



I. FACTUAL BACKGROUND

Ms. Cooper began working at the City Planning Commission as a city planner in August 2001. She alleges that, shortly after she started her employment, she began receiving unwanted sexual advances from another, more senior, city planner, Paul Curran. Some of these alleged advances occurred during "orientation trips," in which Mr. Curran drove Ms. Cooper around Philadelphia to introduce her to the various city neighborhoods to which she had been assigned. During these trips, Mr. Curran would allegedly discuss his sex life, including his sex with prostitutes, and make remarks about Ms. Cooper's attractiveness. Also around this time, Ms. Cooper allegedly became aware from conversations with co-workers that Mr. Curran had said to others that, if Ms. Cooper was not married by forty, he was going to do her a favor and impregnate her. Deposition of Shari Cooper ("Cooper Dep.") at 21, 24-26, 30, attached as Exhibit A to Defendant's Brief in support of Summary Judgment ("Def. Br.").

In December 2001 or January 2002, Ms. Cooper complained to a manager, Maryann Longacre, about Mr. Curran's behavior, but asked Ms. Longacre not to report the incidents to higher management. From January 2002 through March 2003, Ms. Cooper has testified that Mr. Curran's harassing behavior abated, although he intermittently would attempt to "hang[ ] around her in a non-professional way." Cooper Dep. at 28-30.

In February 2003, Ms. Cooper complained about Mr. Curran's behavior to the Director of the Community Planning Division, Richard Redding. Mr. Redding testified that, although he could not remember the exact nature of the conversation, he recalled that Ms. Cooper complained of "harassment" and that he responded by telling her that "basically Paul can be that way." Mr. Redding further testified that a few days after his conversation with Ms. Cooper, he discussed the conversation and Ms. Cooper's complaints with Mr. Curran, with whom he had a "close working relationship" because he wanted Mr. Curran "to be aware" of them. Ms. Cooper has testified that she complained to Mr. Redding both about Mr. Curran's past sexual harassment in 2001, but also about new rumors she had been hearing that Mr. Curran wanted to get her fired. Ms. Cooper says she asked Mr. Redding to make Mr. Curran stop his behavior, but Mr. Redding laughed and told her "Paul's a storyteller." Cooper Dep. at 39-40; Deposition of Richard Redding ("Redding Dep") at 32-36, attached as Exhibit 10 to Plaintiff's Brief in Opposition to Summary Judgment ("Pl. Br.").

In March 2003, Mr. Curran wrote three memos complaining of Ms. Cooper's behavior, one to the newly-selected Community Planning Division Director, Ms. Victoria Mason-Ailey, and two to the president of Curran's union, Mike Walsh. These memos accused Ms. Cooper of threatening him on several occasions and on one

occasion of kicking him. In either March or April 2003, Ms. Cooper was called into Ms. Mason-Ailey's office to discuss Mr. Curran's allegations.<sup>1</sup> Ms. Cooper has testified that during this meeting she told Ms. Mason-Ailey about Mr. Curran's earlier sexual harassment of her and about her February 2003 conversation with Mr. Redding, but Ms. Mason Ailey said she did not want to get involved. Ms. Mason-Ailey has disputed this account and has testified that, although she asked Ms. Cooper to meet with her in March or April 2003, Ms. Cooper refused to participate and walked out of the meeting. Ms. Mason-Ailey testified that Ms. Cooper did not tell her about Mr. Curran's alleged harassment. Cooper Dep. at 36-37, 42-44; Deposition of Victoria Mason-Ailey ("Mason-Ailey Dep") at 30-40, attached as Ex. 15 to Pl. Br..

In late July 2003, Ms. Cooper had another meeting with her supervisor, Ms. Mason-Ailey. At that meeting, Ms. Cooper testified that Ms. Mason-Ailey told her that she was dissatisfied with Ms. Cooper's work performance and that she would not be allowed to be the project manager for a large "TCDI" grant

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<sup>1</sup> There is some uncertainty in the record before the Court on summary judgment as to whether the meeting Ms. Cooper alleges took place with Ms. Mason-Ailey occurred in March or April 2003. Both parties refer to the meeting in their summary judgment briefs as taking place on or about April 2003. Ms. Cooper's initial complaint to the Philadelphia Human Rights Commission states that the meeting occurred in March 2003, and both Ms. Cooper's and Ms. Mason-Ailey's deposition testimony is unclear, placing it in late March or early April 2003. For purposes of clarity, in this Memorandum, the Court will refer to this meeting as taking place in "March-April" 2003.

project. On August 6, 2003, Ms. Cooper met with the Planning Commission Director, Maxine Griffith, who also told her that management was upset with her work performance. Cooper Dep. at 57-59; Mason-Alley Dep. at 21-24, 57.

On August 27, 2003, Ms. Cooper filed a retaliation complaint with the Pennsylvania Human Rights Commission. Her PHRC complaint alleged that her removal from the TCDI project and the July and August meetings about her job performance were done in retaliation for her complaints to Ms. Mason-Ailey in March-April 2003 about Mr. Curran's earlier sexual harassment.

In September 2003, Ms. Cooper received her annual Performance Evaluation in which she was rated by Ms. Mason-Ailey and Mr. Redding. Ms. Cooper was rated as "Unacceptable" in her "Communication," "Judgment" and "Relationship with People" skills. Comments in the evaluation noted her failure to properly record her time out of the office, her walking out of meetings with agency staff and supervisors, and "confrontational" behavior. The evaluation also contained a comment that a staffer should not "physically attack a fellow employee," which appears to reference Mr. Curran's unconfirmed allegation that Ms. Cooper kicked him. Ms. Cooper's over-all rating in September 2003 was "Improvement Needed," the second-lowest of five categories. Ms. Cooper's September 2003 Performance Evaluation was significantly

poorer than her 2001 and 2002 evaluations in which she was rated overall as "Superior," the second highest of five categories.

On September 11, 2003, Ms. Mason-Ailey sent Ms. Cooper an email, informing her that she no longer had any "functional area responsibilities" and that her responsibilities for the "Environmental Area" and "Economic Development matters" were being reassigned. Her supervisor, Mr. Redding, testified that he could not recall another employee of the Planning Commission ever having these duties removed. At around this time, Ms. Mason-Ailey also removed Ms. Cooper from another planning project, for Fox Chase Cancer Center. Ms. Mason-Ailey also required Ms. Cooper to obtain her written approval before attending public meetings. Mason-Ailey Dep. at 58-60, 76-77; Redding Dep. at 87.

On October 9, 2003, Ms. Cooper received a letter of warning from Mr. Redding accusing her of insubordination for refusing to speak at a community meeting in Burholme the night before. Ms. Cooper has testified that she refused to speak at this meeting because she feared she was being "set up." Ms. Cooper had been criticized in her September 2003 evaluation for giving her personal opinion in outside meetings. On October 6, 2003, two days before the Burholme meeting, Ms. Mason-Ailey had circulated an agency-wide email announcing that the department would be taking a "team approach" to coordinating planning services and regrouping employees into geographic teams. Ms.

Cooper was assigned to the Northeast Philadelphia Team, which included Burholme, headed by Mr. Redding. Cooper Dep. at 81-85; Redding Dep. at 90-93.

Ms. Cooper attended the Burholme meeting with Mr. Redding. The community board asked for an update of the Planning Commission's activities, and Ms. Cooper testified that she felt unsure whether she knew what the Commission's next steps would be. She asked Mr. Redding to update her or speak himself, but he declined. Ms. Cooper then declined to speak. She was issued a letter of warning the next day. Cooper Dep. at 85-87; Redding Dep. at 93-101.

On October 22, 2003, Ms. Cooper filed a second complaint with the PHRC, including the October 9, 2003, letter of warning as an additional retaliatory act.

On December 14, 2004, Ms. Cooper was called to a meeting by Ms. Mason-Ailey. At this meeting, at which no one else was present, Ms. Cooper testified that Ms. Mason-Ailey "berate[d] her for being a terrible employee" and then after she finished, held the door open for Ms. Cooper to leave. Ms. Cooper testified that as she walked through the doorway, she told Ms. Mason-Ailey that she did not understand what she had meant and Ms. Mason-Ailey said she would show her what she meant and slammed the door into Ms. Cooper, causing her to fall. Ms.

Mason-Ailey has testified that this incident did not occur. Cooper Dep. at 155-57; Mason-Ailey Dep. at 84-86.

Ms. Cooper reported the alleged door-slamming incident the day it happened. The next day, on December 15, 2004, Ms. Cooper was transferred from the Community Planning Division to the Zoning Division. Ms. Cooper contends this transfer, while still at the same civil service grade, made less use of her community planning skills and offered less opportunity for advancement. Cooper Dep. at 157-58.

Ms. Cooper filed this lawsuit on February 8, 2006.

## II. LEGAL ARGUMENT

The defendant, the City of Philadelphia, seeks summary judgment on Ms. Cooper's Title VII retaliation claims and seeks to strike Ms. Cooper's claims for punitive damages. The Court will deny the defendant's first request but grant the second.

### A. Plaintiff's Retaliation Claims

The City of Philadelphia advances two grounds for summary judgment on Ms. Cooper's retaliation claims. It alleges 1) that Ms. Cooper has failed to show that she complained of discrimination or otherwise engaged in "protected activity" under Title VII before she suffered the alleged retaliation; and 2) that Ms. Cooper has failed to show that any of the alleged

retaliation she suffered was sufficiently severe to constitute an adverse employment action under the statute. Neither of these arguments is persuasive.

The defendant is correct that, to state a prima facie claim for retaliation, Ms. Cooper must establish that the City took an adverse employment action against her either after or at the same time as she engaged in protected activity under Title VII. See Slagle v. County of Clarion, 435 F.3d 262, 265 (3d Cir. 2006). The defendant focuses on the August 27, 2003, filing of Ms. Cooper's first PHRC complaint, which the defendant concedes was protected activity, and argues that several of the actions that Ms. Cooper claims were retaliatory were taken before the PHRC complaint was filed.

This argument, however, ignores Ms. Cooper's allegations that she engaged in protected activity in February and March-April 2003, several months before filing her PHRC complaint in August. Ms. Cooper testified at deposition that she complained about Mr. Curran's harassment to her supervisor Mr. Redding in February 2003 and to her other supervisor Ms. Mason-Ailey in March-April 2003. Although Ms. Mason-Ailey has denied that Ms. Cooper complained to her, for purposes of summary judgment, this Court must assume resolve this factual dispute in Ms. Cooper's favor and assume the complaints were made as Ms.

Cooper testified. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986).

These February and March-April 2003 complaints to Ms. Cooper's supervisors constitute protected activity. Protected activity under Title VII includes "making complaints to management" about unlawful discrimination. Abramson v. William Patterson College of N.J. 260 F.3d 265, 288 (3d Cir. 2001) (internal quotations omitted). Because all of the alleged retaliatory actions against Ms. Cooper took place after April 2003, Ms. Cooper has presented sufficient evidence to show that she engaged in protected activity before she suffered the alleged retaliation by the City.

The defendant's second argument is that the retaliatory acts alleged by Ms. Cooper were too minor to constitute the adverse employment action required to state a claim for retaliation under Title VII. To constitute an adverse employment action, an action taken against an employee must be sufficiently "materially adverse" that it might "have dissuaded a reasonable worker from making or supporting a charge of discrimination." Burlington Northern and Santa Fe Ry. Co. v. White, 126 S. Ct. 2405, 2415 (U.S. 2006) (internal quotations omitted). Adverse employment actions can include changes to a plaintiff's terms and conditions of employment. See Burlington Northern, 126 S. Ct. at 2416-17 (finding unfavorable change in job responsibilities to be

an adverse employment action); Moore v. City of Philadelphia, 461 F.3d 331, 348 (3d Cir. 2006) (finding a police officer's transfer to another district to be an adverse employment action for purposes of summary judgment). They can also include negative performance evaluations. See Zelnick v. Fashion Inst. of Tech., 464 F.3d 217, 225 (2d Cir. 2006) (holding negative evaluation letters can constitute an adverse employment action under analogous standard for first amendment retaliation claims).

Ms. Cooper has alleged she suffered numerous acts of retaliation, several of which involve changes to the terms and conditions of her employment. Ms. Cooper has alleged that, as part of the City's retaliation, she was denied the opportunity to be project manager for a TCDI grant project in late July 2003, and in September 2003, had her duties reduced with the removal of all her "functional area responsibilities." Later, in December 2004, she was transferred to another department. These actions are similar to those found to constitute adverse employment actions in other cases. See, e.g., Burlington Northern and Moore. The other acts of retaliation alleged by Ms. Cooper, including her poor performance evaluation of September 2003 and her October 2003 letter of warning, are also similar to actions

found by other courts to be adverse employment actions. See Zelnick.<sup>2</sup>

On this record, therefore, the Court finds Ms. Cooper has presented sufficient evidence of an adverse employment action to defeat summary judgment on her retaliation claims.

B. Plaintiff's Request for Punitive Damages

The City of Philadelphia has moved to strike Ms. Cooper's request for punitive damages, arguing that such damages are not recoverable against a municipality under Title VII. Ms. Cooper does not respond to this issue in her brief, which alone would justify granting the City's motion on this issue. Brenner v. Local 514, United Bd. of Carpenters & Joiners, 927 F.2d 1283, 1298 (3d Cir. 1991) ("[F]ailure to raise an issue in the district court constitutes a waiver of the argument.")

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<sup>2</sup> The defendant contends that it had legitimate non-discriminatory reasons for two of these actions. It contends it issued the October 2003 letter of warning because of Ms. Cooper's insubordinate behavior at the Burholme public meeting, and it contends it transferred Ms. Cooper in December 2004 because she had an irreconcilable personality conflict with her supervisor, Ms. Mason-Ailey. Leaving aside that these proffered non-discriminatory reasons apply to only some of the alleged acts of retaliation, they both involve disputed issues of fact that must be resolved in the plaintiff's favor on summary judgment. The circumstances surrounding Ms. Cooper's actions at the Burholme meeting are sharply disputed, as is the cause of the conflict between her and Ms. Mason-Ailey. On this record, at this time, the Court cannot resolve these issues in the defendant's favor and therefore cannot grant summary judgment on these grounds.

The Court, however, will consider the issue on the merits and strike the plaintiff's punitive damage claims. Federal law does not permit the recovery of punitive damages on Title VII claims against state governments and municipalities. 42 U.S.C. § 1981a(b)(1); see also Evans v. Port Auth. of N.Y. and N.J., 273 F.3d 246, 356-57 (3d Cir. 2001) (punitive damages are unavailable in Title VII suits against municipalities or quasi-governmental agencies).

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SHARI COOPER : CIVIL ACTION  
 :  
 v. :  
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 CITY OF PHILADELPHIA : NO. 06-576

ORDER

AND NOW, this 21st day of June, 2007, upon  
consideration of the Defendant's Motion for Summary Judgment  
Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure  
(Docket # 9), and the opposition and replies thereto, IT IS  
HEREBY ORDERED that:

- 1) the plaintiff's motion is DENIED to the extent it  
seeks the dismissal of the plaintiff's retaliation claims; and
- 2) the plaintiff's motion is GRANTED to the extent it  
seeks to strike the plaintiff's claims for punitive damages.

BY THE COURT:

/s/ Mary A. McLaughlin  
MARY A. McLAUGHLIN, J.