the City has not proven that Lieutenant

Cawley engaged in any unwelcome conduct of a sexual nature toward [REDACTED]. The Union states that the only thing that the Department has demonstrated is that Lieutenant Cawley sent two text messages to [REDACTED] on October 29, 2010 asking if she wanted to go out with him one evening.

The Union states that the fact that Lieutenant Cawley sought to go out with [REDACTED] does not violate any Departmental rule, as there is no rule prohibiting Boston police superiors from dating other officers, subordinates, or civilian employees. The Union states that there is nothing in the record that demonstrates that [REDACTED] thought that Lieutenant Cawley's action in asking her out was unwelcome. Specifically, the Union states that [REDACTED] told Lieutenant Cawley when she first met him that she worked as a bartender, and he should come by one day, after work, for a drink. Moreover, the Union states that [REDACTED] was the one that told Lieutenant Cawley that she was going to a party, after work. The Union thus maintains that it was not unreasonable for Lieutenant Cawley to believe that [REDACTED] was interested in going out with him after work, and this entire interaction was not an unwelcome interaction.

The Union further states that [REDACTED] did not complain to anyone in October about Lieutenant Cawley's text messages, and she herself was not bothered by Lieutenant Cawley's text message to meet that evening. The Union maintains that the two messages, one asking how her night was going, and the other asking whether she was coming by later, were not sexually charged messages, which in and of themselves would be offensive. Most importantly, the Union states that after [REDACTED] did not respond, Lieutenant Cawley never again asked [REDACTED] out, and

stopped sending her text messages. Lieutenant Cawley's conduct, the Union asserts, did not amount to sexual harassment.

The Union further argues that the City investigated [REDACTED] claim that Lieutenant Cawley created a hostile work environment and interviewed almost twenty persons, yet not one witness who testified at the arbitration hearing could corroborate [REDACTED] allegations that Lieutenant Cawley repeatedly and sexually harassed [REDACTED] during the time Lieutenant Cawley was assigned to the [REDACTED]. The Union asserts that the Department only called Officer Sean West who did not even work the same schedule as Lieutenant Cawley and [REDACTED]. Moreover, Officer West's statement, that he saw Lieutenant Cawley "ogle" [REDACTED] is an ambiguous assertion, and is not proof of sexual harassment.

The Union contends that [REDACTED] testimony that he saw Lieutenant Cawley come to the front desk that he could not actually say why Lieutenant Cawley came to the front desk, but that he simply assumed that he came to check on [REDACTED], is not proof of sexual harassment. The Union states that in view of the fact that [REDACTED] had a tendency to come and go as she pleased, Lieutenant Cawley had a legitimate reason to check the front desk. The Union states that all of the sworn police officers that testified and worked at [REDACTED] stated that they never saw Lieutenant Cawley act inappropriately towards [REDACTED]. The Union states that no Department employees substantiated [REDACTED] assertions.

Moreover, the Union contends that there were a number of inconsistencies between [REDACTED] arbitration testimony and what she told Internal Affairs. Specifically,

the Union states that [REDACTED] claimed that she never texted Lieutenant Cawley, yet Lieutenant Cawley's phone records show that she did text him at least two times. Further, the Union states that it makes no sense for [REDACTED] to reach out to wish Lieutenant Cawley happy birthday if she wanted nothing to do with him.

[REDACTED] stated that she contacted Sergeant William Woodley to tell him of Lieutenant Cawley's alleged sexual harassment, yet there is no dispute that Sergeant Woodley told IAD that [REDACTED] never told him of any such allegations. Moreover, [REDACTED] stated at the arbitration hearing that the fact that she had to fill out a Form 26 did not upset her, yet she told IAD, during the investigation, that it had bothered her. Finally, the Union states that except for Lieutenant Cawley directing that [REDACTED] complete the Form 26 when she left work in March and the text messages in October, [REDACTED] could not recall any dates or even time frames when the alleged incidents of harassment occurred.

The Union further argues that during the time period during which [REDACTED] claimed Lieutenant Cawley's alleged harassment took place, [REDACTED] never brought these incidents to anyone's attention until the Spring of 2011. The Union states that the evidence demonstrates that Lieutenant Cawley was an authoritarian supervisor, was critical and at times yelled at subordinates, but Lieutenant Cawley's harsh management style does not equate with sexual harassment. The Union concludes that the City has not proved that Lieutenant Cawley violated any Department rule, that there was not just cause for his discharge, and that he should be reinstated and made whole.

## Discussion

### I. Administrative Leave

There is no dispute about any of the facts relating to placing Lieutenant Cawley on administrative leave. [REDACTED] came forward with her complaint about Lieutenant Cawley on April 19, 2011. Deputy Gross informed Robin Hunt, Director of Human Resources, on April 20, 2011. [REDACTED] met with Detective Adams from IAD on April 21, 2011. Initially, the Department decided to transfer Lieutenant Cawley to another station but changed its mind, and effective April 30, 2011 Lieutenant Cawley was placed on administrative leave pursuant to Rule 109 §10, until he was ultimately discharged on May 17, 2012. During this period of time the Department conducted an IAD investigation. Detective Adams interviewed eighteen persons, including [REDACTED] twice, and Lieutenant Cawley on one occasion. Detective Adams' last interview was July 27, 2011.

The issue in dispute is whether the Department violated the parties' Agreement by initially placing and then keeping Lieutenant Cawley on administrative leave until he was discharged on May 17, 2012. The first inquiry is whether the Union can challenge the Commissioner's decision to place a superior officer on administrative leave. Arbitrator Phillip Dunn, in a 2003 Arbitration Decision between the parties, has previously addressed this issue. AAA 11-390-0155-99. Arbitrator Dunn, in his decision, noted that an employee on paid administrative leave, even though the employee is paid the weekly wage rate during the period of administrative leave, nonetheless suffers a diminution of his or her earnings, as the employee is prohibited from earning overtime pay, paid



details or court time, the normal components of a superior officer's total compensation.

Arbitrator Dunn concluded that the Commissioner has the statutory authority to place an officer on administrative leave, to take the officer off the street and remove the officer's service revolver, and that this decision may very well be non-delegable. Nonetheless, Arbitrator Dunn reasoned that since the decision to place an officer on administrative leave impacts the superior officer's earnings and benefits, a grievance could be processed that reviews the decision to place an officer on administrative leave. Specifically, he wrote:

From a contractual perspective, this arbitrator has the authority to consider whether Rule 109, s.10 was unreasonably applied, or was applied in a manner inconsistent with express contract provisions, when the Department placed [employee] on administrative leave "with pay" on or about October 28, 1998 and/or when it maintained him on such administrative leave until on or about January 26, 2000; and, if the arbitrator finds that the contract was so violated, to issue an appropriate remedial order.

Arbitrator Dunn further stated that, if upon review, it is determined that the Commissioner violated the Agreement by placing an employee on administrative leave, any remedy would be limited to a monetary relief, and not an order directing the Commissioner to remove an employee from administrative leave, and return the officer to active duty. See Dunn Award p 19.

The question then is whether the Department violated the Agreement by placing and continuing to keep Lieutenant Cawley on administrative leave from April 30, 2011 through May 17, 2012. To this question the only guidance that the Dunn Award offers is that each and every case must be

decided on its own unique facts. Specifically, the facts before Arbitrator Dunn involved a long and torturous history. In that case, the Department placed the officer on paid administrative leave for fifteen months, and then dismissed all the charges against the officer. With reference to the application of Rule 109 § 10, Arbitrator Dunn stated:

At least where the administrative leave "with pay" ends up lasting for 15 months, and the investigation ultimately results in no discipline, however, the rule is only reasonable if the term "with pay" is construed to mean "with full pay," i.e., without any loss of the officer's reasonably predictable, total wages that would have been earned, but for the placement on administrative leave. With the rule so construed, the officer at the end of the day does receive his/her total income, notwithstanding the extended period of non-disciplinary, administrative leave. Underlining added.

Of course, the significant difference in the facts before Arbitrator Dunn is that in that case the Department ultimately dismissed all the charges, whereas in the present case, the charges were sustained and the Department ultimately discharged Lieutenant Cawley.

The analysis in the present case is whether the Department's decision to place Lieutenant Cawley on administrative leave and continue him on administrative leave pending the investigation was unreasonable, or done in bad faith. Arbitrator Dunn in the above mentioned case stated that the Commissioner must have wide discretion to place an officer on administrative leave.

A rule that the Police Commissioner may place a police officer on administrative leave, with pay, pending the ultimate disposition of possible criminal or disciplinary proceedings against that officer, on its

face has a reasonable quality to it. By this mechanism of paid, nondisciplinary, administrative leave, the Police Commissioner can assure that an officer charged with serious misconduct, and facing potential disciplinary action up to and including termination of employment, will not be exercising police powers out on the streets of Boston, with a weapon.

Arbitrator Brynie, in a case involving the patrol officers, stated that the Department must have a "reasonable explanation or legitimate justification" for initially placing an officer on administrative leave. Case Nos. 16-1316 and 16-1340. Page 18.<sup>23</sup>

In the present case the Commissioner's initial decision to place Lieutenant Cawley on administrative leave pending the investigation was reasonable and appropriate. It must be remembered that [REDACTED] was an employee with over [REDACTED] of employment, and her complaint against Lieutenant Cawley raised serious charges of sexual harassment. It is true that [REDACTED] did not return to work [REDACTED]. Even though [REDACTED] did not return work, the charges were still pending, and unquestionably, charges of sexual harassment go to the core of a superior officer's authority and ability to supervise subordinate employees, and any such charges must be fully investigated.

The Union further argues that the twelve month period of time during which Officer Cawley was on administrative leave was too long and totally unnecessary. The contract does not set any fixed time period for conducting disciplinary investigations. In the present case, the facts demonstrate that the investigation was extensive; nineteen

---

<sup>23</sup> Arbitrator Brynie's decision involved the patrol officers, a separate bargaining unit. Her reasoning, however, is certainly appropriate to consider for the analysis in the present case.

separate interviews with eighteen people were conducted during the IAD investigation, which continued through the summer months of 2011.

Arbitrator Brynie was also faced with reviewing the length of time for an officer to remain on administrative leave. Arbitrator Brynie rejected the Union's arguments that there should be a fixed duration for internal affairs investigations. She reasoned:

Instead, in the context of internal police investigations, I would equate a "reasonable" time standard with what is "normal." In other words, the traditional internal investigation practice and time frame within the Police Department, undoubtedly known and understood by both parties at the bargaining table, is within the realm of what is "reasonable." On the other hand, evidence that an officer has been treated in an unusual, atypical or otherwise extraordinary manner may be indicative of unreasonable City conduct. p. 19.

In the present case it cannot be concluded that the length of time that Lieutenant Cawley was placed on administrative leave was unusual, atypical, or extraordinary. Indeed, no evidence was presented as to what has been the normal length of time for similar investigations. It must therefore be concluded that the Department did not violate the Agreement by initially placing Lieutenant Cawley on administrative leave, and keeping him on administrative leave during the pendency of the disciplinary investigation, until he was ultimately discharged from his position.

## II. Just Cause

The parties agreed that the issue to be decided is whether there was just cause for the discharge of the grievant, Lieutenant Stephen Cawley. Just cause is a

determination that considers a number of well established criteria; was the employee actually responsible for the alleged wrongdoing; whether the degree of discipline is consistent with the seriousness of the offense; and the employee's work record with the Employer. The Employer bears the burden of proving that the discipline imposed upon an employee was for just cause.

In the present case the grievant, Lieutenant Stephen Cawley was discharged for sexually harassing a [REDACTED] employee, [REDACTED], an employee under his supervision during the time that he was the Duty Supervisor at [REDACTED]

[REDACTED] More specifically, Lieutenant Cawley was found to have created a hostile work environment for [REDACTED] and to have changed her working conditions because she refused to date him. The Department has specific rules that prohibit sexual harassment, and there is no dispute that Lieutenant Cawley was trained in these policies, as recently as 2010.

#### A. Quid Pro Quo Sexual Harassment

The Department's Policy Rule 114 provides:

MGL Chapter 151 B defines the term sexual harassment as unwanted sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

#### **A. Quid Pro Quo Harassment**

- A) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or
- B) Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting that individual.

The Department maintains that Lieutenant Cawley changed [REDACTED] working conditions in a number of



situations because she refused his requests to date him. There must be some credible evidence that in fact [REDACTED] [REDACTED] working conditions were changed in some adverse manner. To prove quid pro quo sexual harassment there must be evidence that basis that [REDACTED] working conditions were in some way impacted because of her refusal to date Lieutenant Cawley. "A tangible employment action constitutes a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits". Burlington Industries, 524, US 742 (1998) Based on the totality of evidence there is substantial doubt as to whether there were any adverse changes to [REDACTED] working conditions during Lieutenant Cawley's tenure [REDACTED]

The Department states that Lieutenant Cawley directed [REDACTED] that when she was going to be absent or late she had to report this information to the Duty Supervisor. [REDACTED] [REDACTED] claims that in the past, all she had to do was report her tardiness or her absence to the patrol officer working the front desk. First, one would have to question whether changing the process or the person to whom [REDACTED] [REDACTED] had report her absence or lateness can even be considered as a material change in one's working conditions. See eg. Lipsett v. University of Puerto Rico, 864 F. 2d 881, 898 1<sup>st</sup> Cir. (1988); Hariston v. McDonnell Douglas Corporation, 37 F3d 379 (1994).

Second, the record does not indicate when this change occurred; whether it was before or after he asked her out on a date. Moreover, there is credible evidence that [REDACTED] [REDACTED], in fact, had issues with reporting her tardiness and absences. Specifically, records were introduced that

showed that in 2007 there were issues with how [REDACTED] reported her absences to work; she would call the Duty Supervisor's line and not fill out the appropriate paper work.<sup>24</sup> In addition, Lieutenant [REDACTED] the Duty Supervisor immediately prior to Lieutenant Cawley, testified that he too had issues with [REDACTED] not being at [REDACTED] at the times she was supposed to be there.

The Department further contends that Lieutenant Cawley changed [REDACTED] job duties by requiring her to log in evidence; that she had to now bring the evidence back to the Duty Supervisor's office, a task that she never before had to complete. Again, one would have to initially question whether the task of completing a report and then walking from the [REDACTED] to bring the item to the Duty Supervisor's office was an adverse change in work duties; the chore would have only taken a few minutes to complete. The Department asserts that this was a nefarious assignment because it demonstrated that Lieutenant Cawley wanted to get physically close to [REDACTED]. The evidence demonstrates, however, that it was [REDACTED] who brought the item back to the Duty Supervisor's office, and Lieutenant Cawley then directed [REDACTED] to record the item in the logbook; it is not as if Lieutenant Cawley went looking for [REDACTED] to make her come back to his office so that he could be alone with her. Moreover, the records reflect that [REDACTED] never even completed the task as she never made any entries into the log book, as presumably

---

<sup>24</sup> Indeed the memoranda relating to the manner in which [REDACTED] called into work shows that she used to call in on the Duty Supervisor phone line to request vacation and sick days. Thus, it would appear that [REDACTED] in the past did not call the front desk when she sought to be absent from work. See Captain [REDACTED] April 2, 2007 memorandum to Deputy Superintendent Kevin Foley, part of Union Exhibit 10.

another officer made the entries for her; thus it is not as if [REDACTED] was ever alone in the Duty Supervisor's office if and when, on those occurrences, she brought lost items back to the Duty Supervisor's office.

The Department also alleges that this task was outside of the responsibilities of a [REDACTED]. There were no policies that civilian employees could not log a lost item into the logbook. Captain [REDACTED] of [REDACTED] did not believe that this was a task that could or should not be performed by a front desk clerk. Similarly, all of the other supervisors who testified in this proceeding stated that they did not believe having a [REDACTED] employee bring a lost item to the Duty Supervisor's office and have the employee log in the evidence in the log book was unusual, or a violation of any established policy. There is no evidence that the items at issue related to a criminal matter; they were apparently lost items that were brought into the station. [REDACTED] may not have liked to perform the task, but it cannot be concluded that this task was imposed because Lieutenant Cawley had asked, and [REDACTED] refused to go on a date with him. Again, the record does not establish when this incident took place; [REDACTED] made no entries into the logbook. The testimony reflects that it occurred maybe once, or at most twice during the time period during which Lieutenant Cawley was the day shift Duty Supervisor. This was a *de minimis* responsibility.

The Department further maintains that Lieutenant Cawley became upset with [REDACTED] because she would not fill out a road rage report, claiming that this was a new task for [REDACTED]. The weight of the evidence, however, is that [REDACTED] and any other employee sitting at the front desk are responsible for responding to the public,

and when necessary, filling out the appropriate paperwork. The fact that Lieutenant Cawley got upset with [REDACTED] because she would not fill out a report from a civilian who came into the station cannot be considered as an act of sexual harassment. Indeed, [REDACTED] interaction with the public and not wanting to complete certain tasks are issues that Lieutenant [REDACTED] the prior Duty Supervisor, had previously noted and he testified about instances when [REDACTED] did not willingly take responsibility for issues that were brought to her attention while she was working at the front desk.

Lieutenant [REDACTED] credibly testified about interactions that he had with [REDACTED] while she was working at the front desk, and that he wrote these up on Form 26's. The fact that [REDACTED] was not disciplined for these events does not mean that there were no issues with [REDACTED] work performance. There is no legitimate reason why Lieutenant [REDACTED], and Lieutenant [REDACTED] Form 26s introduced into evidence in this proceeding, would not be accurate. Lieutenant [REDACTED] testimony buttresses Lieutenant Cawley's testimony that he too had issues with [REDACTED] work for the period during which he was the day shift Duty Supervisor.<sup>25</sup> Similarly, Lieutenant Cruz testified that when he was the Duty Supervisor [REDACTED] he also had issues with [REDACTED] willingness to perform her work.

The Department further contends that Lieutenant Cawley's action in March 2011, when he investigated [REDACTED] actions when she left work early on March 8, 2011,

---

<sup>25</sup> It is interesting that the Department, in its Internal Affairs Investigation, did not interview Lieutenant Tarantino, the prior day shift Duty Supervisor, to ascertain whether he had any issues with [REDACTED] job performance.

was further evidence of quid pro quo harassment. It must first be stated that it is not as if [REDACTED] simply left work a few minutes early for the day; she left between 9:30 am and 10:30 am, soon after her shift started. It is difficult to conclude that a superior officer, who notices that an employee has left work, and has not reported this to any of the superior officers on duty, and then seeks to investigate the matter, has engaged in an act of sexual harassment. Indeed, it is not as if Lieutenant Cawley made this event up so as to discipline [REDACTED]; this event actually happened.

Lieutenant Cawley sought advice from Captain [REDACTED] on how to address the matter, and it was Captain [REDACTED] who then advised him to complete the Form 26 to record the incident. Lieutenant Cawley then followed Captain [REDACTED] advice, and brought [REDACTED] in to meet with her and another supervisory officer. Lieutenant Cawley then provided [REDACTED] with the Form 26. The record reflects that a Form 26 is not actual discipline. [REDACTED] account of this event was that she was not even upset by the fact that Lieutenant Cawley met with her to give her the Form 26.<sup>26</sup> What took place in March of 2011 relating to [REDACTED] leaving work early, and Lieutenant Cawley's response cannot be considered as quid pro quo sexual harassment.<sup>27</sup>

In sum the Department's assertion that Lieutenant Cawley changed [REDACTED] working conditions because she would not go on a date with him, have not been proven.

---

<sup>26</sup> [REDACTED] however, stated that in the IAD investigation that this incident was upsetting.

<sup>27</sup> In fact, Lieutenant Cawley never disciplined [REDACTED] for this event.



Specifically, any such changes were not tangible changes in employment, and were for legitimate employment reasons.

B. Hostile or Abusive Sexual Harassment

The Department's Policy Rule 114 further provides:

MGL Chapter 151 B defines the term sexual harassment as unwanted sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

**B. Hostile or Abusive Work Environment Harassment**

Whether an environment is "hostile" or "abusive" can be determined by looking at all the circumstances, which may include:

- a) The frequency of the conduct;
- b) The severity of the conduct; and
- c) Whether it unreasonably interferes with an employee's work performance.

The Department maintains that Lieutenant Cawley engaged in a persistent pattern of harassment of [REDACTED]; he paid her undue attention, made sexual comments, mentioned her [REDACTED] appearance and her looks, stuck his tongue out at [REDACTED], ogled her, and asked her out on dates, which she rejected. The Department asserts that it got to the point that [REDACTED] could no longer take Lieutenant Cawley's conduct, and that it created such a stressful environment that she had to leave her position of thirty-five years, and then had to be hospitalized for her mental health; a direct result of Lieutenant Cawley's sexual harassment.

There can be no dispute that [REDACTED] was at a party on October 29, 2010. There is a dispute, however, as to whether [REDACTED] invited Lieutenant Cawley to contact her later that evening or whether Lieutenant Cawley on his own

initiative, decided to reach out to [REDACTED]. There is, however, no dispute that Lieutenant Cawley texted [REDACTED] two times. The first text at 11:29 pm asked [REDACTED] "how is your night going". Lieutenant Cawley in his second text message at 11:48 pm asked "coming by later?" [REDACTED] did not respond to the latter message, and there were no further texts sent by Lieutenant Cawley that evening. In fact the record shows that Lieutenant Cawley never again texted [REDACTED].

First, it must be stated that Lieutenant Cawley's attempt to meet [REDACTED] in October 2010, did not violate any Departmental rule or policy. Specifically, there is no Department rule that prohibits supervisory employees from dating subordinate or civilian employees. There is contradicted testimony that superior officers have dated subordinate and civilian employees. [REDACTED] maintains that these texts were disrespectful. I cannot conclude, however, that Lieutenant Cawley's interaction in texting [REDACTED] in October 2010 was unilateral or unwanted. [REDACTED] also stated that she never texted Lieutenant Cawley that evening. Lieutenant Cawley introduced his phone records that show that [REDACTED] did in fact text Lieutenant Cawley that evening. Moreover, there is dispute as to whether Lieutenant Cawley initially texted [REDACTED] because [REDACTED] invited him to do so.

Further, [REDACTED] showed these text messages to other employees of the Department, presumably close in time to the event, and there is no indication that she was uncomfortable or that she was offended by these text messages, or the fact that Lieutenant Cawley sought to meet her after work. As stated above, after October 29, 2010 Lieutenant Cawley never again texted [REDACTED], thus it

cannot be concluded that Lieutenant Cawley continuously pursued a personal relationship with [REDACTED]. There is nothing in the record that indicates that Lieutenant Cawley was still seeking to date [REDACTED] in April of 2011, when she made came forward with her complaint about Lieutenant Cawley.

[REDACTED] testified that Lieutenant Cawley made a number of comments about her looks, disparaging comments about her age, and various other sexual comments to her. Except for the text messages in October, which actually indicated the date of the messages, [REDACTED] could not recall when comments were made to her, and whether they occurred before or after Lieutenant Cawley asked her out on the date.

Of course, it would be unreasonable to expected an employee to recall with exact specificity each and every date that an inappropriate comment was made. Nonetheless, it is important to try and determine whether the comments were unwelcome, whether these alleged comments and conduct were made prior to Lieutenant Cawley asking [REDACTED] out for the date, and then stopped after [REDACTED] did not respond to Lieutenant Cawley, or whether the comments and conduct escalated after [REDACTED] rejected Lieutenant Cawley's date offer, and were therefore made to upset [REDACTED] because she would not go out with him. Specifically, there must be some indication that the comments and conduct were unwelcome, and when they occurred, to determine the severity and pervasiveness of the alleged comments. [REDACTED] testified that she never told Lieutenant Cawley that his alleged comments that she looked and smelled nice were unwelcome.

The Department, in its internal affairs investigation interviewed sixteen employees<sup>28</sup> who worked at [REDACTED] station, and not one of these persons actually heard or observed any inappropriate or offensive conduct. Officer West did testify that he heard Lieutenant Cawley say to [REDACTED], on one occasion, when she was going to ask him over for supper, and [REDACTED] responded by stating that she not did cook anymore. This is hardly offensive or objectionable conduct. As the United States Supreme Court stated:

... simple teasing offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the "terms and conditions of employment". Farragher v City of Boca Raton, 524 US 775, 77 FEP 14, 18 (US Supreme Court 1998)

Officer West also stated that it also appeared to him that Lieutenant Cawley was "ogling" [REDACTED]. As the 7th Circuit Court of appeals cautioned about conclusions of nonverbal conduct:

... we are concerned about the legal risk that would be placed on employers if a plaintiff in a sexual harassment case could get to a jury on the basis of nebulous impressions concerning tone of voice, body language and other nonverbal non touching modes of signaling. Minor v Ivy Tech State College, 79 FEP 648, 651 (7th Cir. 1999)

Similarly, [REDACTED] stated that it appeared to her that [REDACTED] was under a lot of stress in the fall and winter of 2010 into 2011. [REDACTED] testified that even though she was friendly with [REDACTED], [REDACTED] never once mentioned to her that Lieutenant Cawley had engaged in

---

<sup>28</sup> These sixteen employees were in addition to [REDACTED] and Lieutenant Cawley.

any unwelcome conduct until April 2011, when [REDACTED] decided to go to Superintendent Gross. [REDACTED] stated that [REDACTED] told her that she was thinking of relocating from the area, and that Lieutenant Cawley was giving her a hard time. It cannot be concluded that that stress was due to any unwelcome sexual harassment by Lieutenant Cawley. The evidence demonstrates that during this time frame [REDACTED] and her daughter were involved in criminal proceedings involving gang activity, and [REDACTED] family had received death threats. It is certainly possible, and indeed likely, that [REDACTED] comments to [REDACTED] were made in the context of the stress and anxiety relating to the criminal case on [REDACTED] family. It cannot be concluded that [REDACTED] testimony about observing [REDACTED] being under stress was, therefore, due to any sexually harassing conduct of Lieutenant Cawley.

Although [REDACTED] could not recall with any certainty, when the alleged instances occurred, she did recall that much of Lieutenant Cawley's alleged conduct and comments occurred in the fall of 2010. There is, therefore, a real concern as to whether, even if such conduct occurred, it continued into the April of 2011, at the time that [REDACTED] ultimately complained about Lieutenant Cawley. Specifically, the only event that occurred in the spring of 2011 occurred on March 8, when [REDACTED] left work early, and then Lieutenant Cawley met with her and issued the From 26. As stated above, Lieutenant Cawley's response in March of 2011 cannot in any way be considered as an act of sexual harassment; it was an appropriate supervisory response to an employee, who left work without informing a supervisor.



There is no indication that any specific harassing conduct occurred between March and April 2011 when [REDACTED] went to [REDACTED] to state that she couldn't take it anymore and she was going to quit. Indeed, there is a scant amount of evidence indicating that any alleged offensive conduct occurred in calendar year 2011. It cannot be concluded that there was any severe or pervasive offensive conduct by Lieutenant Cawley toward [REDACTED] that could constitute any type of sexual or impermissible conduct.

[REDACTED] testified that initially [REDACTED] told her that Lieutenant Cawley was treating her badly "especially on Fridays when she was left at the front desk alone". [REDACTED] also stated that none of the other officers or civilian employees liked Lieutenant Cawley. She stated that he yelled at other employees but she never saw him yell at [REDACTED]. There is nothing in the record that indicates Lieutenant Cawley left [REDACTED] alone at the front desk, or that even if he did so that this was due to sexually harass [REDACTED]<sup>29</sup>

I have no doubt as to [REDACTED] view of the inappropriateness of Lieutenant Cawley's overall conduct and behavior. Indeed, [REDACTED] testified that none of the other officers or civilian employees liked Lieutenant Cawley. It must be remembered, however, that Lieutenant Cawley was discharged for creating a hostile work environment, not for being unfriendly and ill mannered. Although Lieutenant Cawley's conduct toward [REDACTED] and other employees may have at times been condescending and abrasive, this does not mean that his conduct created a

---

<sup>29</sup> [REDACTED] in her testimony did not complain about being left at the front desk alone.



hostile work environment. A.W. Chesterton, 27 MDLR at 10-11 (2005) (sexual harassment claim failed because perpetrator engaged in some behavior with both male and females). Discourteousness and rudeness must not be confused with sexual harassment.

There must be more than just allegations and subjective feelings; there must be proof that the conduct did in fact occur. A person in good conscience can testify to events as they perceive them to have happened but it is nevertheless possible that such events are nothing more than one's subjective perceptions. Simply stated, there was no corroboration of [REDACTED] allegations.

Moreover, there were also certain disturbing inconsistencies between [REDACTED] arbitration testimony and her statements that were provided during the IAD investigation. [REDACTED] stated that she never texted Lieutenant Cawley on October 29, 2010, or any other dates, and that she simply ignored him. Lieutenant Cawley's phone records indicate that she did in fact text him on October 29, 2010, and also on November 16, 2010. [REDACTED] also stated that she was not upset at having to complete the Form 26 when she left work but stated in the IAD investigation that she was upset by having to complete the Form 26. [REDACTED] also stated that, on her own initiative she called Lieutenant Cawley in December to wish him a happy birthday; it is difficult to reconcile this call in view of the fact that she supposedly wanted nothing to do with Lieutenant Cawley. In addition [REDACTED] testified that she told Sergeant Woodley about Lieutenant Cawley's harassment. Lieutenant Woodley, in his IAD interview stated, however, that [REDACTED] never told him about any

sexual harassment, never even mentioned Lieutenant Cawley, but only asked advice about what to do if you did not get along with someone at work. In sum, the totality of the evidence casts substantial doubt about [REDACTED] testimony as to the extent, duration and severity, of Lieutenant Cawley's alleged offensive conduct.

The totality of the evidence presented at the arbitration hearing does not show that Lieutenant Cawley created a sexually hostile or offensive workplace environment. Lieutenant Cawley may indeed have been rude, condescending, and abrasive by the manner in which he dealt with subordinate employees. Such conclusion, however, is significantly different than concluding that his conduct created a "hostile work environment" and warranted his discharge. In sum, the totality of the evidence indicates that Lieutenant Cawley is not guilty of the misconduct of which he was accused. There was therefore no just cause for his dismissal.

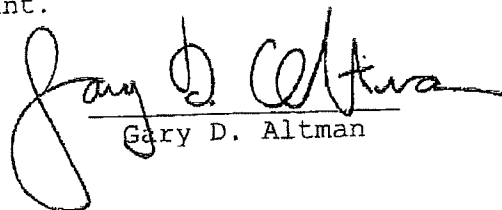
#### Conclusion and Award

For the reasons set forth more fully above. The Department did not violate the Agreement when it placed Lieutenant Cawley on paid administrative leave effective April 30, 2011 and continued him on paid administrative leave through May 17, 2012. Accordingly, no monetary relief is awarded for the time period that Lieutenant Cawley was on administrative leave.

The Department did not have just cause to discharge the grievant Stephen Cawley from his position as a Lieutenant with the Boston Police Department. Lieutenant Cawley shall be reinstated to the position of Lieutenant, and made whole for lost wages and benefits from the date of his discharge until he is reinstated to his position.

Interim earnings, including any unemployment compensation  
shall be deducted from said amount.

April 16, 2013  
Boston, Massachusetts

  
Gary D. Altman