

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LAURA KUBIAK,)	
)	
Plaintiff,)	
)	
v.)	
)	
CITY OF CHICAGO, a municipal)	<u>Jury Trial Demanded</u>
corporation, MELISSA STRATTON, in her)	
individual capacity, LIEUTENANT)	
MAUREEN BIGGANE, in her individual)	
capacity,)	
)	
Defendants.)	
)	

COMPLAINT

Plaintiff, Laura Kubiak, by and through her attorneys, complains of Defendants, City of Chicago, a municipal corporation, and Melissa Stratton and Lieutenant Maureen Biggane in their official and individual capacities, as follows.

NATURE OF THE ACTION

1. Officer Laura Kubiak began her employment with the Chicago Police Department over two decades ago, in or around 1986. Though initially a beat patrol officer, Officer Kubiak was detailed to the Office of News Affairs in 2000. Officer Kubiak performed her job in an excellent manner and served the Office of News Affairs under four separate Superintendents without incident. Notwithstanding her excellent work performance, Officer Kubiak was retaliated against after reporting another officer, Veejay Zala, for assaulting her in the workplace. In retaliation for reporting the assault and initiating a complaint to the Internal Affairs Division, Defendants cancelled Officer Kubiak’s detail in the Office of News Affairs without justification

and assigned her to work the midnight shift in an unsafe neighborhood. Defendants' actions reflect a systemic practice, custom, and policy of retaliating against employees who exercise their First Amendment rights and report misconduct by fellow police officers.

JURISDICTION

2. Jurisdiction is provide by 28 U.S.C. §1331 and 42 U.S.C. §1983, as this matter alleges that Plaintiff has been deprived of rights guaranteed to her under the First Amendment to the Constitution of the United States of America. The Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367(a).

VENUE

3. This action properly lies in this district pursuant to 28 U.S.C. § 1391(a) because the events giving rise to this claim occurred in this judicial district.

PARTIES

4. Plaintiff, Laura Kubiak (hereinafter referred to as "Plaintiff" or "Officer Kubiak"), is a female citizen of the State of Illinois who is an employee of Defendant City of Chicago.

5. Defendant, City of Chicago, is an Illinois municipal corporation located in Cook County, Illinois. Defendant City of Chicago is an employer and principal of the individual defendant actors.

6. Defendant Melissa Stratton was at all relevant times hereto Director of the Office of News Affairs and a superior to Plaintiff and acting under color of state law. Director Stratton had final or delegated final policy making authority for the City of Chicago, specifically with regard to the personnel decisions within the City of Chicago Police Department, including as they applied to Plaintiff. Defendant Biggane is sued in her individual capacity.

7. Defendant Stratton is an employer as defined by the Illinois Whistleblower Act.

8. Defendant Maureen Biggane was at all relevant times hereto Lieutenant of the Chicago Police Department and a superior to Plaintiff and acting under color of state law. Defendant Biggane had final or delegated final policy making authority for the City of Chicago, specifically with regard to personnel decisions within the City of Chicago Police Department, including as they applied to Plaintiff. Defendant Biggane is sued in her individual capacity.

9. Defendant Biggane is an employer as defined by the Illinois Whistleblower Act.

10. Defendant City of Chicago, at all times relevant hereto, employed Defendants Stratton and Biggane and is responsible for the acts of Defendants Stratton and Biggane who were acting within the scope of their employment and pursuant to a custom, policy, and practice of violating individuals' rights to freedom of speech under the First Amendment to the Constitution of the United States.

FACTS

11. Officer Kubiak began her employment with the Chicago Police Department (hereinafter "CPD") in or around 1986 and was assigned as a beat patrol officer.

12. As a beat patrol officer, Officer Kubiak's primary job duties consisted of patrolling the areas to which she was assigned, issuing citations and/or making arrests when appropriate, and conducting preliminary investigations.

13. As a beat patrol officer, Officer Kubiak performed her job in an excellent manner and received several awards from the Chicago Police Department, praising her for a job well done.

14. In or around May 2000, Officer Kubiak was awarded a detail to the Office of News Affairs (hereinafter "ONA").

15. ONA officers are liaisons to the news media. As an ONA officer, Officer Kubiak's primary job duties consisted of keeping members of the news media apprised of police activity by providing information on topics such as crimes committed, arrests made, and providing information with regard to community safety alerts. As part of her daily, routine job duties in the ONA, Officer Kubiak responded to inquiries from the news media; monitored the News Affairs email account, ensuring appropriate and timely forwarding of information; researched print, television, and online media, creating files of Chicago Police coverage in the news; received and recorded notifications from the field on potentially newsworthy events; prepared Daily News Clips and monthly safety related reports; maintained files on high profile cases; and prepared media advisories and press releases.

16. While in the ONA, Officer Kubiak performed her job in an excellent manner and received several Department awards for her work as a news affairs liaison.

17. In or around 2009, Officer Veejay Zala (male) was detailed to the ONA.

18. In or around this same time, a member of the Chicago community filed a federal lawsuit against Officer Zala accusing him of, *inter alia*, battery and excessive force.

19. Defendant City of Chicago denied the allegations and defended Officer Zala in federal court and the case ultimately went to trial.

20. A jury found Officer Zala guilty of battery and excessive force, among other things.

21. Officer Zala was detailed to the ONA during the trial of the case against him and when the jury found him guilty.

22. Rather than remediate Officer Zala's unlawful misconduct, Defendant City of Chicago chose to reward Officer Zala's violent outbursts with a prestigious position in the ONA, which is within the Office of the Superintendent.

23. Defendants maintain a custom, practice, and policy of rewarding and protecting officers accused of misconduct while retaliating against those who exercise their First Amendment rights in exposing and reporting the misconduct.

24. It would come as little surprise, then, that as a member of the ONA, Officer Zala's temper did not improve.

25. Throughout his detail with the ONA, he often lost his temper and directed his outbursts toward his colleagues, and more pointedly toward females, including Officer Kubiak.

26. On or around November 8, 2012, Officer Kubiak was preparing to leave work at the end of her shift and was walking with Officer Robert Perez to the exit when Officer Zala ran toward her.

27. Officer Zala was enraged by a report Officer Kubiak had drafted.

28. Officer Zala ran up to Officer Kubiak, interfering with her ability to leave, and screamed at her, "Who the fuck do you think you are, you stupid bitch?"

29. Officer Zala repeatedly shook his finger in Officer Kubiak's face and then swung his hand back as if to strike her.

30. Officer Kubiak, fearful for her safety, jerked her head to the side and quickly backed away.

31. Officer Perez intervened, attempted to calm Officer Zala, and directed him to, "stop it."

32. Despite Officer Perez and Officer Kubiak's attempts to calm him, Officer Zala continued to yell at Officer Kubiak and intimidate her, shouting, "You are nothing, you are a stupid bitch, you don't know how to be the police, I am the police, I am the real police."

33. Officer Kubiak then returned to her desk and called the ONA Director, Defendant Melissa Stratton, and informed her of what had occurred and that she was afraid that Officer Zala was going to physically strike her. Officer Kubiak further informed Defendant Stratton that Officer Zala had similar outbursts in the past towards her.

34. Officer Zala followed Officer Kubiak to her desk, and while she was on the phone with Defendant Stratton, Officer Zala stood by Officer Kubiak's desk and continued to berate and intimidate her.

35. Other ONA employees witnessed Officer Zala's assault of Officer Kubiak.

36. One employee who witnessed the assault later expressed to Officer Kubiak fear that Officer Zala was going to pull out his gun and shoot Officer Kubiak.

37. ONA Officer Robert Perez most directly witnessed the assault, as he was with Officer Kubiak when Officer Zala came at her.

38. The following day, on or around November 9, 2012, Officer Kubiak spoke with Defendant Stratton again about Officer Zala's assault.

39. Defendant Stratton said that she had already spoken to Officer Zala and that she did not have time to further discuss the incident with Officer Kubiak. She suggested that all of the involved parties should discuss the incident at some later time, without specifying when.

40. Instead, Defendant Stratton warned Officer Kubiak, "don't embarrass the Superintendent."

41. On or around November 12, 2012, Officer Kubiak requested a meeting with Defendant Biggane to discuss the incident. Defendant Biggane responded that she was too busy.

42. Officer Kubiak continued to thereafter request a meeting with Defendant Biggane to discuss Officer Zala's assault. Defendant Biggane continued to respond that she was too busy.

43. On or around November 27, 2012, Officer Kubiak went into Defendant Biggane's office and again asked to discuss the assault. Defendant Biggane again refused.

44. It was clear to Officer Kubiak that Defendants Stratton and Biggane did not want to discuss, and did not want her to further report, Officer Zala's violent and unlawful conduct.

45. Nevertheless, on or around December 3, 2012, after failing to obtain a meeting with Defendant Stratton or Biggane, Officer Kubiak submitted a memorandum to Lieutenant Biggane complaining of Officer Zala's assault.

46. Officer Kubiak was aware that the memorandum would initiate an Internal Affairs Division (hereinafter "IAD") complaint against Officer Zala. An IAD investigation was launched on or around December 3, 2012.

47. In or around December 2012, Officer Kubiak then gave a statement to the Internal Affairs investigators.

48. Officer Kubiak made her complaint against Officer Zala, not as part of her routine job duties, but as a citizen who was subjected to an assault by a Chicago Police Officer with a history of violence, knowing his conduct was unlawful and fearing for her own safety as well as the safety of others. Ms. Kubiak was further concerned with the manner in which her superiors refused to address or remedy Officer Zala's conduct.

49. In fact, within approximately two weeks of the assault, Defendant Biggane assigned Officer Zala to work with Officer Kubiak during the day shift on at least one occasion, notwithstanding that he typically worked the later shift and notwithstanding that Officer Kubiak expressly asked not to work with him and told Defendant Biggane that she did not feel safe working with Officer Zala.

50. Officer Robert Perez also provided a statement to the Internal Affairs investigators in or around January 2013, corroborating Officer Kubiak's complaint against Officer Zala.

51. Just after Officer Kubiak gave her statement to IAD, Officer Jose Estrada, another member of the ONA, remarked that Officer Kubiak "better be careful because [she] might be the one to get suspended or fired."

52. Officer Jose Estrada, like Officer Zala, had also been a recent defendant in an excessive force lawsuit that went to trial.

53. He too was found guilty of excessive force by a federal jury.

54. He too was rewarded with a detail to the ONA.

55. In or around mid-February 2013, Officer Kubiak was verbally informed that her IAD complaint against Officer Zala had been sustained.

56. Within days, on February 25, 2013, Defendant Biggane informed Officer Kubiak that her detail at the ONA was being cancelled.

57. On the same day, Officer Perez's detail at the ONA was also cancelled.

58. Officer Kubiak and Officer Perez were the only two who had their detail to the ONA cancelled.

59. Defendants Stratton and Biggane had final authority to make these personnel decisions, which were not subject to further review, and did so within the scope of their employment and under color of state law.

60. Officer Kubiak was the most senior member of the ONA.

61. Other members of the ONA had previously requested to transfer out of the ONA. Officer Kubiak had not requested a transfer.

62. Officer Kubiak was reassigned to one of the more dangerous neighborhoods in Chicago as a beat patrol officer on the midnight shift.

63. Officer Kubiak's removal from her position as a News Affairs liaison, working in the Office of the Superintendent, and reassignment to midnight beat patrol in a dangerous neighborhood, was in retaliation for her complaining of and exposing the unlawful conduct of an officer with a history of violent behavior.

64. Officer Zala was never reprimanded in any way for his assault against Officer Kubiak.

65. Officer Zala remains detailed to the Office of News Affairs to date.

66. Defendants' actions are in direct violation of the First Amendment to the Constitution of the United States and the Illinois Whistleblower Act.

67. Defendants have engaged in a pattern of conduct, and maintain a custom, practice and/or policy, of retaliating against employees who have exercised their constitutional right to free speech by complaining of, and exposing, unlawful conduct by Chicago Police officers.

68. Defendants further maintain a custom, practice, and/or policy of protecting and rewarding officers with a history of excessive force and other misconduct and giving them preferential treatment at the expense of those who report their unlawful misconduct.

69. In addition to cancelling the detail of Office Kubiak just days after her IAD complaint against Officer Zala was sustained, Defendants also cancelled the detail of her witness, Officer Perez, who gave a statement to IAD corroborating Officer Zala's unlawful conduct.

70. As a result of Defendants' unlawful conduct, Plaintiff has suffered lost wages and other benefits, emotional distress, embarrassment, humiliation, inconvenience, and other non-pecuniary losses.

COUNT I
RETALIATION IN VIOLATION OF THE FIRST AMENDMENT – 42 U.S.C. §1983
(against all Defendants)

71. Plaintiff re-alleges paragraphs 1 through 70 and incorporates them as if fully set forth herein.

72. The First Amendment to the United States Constitution confers upon an individual the right to free speech. Public employers may not retaliate against an employee who chooses to exercise that right by speaking out on matters of public concern.

73. By its conduct as alleged herein, Defendants City of Chicago, Melissa Stratton, and Maureen Biggane retaliated against Plaintiff for engaging in protected speech, including by cancelling her long-standing and desired detail to the Office of News Affairs and assigning her to work midnight shift as a beat patrol officer in a dangerous neighborhood.

74. The retaliation against Plaintiff was carried out by Defendants Stratton and Biggane who had been delegated final policymaking authority with respect to the actions taken.

75. Defendant City of Chicago failed to train its managers, supervisors, and employees to prevent and/or remedy retaliation. Defendant's failure to train was deliberately

indifferent to the rights of Plaintiff and others.

76. Defendants' actions were taken pursuant to a policy, custom, or pattern of retaliation against individuals who exercise their right to free speech and complain of, and expose, the unlawful or other misconduct of fellow police officers, and of giving preferential treatment to officers with violent records of excessive force.

77. The conduct of Defendants was willful, wanton, intentional and malicious and deliberately indifferent to Plaintiff's rights under 42 U.S.C. §1983.

78. As a result of Defendants' unlawful conduct, Plaintiff has lost wages and other employment benefits, has suffered emotional distress, embarrassment, and humiliation, and her career has been damaged as a result of Defendants' conduct; Plaintiff has suffered additional non-pecuniary losses as a direct result of Defendants' conduct.

79. Plaintiff demands to exercise her right to a jury trial in this matter.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in her favor and against Defendants on Count I and that it:

- a) Declare that Defendants' conduct was in violation of her rights under the United States Constitution.
- b) Award Plaintiff the value of the compensation and benefits lost as a result of Defendants' unlawful conduct;
- c) Award Plaintiff the value of compensation and benefits she will lose in the future as a result of Defendants' unlawful conduct;
- d) Award Plaintiff damages for emotional distress and compensatory damages;
- e) Award Plaintiff punitive damages;
- f) Award Plaintiff reasonable attorney's fees, costs and disbursements;
- g) Enjoin Defendants and all officers, agents, employees and all persons in active concert or participation with them from engaging in any unlawful employment

practice, including retaliation in response to the exercise of Constitutionally protected rights;

- h) Enjoin Defendants and all officers, agents, employees and all person in active concert or participation with them to institute and carry out all policies and practices to prevent retaliation; and
- i) Award Plaintiff any and all other relief as the Court deems just in the premises.

COUNT II
CONSPIRACY IN DEPRIVATION OF CONSTITUTIONAL RIGHTS - 42 U.S.C. § 1983
(against Defendants Stratton and Biggane)

80. Plaintiff re-alleges paragraphs 1 through 70 and incorporates them as if fully set forth herein.

81. By its conduct as alleged herein, Defendants Stratton and Biggane acted in concert with each other and reached an understanding to deprive Plaintiff of her First Amendment right to free speech.

82. The actions of Defendants deprived Plaintiff of her right to free speech under the First Amendment to the Constitution of the United States.

83. The conduct of Defendants was willful, wanton, intentional and malicious and deliberately indifferent to Plaintiff's rights under 42 U.S.C. § 1983.

84. As a result of Defendants' unlawful conduct, Plaintiff has lost wages and other benefits, has suffered emotional distress, embarrassment, and humiliation, and her career has been damaged as a result of Defendants' conduct; Plaintiff has suffered additional non-pecuniary losses as a direct result of Defendants' conduct.

85. Plaintiff demands to exercise her right to a jury trial of this matter.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in her favor and against Defendants Stratton and Biggane on Count II and that it:

- a) Declare that Defendants' conduct was in violation of Plaintiff's rights under the United States Constitution.
- b) Award Plaintiff the value of the compensation and benefits lost as a result of Defendants' unlawful conduct;
- c) Award Plaintiff the value of compensation and benefits she will lose in the future as a result of Defendants' unlawful conduct;
- d) Award Plaintiff damages for emotional distress and compensatory damages;
- e) Award Plaintiff punitive damages;
- f) Award Plaintiff reasonable attorney's fees, costs and disbursements;
- g) Enjoin Defendants and all officers, agents, employees and all persons in active concert or participation with them from engaging in any unlawful employment practice, including conspiracy to deprive individuals of their Constitutionally protected rights;
- h) Enjoin Defendants and all officers, agents, employees and all persons in active concert or participation with them to institute and carry out all policies and practices to prevent deprivations of Constitutionally protected rights; and
- i) Award Plaintiff any and all other relief as the Court deems just in the premises.

COUNT III
VIOLATION OF ILLINOIS WHISTLEBLOWER ACT
(against all Defendants)

86. Plaintiff re-alleges paragraphs 1 through 70 and incorporates them as if fully set forth herein.

87. The Illinois Whistleblower Act, 740 ILCS 174/1 et seq., states that "an employer may not retaliate against an employee for disclosing information to a government or law

enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation.

88. By its conduct as alleged herein, Defendants intentionally retaliated against Plaintiff in response to her report of Officer Zala's unlawful assault against her.

86. The conduct of Defendants was willful, wanton, intentional and malicious and deliberately indifferent to Plaintiff's rights under Illinois law.

89. As a result of Defendants' unlawful conduct, Plaintiff has lost wages and other benefits, has suffered emotional distress, embarrassment, and humiliation, and her career has been damaged as a result of Defendant's conduct; Plaintiff has suffered additional non-pecuniary losses as a direct result of Defendants' conduct.

90. Plaintiff demands to exercise her right to a jury trial of this matter.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in her favor and against Defendants as follows:

- a) Declare that Defendants' conduct was in violation of Illinois law and enjoin Defendant and all officers, agents, employee and all persons in active concert or participation with them from engaging in further unlawful conduct prohibited by Illinois law;
- b) Award Plaintiff compensatory damages;
- c) Award Plaintiff emotional distress damages;
- d) Award Plaintiff punitive damages;
- e) Award Plaintiff reasonable attorney's fees, costs, and disbursements; and,
- f) Award Plaintiff any and all other relief as the Court deems just on the premises.

Respectfully submitted,

/s/ M. Megan O'Malley
Attorney for the Plaintiff

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