

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
)	
DEBORAH BUTLER)	DOCKET NO. 93-17
)	DOCKET NO. 93-32

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

Involved herein are two grievances consolidated for the purposes of hearing and decision concerning actions taken by the State of Vermont, Department of Public Safety ("Employer"), against Deborah Butler ("Grievant").

On March 26, 1993, Grievant filed a grievance, which was docketed as Docket No. 93-17. Therein, Grievant contends that the Employer violated 3 VSA §1001, 3 VSA §312(b)(5), Article 5 of the collective bargaining agreement between the State and the Vermont State Employees Association, Inc. ("VSEA") for the State Police Bargaining Unit, effective for the period July 1, 1992 to June 30, 1994 ("Contract"), and Section 3.03 of the Rules and Regulations for Personnel Administration. Specifically, the grievance alleges that the Employer discriminated against her on account of her sex by subjecting her to a general atmosphere of sexual references and joking and sexually offensive comments, issuing her an adverse performance evaluation on January 27, 1993, and transferring her to another duty station. In addition, the grievance alleges that such transfer was a discriminatory application of the rules and regulations governing members of the State Police.

On May 12, 1993, Grievant filed a grievance, which was docketed as Docket No. 93-32. Therein, Grievant contends that the Employer violated 3 VSA §1001, 3 VSA §312(b)(5), Articles 5 and 14 of the Contract and Section 3.03 of the Rules and Regulations for Personnel Administration. Specifically, the grievance incorporated the allegations made in Docket No. 93-17 and also alleges that the Employer dismissed her because of sex discrimination and that there was no just cause for such dismissal.

On January 6, 1994, the Employer filed a Motion to Compel Discovery Under VRCP Rule 37. On January 14, 1994, Grievant filed an Answer to State's Motion to Compel Discovery. On January 11, 1994, the Board determined that there was an insufficient reason to grant the State's Motion to Compel Discovery and denied the motion.

Hearings were held before Board Members Charles McHugh, Chairman, Catherine Frank and Carroll Comstock at the Board's hearing room in Montpelier on December 20, 1993; January 1; February 18, 25; March 17, 25, 31; and April 4, 7, 1994. Assistant Attorney General Mary Lang represented the Employer. Jonathan Sokolow, VSEA Legal Counsel, represented Grievant. Post-hearing briefs were filed on July 1, 1994.

There were an unusual number of delays in this case. Five hearings were canceled and had to be rescheduled because of weather conditions and the illness of an attorney. In addition, both parties requested extensions of time for filing of post-hearing briefs due to parental leaves of their respective

attorneys. The Board granted the parties' requests and post-hearing briefs were filed nearly three months after the date of final hearing.

FINDINGS OF FACT

1. Grievant submitted an application for employment with the Vermont State Police ("State Police") while living in New York State. She had completed one and a half years of criminal justice training at New York State colleges at the time of her application. The Employer informed her in August, 1991 that her application had been accepted, and directed her to report the following Monday to the Vermont Police Academy ("Academy") in Pittsford, Vermont to attend the second week of a three week basic training session.

2. Grievant had missed the first week of the session at the time of her hire. She attended the second week of training, and then missed the third week of training when she was given permission to go to New York to be with her father who had become seriously ill.

3. After the basic training session, Grievant was first temporarily assigned to Waterbury, then assigned to another training course at the Academy. The second training session was a three month session.

4. There were approximately 24 other participants at the Academy at the same time as Grievant. Eight of the twenty-four, including Grievant, had been recently hired by the State Police. The remaining participants were from other law enforcement

agencies. Grievant was one of three women attendees and the only woman hired by the State Police.

5. During Grievant's stay at the Academy, its director, Francis Aumand, gave Grievant an article about a grievance that a female State Trooper, Gloria Danforth, had brought against the Employer. He asked her to read it and give her opinion on the article. Danforth had filed a grievance alleging sex discrimination against the Employer. The Board subsequently heard this grievance and dismissed it in early 1993. Grievance of Danforth, 16 VLRB 7 (1993). Grievant concluded by Aumand's actions that Danforth was considered a "troublemaker".

6. Some of the male participants made Grievant and the other female participants feel by their words and actions that they did not want women in law enforcement. After one such incident involving a female participant other than Grievant, Grievant drafted a report about the incident and showed it to Kathy Dragon, the female participant involved. Grievant understood that, as a result of her written report, an investigation was conducted, but Dragon did not file a formal complaint. After that time, Grievant heard male participants direct comments at her to the effect that they needed to "watch out" because she would "report them for sexual harassment".

7. Marc Lucas was one of the eight participants at the Academy who also had been hired by the State Police. Lucas is a kick boxer and is approximately six feet tall. During their tenure at the Academy, Lucas occasionally demonstrated his kick boxing ability by kicking classmates in the chest or upper arm,

including Grievant, who is approximately 5'6" tall. On one such occasion, Grievant protested Lucas' actions, and he responded, "if you can't take it in here, you're not going to take it in the streets".

8. Lucas also made lewd and sexually suggestive remarks to Grievant. One time he grabbed his crotch and told her to "suck on this". Another time Grievant was looking for an electrical outlet and he told her that there was a "plug up my ass". Grievant did not report Lucas' actions because the Academy was going to last only three months, at which time she believed she and her classmates would be assigned to different barracks. Grievant also feared being branded a troublemaker, like Gloria Danforth.

9. Lucas assisted Grievant in completing one or two training runs at the beginning of their tenure at the Academy, but for the most part Grievant tried to stay out of Lucas' way.

10. Grievant and Lucas graduated from the Academy. Grievant's husband and a male friend from New York, Shawn Murphy, attended the ceremonies.

11. Murphy is a New York State Trooper whom Grievant met while working her way through college. Grievant has never been romantically involved with Murphy. While Grievant was at the Academy, there was a rumor that she had been involved with a New York State Trooper, presumably Murphy, and that his relationship with Grievant had resulted in his being divorced. Lucas heard this rumor while he was at the Academy. Grievant did not hear about this rumor at the time.

12. After graduating from the Academy, Grievant and Lucas were both assigned to the St. Albans barracks. They began their tenure in St. Albans in December, 1991. Both Grievant and Lucas were scheduled to remain on probationary status until July 31, 1992.

13. During all relevant time periods, the Employer's organizational structure from the Commissioner of Public Safety down to the St. Albans barracks was as follows: A. James Walton, Commissioner of Public Safety; Lieutenant Colonel Robert Horton, Director of Vermont State Police; Major James Sinclair, Field Force Commander; Captain James Cronan, Troop Commander/A Troop; Lieutenant Robert White, St. Albans Station Commander; Sergeants George Hacking, Dan Begiebing and Gerald Charboneau, St. Albans Patrol Commanders. The Patrol Commanders supervise the First and Second Class Troopers.

14. Grievant was the third female to be assigned to the St. Albans barracks since approximately 1980. The first female transferred to ~~another~~ barracks. The second female, Betsy Trombly, was still assigned to the St. Albans barracks when Grievant arrived. Trombly was not in the barracks on a regular basis, however, as she was assigned to an outpost on Grand Isle.

15. Grievant and Lucas were assigned to Field Training Officers ("FTO's"). The FTO program lasts approximately ten weeks and provides an opportunity for newly hired Troopers to work with experienced officers. After a certain amount of time, new Troopers work on their own but are "shadowed" by their FTO's. Senior Troopers James Bose and John Underhill were FTO's for

Grievant and Lucas. Trooper James Cruise also instructed Grievant during her FTO program (Grievant's Exhibits 6, 10; State's Exhibit 11).

16. The FTO's kept performance logs detailing the new Trooper's performance. Such logs noted the specific duties performed and Grievant and Lucas' progress in performing such duties (Grievant's Exhibits 6, 10; State's Exhibits 11).

17. When Grievant arrived at the St. Albans barracks, there was a poster in the troop room of a woman in a G-string bikini. A male custodian, Earl Boudreau, took the poster down. He did not think it was appropriate to have such a poster in the troop room with a woman working full time there as a Trooper. Boudreau told the Station Commander that he had taken it down. Grievant had seen the poster, but did not complain. She did not want to be seen as a troublemaker.

18. Grievant and Lucas both successfully completed their FTO programs in mid-February, 1992. Lucas' FTO performance logs note all applicable performance/behavior items as "satisfactory". FTO Underhill gave Grievant a "not satisfactory" under "relationships with peers (other Department members)" during week number two, and Cruise gave Grievant a rating of "not satisfactory" in the areas of "problem-solving and decision-making" and "radio use" during week number seven; Grievant received a "satisfactory" in other applicable categories (Grievant's Exhibits 6, 10; State's Exhibit 11).

19. Grievant and Lucas were expected to perform the duties and responsibilities of uniformed officers after they completed

their respective FTO programs: responding to complaints, investigating traffic violations, conducting investigations, and generally protecting people and property. Grievant and Lucas' supervisors continued to keep performance logs, which for the most part, noted performance problems (Grievant's Exhibits 6, 10; State's Exhibit 11).

20. After Grievant completed her FTO program, Sergeants Hacking and Charboneau initially supervised her. Sergeant Begiebing then became primarily responsible for her supervision because Grievant primarily worked the night shift.

21. In March, 1992, Lucas called a woman who had not returned an overdue video and told her that she would be cited to appear in court if she did not return it. Lucas made this call on behalf of his roommate's parents, who owned a video store. Charboneau spoke to Lucas about his actions and noted in Lucas' performance logs that Lucas' action showed a "problem with judgment". He also noted that he had spoken to Lucas about "personal favors/abuse of authority" (Grievant's Exhibit 7).

22. On or about March 11, 1992, an unidentified person called the Employer to report that a State Police cruiser had gone by her stopped vehicle on the Interstate and had not stopped and offered assistance. The cruiser was identified as Grievant's. This occurred on the day of the Montpelier flood. Grievant had been assigned to work in Montpelier and had been told not to be late.

23. Begiebing brought this complaint to Grievant's attention the next day. Grievant acknowledged that there were

vehicles parked along the side of the road on the way to Montpelier and on the way back. She had called the Colchester barracks when she saw a vehicle on the side of the Interstate while she was enroute to Montpelier. She did not stop because she was told not to be late. She also passed cars on her way back to St. Albans because the weather had turned to nearly white-out conditions due to a snowstorm. Grievant, who was proceeding slowly, had concluded that they were all waiting out the storm. Begiebing told Grievant that she should have stopped and checked with the occupants of each vehicle to make sure they did not need assistance. This incident occurred within a month of Grievant's completion of the FTO program. The incident was noted in Grievant's performance logs (State's Exhibit 11).

24. On or about March 16, 1992, Grievant and Trooper Underhill were dispatched from the St. Albans barracks to assist Troopers William Hayes and Todd Chisholm in the apprehension and arrest of a male suspect in Fairfield, Vermont. Grievant followed Underhill towards Fairfield, and was directed to go to the four corners in Fairfield. At some point, an officer involved in the incident radioed Grievant to go to West Street. The map Grievant had in her cruiser did not have West Street identified on it and Grievant could not follow the directions that were radioed to her. While Grievant was trying to find West Street, she heard on her radio that the suspect had been taken into custody and was being transported back to the barracks, so she went back to the barracks as well. Grievant returned to the barracks before the other officers arrived because she was closer

to St. Albans. She asked the dispatcher to help her find West Street on a wall map when she returned. The incident was noted in Grievant's performance logs (State's Exhibit 11).

25. During the Spring, 1992, at least three officers in the St. Albans barracks heard a rumor that Grievant had an affair with a New York State Trooper and he had gotten divorced and lost his job as a result of this affair. An officer in the Middlesex barracks, who had attended the Academy with Grievant and Lucas, also heard this rumor. Grievant did not become aware of these rumors until Summer, 1992.

26. On or about April 5, 1992, Grievant observed a minivan speeding south on Interstate 89. She stopped the van, which was operated by a man who was accompanied by his wife, child and mother-in-law. The occupants were Asian and very upset. Grievant spoke with the driver, who did not speak fluent English, but made Grievant understand that the child was sick with the croup. He told her he had spoken with a doctor who had directed him to bring the child to Burlington. Grievant has three children and is a certified emergency medical technician. It was obvious to her that the baby was having a hard time breathing, but it did not appear to be a medical emergency. Grievant offered to escort the vehicle. The man did not immediately understand that he was to follow Grievant and left before she could escort him.

27. Grievant finally successfully escorted the vehicle and called the Colchester barracks to have someone meet her on the south side of her patrol area. An officer from the Colchester

barracks met Grievant and put the family in his cruiser and took them to Burlington.

28. Grievant was later criticized by Trooper Albert Stringer because she had not taken the couple to the St. Albans hospital, which was closer than Burlington, and she had not asked permission to escort the couple. Stringer investigated the incident by talking with the dispatcher and calling the Asian couple. On April 11, 1992, Stringer wrote a memorandum to Lieutenant White complaining about Grievant's performance (State's Exhibit 11).

29. On April 11, 1992. Butler stopped a speeding vehicle. The driver was a female, Pamela Gagne. Gagne was sobbing and extremely upset because she had just seen her ex-husband at a bar with another woman. Grievant talked with her for a few minutes and calmed her down. She also did a motor vehicle check. She then offered to follow Gagne home, where she spoke with her again and asked if she could call a friend. Gagne declined the offer and went into the house. Less than a hour later, another officer was called to this same residence because of a domestic dispute. The officer reported that Gagne was intoxicated.

30. At the time that the St. Albans dispatcher notified the St. Albans patrol about the above-referenced domestic dispute, the dispatcher also notified Grievant that there was a citizen complaint that intoxicated females were driving south on I-89. Grievant reversed her direction and followed the car to establish whether there was probable cause for a stop. She observed the

car going approximately 55 - 60 mph and not driving erratically. Based on these observations, she did not stop the vehicle.

31. Stringer wrote a memorandum to White complaining about the Gagne incident and Grievant's failure to stop the vehicle based on a citizen's complaint. Charboneau also wrote a memorandum with respect to these incidents. Such complaints were not brought to Grievant's attention until after she filed a grievance in this matter (State's Exhibit 11).

32. On or about April 18, 1992, Stringer complained that Grievant had returned his cruiser unclean. He also complained that she must have hit something with his cruiser because there was grass on a bent license plate. Grievant explained that she had possibly bent the license plate while pursuing a vehicle in a grassy and rutted area with Trooper Chisholm. During Grievant's employment with the State Police, she was involved in two other motor vehicle accidents with her cruiser. On January 9, 1993, she sideswiped a metal reflector and caused minor damage to her cruiser. On January 24, 1993, while she was in pursuit of a speeding vehicle, she hit a patch of ice on a curve, lost control of her vehicle and went off the road. The cruiser struck an embankment, causing approximately \$1500 damage to the cruiser. Sergeant Begiebing was with her at the time. An investigation was conducted and the investigating officer determined that she was traveling at an excessive speed for the road conditions, but no charges were preferred against her (State's Exhibit 11).

33. On or about May 30, 1992, Lucas caused approximately \$1400 worth of damage to two motor vehicles. During a motor

vehicle stop, he reached inside a truck that was parked on an incline and released the emergency brake. This caused the truck to roll into his cruiser. An investigation was conducted, but no charges were preferred against him. Sergeant Begiebing counseled him about the accident and the accident was noted in his performance log. Over the course of the next 10 months, Lucas was involved in three more accidents with a cruiser. On August 21, 1992, it was discovered that the cruiser he had used for two weeks had a large scratch on the rear bumper. On or about December 5, 1992, he sideswiped a stop sign and scratched a rear fender. He paid for the repairs. On March 13, 1993, he had an accident with a cruiser while assisting in a pursuit; charges were preferred against him for this 1993 incident (Grievant's Exhibits 7, 7A, 9).

34. Sometime during June or July, 1992, while Lucas was still in his probationary period, he was scheduled to start work at 6:00 p.m. Earlier in the day, he consumed alcohol with his date, Rochelle Rose. He then called the barracks before his 6:00 p.m. shift and asked someone to come over to his house and give him an alco-sensor test to determine whether his alcohol consumption was above the legal limit. Grievant agreed to go to Lucas' house with the alco-sensor. Lucas later called in sick because his alcohol level was too high. While Grievant was enroute to Lucas' house, Lucas commented to Rose that Grievant was his "sex slave" or "love slave". The following spring, 1993, a similar incident occurred: Lucas attended a wedding celebration, became intoxicated and called in sick. This

incident was noted in his performance log as "unacceptable behavior" (Grievant's Exhibit 7).

35. On or about June 1, 1992, Begiebing observed or learned that Grievant had used her cruiser to transport her children during her shift. Begiebing told Grievant that such use was not permitted.

36. During all relevant time periods, Grievant observed other officers, including Lieutenant White, occasionally use their vehicles for personal purposes.

37. Officers are required to submit written reports for various incidents they investigate, such as motor vehicle accidents, burglaries, assault investigations, and DWI's. Although there are no written guidelines for submission of written reports, there can be serious consequences for not submitting a report in a timely manner. Such consequences would include the Employer's inability to follow through on alleged statutory violations and a delay in submitting information for insurance claims.

38. Approximately four months into her original probationary period, Grievant had to be reminded several times to complete written reports in a timely and accurate manner. The first note of such problems with Grievant's performance appeared in her performance log during the last week of June, 1992. Grievant's performance logs also noted several times that her writing was clear and easy to follow and that she often worked on her reports after her shift had finished on her own time (Grievant's Exhibit 11; State's Exhibit 11)

39. Lucas had approximately six reports returned to him early in his probationary period. On May 27, 1992, his performance logs noted that he had difficulty with criminal reports and stated "most are too short and lack details". Another report was returned to him on June 26, 1992. On July 1, two more errors were found in Lucas' reports (Grievant's Exhibit 7, 7A).

40. Although Grievant had problems completing written reports in a timely manner throughout her employment, the evidence does not indicate that any of the late reports resulted in harming a member of the public or causing the State Police's reputation to suffer.

41. Begiebing met with Grievant on July 9, 1992, and informed her that he was concerned about certain basic performance issues. His primary concerns were her late reports and a lack of judgment and skills. Begiebing indicated that he was looking for improvement over the next month in these areas (State's Exhibit 11).

42. On July 25, 1992, Grievant's performance log indicated continuing problems with late and incomplete reports. Grievant had 17 reports returned to her because of incomplete information by the end of her original probationary period, July 31, 1992 (State's Exhibit 11).

43. On July 25, 1992, Grievant was dispatched to Richford to respond to a domestic dispute in which it was reported that a male had a rifle. When Grievant arrived on the scene, the male, Dale Peddle, was in a second story window and threatening to

commit suicide. Three relatives were outside the house and hysterical. They said Peddle had discharged the rifle in the house earlier and had three bullets left. After Grievant arrived at the scene, two constables from Richford, Larry Carr and Douglas Billado, also arrived on the scene. Grievant used a portable telephone and successfully talked Peddle out of his house without his rifle. He came out carrying a kitten.

44. Carr later complained to Grievant's supervisors that she had conducted herself improperly. Carr told Sergeant Hacking that Grievant had not taken cover while Peddle was in an upstairs' window with a gun. He also complained that Grievant had left her cruiser running after putting an unrestrained Peddle into it.

45. Grievant had in fact taken cover. She did leave her cruiser running with Peddle sitting unrestrained in the front passenger seat; she was returning the kitten to Peddle's relatives who were standing near the rear of the car. Grievant had no authority to handcuff or restrain Peddle because his relatives did not want to press charges against him. While Grievant was returning the kitten, Peddle reached over and shifted the car out of the "park" position. Billado reached into the car and put the car back into the "park" position". There was a car parked in front of Grievant's cruiser and there were people standing all around the cruiser (Grievant's Exhibits 19, 20).

46. Grievant told the officers on duty what had occurred when she returned to the barracks. No one congratulated her for

successfully averting a suicide. Trooper Bose "snickered" when Grievant relayed what had occurred. Grievant wrote a report on the incident.

47. On the basis of Carr's complaint, Sergeant Hacking criticized Grievant about the situation soon after it occurred. He did not interview Billado, nor did he enter anything into Grievant's performance log with respect to this incident. A few weeks later, Begiebing asked Grievant about the incident. Grievant asked him if he had read her report. He said he had not because he wanted to get her side of the story first. Begiebing did not enter anything into Grievant's performance logs with respect to this incident.

48. On August 8, 1992, a woman came into the barracks complaining about her husband. Her husband telephoned the barracks and spoke with Trooper Hall while she was there. The husband sounded intoxicated over the telephone and Hall told him not to drive to the barracks if he had been drinking. The husband drove to the barracks anyway and Grievant processed his complaint. Such complaint was an allegation that his wife's parents had been sexually abusing his child. It was apparent that the man had been drinking and Grievant gave him an alco-sensor test. The test indicated that he was above the legal limit. Grievant called the man's sister to pick him up at the station. She did not arrest him because she had not seen him driving. Grievant did not know about Hall's earlier conversation with the man in which he had warned him not to drive (Grievant's Exhibit 13; State's Exhibit 11).

49. Grievant asked for Begiebing's assistance during her handling of the above-referenced matter because she initially had trouble reasoning with the man. Begiebing told her she did not have to reason with him - she just needed to take the complaint and investigate it. Begiebing also criticized Grievant's performance because she had not arrested the man for DWI. Begiebing noted in Grievant's performance logs that she continued "to lean towards counseling rather than enforcement". Grievant later failed to follow through on mandatory reporting to a state agency with respect to the husband's allegations of child abuse. She had to be reminded to do so six days later. This was Grievant's first mandatory reporting case (Grievant's Exhibit 13; State's 11).

50. Grievant had taken criminal justice courses in New York and had been taught that taking an aggressive stance can produce aggressive behavior; talking and reasoning is sometimes a better approach and can defuse a potentially explosive situation. She was frequently criticized by Begiebing for "counseling" individuals instead of taking a more aggressive approach. Although Grievant was criticized for not taking an aggressive stance, her supervisors conceded that she never had a prisoner escape on her throughout her tenure with the Employer. She successfully defused potentially explosive situations many times. For example, Grievant often backed up Barbara Beauregard, an emergency medical technician. One time Beauregard responded to a call to pick up an emotionally disturbed young man in Richford. When Grievant arrived on the scene, the young man and his mother

were attacking Beauregard and the mother was threatening to commit suicide. Grievant successfully got the young man into the ambulance and calmed the mother down.

51. Other Troopers have had prisoners escape on them. For example, on August 28, 1992, a prisoner, whom Lucas had left alone in the holding area, escaped from the holding area after breaking a bolt that held him to the wall. Such incident was noted in Lucas' performance logs. Although it was not Lucas' fault that the bolt broke, it is unlikely such incident would have occurred if the prisoner had not been left alone in the holding area. Approximately six weeks later, Lucas left a prisoner alone in the detention room and the prisoner slipped out of his handcuffs and left the detention room; he was apprehended outside of Sergeant Begiebing's office. Begiebing noted in Lucas' performance logs that he needed "better surveillance of custodial arrestees "(Grievant's Exhibit 7).

52. Todd Chisholm is a Senior Trooper and has always been assigned to the St. Albans barracks. He has been a Trooper for approximately five years. Chisholm had followed a woman home and asked her out on a date while he was in uniform during his original probationary period. Shortly after this incident, Chisholm was involved in an incident with the Burlington Police Department in which he was intoxicated. He was suspended for five days for the intoxication incident, and, as a result of both of these incidents, his original probationary period was extended three months.

53. Grievant and Lucas were scheduled to complete their six month probationary period on July 31, 1992. Begiebing met with Grievant and gave her a performance evaluation on September 8, 1992. She was informed that her probationary period was going to be extended for another six months. Lucas was given his performance evaluation on September 9, 1992 and was informed that he had successfully completed his probationary period (Grievant's Exhibit 8; State's Exhibit 9).

54. The performance evaluations used by the Employer contain both numerical ratings to evaluate various categories of performance, called "traits", and narrative summaries to evaluate various categories of performance.

55. Lucas received a total of 296 trait points, which fell within the range of a rating of "3" (i.e., "consistently meets job requirements/standards"). Grievant received a total of 272 trait points, which also fell within the range of "3" (Grievant's Exhibit 8; State's Exhibit 9).

56. Lucas' overall performance evaluation for his probationary period was a "3". White noted that he was extremely pleased with Lucas' "aggressive approach in DWI enforcement" (Grievant's Exhibit 8).

57. Grievant's overall performance evaluation for her probationary period was a "2" (i.e., "inconsistently meets job requirements/standards"). Grievant had received negative feedback on the narrative portion of her evaluation, thus reducing her overall performance to "2". Sergeants Begiebing, Hacking and Charboneau commented, in pertinent part:

...the Supervisors recommend that you become more aware of your surroundings. We would like to see you take a more defensive posture when dealing with the unknown. We hope that time and experience will help you in these situations. We encourage you to become more aggressive with your patrol work but also note that 17 late reports notices are not an acceptable level. We strongly recommend Advanced Trooper School.

The Sergeants also noted:

...We are aware that due to circumstances beyond your control you missed some elements of the indoctrination period [at] the Academy which may have set you back from the rest of your classmates. We, the Raters, strongly feel that you need to develop and maintain a defensive posture when dealing with uncertain/unknown situations. We would also like to see this posture to include a more rigid mindset. We feel that by addressing these key points, along with time, experience and more training that your traits will improve. We have noted that your reports are usually complete and neat and that you do volunteer your own time to completing paperwork (State's Exhibit 9).

58. Lieutenant White and Major Sinclair concurred with the Sergeants' recommendation that Grievant's probationary period be extended another six months (State's Exhibit 9).

59. White met with Grievant on September 29, 1992 and gave her a memorandum, which stated in pertinent part:

...

The extension period is from August 1 until January 31, 1993. During this period, your supervisors will meet with you periodically to review your progress against standards in the VSP Performance Evaluation Manual. It will be your patrol commanders responsibility to meet with you on your scheduled shift for the week or a day that is convenient for both of you to meet. Entries will continue to be entered on your green sheets and reviewed on a weekly basis. If, at the end of the extension, you have met the standards you will complete your probation and become a status employee. Failure to meet standards for completion of original probation will result in your dismissal...

My review of your evaluation indicates that the specific areas in which we are looking for improvement to standard are:

Dependability
Enforcement Tactics - In custody Arrest
Judgement, Decision Making, Common Sense
Relationship

Standards for each of these performance traits are included in the VSP Performance Evaluation Manual. You should also pay close attention to those comments made by your supervisors on your evaluation (State's Exhibit 10).

60. At the hearing, Grievant's supervisors relied on eight specific incidents that occurred in Grievant's original probationary period to justify their extension of her probation. Six incidents are: Grievant's failure to stop on I-89 the day of the Montpelier flood (see Findings No. 22, 23); Grievant's failure to find West Street on March 16, 1992 (see Finding No. 24); Grievant's failure to obtain permission to escort the Asian couple with the sick child to Burlington (see Findings No. 26, 27); the incident with Pamela Gagne on April 11, 1992 (see Findings 29 - 31); Grievant's failure to stop a car based upon a citizen's complaint on April 11, 1992 (see Findings No. 29 - 31); and the Dale Peddle incident on July 25, 1992 (see Findings No. 43 - 47). It is unclear when Grievant became aware that her failure to find West Street and her failure to stop a car based on a citizen's arrest were considered serious performance deficiencies. The incident with Gage was not brought to Grievant's attention until after she filed a grievance in this matter. The other three incidents had been brought to Grievant's attention shortly after their occurrences.

61. Grievant was told during the performance evaluation that she failed to back up officers on February 26 and 28, 1992. She was told that she had not backed up Trooper Underhill on

February 26, because she failed to exit her cruiser after arriving on the scene of an incident Underhill was investigating. The incident was not recorded in Grievant's performance logs. Underhill had written a memorandum to Sergeant Hacking, dated March 27, 1992, about the incident. Grievant had not been questioned about the incident at the time, nor given the opportunity to explain her actions. Grievant was also told that she had failed to back up Sergeant Begiebing on February 28, 1992, because she remained in her car too long. Begiebing had noted this incident in Grievant's performance logs. She had not been questioned about this incident at the time, nor given the opportunity to explain her actions. Grievant generally organized herself before getting out of her vehicle, but was not reluctant to become involved in assisting an officer (State's Exhibit 11).

62. Grievant did not appeal the September 8, 1992, performance evaluation or the extension of her probation.

63. During White's meeting with Grievant on or about September 29, 1992, Grievant explained that she had been under a lot of personal stress. She had moved her husband and three children from New York and was the sole support of her family. White told Grievant about the Employee Assistance Program and said she may wish to speak to a counselor about her personal problems. Grievant later followed up on this offer and requested the name of a counselor.

64. Although White told Grievant that she would receive weekly evaluations from her supervisor, she did not receive such weekly evaluations.

65. The Employer compiles figures for each officer on the total number of incidents in which they are involved. The system it uses to track such figures changed during 1992 from a "VELI" system to a new computer system, called "CAD". CAD was to be fully operational by January, 1993.

66. The information from VELI enabled the department to keep track of each officer's monthly activity by categories. Such categories fell within the general categories of Levels I, II, or III incidents. Level I and II incidents are incidents generally received by a dispatcher and dispatched to an officer. Level I incidents are considered serious felonies, such as homicide, rape, arson, and motor vehicle theft. The FBI also keeps track of Level I incidents. Level II incidents are less serious crimes, such as vandalism, trespass, and DWI. Level III incidents are all other crimes not included in Level I or II (Grievant's Exhibit 16; State's Exhibit 17).

67. Under the VELI system, the officer primarily responsible for the investigation received credit for handling the incident. The Employer does not set quotas for monthly activity in any category. The numerical totals do not provide a basis for knowing how busy an officer is, in that some cases take more time and are more complicated than others. The monthly activity records do not reflect the amount of time an officer has worked or if that officer has worked overtime shifts.

68. Grievant's supervisors contended that she had performed in a less than satisfactory manner in eight incidents during her first six months as a Trooper. During this same period, January

through July 29, 1992, Grievant was given credit and considered the principal officer in 55 Level I serious felonies and 51 Level II less serious crimes (Grievant's Exhibit 16).

69. Lucas was the principal officer in 61 Level I serious felonies and 58 Level II less serious crimes during this same time period (State's Exhibit 17).

70. Sometime during late summer or early fall, 1992, Trooper Chisholm's wife and daughter stopped by the barracks with a birthday balloon. Chisholm told Grievant that it was his birthday and he made a comment to the effect that he was "collecting birthday kisses", or "How about a kiss?" Grievant responded, "Only in your dreams or my nightmares", or words to that effect. Chisholm also made a comment to Grievant that she was three or seven "ax handles wide"; Chisholm made this comment during a conversation in which he was teased about gaining weight and splitting his pants. Grievant did not complain about these comments at the time.

71. Officers stationed at the St. Albans barracks frequently interact with agents and personnel of the U.S. Justice Department Border Patrol stationed in Richford, Vermont. Officers from the St. Albans barracks often stop by the Border Patrol office to talk, use the telephone, catch up on paperwork or reports, or have a cup of coffee. Officers from the St. Albans barracks have been known to spend several hours at the Border Patrol Office. Grievant did not spend more time at the Border Patrol office than other officers from the St. Albans barracks.

72. David Boocock is an Agent with the Border Patrol. He had worked as an officer for the State Police at the St. Albans barracks from 1980 - 1983. Boocock left the State Police in 1983 to take a job with the Border Patrol. Boocock had dated a dispatcher during his tenure at the St. Albans barracks. Problems arose from this relationship and the dispatcher was transferred to Brattleboro. Boocock worked with many of the officers at the St. Albans barracks who are still at the barracks, including White and Charboneau.

73. After the dispatcher was transferred to Brattleboro, there was an incident between Boocock and his supervisors concerning his visiting her. A rumor spread among officers in the St. Albans barracks that Boocock was stopped on the Interstate on his way to Brattleboro and that his gun was taken away. He was not stopped on his way to Brattleboro, but he did observe many Vermont State cruisers on the Interstate during his trip.

74. Boocock and the dispatcher eventually married. They separated in October, 1989 and divorced in January, 1993.

75. Border Patrol Agents and State Police officers often are required to back each other up in carrying out their respective responsibilities. Boocock has backed up various officers in the course of his employment with the Border Patrol, including but not limited to Grievant, Troopers Lucas, Glen Hall, Bose, Chisholm, Stringer, and Hayes.

76. During the summer and fall, 1992, Grievant became friends with Boocock.

77. On or about September 19, 1992, Begiebing was told that Grievant had used her cruiser for personal purposes. He was informed that Grievant had signed off for the shift, but her cruiser was not at her home, where it should have been because she was on call-out status. He was told Grievant then later returned to the St. Albans barracks and had visited with the dispatcher.

78. When confronted about this on September 20, 1992, Grievant told Begiebing that she had not signed off for the night. She had told the dispatcher that she intended to go to Richford and the dispatcher could reach her there. She later had a conversation with the dispatcher from Richford at the Border Patrol Office, where she was talking with Agents Kenneth Crockett and Boocock. She later returned to the barracks and signed off before going home (Grievant's Exhibit 13; State's Exhibit 11).

79. On October 18, 1992, Grievant was dispatched to the U.S. port of entry. Customs officials had detained four young males, ages 19 - 23, including a set of identical twins. The men had returned from a hockey game in Canada and were intoxicated. The twins did not have identification and Grievant could not tell them apart. Grievant interviewed all four men in the waiting room to determine how she could get in touch with someone to come and pick up the passengers and the vehicle. U.S. Customs officials were in the room at the same time. The young men were not cooperative with Grievant. At some point, Grievant left the waiting room to make a telephone call to the twins' mother to arrange for transportation. While Grievant was making the call,

the twins took off on foot towards the Interstate. Grievant had to threaten to "caps stun" them to convince them to return. They then walked in front of Grievant back into the waiting room.

80. The driver of the vehicle was intoxicated and acted belligerently towards Grievant when she said she was going to process him for DWI. He left the building while she was trying to process him. Grievant followed him and tried to calm the man down by placing her left hand on his shoulder as a way of restraining him and making him pay attention. He came back into the building. Grievant then handcuffed him and processed him for DWI. She had to pull his jacket down over his arms in order to restrain him and get the handcuffs on him; after she had him handcuffed, he continued to resist and threw his weight against her. A Customs Inspector helped Grievant get him into her cruiser. Grievant had called the St. Albans barracks for backup assistance at some point during her handling of this incident, but the backup officer, Trooper Trombly, did not respond (State's Exhibit 11).

81. U.S. Senior Immigration Inspector David Behoda was one of the Customs officers present during Grievant's handling of this incident. Behoda told Trooper Underhill sometime during the last week of October that he had not been pleased with Grievant's performance during the above-referenced incident. It is unknown what information Behoda had given Underhill at this time, but Underhill did not question Grievant about the incident.

82. Behoda lives near the port of entry and has invited various officers to come to his house. Grievant always declined Behoda's invitations.

83. The first time Grievant heard any negative feedback about this incident was two months later on December 22, 1992 (State's Exhibit 11).

84. On or about October 19, 1992, Grievant went to Richford at the end of what would be her normal shift, but did not sign off for the night. She went to Richford for the specific purpose of visiting with Agent Boocock. She later returned to the barracks, then signed off for the shift.

85. Begiebing met with Grievant on or about October 20, 1992 and expressed concern about her taking her cruiser to Richford for personal purposes. During this meeting with Begiebing, Grievant told Begiebing about her friendship with Boocock. She explained that she was having personal problems and Boocock gave her moral support. She also indicated to Begiebing that she had taken White's suggestion and was visiting a counselor, Ken Kelley. Begiebing told Grievant that people would look at her the wrong way because she was seeing Boocock. He told her that he did not know Boocock personally, but he had heard that the barracks had put out an alert for him one time and had stopped him on the interstate and taken his gun away. He told her that Boocock was not good for her and made a comment to the effect that her friendship with Boocock was "tarnishing the green and gold". A comment was made at this meeting that working

as a Trooper was like "living in a goldfish bowl" because everything they did was discussed and magnified.

86. Grievant told Begiebing at this October 20, 1992, meeting that she had not been comfortable since she came on the job. She told him about missing time at the Academy, due to her father's illness. She told him that a female student had been "blackballed" by the other officers in the class because of a complaint she had made.

87. Grievant told Begiebing that "one of the guys" had asked her for a kiss. Begiebing did not know if it was a Trooper, a FTO officer or someone at the Academy. He did not ask her who it was. Grievant told him that she had responded to this remark with "not in your wildest dreams" or words to that effect. Grievant also told Begiebing about the "ax handle" comment, but she did not tell him that it was Chisholm that had made the comment. Begiebing did not probe Grievant about any of these comments. She was left with the impression that he was not interested.

88. Sometime after Grievant's meeting with Begiebing, a female dispatcher, Jan Ford, told Grievant that she heard Begiebing discuss Grievant and Boocock's relationship with Chisholm. Grievant felt betrayed by Begiebing. She had thought that her discussion with him had been confidential.

89. Grievant did not discuss her friendship with Boocock in the barracks because she knew that the officers did not like him. She felt that there was a preoccupation in the barracks about her personal life, as well as her relationship with Boocock.

Chisholm and Lucas in particular seemed overly curious about Grievant's personal life. By this time, Grievant had also heard that there was a rumor in the barracks that she had an affair with a New York State Trooper.

90. Lucas dated a woman during the fall, 1992 and kept a seminude picture of her in his desk. On occasion, he would take it out and show it to the officers. Grievant felt uncomfortable when Lucas was showing the picture, but she did not complain to her supervisors. She did not want to be seen as a troublemaker.

91. Grievant went on unscheduled leave due to the death of her mother on October 28, 1992. She had several outstanding reports at the time. White told her not to worry about it and to try and catch up when she returned. Grievant remained on leave until November 9, 1992.

92. Sometime during the Fall, 1992, Trooper Robert Rugg was working with another male officer, Trooper Meslin. There was only one clean coffee mug that morning, which was a U.S. Border Patrol mug. Trooper Meslin jokingly would not give Rugg the mug until he said "please". After Meslin left, Rugg wrote "Who f----- that guy?" on the mug, intending this to be a joke directed towards Meslin. The mug was in the room for a period of time with this inscription on it. The Dispatcher, Jan Ford, saw the mug. Because it was common knowledge that Grievant was dating a Border Patrol agent, Ford believed the comment was directed towards Grievant. She told Grievant about the mug and Grievant also believed that the comment was directed towards her.

93. On or about November 10, 1992, Billy Washington voluntarily came into the barracks with his father after learning that a warrant had been put out for his arrest. Grievant performed a pat-down on Washington. During this pat-down, Grievant bent down in front of him. Other officers left the barracks while Grievant was processing Washington. At no time was Washington unruly or aggressive toward Grievant. Other officers from the St. Albans barracks have had problems with Washington, but Grievant has never felt it necessary to take an aggressive stance towards him and Washington had never displayed any hostility towards Grievant. Begiebing spoke to Grievant about this incident because he had heard that she had not properly protected herself during the pat-down (State's Exhibit 11).

94. The town of Richford has a contract with the State Police whereby the State Police provide law enforcement protection to the town. The town provides an office and a telephone. Calls can also be made from the St. Albans barracks to Richford on a designated line, called the "933" line. White manages the Richford program, which is called the "Richford Cops" program.

95. Officers assigned to the Richford patrol are required to keep an "Activity Report Sheet". Such report itemizes the date, hours worked and the various activities the officer engaged in while on duty. Both Grievant and Lucas were assigned to the Richford patrol during all relevant time periods. Their activity sheets from February, 1992 through October, 1992

indicate that Lucas worked approximately 210 hours and Grievant worked approximately 174 hours on Richford patrol. Lucas reported 72 incidents during this time period and Grievant reported 73 (Grievant's Exhibit 21).

96. A common practice for Troopers assigned to Richford patrol is to sit in the ambulance station in Richford. This location enables them to observe general activity in the town and to also stop traffic violators. It is a highly visible location and citizens often come to the cruiser to request assistance or directions. Such incidents normally would not be included on an activity sheet. Certain times of the year are more active ~~than~~ others.

97. It is also a common practice for some of the officers from the St. Albans barracks to visit with Bruce Dupra, who lives in Richford. Dupra has a law enforcement background and has assisted the Vermont State Police by providing information relative to various criminal complaints. During Grievant's FTO program, Trooper Bose took her to Dupra's house and introduced her to him.

98. Grievant frequently observed Bose's car at Dupra's house. Bose had lunch at Dupra's house four to six times per month. He also watched television, played Nintendo or played with Dupra's dog while in uniform. Dupra assumed that Bose was on break when he came to his house.

99. Bose also frequently stopped by Constable Carr's house in Richford. Carr owns a car repair garage and Grievant frequently observed Bose at the garage. Grievant also observed

Lucas at Carr's home. Both Lucas and Bose have sought information related to criminal activity from Carr and both have visited with Carr on a social basis while on duty.

100. On or about November 11, 1992, at approximately 11:00 p.m. Grievant was on Richford patrol. She was sitting at the ambulance station talking to Boocock, who was off duty at the time. Constable Carr brought a complaint to Boocock from someone at the Pinnacle Peddler, a convenience store, in Richford. The complaint was that a man, believed to be Canadian, had been sitting in his car for a long time in the Pinnacle Peddler's parking lot. Boocock called the Border Patrol Agent who was on duty, Agent Backus. Boocock also went to the Pinnacle Peddler to assist Backus.

101. Grievant decided to also go to the Pinnacle Peddler in the event that she could offer assistance. When she arrived, Boocock and Backus were talking to Randall Trammell. Trammell was sitting in his car in the parking lot. He had been denied entry into Canada and was waiting for his girlfriend to bring him some clothes and money so he could spend the night. His car was running because it was a cold night. Trammell's speech was slurred and he admitted that he had been drinking. Grievant gave him an alco-sensor test which registered .19, above the legal limit.

102. Grievant had the authority to arrest Trammell but she chose not to arrest him. He said he would be spending the night as soon as his girlfriend came from Canada with clothes and money and he did not intend to drive anywhere. Grievant had observed

other officers make these same judgment calls based on similar circumstances during and after her FTO program.

103. Agent Backus left. The owner did not want Trammell sitting in the parking lot, and Trammell was worried about his girlfriend because she was late. Grievant gave him a ride to a local grocery store where he used a public telephone and called her. Boocock moved his car from the parking lot to the grocery store. Trammell told Grievant and Boocock that he had left a message on his girlfriend's answering machine to meet him at the grocery store. He promised not to drive. Grievant left him at the grocery store.

104. Approximately two hours later, Grievant was called to the port of entry because Trammell was there acting intoxicated. Backus was working with Customs Agent Robert Greater. Backus took Trammell's keys. He told Grievant that she was going to have to take responsibility for Trammell and that he did not want him on government property.

105. Grievant took out her handcuffs, twirled them in front of him, and started processing him for DWI. Trammell's girlfriend had arrived by this time. The Immigration office called Grievant and gave Trammell's girlfriend permission to drive. She left in Trammell's car to see if she could get Trammell a room for the night at a local hotel. Grievant performed a breath test on Trammell and took him to the hotel. Trammell's girlfriend met them and said she had gotten a room on the second floor and asked if Trammell could come upstairs quickly and make sure she had everything he needed and to say a

quick good by. Grievant let them both leave while she sat in the cruiser and filled in the DWI form. They returned a short time later before Grievant had finished completing the DWI form.

106. Grievant released Trammell without giving him a citation and told him that the citation would be mailed to him. Grievant took Trammell's girlfriend back to the port of entry, where she had left her car. Trammell was never prosecuted for DWI because the test Grievant had performed at the port of entry turned out to be faulty.

107. Grievant had observed other officers, including Begiebing, not process obviously intoxicated drivers, or drivers who had violated the law. One time while Grievant was working with Begiebing, Begiebing directed Grievant to follow a car that turned into a public garage. The driver was urinating by the side of the garage when they approached. He was swaying and his speech was slurred. Begiebing took a breath test, determined that he was above the legal limit and told him he could not drive. The man promised not to drive and indicated that he could walk to a relative's house which was nearby. Begiebing let him go on this promise. Trooper Bose one time clocked a motorcycle traveling 120 mph. The driver turned at a corner and disappeared and Bose was unable to follow him. Bose later confronted the individual, who admitted he had been speeding. Bose could have issued a citation based upon his observations, but did not because he appreciated the man's honesty.

108. Grievant was assigned to Richford on November 22, 1992. She was parked at the ambulance station and Boocock was parked in

his car next to her. Grievant had seen Bose's cruiser parked at Dupra's house earlier in her shift. While Grievant sat at the ambulance station, she turned her radio down low, but believed that she would still be able to hear any transmissions. At some point, Bose attempted to contact Grievant for back up assistance with an intoxicated driver just outside of Grievant's patrol area. Grievant did not respond because she had not heard the transmission. Bose complained to White that Grievant had not backed him up and that he had seen Grievant sitting in the ambulance station with Boocock before and after he had called for assistance. Bose complained to Begiebing about this on November 29, 1992 and wrote a memorandum about this incident to White nearly a month later, December 20, 1992. Grievant first learned about Bose's complaint on December 22, 1992 (Grievant's Exhibits 13, 14; State's Exhibit 11).

109. On November 23, 1992, Trooper Cruise was attempting to restrain a man he had taken into custody. Grievant was on the telephone in another room. She heard Cruise speaking loudly, which was not unusual. When she got off the telephone, she went to see if Cruise needed help.

110. On November 25, 1992, Trooper Stringer received a call from Grand Isle and asked Grievant to respond to the call. Grievant was ready to respond, when another Trooper offered to go. Stringer believed that Grievant was reluctant to take the call. At the end of her shift that same evening, Grievant called Boocock collect from the barracks. Grievant was not on the 933 line. Stringer thought Grievant was on the 933 line and yelled

at her, "Get the fuck off that phone", "Who the fuck are you talking to?" or words to that effect. Stringer's voice was loud enough for Boocock to hear on the other end of the telephone line. Stringer later complained to White that Grievant had been on the 933 line (Grievant's Exhibit 15; State's Exhibit 11).

111. On one unspecified occasion, Lucas used the telephone in the Richford office for a personal two hour long distance telephone call while he was on Richford patrol. White found out about the call and ordered Lucas to reimburse the town for the money and the time.

112. On or about November 26, 1992, Sergeant Charboneau was reviewing Grievant's paperwork with respect to the incident with Trammell at the Pinnacle Peddler. He wrote a memorandum to Grievant about his concerns and he also spoke to Sergeant Hacking. Charboneau's primary concern was that Grievant had not initially processed Trammell for DWI. Charboneau also spoke to Hacking about the incident. Hacking called Grievant and told her to go over the paperwork with Begiebing before she left at the end of the month for Advanced Troop School. On November 30, 1992, Begiebing noted that there were "shortcomings in paperwork" and that he planned to meet with her (State's Exhibit 11).

113. During late November or early December, 1992, Rochelle Rose told Grievant about the "sex slave" or "love slave" comment Lucas had made about her in June, 1992.

114. Grievant and Lucas both attended Advanced Troop School from November 30 until December 18, 1992.

115. Begiebing had been on leave the last two weeks of November. Upon his return from leave, and while Grievant was attending Advanced Troop School, Troopers Stringer, Cruise and Underhill all complained to him about Grievant's performance. Stringer's complaint included the misinformation that Grievant had used the 933 line to make a personal call.

116. Begiebing reviewed Grievant's Richford Daily Activity Sheets for the month of November, 1992. He determined that she had not been active when on patrol in Richford that month. She had worked six shifts in November and her Activity Report Sheets indicated one DWI, one assist with the Border Patrol, one unfounded child abuse case investigation, and one criminal investigation of a mutual affray. Four Daily Activity Sheets showed no reported activity at all (State's Exhibit 11).

117. Both Grievant and Lucas had on occasion shown no reported activity on their Richford Daily Activity Sheets between February, 1992 and October, 1992. It was unusual to show no activity on four out of six shifts in a month (Grievant's Exhibit 21).

118. Grievant and Lucas were required to complete fictional reports as part of their training at Advanced Troop School. Occasionally the classes were dismissed early and the participants were expected to complete their projects outside of class. Begiebing observed Grievant in her cruiser on December 16, 1992, at a time that he thought she should be in class. He asked her over the radio if she was done and where she was going. He believed that she gave him a "cocky" response. He noted the

incident in her performance logs and noted that she is in "no position to be cocky on the air to [the patrol commander]" (State's Exhibit 11).

119. As of December 18, 1992, Grievant had several outstanding reports to complete. The Employer was attempting to totally convert to the new CAD computer system by January, 1993. Begiebing wrote Grievant a memorandum which stated in pertinent part:

As of 12/18/94 I have noted that you have ten late reports in the tickler file....I know that you have been getting out of [Advanced Troop School] early and have not been addressing your cases with that free time. You also still, as I understand it, have to complete a test associated with [Advanced Troop School] training to complete same...(State's Exhibit 11).

120. On or about December 20, 1992, Bose submitted his written complaint to White regarding Grievant's failure to back him up on November 22, 1992. In such complaint Bose stated that Grievant was sitting in the ambulance station talking with a Border Patrol agent while he was on his way to process the complaint. He previously had identified the agent to Begiebing as Boocock. On December 21, 1992, Trooper Underhill wrote White a memorandum concerning U.S. Immigration Inspector Behoda's complaint regarding Grievant's performance with the twins at the port of entry back in October. Underhill did not provide details of Behoda's complaint, but stated that Behoda "was less than pleased with" Grievant's performance. He suggested that White speak with Behoda. White did not speak with Behoda until a month later, on or about January 22, 1993 (State's Exhibit 11).

121. Grievant successfully completed Advanced Troop School on December 18, 1992, and returned to the barracks on December 22, 1992.

122. White and Begiebing met with Grievant on December 22, 1992. They told her that, based on her performance during the probationary period thus far, they could not recommend that she become a permanent employee at the end of her extended probation, which was to end on January 31, 1993. They expressed concern over her late submission of reports. At that time she had ten reports overdue.

123. White told Grievant that he was concerned about her lack of activity while on Richford patrol. He showed Grievant her Richford Activity Sheets. Grievant was upset and unable to provide an explanation of her patrols in Richford, which had taken place the previous month and prior to her attending Advanced Troop School. They told her she was spending too much time at the Border Patrol Office. White told Grievant that he was going to take her off Richford patrol. Grievant did not object to this.

124. Grievant had not known until this December 22, 1992, meeting with Begiebing and White that there had been complaints about her performance with respect to several of the incidents. Neither Begiebing nor White were witnesses to most of these incidents, including the incident with Trammell at the Pinnacle Peddler.

125. The only witnesses to the Pinnacle Peddler incident were Trammell, Grievant, Border Patrol Agents Boocock and Backus

and Customs Inspector Robert Greater. Neither Backus nor Greater were witnesses to the entire evening of events. Greater was not interviewed until a year later, just prior to the hearing in this matter. Boocock was never interviewed. The evidence does not indicate that Backus was interviewed.

126. At some point during this December 22, 1992, meeting, Boocock's name was mentioned. Begiebing and White voiced concerns over Grievant's relationship with Boocock. They brought up situations that had occurred nearly a decade earlier when Boocock had worked at the St. Albans barracks and had dated a dispatcher in the barracks. White told Grievant that if his daughter dated Boocock he would "kick her in the butt" or words to that effect.

127. White has never passed judgment on, or discussed, a relationship between a male Trooper and a woman.

128. Grievant was upset during this meeting and did not dispute her supervisors' assessment of her performance at that time. She also acknowledged that she had been having problems in her personal life and that she sometimes had a hard time concentrating. She said she had been seeing Ken Kelley, the counselor that Begiebing had recommended. She told Begiebing and White that they could contact him.

129. White told Grievant that he was assigning Begiebing to act as her FTO during the next six weeks.

130. Begiebing then gave Grievant her performance logs and provided her with an opportunity to draft an immediate rebuttal. He did not provide Grievant with radio logs, notes or reports that would have assisted her in drafting such written response.

Her written rebuttal was not totally accurate because she had to rely on her memory at a time when she was extremely upset.

131. Grievant responded in writing to several negative entries in her performance logs: the August 8, 1992 incident with Trooper Hall and Grievant's failure to subsequently follow through on mandatory reporting to a state agency (see Findings No. 48, 49); Grievant's September 19, 1992, trip to Richford before she signed off for her shift (see Finding No. 77); an October 13, 1992 entry in Grievant's performance logs whereby she used the wrong code; the incident on October 29, 1992, in which Stringer complained that she was reluctant to go to Grand Isle and that she was later on the 933 line. Grievant also responded to Bose's complaint that she failed to back him up (see Finding No. 108), but she responded to this incorrectly. In addition, Grievant responded in writing to White and Begiebing's charges that she spent too much time at the Border Patrol office. She stated that she, as well as other St. Albans Troopers, had been given permission to work on paperwork there (Grievant's Exhibit 13; State's Exhibit 11).

132. Begiebing reviewed Grievant's rebuttal. Nothing in her response convinced him that he could recommend that she become a permanent employee. He summarized the December 22, 1992, meeting in a memorandum to White. He stated in such memorandum that he would be primarily focusing on Grievant's late reports (State's Exhibit 11).

133. White and Begiebing suggested that Grievant meet with the Employer's Personnel Administrator, Duncan Higgins.

134. Grievant met with Higgins on December 23, 1992. Higgins explained to Grievant that during the six weeks that she had left to improve her performance, she had three options: she could improve her performance and become a permanent State employee, in which case she would retain all her medical benefits; she could remain and face the possibility of being fired; or she could resign. Higgins told Grievant that, if she resigned, she would be able to retain medical coverage for a certain length of time and she would also leave with a clean record.

135. On or about December 31, 1992, Grievant and Begiebing responded to a call to investigate a breaking and entering. During the investigation, Grievant left the cruiser running outside with the door unlocked. Begiebing criticized Grievant for this and also noted it in her performance logs.

136. On an unspecified occasion while Grievant was working with Begiebing after December 22, 1992, Begiebing noticed that Lucas had left his unattended cruiser running outside the barracks. Sergeant Begiebing got into the cruiser and drove it to the side of the building in order to teach Lucas a lesson. Such incident did not become part of Lucas' performance logs.

137. Grievant's personal life continued to be of expressed interest to the male officers. In early January, 1993, Grievant called in sick. Ford took the call and relayed this information to Hacking and Begiebing. Begiebing's response was "Boo hoo, my marriage is in trouble", or words to that effect. Ford, who was a friend of Grievant's, told them that their comments were not

very nice. Hacking later apologized to her and said they did not intend to be mean.

138. Sergeant Charboneau asked Ford whether Grievant was going to leave her husband. Ford told him she did not know, and if he wanted to know, he should ask Grievant himself. Charboneau never asked Ford about the personal lives of male Troopers.

139. Grievant attempted to catch up on her late reports and spent most of the time she was in the office working on such reports. She continued to submit incomplete reports and received criticism for such in her performance logs. Begiebing was also critical of her investigations and investigative reporting. Begiebing noted in Grievant's performance log on January 10, 1993, that she had no 1992 cases pending and was totally in the new CAD computer system (State's Exhibit 11)

140. Grievant did not find the atmosphere in the troop room hospitable or comfortable to work in. She especially felt hostility from Lucas, and had since their days at the Academy. She also believed that Bose, Chisholm and Stringer went out of their way to yell at her or to criticize her performance.

141. During January, 1993, there were meetings and conversations between White and Boocock's supervisors. During such meetings Grievant and Boocock's relationship was discussed. A year later, in January, 1994, Boocock went through a periodic security clearance by the federal Office of Personnel Management. Boocock had been through such a clearance in 1988, but this security clearance was much more extensive than the one in 1988. Boocock was interviewed for over six hours, during which time he

was questioned about the incident on the interstate in the early 1980's which had been the subject of much discussion in the St. Albans barracks. Boocock had not been questioned about this incident in 1988. His relationship with Grievant and the incident at the Pinnacle Peddler were also mentioned at this interview by the investigator.

142. White contacted Ken Kelley on January 19, 1993. Kelley told him that he thought Grievant was making progress. Kelley recommended that Grievant have a three to six month extension of her probation. White later relayed this information to Walton (State's Exhibit 11).

143. Grievant consulted with VSEA's legal counsel, Jonathan Sokolow. On or about January 20, 1993, Sokolow wrote a letter to the Employer's Legal counsel, James Crucitti. Such letter stated in pertinent part:

I am troubled by indications that the Department's handling of Trooper Butler's situation may be motivated by non-legitimate concerns. As you may imagine, any adverse action taken with respect to Trooper Butler which results from concerns related to her sex life or her personal life will be resisted vigorously by this office (Grievant's Exhibit 5).

144. Sometime prior to January 22, 1993, White reviewed Grievant's rebuttal, written on December 22, 1992. He compared her response to radio logs and Richford Activity Reports. He determined that Grievant's response to Bose's allegation did not conform to the written documentation. He requested that Grievant provide further explanation and support such explanation with documentation (State's Exhibit 11).

145. Begiebing spoke with U.S. Customs Inspector Behoda on or about January 22, 1993 regarding the specifics of his complaint with respect to Grievant's performance concerning the October 18, 1992, incident at the U.S. port of entry involving the detaining of four young men, including the identical twins. Begiebing wrote a memorandum to Lieutenant White regarding this conversation. Such memorandum stated that Behoda observed that after Grievant arrived on the scene, she did not give the driver a sobriety test. He reported that the driver was very belligerent and Grievant seemed more concerned about calming him down than he thought she should have been. He said she rubbed the subject's back and neck and told him to relax. Although Behoda did not observe this directly, he told White that he had heard that Grievant took both intoxicated individuals outside where they ran on her and she had to threaten to "caps stun" them. Behoda also complained that when Grievant left with the intoxicated driver, she left one of the intoxicated twins at the Customs' office. The issue that was given the most emphasis by Behoda was Grievant's rubbing the man's back and neck in order to get him to relax (State' Exhibit 11).

146. Grievant responded to White's memorandum on January 24, 1993, and explained that she had initially responded to the allegations made against her at a time when she was under "extreme duress" and had responded without the benefit of reviewing pertinent logs. She stated that she would be submitting a revised rebuttal (State's Exhibit 11).

147. Grievant wrote a revised rebuttal of all the charges made against her. Such response was dated January 25, 1993. Grievant gave this response to Commissioner Walton on or about February 1, 1993. White did not see this rebuttal until July, 1993 (Grievant's Exhibit 13).

148. Grievant's performance evaluation for her extended probationary period, from August 1, 1992 to January 31, 1993, was completed by her immediate supervisors - Begiebing, Hacking and Charboneau - on or about January 20, 1993. Grievant received 252 trait points which fell within an overall rating of "2", "inconsistently meets job requirements/standards". The Sergeants recommended dismissal, stating that Grievant had failed to meet their expectations of performance in judgment, dependability, common sense, in-custody enforcement tactics, relationships, policies and procedures, and decision making. They set forth numerous incidents in which Grievant's performance fell short of satisfactory performance. White concurred with their recommendation and also provided a separate narrative explanation of his decision. White stated in pertinent part:

...

In making this decision and the recommendation of dismissal I took into account the apparent lack of motivation on your part in making a continuous effort to improve upon work ethics. Your late report problem went from 17 late reports during the initial original probationary period to 36 late report notices being given during the extended original probationary period. As noted by your immediate supervisors you did not take the initiative to catchup on paperwork when free duty time was available to you. Your failure to due [sic] aggressive proactive work while assigned to the Richford Cops patrol during the month of November again showed a lack of motivation on your part. This coupled with your failure to take the appropriate action on a number of

cases...and the officer safety issues, leaves me with no other choice then to recommend that you be dismissed at the end of this extended original probationary period (State's Exhibit 7).

149. On or about January 24, 1993, Grievant met with Begiebing and raised various issues with respect to her work environment, including: the border Patrol mug with "Who f----- that guy" on it; a comment she had heard through Boocock that Bose would do anything to get rid of her and that Bose and Carr looked for ways to get her in trouble; her feelings of being ostracized at the Academy; and information she had received through the dispatcher that Troopers made comments about her behind her back. She complained that she was being harshly judged about her performance with Trammell at the Pinnacle Peddler and did not understand why she was being questioned about this incident when she knew at one time Bose had been made a similar decision not to process a person for DWI. Begiebing thought Grievant was trying to "build a case" and left a note for Lieutenant White about this meeting so he would not be "blindsided" at a scheduled meeting with the central office command staff (State's Exhibit 11).

150. During the week preceding January 25, 1993, Commissioner Walton learned from Lieutenant Colonel Horton that it was the consensus of the St. Albans' command staff (i.e., Lieutenant White and Sergeants Begiebing, Charboneau and Hacking) that they were not going to recommend that Grievant become a permanent employee.

151. On or about January 25, 1993, Walton met with White and Major Sinclair and Captain Cronan. They discussed Grievant's performance evaluation. Walton, in consultation with his central office command staff, concurred with the recommendation to dismiss Grievant. Walton wrote Grievant a Loudermill letter on January 25, 1993, notifying her that he was contemplating her dismissal. Such letter provided Grievant an opportunity to meet with him to respond to the charges made against her.

152. White met with Grievant on January 27, 1993, and gave her the performance evaluation which had been prepared and signed by her supervisors, as well as Captain Cronan and Major Sinclair. He hand delivered Walton's letter to Grievant and placed her on administrative leave until a final decision was made with respect to her employment status. Grievant was directed to discontinue acting in any official capacity for the Employer and to turn in her badge and firearm (State's Exhibits 5, 6, 7).

153. Grievant and Sokolow met with Walton, Horton and Crucitti on February 1, 1993. At such meeting, Grievant submitted the revised rebuttal letter she had written on January 25, 1993. Grievant told Walton about the personal problems that she had had since the beginning of her employment. She also stated that she felt she could be a good State Trooper and wanted the opportunity to succeed. She said she had been receiving help from Ken Kelley, who was helping her deal with personal problems and thought that she was making progress. Grievant gave Walton permission to call Kelley, as she had given White and Begiebing such permission in December.

154. Grievant provided Walton with examples of incidents in which she felt she had been sexually harassed by other officers. She told him about the "ax handle" comment, the comment about her buttocks, and about the inscription on the Border Patrol mug. She also said that there had been a preoccupation about her personal life among the male officers of the barracks. She felt that her performance had been tainted because she was female. She wanted an opportunity to complete her probation. Walton agreed to investigate Grievant's charges of sexual harassment.

155. Walton met with the St. Albans command staff on February 4, 1993. He explored the allegations of sexual harassment that Grievant had raised during his meeting with her and Sokolow. Walton said he hoped to keep Grievant because she is a woman and he wanted to give her another chance. He explored the possibility of Grievant staying in the St. Albans barracks. The St. Albans command staff was of the opinion that there was no chance of Grievant succeeding in the St. Albans barracks; Troop Commander Captain Cronan did not want Grievant in the St. Albans barracks. They had seen nothing in the last six months that indicated her performance was improving. They did not recommend that she become a permanent employee or that her probation be extended. Walton asked White to investigate Grievant's allegations of sexual harassment.

156. White spoke with Ford when he returned to the barracks that day. She told him she had seen the Border Patrol mug and she also had heard officers discussing Grievant's personal life. She denied telling Grievant that she had heard officers rating her body, an allegation that Grievant had also made to Walton.

White sent his findings by fax to Walton because he knew he was meeting with Grievant that same day.

157. Grievant and Sokolow met again with Walton and Horton on February 4, 1992. Walton told Grievant that he had met with Begiebing and White and they did not want her back in the St. Albans barracks. Walton told Grievant that he had no alternative but to dismiss her.

158. Grievant told Walton that she had worked hard to get as far as she had and asked if there was anything else he could do. Walton said that he would look around and see if another barracks would consider taking her, but he was not optimistic. He said that he could order a barracks to take her, but that he was not going to do that.

159. Walton then put word out to all the barracks to see if any were willing to consider allowing Grievant to transfer there. The Middlebury barracks expressed interest in having Grievant transfer there. Such a transfer would not be immediately available, as another personnel change would take place first. A Trooper would be promoted to the position of Patrol Commander, then Grievant could fill the vacancy left by the Trooper.

160. Walton was pleased that Middlebury had come forward. He thought that particular barracks could provide a good opportunity for Grievant to succeed because it had assimilated women into the barracks. The Troop Commander of the Middlebury barracks, Craig Iverson, had been instrumental in recruiting women. In addition, Walton thought Station Commander Dean George was a progressive manager.

161. Sokolow and Walton were in communication between February 2 and February 24, 1992. Walton told Sokolow about the possibility of Middlebury as a placement for Grievant. Sokolow said he would ask Grievant.

162. Grievant discussed the possibility of working in Middlebury with her family. She was renting an apartment in St. Albans at the time and still owned a trailer in New York. Her estranged husband was living in the apartment with her, but they were in the process of obtaining a divorce. Her children at that time were approximately 15, 13 and 9.

163. Grievant's children did not want to move. The older children discussed the possibility of ~~staying~~ in St. Albans with their father if Grievant moved. Grievant met with the attorney that was handling her divorce. The attorney told her that if the older children expressed a desire to live with their father, the court may award him custody. Grievant decided that she could not consider a transfer to Middlebury, both for personal and economic reasons.

164. Grievant and Sokolow met with Walton on February 24, 1993. Grievant told Walton that she could not consider a move to Middlebury because of her pending divorce, custodial issues, and finances. She made it clear to Walton that she could not go to Middlebury. Walton stated that he was sorry she had made that decision because he was going to order her transfer to Middlebury. They discussed the possibility of Grievant temporarily working at the Williston barracks, and Grievant understood from this meeting that her probation had been

extended. Walton told Grievant not to tell anyone in the Williston barracks that she was going to refuse the transfer to Middlebury.

165. Walton consulted with Horton about the possibility of providing moving money for Grievant. Walton told Sokolow that money would be available to help Grievant move her trailer from New York.

166. On February 22, 1993, Walton notified Grievant that he was extending her probation for seven months from January 31, 1993. The letter also stated in pertinent part:

You will serve a six (6) month extension of original probation at the Middlebury State Police barracks undergoing a field officer training (FTO) program at the barracks which will be structured by the Station Commander as per Rules and Regulations.

You are to report to the Williston barracks on Friday, February 26, 1993, at 0800 hours to begin the first phase of your field officer training program...The second phase of your probationary program will require you to report for permanent assignment to the Middlebury barracks on March 26, 1993...(State's Exhibit 4).

167. Grievant reported to the Williston barracks.

168. At some point after this February meeting, Higgins was assigned to conduct an investigation into the sexual harassment charges that Grievant had raised.

169. Grievant was assigned to Senior Trooper Fred Cornell, who acted as Grievant's FTO at the Williston barracks. Cornell was told that Grievant would be working with him until he was advised otherwise.

170. Grievant's overall performance at the Williston barracks was satisfactory. Cornell noted several examples of

good performance: she showed "good rapport" with kids and the public, her uniform looked good, she kept herself busy while at the office and did not waste time, and she avoided an accident by practicing good defensive driving. He also noted that she "got along with other area department personnel easily" (Grievant's Exhibit 2).

171. Grievant's performance logs during her initial days in Williston noted problems in the processing of paperwork. Cornell showed her a method of keeping track of paperwork that involved an accounting book. For the first time since she had become a Trooper, Grievant did not feel overwhelmed by paperwork.

172. On March 22, 1993, Sokolow sent Higgins a letter outlining Grievant's charges with respect to her allegations of sexual harassment. Such letter highlighted the following: 1) the rumor about Grievant's alleged affair with a New York State Trooper; 2) the barrack's general preoccupation with Grievant's relationship with Boocock; 3) Begiebing's discussion with Chisholm about Grievant's personal life; 4) Hacking's comments about Grievant's personal life; 5) the coffee mug inscription; 6) Chisholm's "ax handle" comment; 7) Lucas' sexually offensive remarks and conduct at the Academy and in St. Albans (Grievant's Exhibit 5).

173. Cornell's entry in Grievant's performance logs indicated that she met with Higgins on March 23, 1993. Cornell also learned on or about March 22 or 23, 1993 that Grievant would not be staying in Williston.

174. On March 22, 1993, Cornell gave Grievant a quick lesson in operating a snowmobile and together they traveled on snowmobiles in order to interview some individuals who were camped in a lean-to off the main road. Cornell noted that Grievant obtained all the information, but she later got her snowmachine stuck and yelled "in a whining voice". On March 23, 1993, Cornell noted in Grievant's performance logs that she had a conversation with a man in "a confrontational voice which seemed to irritate the male more" (Grievant's Exhibit 2).

175. Grievant learned while she was working at the Williston barracks that an officer from that barracks wanted to transfer to St. Albans. Grievant offered to Walton that she be allowed to stay in Williston to take this officer's place. Walton told her that the Troop Commander, Captain Cronan, did not want her at the Williston barracks.

176. Grievant did not report to Middlebury on March 28, 1992. On April 1, 1993, Walton sent her a Loudermill letter which informed her that he was contemplating her dismissal because she failed to report to the Middlebury barracks, coupled with her failure to meet the performance standards required of a Vermont State Trooper (State's Exhibit 2).

177. Walton terminated Grievant effective April 12, 1993, by letter of the same date. The letter stated in pertinent part as follows:

After due consideration of the information available to me, I have decided to terminate your employment with the Department of Public Safety as a Vermont State Trooper.

I have reviewed the reasons for your dismissal as enumerated in my April 1, 1993, letter to you and find that your performance does not meet the standards required of a Vermont State Trooper and you have failed to report to Middlebury per my orders. We have met with both yourself and your attorney in order to discuss pertinent issues regarding the second extension of original probation and transfer to the Middlebury Barracks. Your failure to report to Middlebury precluded this plan.

Therefore I have determined that you will be terminated as of April 12, 1993. The period March 28, 1993 to April 12, 1993, has been in an off payroll status as you failed to report to the Middlebury Barracks per my orders. Please contact Mr. Duncan A. Higgins or our personnel office to determine the effect of this action on our employee benefits.

...
(State's Exhibit 1).

178. At the hearing, the Employer relied on fourteen example of incidents in which Grievant's performance was less than satisfactory during her original and extended probation period. Such incidents were relied upon to demonstrate Grievant's lack of judgment and decision making and her lack of using proper safety techniques. The first eight are referred to in Findings No. 60 and 61. The remaining six incidents are: the incident with the twins on the border (see Findings No. 79-80); Grievant's taking her cruiser to Richford on October 19, 1992 (see Finding No. 84); the incident with Billy Washington on November 10, 1992 (see Finding No. 93); the November 11, 1992 incident at the Pinnacle Peddler (see Finding No. 100 - 106); Grievant's failure to back up Bose on November 22, 1992 (see Finding No. 108); and Grievant's failure to back up Cruise on November 23, 1992 (see Finding No. 109). Grievant's supervisors

considered the incident at the Pinnacle Peddler the most serious incident.

179. Grievant was the principal officer in 122 Level I serious felonies and 103 Level II less serious crimes between January, 1992 and January, 1993 (Grievant's Exhibit 16).

180. At some point, Higgins completed his investigation of Grievant's sexual harassment charge. He interviewed Grievant, officers in the St. Albans barracks, officers who attended the Academy with Grievant, the St. Albans dispatcher, Carr and Billado. He concluded that there was insufficient evidence to support Grievant's charge.

181. Grievant received a copy of the Employer's sexual harassment policy when she attended a sexual harassment workshop during the Summer, 1992. Such sexual harassment policy provided in pertinent part as follows:

...

Sexual Harassment

1.0 PURPOSE

- 1.1 To establish Department policy, resolution and reporting procedures concerning instances of sexual harassment or discrimination.
- 1.2 As a public agency, to provide a businesslike and professional work environment at all times.
- 1.3 To negate any adverse affect caused by sexual harassment on morale, motivation, and job performance.
- 1.4 To encourage discussion of sexual harassment by all employees of the Department by encouraging resolution and correction of misunderstanding and unintentional harassment at the lowest appropriate supervisory levels.
- 1.4 To ensure compliance with the Vermont Fair Employment

Practices Act of Title 21 Vermont Statutes Annotated by ensuring that all decisions regarding aspects of employment or working conditions, such as promotions, transfers, assignments, etc., are made without regard to the employee's gender.

- 1.5 To implement paragraph 3 of Article V of the Agreement between the State of Vermont and the Vermont State Employees Association regarding the employers' duty to inform employees of their obligation not to discriminate, intimidate, or harass other employees.

2.0 POLICY

- 2.1 It is the intention of the Department to provide an environment free from sexual harassment. All employees should enjoy a working environment free from all discrimination including sexual harassment. An employee's work performance or interaction with both peers and supervisors should not be affected by the gender of the employee. No employee shall be subject to ~~unsolicited or~~ unwelcome sexual overtones or conduct, either verbal, nonverbal or physical. Sexual harassment will be treated like any other form of substandard job performance or improper conduct and will be neither tolerated nor permitted. Where appropriate, corrective and/or disciplinary action will be taken.
- 2.2 Employees within the Department have a right to an atmosphere free from sexual harassment by a member of the same or opposite sex. Some behavior which is appropriate in a social setting may not be appropriate in the workplace. In whatever form it takes, verbal, nonverbal, or physical, sexual harassment can be insulting and demeaning and cannot be tolerated within the Department. When sexual harassment occurs, the victims are directly and severely affected. Not only must they perform the same duties that tax the skill and stamina of all members of the department, victims of sexual harassment are further drained of energy in that they must direct additional time and energy to overcoming the obstacles of sexual harassment.
- 2.3 This harassment causes personal pain, anger, and confusion and creates needless obstacles to the effective performance of a member's duties. Sexual harassment is a form of discrimination that undermines the integrity of the Department, results in loss of morale, polarization of the members, and destruction of the esprit de corps. Thus, beyond the immediate victim, the entire department suffers the ramifications of sexual harassment.

3.0 PROCEDURE

3.1 No member shall sexually harass another employee of the Department.

3.2 Sexual harassment is defined by the Equal Opportunity Commission as a violation of Title 7 of the Civil Rights Act of 1964 as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.
- (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual, or
- (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

3.3 Sexual harassment does not refer to behavior or occasional compliments of a socially acceptable nature. It refers to behavior that is not welcome, that is personally offensive, and that fails to respect the rights of others.

3.4 Sexual harassment may include deliberate or repeated behavior of a sexual nature which is unwelcome, not asked for, and not returned. Behavior constituting sexual harassment may be verbal, nonverbal, or physical.

...

3.6 Employee Assistance Coordinator

- (1) The Director shall appoint a member as an employee assistance coordinator.
- (2) The employee assistance coordinator shall, through training, review of pertinent literature, etc., become familiar with the issues surrounding sexual harassment.
- (3) The employee assistance coordinator shall be available to any Department employee who may wish to discuss concerns and problems regarding sexual harassment. The coordinator shall assist that

member in resolving problems of sexual harassment and shall make known to that member all avenues of relief from harassment.

- (4) Notwithstanding Section III, Article III, Section 1.1, communications made to the employee assistance coordinator regarding complaints of sexual harassment shall, at the request of the employee, be kept confidential.
- (5) The employee assistance coordinator shall periodically survey employees of the Department in order to determine whether sexual harassment is occurring, and if so what forms of sexual harassment have occurred. The coordinator shall also make recommendations to the command staff through the Director of Training for periodic and appropriate sexual harassment training.

...

3.7 Reporting Procedure

- (1) If an employee believes he or she has been sexually harassed, he/she shall immediately report the harassment to his/her immediate supervisor. If the complaint involves an immediate supervisor, the complaint shall be made directly to that individual's supervisor. If for any reason an employee feels uncomfortable filing a complaint through the chain of command, a complaint may be made directly to the Department's Personnel Officer, the Employee Assistance Coordinator, the Commissioner, or any member of the Employee Relations Staff, Department of Personnel.
- (2) All complaints shall be timely investigated and shall remain confidential.

3.8 Responsibilities of Supervisors

- (1) Supervisors are responsible for providing a work place free from sexual harassment; shall ensure that all employees whom they supervise are familiar with the contents of this policy and shall ensure that employees do not commit acts of sexual harassment. Any supervisor who does not deal with sexual harassment complaints consistent with the terms of this policy shall be subject to disciplinary action.
- (2) If a supervisor becomes aware of a situation that may involve sexual harassment, whether or not a

complaint has been filed, a supervisor shall take appropriate steps, including separate counseling with both the offender and the victim to discuss the ramifications of sexual harassment and ensure that if the conduct is inappropriate that it does not continue.

...
(Board Exhibit 1)

OPINION

Grievant contends in both grievances, Docket No. 93-17 and Docket No. 93-32, that she was discriminated against on account of her sex in violation of 3 V.S.A. §1001, 3 V.S.A. §312(b)(5), Article 5 of the Contract and Section 3.03 of the Rules and Regulations for Personnel Administration.

Section 3.03 of the Rules and Regulations for Personnel Administration states that "discrimination against any person in connection with . . . promotion, retention . . . because of . . . any . . . non-merit factor . . . is prohibited", and further provides that "any employee not a member of a bargaining unit who feels adversely affected in [her] status as an employee or in [her] conditions of employment shall have the right to appeal to the Vermont Labor Relations Board under 3 V.S.A. §1001." 3 V.S.A. §1001 provides that "classified employees in their initial probationary period and any extension or extensions thereof may appeal to the [Board] if they believe themselves discriminated against on account of their . . . sex". 3 V.S.A. §312(b)(5) assures fair treatment of employees "without regard to . . . sex". Article 5 of the Contract provides that the State "shall not discriminate against . . . any employee because of . . . sex".

Grievant also contends in Docket No. 93-17 that the Employer's actions constituted a discriminatory application of the rules and regulations governing members of the State Police. In Docket No. 93-32, Grievant contends that the Employer violated Article 14 of the Contract in that there was no just cause for her dismissal. In sum, Grievant contends that the Employer

engaged in sex discrimination in giving her an unsatisfactory performance evaluation, transferring her to Middlebury and dismissing her; Grievant further alleges that her dismissal was without just cause.

Before addressing the merits, we need to briefly discuss a jurisdictional issue raised by the Employer in its Answer in Docket No. 93-17. The Employer contended that the contract violations and violations of the Rules and Regulations alleged by Grievant, with respect to her unsatisfactory performance evaluation and transfer to Middlebury, were untimely raised because Grievant had failed to follow the contractually mandated grievance procedure. The Employer did not discuss this issue in the post-hearing brief, and it is unclear to us whether the Employer is pursuing this issue.

In any event, Grievant clearly has the right to bring her sex discrimination claim concerning her unsatisfactory performance evaluation directly to the Board pursuant to 3 V.S.A. §1001, and 20 V.S.A. §1921 provides that alleged discriminatory transfers "shall be grievable directly to the . . . (Board)". The violations of the Contract and the Rules and Regulations alleged by Grievant add nothing of substance to Grievant's claims of sex discrimination which can be brought directly to the Board. Under these circumstances, the Employer's contention that Grievant raised claims in an untimely manner by failing to follow the contractually mandated grievance procedures is not significant, and we reject it.

In addressing the merits, we treat together Grievant's claims of sex discrimination in Docket No. 93-17 and Docket No. 93-32. The focus of Grievant's sex discrimination claim is twofold, sexual harassment and disparate treatment. Specifically, Grievant contends that she was disparately treated on account of her sex when: 1) she received an adverse performance evaluation on January 27, 1993; 2) she was later transferred to another duty station; and 3) she was dismissed on April 12, 1993. Grievant also contends that, throughout her employment, she was subjected to a general atmosphere of sexual references and joking and sexually offensive comments. Grievant's claim of a hostile and offensive work environment is inextricably intertwined with her claim of disparate treatment. Thus, these claims will be discussed together.

In disparate treatment claims, we have previously adopted the analysis developed by the United States Supreme Court in determining whether an employee was discriminated against on account of gender. Grievance of Kirby, 16 VLRB 158 (1993). Grievance of Lowell, 15 VLRB 291 (1992). The central focus of inquiry in a disparate treatment case is always whether the employer is treating "some people less favorably than others because of their...sex". Furnco Construction Corp. v. Waters, 438 U.S. 567, 577 (1978).

The United States Supreme Court articulated the burdens of proof in disparate treatment cases, distinguishing between the burden of proof in a "mixed motive" case and a "pretext" case involving alleged sex discrimination. Price Waterhouse v.

Hopkins, 490 U.S. 228 (1989). Grievant contends that this is a "pretext" case. In the event that we do not conclude discrimination exists in applying the "pretext" analysis, Grievant alleges alternatively that this is a "mixed motive" case. Given our ultimate conclusion herein, it is unnecessary to reach Grievant's alternative "mixed motive" argument.

Grievant contends that the legitimate business reasons offered by the Employer for its actions are just a pretext for the real reason of sex discrimination. The issue in pretext cases is whether illegal or legal motives, but not both, were the true motives behind the decision. Id. In pretext cases, the analysis used is that which is set forth in Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981). Grievance of Dav, 16 VLRB 312, 338-339 (1993).

The complainant carries the initial burden of establishing by a preponderance of the evidence a prima facie case of discrimination. Burdine, supra. If the complainant succeeds in proving the prima facie case, the burden shifts to the employer to articulate some legitimate, non-discriminatory reason for the adverse action against the employee. Id. Should the employer carry this burden, the employee must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the employer were not its true reasons, but were a pretext for discrimination. Id. The ultimate burden of persuading the trier of fact that the employer intentionally discriminated against the employee remains at all times with the employee. Id.

Thus, we first determine whether Grievant has established a prima facie case of discrimination based on gender. The burden of establishing a prima facie case of disparate treatment is not onerous. Burdine, 450 U.S. at 253. Kirby 16 VLRB at 184. Lowell, 15 VLRB at 335. The complainant must prove by a preponderance of the evidence that she was subject to an adverse employment action under circumstances which gave rise to an inference of discrimination. Id. The Burdine court stated:

As the Court explained in Furnco Construction Corp. v. Waters, 438 U.S. 567, 577 (1978), the prima facie case "raises an inference of discrimination only because we presume these acts, if otherwise unexplained, are more likely than not based on the consideration of impermissible factors." Establishment of the prima facie case in effect creates a presumption that the employer unlawfully discriminated against the employee. If the trier of fact believes the plaintiff's evidence, and if the employer is silent in face of the presumption, the court must enter judgment for the plaintiff because no issue of fact remains in the case. Id. at 254.

In properly placing into context the adverse actions which were taken against Grievant, it is necessary to consider Grievant's entire work history to determine whether an inference of discriminatory motive sufficient to support a prima facie case has been established. This means that we will consider incidents occurring during Grievant's academy training and initial probationary period. We do this even though Grievant did not formally grieve actions of the Employer until after she had not successfully completed the extension of her probationary period. It is necessary to do this to adequately understand whether the adverse actions ultimately taken against her arose under circumstances giving rise to an inference of discrimination. In

addition, the Employer relied on incidents throughout Grievant's tenure, including her initial probationary period, to demonstrate Grievant's unsatisfactory performance.

Grievant's unsuccessful completion of extended probation, transfer and dismissal cannot be examined in a vacuum; we can analyze this case adequately only by examining the environment in which Grievant operated from the time she commenced employment. As the Third Circuit Court of Appeals aptly noted: "A play cannot be understood on the basis of some of its scenes but only on its entire performance, and similarly, a discrimination analysis must concentrate not on individual incidents, but on the overall scenario." Andrews v. City of Philadelphia, 895 F.2d 1469, 1484 (1990).

Grievant contends that she was subjected to a hostile work environment throughout her employment with the State Police which was sufficient to adversely affect her work performance, and result in her evaluation, transfer and dismissal being the product of sex discrimination. At this stage of the analysis, we examine the environment in which Grievant worked to determine whether it rose to the level of being a hostile environment sufficient to support an inference of discrimination against her.

A hostile work environment exists when conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment. Meritor Savings Bank FSB v. Vinson, 477 U.S. 57, 65-67 (1986). Carrero v. New York City Housing Authority, 890 F.2d 569, 577 (2nd Cir. 1989). Hall

v. Gus Construction Co., 842 F.2d 1010, 1013 (1988). This occurs "when the workplace is permeated with discriminatory intimidation, ridicule, and insult" that "is sufficiently severe or pervasive to alter the conditions of the victim's employment". Harris v. Forklift Systems, Inc., 114 S.Ct. 367, 370 (1993). Allen v. Dept. of Employment and Training, 159 Vt. 286, 289-290 (1992).

This standard requires an objectively hostile or abusive environment - one that a reasonable person would find hostile or abusive - as well as the victim's subjective perception that the environment is abusive. Harris, 114 S.Ct. at 370. The determination whether an environment is "hostile" or "abusive" can be made only by looking at all the circumstances. Id. at 371. "These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." Id.

The predicate acts underlying a sexual harassment claim need not take the form of sexual advances or of other incidents of clearly sexual overtones to be actionable. Andrews v. City of Philadelphia, 895 F.2d 1469, 1485 (3rd Cir. 1990). Hall, 842 F.2d at 1014. McKinney v. Dole, 765 F.2d 1129, 1138-39. Any harassment of an employee that would not have occurred but for the sex of the employee may, if sufficiently patterned or pervasive, constitute actionable sexual harassment. McKinney, 765 F.2d at 1138. Intimidation and hostility toward women because they are women obviously can result from conduct other than explicit

sexual advances. Hall, 842 F.2d at 1014. For example, the pervasive use of derogatory and insulting comments relating to women generally and addressed to female employees personally may serve as evidence of a hostile environment. Andrews, 895 F.2d at 1485. Similarly, so may the posting of pornographic pictures or posters in the workplace. Id.

In addition to establishing that she was subjected to a hostile employment environment, a female employee must establish that the conduct which created the hostile situation should be imputed to the employer based upon agency principles. Meritor Savings Bank, 477 U.S. at 70-71. To hold the employer liable where the hostile environment is created by a supervisor, the employee must prove that the supervisor uses actual or apparent authority to further the harassment. Karibian v. Columbia University, 14 F.3d 773, 780 (1994). In situations where a supervisor does not rely on supervisory authority to carry out the harassment, such as when co-workers carry out the harassment, the employer will be held liable if the employer provided no reasonable avenue for complaint, or the employer knew or should have known of the harassment and failed to take prompt remedial action. Id. Andrews, 895 F.2d at 1486.

In applying these standards to this case, we first consider Grievant's experiences at the Vermont Police Academy during her initial training period. First, it is pertinent that the Academy's Director, Francis Aumand, gave Grievant a copy of an article about a female State Police officer, Gloria Danforth, and asked her to give her opinion on the article. Significantly, the

article was about Danforth having filed a grievance against the Employer alleging sex discrimination. Grievant reasonably concluded by these actions that Danforth was seen as a "troublemaker" because she brought a sex discrimination claim against the State Police; we reach the same conclusion. Grievant wanted to succeed at the Academy and in the male dominated profession of law enforcement and did not want to be seen as a troublemaker. This event was a powerful message very early in Grievant's tenure to not raise complaints because of her gender if she wished to fit into the law enforcement profession.

We recognize that Aumand was not in the Department of Public Safety chain of command and was not Grievant's supervisor. However, Aumand's actions occurred during Employer-mandated training, and is pertinent with respect to contributing to the environment in which Grievant had to work. Also, Grievant's later reluctance to complain of sexual harassment issues, to which the Employer points to diminish the significance of her claims, understandably was influenced to some extent by these actions of Aumand.

There were other occurrences at the Academy that raised inferences of discriminatory animus. Males directed comments at Grievant suggesting that they should be careful around her or she would report them for sex harassment. Further, her future colleague in the St. Albans barracks, Mark Lucas, made suggestive comments to Grievant which were offensive. These included grabbing his crotch area and telling her to "suck this", and responding to her inquiry as to where she could plug in a vacuum cleaner with a vulgar reference that he had a "plug up my ass".

Lucas also kicked Grievant, and then taunted her by saying "if you can't take it here, you can't take it out there". Although there was no evidence that Lucas singled out females to kick since he frequently kicked his male classmates, such conduct generally would have a more intimidating effect on women than men because of their physical differences. There was ample evidence that Lucas demonstrated his kick boxing skills on classmates with enough frequency for Grievant to conclude that such conduct was known and deemed acceptable conduct at the Academy. It is understandable in light of Aumand's above-referenced actions that Grievant, not wanting to be seen as a troublemaker, did not complain about Lucas' conduct. In sum, Grievant's introduction to her job through her Academy training provided sufficient evidence to her that women were not entirely welcome in law enforcement and that they should not complain about gender-based differences in treatment.

We now move to Grievant's tenure at the St. Albans barracks, which she started at the same time as Trooper Lucas in December, 1991. Grievant was the only female uniformed officer working full time in the barracks at the time she was assigned to the St. Albans barracks. During her initial tenure at the barracks, there was a demeaning poster of a scantily clad woman in the troop room. It is noteworthy that the individual who took the poster down - because he thought it was inappropriate - was a male Custodian, not a peer or uniformed officer.

Although the poster was removed, the sexist attitude which lead to such a display continued. This is evident by Lucas, in

Grievant's presence, passing around a picture of his seminude girlfriend to the Troopers. This is further evidenced by Lucas' girlfriend accurately reporting to Grievant that Lucas had referred to Grievant as his "sex slave" or "love slave". This demeaning view of women as sex objects contributed to the hostile environment in which Grievant worked.

In addition, St. Albans personnel, including Grievant's supervisors, inappropriately focused on Grievant's marital troubles and a personal relationship which Grievant had developed with David Boocock. This is indicated by Sergeant Begiebing, an immediate supervisor of Grievant, commenting upon Grievant calling in sick: "boo hoo, my marriage is in trouble". This insensitive comment, made in the presence of other employees, is a demonstration of Begiebing's attitude towards Grievant. Begiebing's comment had the effect of inappropriately making Grievant an object of ridicule.

On another occasion, Begiebing told Grievant that her relationship with Boocock was "tarnishing the green and gold" (i.e., the State Police) since the State Police work in a "fish bowl". In the same vein, Lieutenant White, another superior of Grievant, told Grievant that if his daughter dated Boocock he would "kick her in the butt". The Employer had a legitimate concern to address any performance deficiencies of Grievant resulting from contacts she had with Boocock while she was working, but these comments by her superiors go beyond any legitimate management concerns. Their expressed disapproval of the relationship was inappropriate, and contributed to an

intimidating and offensive work environment for Grievant based on her gender. It is telling that White never questioned male troopers with respect to their personal relationships with women. In sum, we conclude that these incidents were sufficiently severe and pervasive to alter the conditions of Grievant's employment and create an intimidating, hostile and offensive working environment.

The Employer seeks to diminish the seriousness of the harassment of Grievant by pointing to the fact that Grievant did not report the actions sufficiently to allow the Employer to take remedial action. The evidence does indicate an understandable reluctance on Grievant's part to report some of the above incidents in a timely manner. Under the circumstances, this does not defeat her sexual harassment claim. Grievant was reluctant to report harassment given her understandable fear stemming from her Academy experience of being labeled as a "troublemaker", as discussed above. Also, the evidence does not indicate that Grievant's supervisors were sympathetic to Grievant's situation of being a women in a male-dominated environment, or even understood how Grievant would be offended by her work environment.

Further, when Grievant did report instances of alleged harassment to her supervisors, no action was taken. At an October 20, 1992, meeting, Grievant told Begiebing of her discomfort as a woman on the job, being asked for a kiss by "one of the guys", and the comment by a trooper about her buttocks. Begiebing had an

obligation under the Employer's sexual harassment policy to make further inquiry. The policy provides that "(i)f a supervisor becomes aware of a situation that may involve sexual harassment, whether or not a complaint has been filed, a supervisor shall take appropriate steps". Despite this provision, Begiebing did nothing to respond to Grievant's claims that she had been harassed. Following a subsequent meeting between Grievant and Begiebing, in which Grievant raised further issues with respect to her work environment, Begiebing concentrated on his view that Grievant was trying to "build a case", and that management should not be "blindsided", rather than addressing the substantive issues which Grievant had raised.

We conclude that, under these circumstances, liability for the hostile environment in which Grievant worked should be imputed to the Employer. The Employer is clearly liable for the actions of Begiebing and White directly contributing to the harassment of Grievant because they were using their supervisory authority to further the harassment. In those incidents where Grievant's co-workers carried out the harassment, in some instances Grievant's superiors knew of the harassment and failed to take any remedial action. In other instances, the working environment in which Grievant operated was such as to discourage the reporting of complaints. The Employer should have been more sensitive to the environment in which female officers worked, and done much more in the way of training and daily monitoring to prevent harassment from occurring and, when it did occur, to take swift action to remedy it.

The harassment which occurred here was insidious. Grievant's work environment was such that she understandably was intimidated and felt hostility towards her from male employees arising from the fact that she was a woman in a male-dominated profession and workplace. The harassment which occurred was sufficient to substantially contribute to an inference that the unsatisfactory performance evaluation which she received, and the subsequent transfer and dismissal of her, was the result of intentional sex discrimination.

Grievant's prima facie case of an inference of sex discrimination does not rest on sexual harassment alone. Although Grievant did not appeal the unsuccessful completion of her initial probationary period, we look to Grievant's performance during this period to determine whether the way in which Grievant's performance was treated by the Employer contributes to an inference of discrimination. The Employer has relied on Grievant's performance problems throughout her tenure, including her initial probationary period, to support the position that the adverse actions taken against Grievant were not the result of sex discrimination. It thus becomes necessary to look to the purported performance deficiencies of Grievant to ascertain what light is shed on the ultimate issue which we must decide.

The Employer relied on Grievant's failure to properly and timely process paperwork, and on eight separate incidents to demonstrate her failure to meet performance standards during the initial probationary period. We need spend little time on two incidents: the February 26 and 28, 1992, incidents when Grievant

purportedly failed to back up officers Underhill and Begiebing. There was insufficient evidence to indicate that these incidents were brought to Grievant's attention near the time of their occurrence, when she may have had an explanation for the alleged conduct.

The six remaining complaints about Grievant's performance that occurred during her initial probationary period do not strike us as providing persuasive evidence of substantial performance deficiencies of a state trooper during a probationary period of employment when compared to the standard set for male troopers. Grievant's failure to stop and assist cars on the Interstate on the day of the Montpelier flood, Grievant's failure to assist officers because she could not find West Street, and Grievant's decision to escort the Asian couple with a sick child to Burlington appear, at most, to constitute minor deficiencies of judgment which would be corrected through training and experience.

The evidence does not indicate any deficiencies on Grievant's part with respect to the incident with Pamela Gagne and Grievant's subsequent failure that evening to stop a car on the basis of a citizen's report. In both instances, Grievant appeared to proceed reasonably based on the information which she had at the time. The evidence shows that male officers likewise used reasonable discretion in situations where DWI charges potentially could be brought. Also, the insignificance of these incidents is indicated by the fact that they were not even brought to Grievant's attention until after she filed grievances in this matter.

An examination of the circumstances surrounding the remaining incident, involving Dale Peddle, is perhaps most pertinent in what it reveals concerning an inference of illegal discriminatory motive. The ultimate result of Grievant's performance in this incident was that she successfully talked an armed man out of his house without his rifle and without injuring anyone. The man had reportedly discharged his rifle in his house and was threatening suicide. Nonetheless, she received no praise from her male colleagues and supervisors, only criticism of her performance based on unreliable third party reports.

A male law enforcement officer from another agency, Constable Carr, complained to Sergeant Hacking about the way Grievant conducted herself in this incident. Without further investigation, Hacking criticized Grievant based on the complaint of Carr, a friend of some of the male officers in the St. Albans barracks. Begiebing, who also questioned Grievant, had not bothered to read her account of the incident before questioning her about it. None of Grievant's supervisors interviewed Douglas Billado, who was also a witness to the event, nor did they conduct an on-site investigation of Carr's complaint to see if his claims against Grievant even made sense. Instead, the Employer accepted Carr's version of events and used this incident to demonstrate Grievant's unsatisfactory performance.

The actual facts of this incident do not provide support for any significant deficiency in Grievant's performance. The incident serves instead to illustrate the realities of Grievant's tenure in the St. Albans barracks: other officers and

individuals, all male, had more credibility with Grievant's supervisors than she did. When male officers complained about Grievant's performance, her supervisors frequently assumed their complaints to have merit, failed to properly conduct an investigation in a timely manner, and used such criticisms to support negative performance evaluations.

Although Grievant made mistakes during her initial probationary period, including submitting late and incomplete reports, the evidence indicates that male officers were judged less critically during their initial probationary periods. For instance, Trooper Chisholm abused his position as a Trooper in order to get a date, and was involved in an incident with the Burlington police during which he was intoxicated. His probationary period was extended for only three months as a result of these incidents.

We have before us substantial evidence on Trooper Lucas' performance during his original probationary period, and it is suspect that he successfully passed probation, while Grievant's probation was extended. Included among Lucas' deficiencies were abusing his position by making a call to a video store customer, and threatening to cite the woman into court, to help his roommate's parents; calling in sick to work an evening shift because he was intoxicated; and submitting inadequate reports.

The deficiencies of Troopers Chisholm and Lucas appear to be more serious than Grievant's deficiencies. The abuse of authority and intoxication displayed by Chisholm and Lucas constitute more serious deficiencies than Grievant's deficiencies in submitting

reports and exercising judgment. Yet the male troopers were not treated as critically.

Also, Grievant's deficiencies must be viewed in light of her entire work record during her original probationary period. She was recognized and given credit for being the principal investigating officer in approximately 55 serious felonies and 51 less serious crimes in which she presumably performed satisfactorily. Lucas' record in the same time frame does not provide a basis for separating his overall performance strengths from those of Grievant.

In sum, the evidence indicates that Grievant was held to a higher standard than her male colleagues. The difference in treatment is pertinent to Grievant's claim of sex discrimination and contributes to raising an inference that the adverse actions taken against her were the result of intentional sex discrimination.

Grievant has presented sufficient evidence of her performance during her extended probationary period to at least support an inference of discrimination. It is perhaps most notable in this regard that the Employer has concentrated on a relatively small number of incidents to demonstrate Grievant's purported performance deficiencies, while the evidence indicates that Grievant was the principal officer in a vastly greater number of serious felonies and less serious crimes without apparent performance problems. It is also pertinent that Grievant's performance during her short time in Williston was satisfactory. Satisfactory performance in most of her cases is sufficient to contribute to supporting Grievant's prima case that

adverse actions taken against her of an unsatisfactory performance evaluation, and subsequent transfer and dismissal, occurred under circumstances giving rise to an inference of discrimination.

A final element of Grievant's prima facie case is that she must prove that she was qualified for the position from which she was dismissed. Grievances of Choudhary, 15 VLRB 118, 157 (1992). The burden of demonstrating that Grievant is qualified for the Trooper position is limited to showing that she possesses the basic skills for retention in such a position. Id. at 158. Grievance of Smith and VSCFF, AFT Local 3180, AFL-CIO, 12 VLRB 44, 54 (1989). The Employer has admitted through its actions that Grievant at least possesses the basic skills necessary for retention. This is demonstrated by Commissioner Walton arranging to transfer Grievant to Middlebury, after she received an unsatisfactory performance evaluation in St. Albans, and believing that she would have a good opportunity to succeed there.

In sum, we conclude that the evidence which Grievant has submitted with respect to sexual harassment of her, the different treatment of her than male officers during the original probationary period, her performance during her original probationary period and extension of probationary period, and her qualification for the position in which she was removed, create an inference that her unsatisfactory evaluation, transfer and dismissal were the result of intentional sex discrimination. Thus, we conclude that Grievant has established a prima facie case of sex discrimination.

Grievant having established a prima facie case, the burden shifts to the Employer to articulate legitimate, non-discriminatory reasons for its adverse actions against Grievant. Burdine, 450 U.S. at 253-254. Day, 16 VLRB at 343. The burden that shifts to the Employer is to rebut the presumption of discrimination by producing evidence that actions against Grievant were for legitimate, non-discriminatory reasons. Burdine, supra. The Employer need not persuade us that it was actually motivated by the proffered reasons. Id. It is sufficient if the Employer's evidence raises a genuine issue of fact as to whether it discriminated against Grievant. Id.

To accomplish this, the Employer must clearly set forth, through the introduction of admissible evidence, the reasons for its actions. Id. at 255. The explanation must be legally sufficient to justify a judgment for the Employer. Id. The Employer must produce admissible evidence which would allow us rationally to conclude that the Employer's actions had not been motivated by discriminatory animus. Id. at 257. The determination whether the Employer has met the burden of production involves no credibility assessment. St. Mary's Honor Center v. Hicks, 113 S.Ct. 2742, 2748 (1993). If the Employer fails to meet its burden of production, then Grievant prevails on her claim of discrimination as a matter of law. Id. Day, 16 VLRB at 344.

The Employer has met this burden. The Employer supports the unsatisfactory performance evaluation which Grievant received at the conclusion of her extended probationary period on the basis of Grievant's continued performance problems. The Employer relies

primarily on six incidents that raised questions of satisfactory performance, continued tardy submission of reports, and lack of activity on the Richford Cops program during November, 1992. The Employer contends that Grievant failed to meet her supervisors' expectations of performance in judgment, dependability, common sense, in-custody enforcement tactics, relationships, policies and procedures and decision making. These constitute legitimate, non-discriminatory reasons for an adverse performance evaluation.

The Employer has produced admissible evidence with respect to these reasons, raising a genuine issue of fact, which would allow us rationally to conclude that the Employer's actions were not motivated by discriminatory animus. In concluding that the Employer has rebutted the presumption of discrimination by meeting its burden of production, we do so without making a credibility assessment of the evidence. Hicks, 113 S.Ct. at 2748.

The Employer supports the transfer of Grievant to Middlebury on the basis of being generous with her, and providing her with another opportunity to perform satisfactorily despite her unsatisfactory performance in St. Albans. The Employer supports the dismissal of Grievant based on unsatisfactory performance and her failure to report to Middlebury as ordered by Commissioner Walton. These constitute legitimate, non-discriminatory reasons for transfer and dismissal. Again, without making a credibility assessment of the evidence, we conclude that the Employer has produced admissible evidence with respect to these reasons, raising a genuine issue of fact, which would allow us rationally to conclude that the Employer's actions were not motivated by discriminatory animus.

The Employer having sustained its burden of production, Grievant must prove by a preponderance of the evidence that the legitimate reasons offered by the Employer were not its true reasons, but were a pretext for discrimination based on sex. Our "disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination". Hicks, 113 S.Ct. at 2749. Day, 16 VLRB at 345. In determining whether the employer's explanation was pretextual, the trier of fact may consider the evidence, and inferences properly drawn therefrom, previously introduced by the complainant to establish a prima facie case. Burdine, 450 U.S. at 255, n. 10. Lowell, 15 VLRB at 336-337.

In this regard, we discuss the six specific incidents that occurred in Grievant's extended probationary period, along with other purported performance deficiencies, which are relied on by the Employer to support her January 27, 1993, performance evaluation. The six specific incidents are: 1) the incident with the twins on the U.S. and Canadian border, 2) Grievant taking her cruiser to Richmond for personal purposes, 3) Grievant's failure to back up Trooper Bose, 4) Grievant's failure to back up Trooper Cruise, 5) Grievant's pat-down of Billy Washington, and 6) the incident at the Pinnacle Peddler.

The evidence presented belies the Employer's claim that these incidents, when considered with other deficiencies of Grievant, were of such significance that they demonstrated an

unbiased management determination that Grievant failed to perform satisfactorily on an overall basis, particularly when her performance in specific areas is compared with male troopers. Instead, we conclude that, under the totality of the circumstances, the Employer's unsatisfactory performance evaluation of Grievant constituted a pretext for discriminating against her on the basis of her sex rather than an objective determination that her overall performance was unsatisfactory. We examine each of these incidents, along with other noted deficiencies of Grievant, in turn.

The source of the complaint about Grievant's performance concerning the incidents with the twins at the U.S. port of entry was a male law enforcement officer from another agency, U.S. Immigration Inspector Behoda. Grievant's supervisor, Sergeant Underhill, assumed Behoda's complaint to have merit. He did not question Grievant about it at the time. Underhill later told Lieutenant White about Behoda's complaint and wrote a memorandum to White in December in which he stated that Behoda "was less than pleased with" Grievant's performance; it is unclear whether Underhill even knew the details of Behoda's complaint. White did not personally speak to Behoda about this incident until just prior to issuing Grievant's January 27, 1993, adverse performance evaluation.

We find a strikingly similar pattern between this incident and the incident with Dale Peddle. Both Constable Carr and Immigration Inspector Behoda were socially friendly with male officers in the St. Albans barracks. Grievant did not spend time

off duty with either Carr or Behoda, and, in fact, declined Behoda's offers to stop and visit him at his house. In this particular incident, as in several others, Grievant was not given an opportunity to respond to a complaint about her performance for months.

Although Grievant acknowledged having difficulties with the four intoxicated young men, we do not find that she demonstrated any significant performance deficiencies in this incident. Grievant's explanation for putting her hand on one of the men's shoulder as a method of restraining him is a credible explanation. Behoda's interpretation of these actions, that she was rubbing or massaging his neck, was given much emphasis by him in his complaint against Grievant. His interpretation is not credible and had the effect of miscoloring the incident with Grievant's supervisors. Also, we note that Grievant's performance did not have negative law enforcement consequences; she achieved her objective of processing the driver of the vehicle for DWI and ensuring that the other three men were transported home by persons whom were not intoxicated.

The Employer's actions with respect to this incident were much more revealing than any performance deficiencies of Grievant. The incident, like the earlier Dale Peddle incident, illustrates the realities of Grievant's tenure in the St. Albans barracks: other officers and individuals, all male, had more credibility with Grievant's supervisors than she did. When male officers complained about Grievant's performance, her supervisors frequently assumed their complaints to have merit, failed to

properly conduct an investigation in a timely manner, and used such criticisms to support negative performance evaluations.

The second incident relied on by the Employer to support Grievant's unsatisfactory performance evaluation was Grievant taking her cruiser to Richmond for the personal purpose of visiting David Boocock. Grievant showed a lack of judgment in taking her cruiser to Richmond for personal purposes, and this action cannot be condoned.

The third incident relied on by the Employer, Grievant failing to back up Trooper Bose, is a related deficiency demonstrated by Grievant. Grievant failed to back up Bose, when Bose sought her assistance by radio transmission, because she had turned her radio down low while she was talking to Boocock while their cars were parked at the Richford ambulance station. This was careless and showed a lapse of good judgment on Grievant's part.

Grievant's actions with respect to these two incidents demonstrate inappropriate use of State equipment and unproductive use of work time. A related deficiency of Grievant was indicated by her lack of activity while on Richford patrol during the month of November, 1992. Four of six daily activity sheets submitted by Grievant for that month showed no reported daily activity at all. Although it was not unusual to occasionally submit a daily activity sheet with no reported activity, it was unusual to show no activity on four of six shifts in a month. Grievant presents no explanation for this lack of reported activity, and we conclude that it indicates a lack of productive use of work time during this period.

Although Grievant's inappropriate use of State equipment and unproductive use of work time do demonstrate significant deficiencies, the seriousness of her deficiencies is substantially lessened when the activities of male officers are examined. The evidence indicated that there had been occasions when male officers used cruisers for personal business. The activities of male officers while on Richford patrol is more revealing. Grievant observed other Troopers, particularly Trooper Bose, spending time socializing while in uniform. Bose and Lucas spent time at Constable Carr's residence and car repair station while on duty, and the evidence indicates that at times these were social visits. Bose also spent a significant amount of time at the residence of Bruce Dupra on personal business while he was on duty.

The unproductive use of work time by Bose and Lucas while on Richford patrol does not make Grievant's similar unproductive use of time excusable, but it does provide another illustration how the activities of Grievant, the only female trooper in the St. Albans barracks, were more closely scrutinized and criticized than that of male troopers. Also, we weigh Grievant's deficiencies in this regard, as well as others, with the totality of Grievant's performance, including, but not limited to, the fact that she was the principal investigating officer in 122 serious felonies and 103 less serious crimes during the year at the St. Albans barracks where her performance was most heavily criticized.

The fourth incident relied on by the Employer to support Grievant's unsatisfactory performance evaluation was Grievant's purported failure to assist Trooper Cruise on November 23, 1992, in restraining a man Cruise had taken into custody. The Employer uses this incident as one of several incidents in which Grievant did not show proper motivation because she failed to offer assistance to other officers while they were carrying out their respective duties. Grievant was not informed of most of these alleged incidents near the time of their alleged occurrences. This placed her at a disadvantage, both during her performance reviews and at the hearing, to respond to such complaints. We were not persuaded under the state of the evidence that Grievant failed to show initiative in assisting other officers, including the incident with respect to Cruise's complaint that she did not assist him on November 23, 1992.

The fifth incident relied on by the Employer to support Grievant's unsatisfactory performance evaluation was her pat-down of Billy Washington. The circumstances surrounding the incident with Washington negate its significance. Washington had voluntarily come into the barracks with his father after learning that a warrant had been issued for his arrest, and was not acting in an aggressive manner. Grievant had a good relationship with Washington and he had never shown any hostility towards her. Begiebing, who criticized Grievant's performance, did not witness the incident, but instead had heard Grievant had not properly protected herself. Although Grievant could have acted more cautiously to protect herself, we find Grievant's un rebutted

explanation of her actions as indicating understandable actions under the circumstances. We conclude that the incident is of little significance in indicating performance deficiencies on Grievant's part.

The sixth incident relied on by the Employer to support Grievant's unsatisfactory performance evaluation was the Pinnacle Peddler incident. The Employer considered Grievant's actions at the Pinnacle Peddler to be the most serious demonstration of unsatisfactory performance and lack of judgment on her part.

The Employer was most critical of Grievant for her failure to arrest Trammell at the Pinnacle Peddler because he was sitting in his car with the engine running and his alcohol consumption was above the legal limit. We conclude that the Employer unfairly singled out Grievant for criticism in this regard. There was little difference between Grievant's decision to leave an intoxicated Trammell in his car on his representation that his girlfriend was coming to pick him up, and his promise not to drive, and Sergeant Begiebing's decision to leave an intoxicated driver in his car at a public garage on his promise not to drive.

Yet, Grievant was severely criticized for her actions while there is no evidence that Begiebing's actions formed the basis for any criticism of him. The fact that Grievant observed the action of Begiebing, her supervisor, provided her with a reasonable basis to believe that her similar actions in the Pinnacle Peddler incident were appropriate.

The Employer also attempted to discredit Grievant's performance in this incident because she twirled her handcuffs in

front of the involved individual, Randall Trammell, when she was summoned to the U.S. port of entry after Trammell had appeared there acting intoxicated. We find this action by Grievant of little significance under the circumstances. The Employer also contends that Grievant acted disgracefully by later allowing Trammell and his girlfriend to go to his motel room before she returned Trammell's girlfriend to her car at the border. Grievant's explanation of her actions in this regard were credible and we do not find her actions disgraceful.

Although Grievant made some judgment calls that, in hindsight, could have been made differently, we do not find the totality of Grievant's conduct that evening rising anywhere near the level of serious deficiencies alleged by the Employer. Once again, we conclude that this incident is more revealing for indicating how Grievant was treated in a disparate manner from male officers with respect to her performance. None of Grievant's colleagues and supervisors were witnesses to the incident at the Pinnacle Peddler. Yet, there was no evidence that Grievant's supervisors interviewed anyone who was a witness to the Pinnacle Peddler incident, except prior to the hearing in this matter, approximately one year later. This belies the seriousness of Grievant's deficiencies during this incident. Instead, we look upon this incident as yet another example of the Employer holding Grievant to a higher standard than male officers.

We believe an examination of other Employer complaints of Grievant's performance indicates that she was held to a different, and higher, standard than male officers. Grievant was

criticized by her supervisors for not taking a sufficiently aggressive stance. Grievant's approach was less confrontational. She had been taught in previous law enforcement training that talking and reasoning is often a better approach and can defuse a potentially explosive situation. Her view was not shared by her male supervisors and colleagues in the St. Albans barracks, who routinely criticized her for not being aggressive enough.

Although Grievant's law enforcement tactics were criticized, her supervisors conceded that a prisoner never escaped on her. This contrasts with Trooper Lucas; Lucas did have prisoners escape from him. He received criticism for having prisoners escape from him on two occasions, but was not otherwise treated adversely for such actions. Also, Grievant was successful in defusing potentially explosive situations many times by her nonconfrontational approach. Given the success of her approach, Grievant's supervisors were unjustified in criticizing her in this regard.

Grievant's supervisors criticized her driving. She did have accidents with her cruiser while at the St. Albans barracks. Lucas also had accidents during the same time period, as well as an accident in March, 1993, which resulted in charges being preferred against him. Yet, the evidence indicates that Lucas was considered a satisfactory employee at all times relevant. Begiebing criticized Grievant on one occasion for leaving her cruiser running unattended. Lucas also left his cruiser running unattended on one occasion. Begiebing drove it to the side of the building to teach him a lesson, but Lucas was not otherwise reprimanded.

These instances of different treatment of Grievant than Lucas indicate that the Employer scrutinized her performance much more carefully and critically than that of Lucas. The Employer contends that no male officer demonstrated the extent of deficiencies as did Grievant. Our reading of the evidence leads us to a contrary conclusion. The level of deficiencies demonstrated by Lucas were at least as serious, if not more so, than Grievant's deficiencies during the relevant time period. Yet, he was determined to be an overall satisfactory employee, while Grievant was deemed an overall unsatisfactory employee.

This does not mean Grievant did not have performance problems. In addition to her deficiencies discussed above, the evidence indicates that Grievant had trouble submitting complete and timely reports throughout most of her tenure in the St. Albans barracks, including the extension of her probationary period.

This was a significant performance problem, but mitigating circumstances diminish the seriousness of Grievant's deficiencies. Grievant left on unscheduled leave due to the death of her mother during her extended probationary period. She was out of the barracks from October 28 - November 9, 1992. At the time she left on leave, Lieutenant White told her not to worry about her outstanding reports and to try to catch up when she returned. Grievant worked in the barracks for approximately three weeks upon her return, when she then left the barracks to attend Advanced Troop School for three weeks. At the conclusion of this training, Grievant was left with approximately five weeks to get up to speed on her reports.

We evaluate Grievant's lack of progress in improving on her report writing by taking into consideration White's assurances that she not worry about her reports while on leave and her extended absences from the barracks. Although Grievant certainly could have performed better with respect to her report writing, her deficiencies were not as serious as the Employer now tries to make them. Grievant's supervisors conceded that there were no instances where Grievant submitted late or incomplete reports that harm resulted to a member of the public or the Employer's reputation. Further, as of January 10, 1993, near the end of Grievant's tenure in St. Albans, she had no 1992 cases pending.

Also, in examining Grievant's purported overall performance deficiencies in determining whether the Employer's stated performance reasons to support Grievant's unsatisfactory performance evaluation were actually a pretext for discrimination based on her gender, we consider the evidence, and inferences properly drawn therefrom, previously discussed in Grievant's prima facie case. The evidence which Grievant submitted to support her prima facie case with respect to sexual harassment of her, the different treatment of her than male officers during the original probationary period, her performance during her original probationary period, and her qualification for the position from which she was removed, support our ultimate conclusion that the legitimate reasons offered by the Employer were not its true reasons for Grievant's unsatisfactory evaluation, but were a pretext for discrimination.

It would be difficult to overstate the importance of the general environment in which Grievant operated. Grievant was subjected to an environment which was hostile, intimidating and offensive to her as a woman serving as a law enforcement officer. She understandably was intimidated and offended, and felt hostility towards her from male employees. Grievant's conditions of employment were altered by her environment, and it is a reasonable inference that such environment adversely affected her performance.

Through their testimony in this matter, many of Grievant's male colleagues and supervisors in the St. ~~Albans~~ barracks appeared to show disdain towards Grievant by diminishing her and scoffing at her work while criticizing her performance. Such attitude and testimony did not serve its apparent intended effect; in fact, it had the opposite effect as we often did not find such testimony credible. The attitude displayed at the hearings in these matters is something Grievant had to deal with on a regular basis in her work environment.

We conclude that the environment in which Grievant worked had a significant effect on the adverse actions taken against her and on her performance. The attitude which Grievant's colleagues and supervisors displayed towards her as a woman working as a law enforcement officer substantially contributed towards their scrutinizing Grievant's work performance more closely, and criticizing her work more harshly, than that of male officers. We cannot divorce the environment from the actions, and consider the environment in which Grievant worked a significant part of our ultimate conclusion that the legitimate reasons offered by the

Employer were not its true reasons for Grievant's unsatisfactory evaluation, but were a pretext for discrimination.

Our conclusion is reinforced by Commissioner Walton arranging to transfer Grievant to Middlebury, after she received an unsatisfactory performance evaluation in St. Albans, and believing that she would have a good opportunity to succeed there. He believed Grievant had a good opportunity to succeed working in the Middlebury barracks because it had "assimilated women into the barracks", its Troop Commander had been instrumental in recruiting women and its Station Commander was a progressive manager.

Such acknowledgement by the Commissioner infers that Grievant could not succeed at the St. Albans barracks as a woman because the barracks, its Troop Commander and Station Commander had not assimilated women into the barracks. If Grievant's performance was as unsatisfactory as the Employer alleges, then she would not have a good opportunity to succeed in any State Police setting.

In sum, we do not believe the Employer's proffered reasons for issuing an adverse performance evaluation for Grievant's performance during the 6 month period preceeding January 27, 1993. The legitimate reasons offered by the Employer were not its true reasons for Grievant's unsatisfactory evaluation, but were a pretext for discrimination against Grievant because of her sex. We conclude that, but for discrimination against Grievant because of her sex, Grievant would have received an overall satisfactory performance evaluation at the conclusion of the extension of her probationary period. At that point, Grievant should have become a permanent status state trooper.

Our conclusion obviously has great bearing on our view towards the subsequent transfer and dismissal of Grievant. The Employer supports the transfer of Grievant to Middlebury on the basis of being generous with her, and providing her with another opportunity to perform satisfactorily despite her unsatisfactory performance in St. Albans. Since the transfer of Grievant flowed from discriminatory acts towards her by the Employer during her tenure at the St. Albans barracks, we cannot conclude that any transfer of Grievant reflected Employer generosity towards her.

If we were to uphold the transfer of Grievant, in effect we would be punishing the victim of discrimination. A victim of sex discrimination should not have to work in a less desirable location as a result of discrimination in the victim's original, and preferred, work setting. Ellison v. Brady, 924 F.2d 872, 882 (9th Cir. 1991). It is clear by the evidence that Grievant obviously viewed the transfer to Middlebury as undesirable. This was due primarily to the possibility in her then-pending divorce action of losing physical custody of her children due to the transfer. Grievant made it clear to Commissioner Walton prior to the transfer being ordered that she could not consider a move to Middlebury because of the custodial issues and finances.

Also, as discussed above, Commissioner Walton believed Grievant had a good opportunity to succeed working in the Middlebury barracks because it had "assimilated women into the barracks". The inference to draw from such acknowledgement by the Commissioner is that Grievant could not succeed at the St. Albans barracks as a women because the barracks, its Troop Commander and Station Commander had not assimilated women into the barracks.

Given Grievant's expressed desire not to be transferred to Middlebury, and the true reason for the transfer flowing directly from the sex discrimination against Grievant, Commissioner Walton's transfer decision is best viewed as a capitulation to St. Albans management who denied Grievant the opportunity to work in an environment where decisions were based on merit, not sex discrimination. Our conclusion in this regard is strengthened by Captain Cronan informing the Commissioner that he did not want Grievant working under his command in either the St. Albans or the Williston barracks. Under these circumstances, we conclude that the legitimate reasons offered by the Employer for Grievant's transfer were not its true reasons, but were a pretext for discrimination against Grievant because of her sex.

We likewise conclude with respect to the dismissal of Grievant. The Employer supports the dismissal of Grievant based on unsatisfactory performance and her failure to report to Middlebury as ordered by Commissioner Walton.

As discussed above, but for discrimination against Grievant because of her sex, Grievant would have received an overall satisfactory performance evaluation at the conclusion of the extension of her probationary period. At that point, Grievant should have become a permanent status state trooper who could only be dismissed for just cause. Subsequent to the conclusion of the extension of her probationary period, Grievant only worked in the Williston barracks, and her overall performance there was satisfactory. Under these circumstances, Commissioner Walton had no basis to dismiss Grievant due to unsatisfactory performance.

Commissioner Walton also had no appropriate basis under the circumstances to dismiss Grievant due to her failure to report to Middlebury as ordered. Grievant was placed in a fundamentally unfair and untenable position by this order. The transfer of Grievant flowed directly from sex discrimination against Grievant during her tenure in the St. Albans barracks. If she accepted the transfer, she may have lost physical custody of her children. Grievant made Commissioner Walton aware that she would not accept this transfer.

The Employer cannot credibly contend that it should be able to benefit from its discriminatory actions by having the dismissal of Grievant upheld. A refusal to obey a legitimate order of a superior can appropriately constitute the basis for disciplinary action. Here, the order was not legitimate as it flowed directly from discriminatory acts. Commissioner Walton's insistence on issuing such an order, which he knew Grievant would not accept, constituted yet another form of discrimination against Grievant because of her sex. The resultant dismissal was discriminatory, and was without just cause.

The proper remedy in such a case is to make Grievant whole. Grievance of Lowell, 15 VLRB at 339-40. To make Grievant whole is to place her in the position which she would have been in had the sex discrimination not occurred. Id. If the discrimination had not occurred, Grievant would have been a permanent status State Trooper assigned to the St. Albans station. Thus, it is appropriate for us to order that the unsatisfactory performance evaluation issued to Grievant at the conclusion of the extension

of her probationary period be rescinded, and that Grievant be reinstated to a State Trooper position at the St. Albans Station, as a permanent status employee, with full back pay and benefits.

ORDER

NOW THEREFORE, based on the foregoing findings of fact and for the foregoing reasons, it is hereby ORDERED that the Grievances of Deborah Butler ("Grievant") in Docket Nos. 93-17 and 93-32 are SUSTAINED; and

1. The State of Vermont Department of Public Safety shall rescind the unsatisfactory performance evaluation issued to Grievant in January, 1993, at the conclusion of the extension of her probationary period, and shall consider Grievant to have satisfactorily completed that probationary period and to have become a permanent status employee at that time;

2. The State of Vermont Department of Public Safety shall reinstate Grievant to her State Trooper position at the St. Albans Station, as a permanent status employee;

3. Grievant shall be awarded back pay, plus interest, and benefits from the date of her dismissal from employment until her reinstatement for all hours of her regularly assigned shift, minus any income (including unemployment compensation received and not paid back) received by Grievant in the interim;

4. The interest due Grievant on back pay shall be computed on gross pay and shall be at the rate of 12 percent per annum and shall run from the date each paycheck was due commencing with Grievant's dismissal from employment, and ending on the date of her reinstatement; such interest for each paycheck date shall be computed from the amount of each paycheck minus income (including unemployment compensation) received by Grievant during the payroll period; and

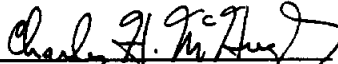
5. The parties shall submit to the Labor Relations Board by November 23, 1994, a proposed order indicating the specific amount of back pay and other benefits due Grievant; and if they are unable to agree on such proposed order, shall notify the Board in writing that date of specific areas of factual disagreement and a statement of issues which need to be decided by the Board. Any evidentiary hearing on these issues shall be

held on December 1, 1994, at 9:30 a.m., in the Labor Relations Board hearing room, 13 Baldwin Street, Montpelier, Vermont.

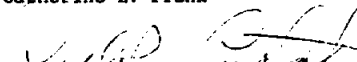
Dated this 7th day of November, 1994, at Montpelier,

Vermont.

VERMONT LABOR RELATIONS BOARD


Charles H. McHugh, Chairman


Catherine L. Frank


Carroll P. Comstock