BEFORE THE IOWA CIVIL RIGHTS COMMISSION

DOROTHY A. ABBAS, Complainant,

and

IOWA CIVIL RIGHTS COMMISSION

vs.

CITY OF HAMPTON, Respondent.

CP # 11-88-18395

COURSE OF PROCEEDINGS

This matter came before the Iowa Civil Rights Commission on the complaint filed by Dorothy Abbas against the Respondents City of Hampton, Kenneth Herwig, City Clerk, and the Mayor and City Council of Hampton, Iowa alleging retaliation for filing a prior complaint. The retaliation complaint was voluntarily dismissed against all Respondents except the City of Hampton prior to the hearing.

Complainant Abbas alleges that, after filing a sex discrimination complaint, her work assignments were steadily diminished, she was placed under increased scrutiny, and she was threatened with a lawsuit because she filed the complaint. She also alleged that her position was reduced to part-time status in retaliation for her filing of the sex discrimination complaint, with a consequent loss of employee benefits and reduction of her hourly wage. Also tried during the course of the hearing was the closely related issue of whether Ken Herwig and his wife began to refrain from speaking to Complainant Abbas at work and to withhold information from her which she needed to perform her work.

A public hearing on this complaint was held on July 15-16, 1991 before the Honorable Donald W. Bohlken, Administrative Law Judge, at the Franklin County Courthouse in Hampton, Iowa. The Respondent was represented by Charles W. McManigal, Attorney at Law. The Iowa Civil Rights Commission was represented by Rick Autry, Assistant Attorney General. The Complainant, Dorothy Abbas, was not represented by counsel.

The Iowa Civil Rights Commission's post-hearing brief in this case was filed on January 16, 1992. The Respondent's brief was filed on January 17, 1992.

The findings of fact and conclusions of law are incorporated in this contested case decision in accordance with Iowa Code § 17A.16(1) (1991). The findings of fact are required to be based solely on evidence in the record and on matters officially noticed in the record. Id. at 17A.12(8). Each conclusion of law must be supported by legal authority or reasoned opinion. Id. at 17A.16(1).

The Iowa Civil Rights Act requires that the existence of retaliation be determined in light of the record as a whole. *See* Iowa Code § 601A.15(8) (1991). Therefore, all evidence in the record and matters officially noticed have been carefully reviewed. The use of supporting transcript and exhibit references should not be interpreted to mean that contrary evidence has been overlooked or ignored. In considering witness credibility, the Administrative Law Judge has carefully scrutinized all testimony, the circumstances under which it was given, and the evidence bolstering or detracting from the believability of each witness. Due consideration has been given to the state of mind and demeanor of each witness while testifying, his or her opportunity to observe and accurately relate the matters discussed, the basis for any opinions given by the witness, whether the testimony has in any meaningful or significant way been supported or contradicted by other testimony or documentary evidence, any bias or prejudice of each witness toward the case, and the manner in which each witness will be affected by a particular decision in the case.

RULINGS ON OBJECTIONS TO EVIDENCE:

1. The only objection to evidence made during the course of the hearing which would have required a ruling was the Respondent's objection to Complainant's Exhibit No. 28. This objection was withdrawn, however, by a letter from Respondent's counsel dated January 16, 1992.

FINDINGS OF FACT:

Jurisdictional and Procedural Facts:

1. On August 18, 1987, Complainant Dorothy Abbas filed her initial complaint number 16590 charging Respondents city clerk Ken Herwig, mayor Howard Werner, and city councilmen Donald Marquard, Donald Springer, Denny Edwards, Norman Cole and John W. Davies with sex discrimination in employment. The City of Hampton was added as a Respondent by amendment on November 5, 1987. After investigation, a finding of no probable cause was made on October 10, 1989. An application by Complainant Abbas for reopening was denied on November 22, 1989. (Request for Admissions).

2. On November 15, 1988, Complainant Dorothy Abbas filed a second complaint, complaint number 18395, which alleged that she was retaliated against because she had filed her prior complaint. (Request for Admissions). The Respondents to that complaint were the City of Hampton, Kenneth Herwig (City Clerk), the Mayor and City Council of Hampton, Iowa. The date of the most recent alleged discrimination set forth in the complaint is October 14, 1988. (Notice of Hearing). Official notice is taken that November 15, 1988 is thirty-two days after October 14, 1988. Fairness to the parties does not require that they be given an opportunity to contest this fact.

3. The retaliation complaint was investigated. After probable cause was found, conciliation was attempted, and failed. (Request for Admissions). Notice of Hearing was issued on February 22, 1991. (Notice of Hearing). On March 4, 1991, Complainant Abbas and the Iowa Civil Rights Commission filed a partial voluntary dismissal with respect to Respondents Kenneth Herwig, the Mayor and City Council of Hampton, Iowa. The case was not dismissed against the City of

Hampton. The dismissal was only effective "upon the understanding that the Respondent City of Hampton will forego any argument that the City of Hampton is not legally responsible for the actions of the entities and/or persons dismissed." (Partial Voluntary Dismissal). The hearing was held on July 15-16, 1991.

Background:

Background of Complainant Abbas:

4. Complainant Dorothy Abbas began her employment with the Respondent City of Hampton on January 6, 1975. (CP. EX. # 1; Tr. at 10). She was hired by Ken Herwig, City Clerk, and worked in his office doing bookkeeping, receptionist and secretarial work. (Tr. at 10). Her initial job title was secretary. (Tr. at 11). In 1979, Dorothy Abbas was given the unofficial title of Deputy Clerk by Kenneth Herwig. In 1987, she was temporarily appointed as Deputy City Clerk by the City Council. (CP. EX. # 1; Tr. at 11, 12, 189-90). In 1984, while City Clerk Ken Herwig was absent due to an illness, Abbas' duties and responsibilities were expanded. She would attend council meetings and keep their records. She paid warrants and signed checks. Her duties did not return to their prior status when Ken Herwig returned from his absence. Her duties of attending council meetings and taking minutes ended in April of 1985. (Tr. at 11-12). Her duties as a full time employee continued to include such functions as paying invoices, bookkeeping, entering receipts, banking, typing minutes and letters, and performing general secretarial and receptionist work. (Tr. at 188).

5. On May 29, 1987, Complainant Abbas wrote a letter to Ken Herwig requesting that he ask the city council to officially recognize her title of "Deputy Clerk" and to compensate her for this position in accordance with "the guidelines of the 1987 Iowa Local Government Salary and Benefit Survey." (CP. EX. # 1; Tr. at 12-13). After being informed by Ken Herwig that the city council did not give her request any consideration, Ms. Abbas filed her original discrimination complaint. (Tr. at 15-16). That complaint alleged that the City's failure to either recognize her title in the 1987-88 Salary Resolution or to compensate her accordingly constituted sex discrimination. (CP. EX. # 2; Admissions).

6. It should be noted that City Clerk Kenneth Herwig had been a friend of the complainant for many years at the time she filed her first complaint. (Tr. at 10, 185, 289). Complainant Abbas had done bookkeeping for Kenneth Herwig as part of a high school program. (Tr. at 9, 185) From approximately 1953, Abbas had worked part-time on and off for a accounting service operated by Mr. Herwig and his former wife. (Tr. at 10, 185-86). She was hired by Ken Herwig into the city clerk's office in 1975 as he felt she was a good employee based on his experience with her in private business. (Tr. at 186).

Background of the City of Hampton:

7. There are three departments in the City of Hampton: the police department, public works, and city hall. The chief of police and the public works director were equal in authority to the city clerk until the later part of 1990. (Tr. at 207-08, 352-54). The office of City Clerk for the City of Hampton was filled by Ken Herwig from July 1, 1970 to December 31, 1990. (Tr. at 184-85).

Mr. Herwig was the chief financial and administrative officer of the City of Hampton responsible to the city council. He was supervised by the mayor and city council. He attended council meetings, kept and wrote minutes, and made certain that all notices and legal aspects of the city's functions were either published or documented. He also administered financial reports, kept the books in order, reconciled bank accounts, and made out monthly reports. He dealt with the public and answered questions and resolved problems they had concerning city functions. He was also the city's chief building permit and zoning official. (Tr. at 189, 253).

8. After the death of his first wife, Ken Herwig married Rozann. The three people working in the clerk's office at all times pertinent to this complaint were Ken Herwig, Rozann Herwig, and Dorothy Abbas. (Tr. at 11, 186, 188-90). Rozann Herwig's duties as secretary included utility billing, changes on water accounts, payroll, paying bonds and coupons for the city when due, typing, tax reports and general office work. (Tr. at 189).

Retaliation Implemented Through City Clerk Herwig's Threats to Sue the Complainant for Statements Made in Her Sex Discrimination Complaint:

Complainant Abbas' Original Complaint:

9. Ms. Abbas' original sex discrimination complaint, Complaint Number 16590, states, in part, that:

> When Mr. Herwig suffered a mental breakdown in June 1984 and was hospitalized for many weeks, I was required to perform his duties as well as my own for several months in his absence.

(Complaint No. 16590 - Attachment to Request for Admissions).

10. When Complainant Abbas filed that complaint with the Commission on August 18, 1987, and afterwards, she fully expected it would not be made public. (Tr. at 16, 157). Of course, she knew the city council was aware of it as the mayor and members of the council were named as respondents.

11. Ken Herwig, the mayor, and council members received their copies of the first complaint on or about September 3, 1987. (Request for Admissions; Tr. at 249-50, 288). The city council met on September 9, 1987. At that time, the Mayor unilaterally decided to publicly read aloud the entire complaint. (Tr. at 249-50, 288, 320-21). Mr. Herwig was present at the meeting and was upset by the reference to him allegedly having a "mental breakdown." (Tr. at 249-50, 290, 301). He was "very shocked" by the filing of the complaint. (CP. EX. # 28 at 16). He felt that the Complainant had betrayed their friendship through the use of this term. (Tr. at 289). Mr. Herwig was actually admitted to the hospital in an exhaustive and hypertensive condition after undergoing considerable stress at city hall. This stress appears to have been due to a councilman whose repeated inquiries made it difficult for Mr. Herwig to keep up with his daily work. (CP. EX. # 28 at 15; Tr. at 187).

Direct Evidence of Retaliation Though Threats of Litigation:

12. After a radio correspondent asked him at the meeting if he was going to sue Ms. Abbas, Mr. Herwig replied that "maybe I should." (Tr. at 290). Ms. Abbas subsequently heard, on a radio broadcast the next morning, that Herwig was angry and considering suing her. (Tr. at 18, 70).

13. After the council meeting, on more than six occasions during the period from 1987 to 1989, City Clerk Herwig threatened, in conversations with Complainant Abbas during working hours at the office, to sue her because of what she had said in the complaint. (CP. EX. # 28 at 15; Tr. at 19, 70-72, 290, 299, 301, 332). **Herwig threatened to economically destroy Complainant Abbas and her husband through such a lawsuit, i.e. "He said that hewould sue me for what I said and he was going to take everything that Bud [complainant's husband] and I had worked for all of our lives."** (Tr. at 19-20). He also made other comments indicating he did not like what was said in the complaint. (Tr. at 19). He also informed her that she had ruined his and the council's Labor Day weekend by filing the complaint. (Tr. at 71).

14. It is undisputed, for example, that Herwig threatened to sue the complainant on October 18, 1988, when he discussed her reduction from a full-time to a part-time employee. (Tr. at 30-32, 299, 301). At that time, Herwig stated there were four specific things that she said in the complaint "that he would sue me [Abbas] over and win." (Tr. at 31-32). He would not identify all four statements which he felt were actionable, but Complainant was made aware that the reference to him having a "mental breakdown" was one of the things which upset him. (Tr. at 32, 72, 301).

15. It should be noted that this complaint is concerned with retaliation through threats by Ken Herwig at the worksite to sue Complainant Abbas and not with retaliation through actual implementation of the lawsuit. After his initial comment to the radio station indicating he was considering suing Complainant Abbas, Mr. Herwig sought and received legal advice indicating that, in his attorney's opinion, he had a reasonable basis to commence a lawsuit based on libel, defamation or other cause of action. (Tr. at 301, 307-08, 332-33). Mr. Herwig, however, elected to not proceed with such a lawsuit as he felt it was not worth the money and trouble. (Tr. at 301, 307-08).

16. It should be noted that the Complainant apologized to Mr. Herwig in September of 1987 for making the "mental breakdown" remark in her complaint. She told him that she did not wish to make him angry or sick as a result of that comment, as he was acting sick. At that time, he responded by saying, "O.K., I'm all right." (Tr. at 32, 72, 76). Nonetheless, as set forth above, he continued to make threats to sue her after September of 1987.

17. It is clear that Complainant Abbas' reference to a "mental breakdown" was made because she sincerely believed that was the nature of Herwig's illness. (Tr. at 73, 76). The reference was not malicious. (Tr. at 147). The reference bears some relevance to the case as it was simply a way of identifying when Mr. Herwig was absent, by referring to an event as well as a date, i.e. "a period of time when he was absent from city hall and that's how I meant it to be. It was when he was ill in 1984." (Tr. at 75).

Retaliation Implemented Through Refraining from Speaking with Complainant Abbas and Withholding Information From Her Which She Required to Do Her Work:

18. After Complainant Abbas filed her complaint, her working environment changed. Ken Herwig and his wife, Rozann, would not speak to Abbas when she came to work in the morning. (Tr. at 20). As reflected by Complainant Abbas diary excerpts and testimony, she, in effect, got the "silent treatment" in the form of being ignored most of the time or hardly spoken to by Mr. and Mrs. Herwig, who were the only other employees in the city clerk's office. (CP. EX. # 3; Tr. at 20-21). See Finding of Fact No. 8.

19. Mr. and Mrs. Herwig would not tell her what was going on so she could do her day's work. (Tr. at 20). Abbas needed to know what other departments were doing so, if she answered the telephone, she could inform the caller of what was happening. (Tr. at 20-21). They would also not give her messages and mail to Complainant Abbas. Prior to her filing the complaint, Herwig and his wife would talk to the complainant about what was going on that day with respect to the business of the city clerk's office. (Tr. at 21).

20. It may reasonably be inferred from the timing of Herwig's receipt of the complaint, the contemporaneous threats to sue Abbas, and the onset of this behavior that Complainant Abbas was treated in this manner in retaliation for filing her complaint. The Respondent offered no evidence to explain what happened or to contradict Complainant's testimony on these issues.

Retaliation Implemented Through Decreasing Complainant Abbas' Work Assignments:

Reduction of Various Duties:

21. Complainant Abbas' duties were reduced after filing her original complaint of sex discrimination. The various reductions, therefore, were effective throughout the same time as the lawsuit threats. Herwig no longer let Abbas help him with various duties or discuss work with her. (CP. EX. # 3; Tr. at 24-25). Although she had routinely answered such correspondence prior to filing the complaint, Herwig no longer allowed her to type or answer correspondence for him or the public works director. (Tr. at 25-26). (Tr. at 25). Herwig would not let the complainant make photocopies as often as he had before filing of the complaint. This was one of her regular duties prior to the filing of the complaint. (Tr. at 25). It may reasonably be inferred from this evidence that this reduction in duties was due to her filing of the complaint. Respondent offered no evidence to explain what happened or to contradict Complainant's testimony on these issues.

Elimination of Check-Signing Duties:

22. At no time after she filed her complaint, was Abbas allowed to sign checks. She had previously signed checks to pay claims, payroll and anything else required by city finances. She had also signed checks from the fund with HUD grant money in it. Ken Herwig signed them after the complaint was filed. (Tr. at 26). This practice was formalized when, on March 19, 1990, the signature cards for City of Hampton checking account funds at the Hampton State Bank and the First National Bank were replaced with new ones which only had Ken Herwig's signature. From June 29, 1984 to March 19, 1990, the signature cards had listed both Complainant Abbas'

and Ken Herwig's signatures. (CP. EX. # 4; Tr. at 27, 77). It may reasonably be inferred from this evidence that the refusal to allow Abbas to sign checks was due to her filing the complaint.

23. Although it was suggested on cross-examination of Complainant Abbas by Respondent's counsel that the change in the signature cards was made in response to an auditor's recommendation, (Tr. at 77-78), there was no testimonial or other evidence to indicate that the change in signature cards or denial of check writing duties was done for that reason.

24. Furthermore, the first recommendation by the auditors which even touched on this area was made on February 8, 1989 in the report for year ending June 30, 1988. (R. Ex. # 6 at 54). The prior year's report, of March 7, 1988, for the year ending June 30, 1987 did not even mention this area. (R. EX. # 5). The elimination of Complainant Abbas' check writing duties occurred shortly after the Respondents' receipt of her original complaint, in September 1987, sixteen months prior to the auditor's first recommendation.

25. That auditor's report did not recommend that the number of persons eligible to sign checks for the city be reduced. It did suggest that there be a segregation of duties among employees "in the areas of check signing, check mailing, review of payrolls and certain bank reconciliation functions" and that countersignatures be required on all checks. (R. Ex. # 6 at 54). In any event, it is not clear from the record whether reduction of the number of employees eligible to sign checks to one would have been considered by the auditor to either have facilitated the goal of segregation of duties or to have obstructed the goal of requiring countersignatures.

Elimination of Opportunity to Be In Charge During Ken Herwig's Vacations:

26. Prior to the filing of Abbas' complaint, Ken Herwig and his wife would leave together on vacations and allow Abbas to run the office in their absence. After the filing of the complaint, Mr. and Mrs. Herwig would take separate vacations which left one of them in charge of the office. (Tr. at 26-27). For example, in 1989, Ken Herwig took vacation from June 9th through June 16th inclusive. Rozann Herwig took her vacation on June 22nd and 23rd. (CP. EX. # 9). Respondent provided no evidence concerning this change which, in effect, eliminated this responsibility for the Complainant. Given that this pattern was not followed prior to the Respondents' receipt of the complaint, it is reasonable to infer that it was a response to the complaint.

27. The not-so-subtle message communicated by the combination of the threats to sue Abbas, the silent treatment, and the reduction in her duties was that she would not be trusted or allowed to perform the full range of her former duties because she had filed the complaint.

The Herwigs' Work Overtime to Perform Abbas' Former Duties:

28. After Ken Herwig reduced Complainant Abbas' job duties, he and his wife worked extra hours to perform her former duties. (Tr. at 32). Prior to her filing of the complaint, the Herwigs and Abbas would leave work together at 5:00 p.m. After filing her complaint, the Herwigs would stay behind and work after Abbas left at 5:00 p.m. (Tr. at 32- 33).

29. Complainant Abbas recorded in her diary numerous, but not all, instances when she found the Herwigs were working late. (CP. EX. # 7, 8, 9; Tr. at 33-35, 37). The first instance recorded was on December 22, 1987. At 8:15 p.m., Complainant Abbas went to the office to obtain some personal envelopes which she had in her desk drawer. The lights in the office were off. When she opened the door, she noticed Rozann Herwig's coat on the railing and that the computer was running. Rozann "came through the door by my desk from the council chambers. I asked her why there were no lights on, and her face got red and she went into the computer room and did not answer me. I got my envelopes and left, and left the lights ON." (CP. EX. # 8).

30. There were over 25 days in 1988 and 1989, particularly after she was reduced to part-time effective October 13, 1988, for which Complainant Abbas recorded either of her or others' direct observations of the Herwig's working after hours, of the Herwig's vehicle being parked at City Hall after working hours, or when she was told by Rozann Herwig that she had worked late. (Tr. at 29, 34, 37, 64, 66; CP. EX. # 5, 7, 8, 9). Not all such incidents were recorded. (Tr. at 66; CP. EX. # 8). This was not a systematic, round-the-clock tracking of the Herwigs or of after hours work at City Hall. These documents are a partial reflection of those times the Complainant became aware that Ken or Rozann Herwig, or both of them, were working after hours. (Tr. at 34-35, 98; CP. EX. # 7, 8, 9).

Retaliation Implemented Through Increased Scrutiny of Complainant Abbas' Work:

After Her Duties Were Reduced, Complainant Abbas Did Some Personal Work on City Time:

31. After Ken Herwig reduced her job duties, which were then performed by him and Rozann Herwig through work beyond their regular hours, Complainant Abbas was, on some days, left with insufficient work to fill her time. On those days, she would spend up to one-half of a day performing personal work, such as studying shorthand, reading, or, on one occasion, doing a picture scrapbook for her grandson. (Tr. at 94-96). There is no credible evidence that such personal work was done prior to the reduction of her duties. Ken Herwig's testimony that council member Norman Cole had complained about Abbas cutting out pictures for a scrapbook for her grandson prior to July 1, 1987 is not credible, as it is contradicted by Cole's own statement to the effect that he observed this activity in late 1987 or early 1988 and by Complainant Abbas' testimony to the effect that this occurred after the reduction of her duties. (R. EX. # 2; Tr. at 94-95, 212-13).

32. During the course of the investigation, Ken Herwig acknowledged that Complainant Abbas was not being given sufficient city work to keep her busy. Her assigned work was being done. Her personal work was not seen as misconduct so much as evidence that there was not sufficent work for her to do. Ken Herwig did not acknowledge, however, that her former duties were being performed by him and Rozann. (CP. EX. # 28 at 13-14).

33. After Herwig retaliated against Complainant Abbas by reducing her duties, and after she responded to this by doing personal work when she was left with nothing to do in the way of her official duties, Herwig mentioned to city councilman Don Springer that Abbas was doing personal work on city time. (Tr. at 269-70). Herwig also heard complaints about the Complainant performing personal work from council member Norman Cole and water and sewer department

foreman James Hagerty. Cole commented that perhaps Complainant Abbas should be placed on a part-time basis. (R. EX. # 2, 14; Tr. at 216).

Maintenance of Log of Complainant's Personal Work Activities:

34. Herwig established a log to document Complainant Abbas activities at the office when she was not doing city work. (CP. EX. # 26; Tr. at 291, 293). The log ultimately was used to justify Complainant Abbas' reduction in hours, which was at least recognized as a possiblity from the start of the maintenance of the log. (R. EX. # 3; Tr. at 291, 293). While it is clear that this log was partially a response to Herwig's observations and others' comments about her doing personal work on city time, (CP. EX. # 28 at 14; R. EX. # 3; Tr. at 291), it must be borne in mind that Abbas began doing such personal work only as a response to the retaliatory reduction of her work duties. Also, on or before January 26, 1988, Herwig had already decided to recommend that Complainant Abbas be reduced to part-time. (CP. EX. # 3; Tr. at 21-22). See Finding of Fact No. 41. The log thus became an instrument to provide documentation for a decision that had already been reached. There is also evidence which indicates that the maintenance of this log was more directly linked to the filing of the complaint.

35. Log entry dates correspond to activity concerning the complaint. The log was maintained in a desk diary. On December 16, 1987, the Commission mailed a letter to the Respondents notifying them that the sex discrimination was in line for investigation and that information was being requested. This information included a request for a summary of the duties performed and the qualifications of the four highest paid employees in each department. (Request for Admissions and attachments; Tr. at 294). On December 21, 1987, Herwig submitted a written request to the complainant for such information "because of a complaint that has been filed by Dorothy Abbas." (CP. EX. # 27; Tr. at 296). The first entry is for the next day, December 22, 1987. (CP. EX. # 26; Tr. at 295-296).

36. The diary is then blank for a month and a half until February 10, 1988. (CP. EX. # 26; Tr. at 296). The previous day, February 9th, Ken Herwig had consulted with counsel for the Respondent concerning this case. (Tr. at 298). (The Commission does not imply that counsel had any role in retaliating against Complainant Abbas. He advised against retaliation.) After February 11th, the log is blank for approximately one month until March 9, 1988. (CP. EX. # 26; Tr. at 296). Six days prior to this, on March 3, 1988, the Commission's investigator had conducted an interview with Ken Herwig in the presence of his counsel. (Request for Admissions). There are six more entries in March. (CP. EX. # 26).

37. There are no further entries for five and one-half months until September 13th, the second Tuesday in September of 1988, approximately one year after September 9, 1987, the second Wednesday in September of 1987, the date when Abbas' complaint was read aloud at the city council meeting. There are five more entries in September. (CP. EX. # 26; Tr. at 296). See Finding of Fact No. 11.

38. The last entry is for October 10, 1989, three days before Herwig's letter to Complainant Abbas informing her that he was reducing her to a part-time employee. (CP. EX. # 5, 26). That log entry, states, in part: **"Asked her if she had lawyer help her with filing complaint to Civil**

Rights Commission.She said 'no.' Just Bud [her husband] and Shelly [her daughter] read it." (CP. EX. # 26; Tr. at 8).

39. In light of the close relationship between complaint activity and the maintenance of the log, the continuing threats to sue Abbas, the last entry demonstrating an explicit continuing concern with the "filing [of the] complaint," and the underlying fact that Abbas would not have been performing personal work if it were not for the retaliatory reduction of her duties, this log constitutes a manifestation of retaliation and not any legitimate personnel function of the Respondent.

Maintenance of A Correspondence File:

40. Ken Herwig also maintained personnel files on five city employees including Complainant Abbas. These were the only employees on whom personnel files were maintained at the time. (Tr. at 40). Although Abbas asserted that these files were maintained only on "troublemakers," persons who caused personnel problems for the city, the Respondent was able to produce evidence to the effect that all five of these files were correspondence files initiated in response to correspondence from outside sources and maintained as records of the correspondence. (Tr. at 41, 78-79, 80, 175-183, 219- 20). This evidence was not rebutted. Although Abbas testified that persons with such files were referred to as "troublemakers," her testimony does not specify who used such an appellation. (Tr. at 183). There appears to have been no harm to Abbas through the mere collection of correspondence relating to her case in a file. Under these facts, the maintenance of such personnel or correspondence files does not constitute retaliation.

Retaliation Implemented Through the Reduction of Complainant Abbas From a Full-Time to a Part-Time Employee:

The Process Leading to the Reduction to Part-Time:

41. The reduction of Complainant Abbas' position from full-time to part-time first began to be considered in December of 1987. This was after the filing of Abbas' complaint and the subsequent retaliatory reduction in her duties, and at approximately the same time the retaliatory log on her personal work activities began to be kept. (Tr. at 291, 293). See Findings of Facts Nos. 31, 33-34. Ken Herwig had decided to recommend the reduction of the complainant to part-time at some time before January 26, 1988. At that time, Complainant Abbas overheard Ken Herwig tell Mayor Howard Werner that when the city clerk's office went part-time, the city would be saving some additional money. (CP. EX. # 3; Tr. at 21-22). While Abbas did not overhear Herwig name any particular person who would be reduced, it was the city's practice to reduce the least senior employee. In the city clerk's office, that would be Abbas. (CP. EX. # 3; Tr. at 21-22, 96-98).

42. On January 20, 1988, Herwig reported to the council that, due to a property valuation decrease, there would be a decrease in the General Fund available for the 87-88 year of approximately 11% or $66,520.00. The council decided that the finance committee should meet with department heads to work out possible budget adjustments. (R. EX. # 12). By April of 1988, Herwig had discussed reducing Abbas' position with the city's finance committee. (Tr. at 256-

57). He continued to make recommendations to the committee on this matter as the time approached for the city council to formulate the salary resolution effective July 1, 1988. (Tr. at 256). Although it is clear the finance committee did not act with retaliatory intent, the committee, as noted by its chairman Keith Miller, essentially relied on Herwig's recommendation when deciding that the City Clerk's office could be operated with less than two full-time secretaries. (Tr. at 335, 340, 342).

43. The finance committee incorporated Herwig's advice favoring the reduction of Abbas' position to half-time in its recommendation to the Hampton city council on the salary resolution. (Tr. at 257). The finance committee gave Herwig the guidelines to present the salary resolution and he presented a verbal report on their behalf to the city council at its meeting on June 8, 1988. (R. EX. # 12; Tr. at 257, 351).

44. The city council adopted the salary resolution on that date. (R. EX. # 12; Tr. at 257). Although it is clear the council did not act with retaliatory intent in adopting the resolution, the council, as demonstrated by the testimony of Mayor Howard Werner, and council members Don Springer, Denny Edwards, Keith Miller, and Kathy Cooper, based its decision on the recommendations of Herwig and the finance committee. (Tr. at 270, 312, 315-16, 317, 327-29, 340, 342, 351, 358). Paul Sensor also testified concerning the reduction, but he was not on the council until July 1988, after the resolution was passed. (R. EX. # 12; 371, 373-74).

45. After the resolution was adopted, Herwig had, effective July 1, 1988, the discretion to implement Abbas' reduction to part-time. (Tr. at 257-59). He did not immediately exercise this authority because of the heavy workload in the City Clerk's office from July to October due to the end of the fiscal year and the reporting of road use tax. (Tr. at 259). In September 1988, the council requested that Herwig consult with Respondent's counsel about the reduction. (Tr. at 259). Near the end of September, Herwig telephoned Respondent's counsel, Charles McManigal. (Tr. at 217, 258). At that time, McManigal advised Herwig that reduction of the position would be appropriate if financially responsible, that is if cuts were also being made in other areas of the city's budget. (Tr. at 217). He asked Herwig if retaliation for filing the civil rights complaint was the reason for the reduction. (Tr. at 217-18). Herwig had been aware since the fall of 1987 that retaliation was illegal. (Tr. at 254). Herwig falsely stated to McManigal, and falsely reiterated under oath at the hearing, that it was not. (Tr. at 217-19, 302). McManigal requested that the reasons be reduced to writing. (Tr. at 218). Herwig's listed reasons in his letter of September 30, 1988 to McManigal did not include retaliation. (R. EX. # 3; Tr. at 218).

46. On October 13, 1988, Herwig gave Abbas a letter informing her that, effective "October 31, 1988 your status as an employee of the City of Hampton will be reduced from a full-time employee to a part-time employee." (CP. EX. # 5; Tr. at 29).

Direct Evidence That Retaliation Was A Motive For the Reduction of Complainant Abbas to a Part-Time Employee:

47. On October 18, 1988, Complainant Abbas met with Ken Herwig to discuss his letter of October 13th. Abbas asked Herwig who reduced her from full-time to part-time. Herwig stated that he and the council had. (Tr. at 30). **When Complainant Abbas asked Herwig why she was**

reduced he replied thathe "didn't like that civil rights mess hanging over his head." (Tr. at 31-32).

48. **It is undisputed that, during this same conversation about the letter informing Abbas that she was being reduced to part-time, Herwig againthreatened to sue her because of what she said in the complaint.** The serious economic harm sustained by Abbas through her reduction to part-time is consistent with the harm Herwig explicitly threatened to inflict upon her through a retaliatory lawsuit. See Findings of Fact Nos. 13-14.

Respondent's Retaliatory Actions Against Complainant Abbas Created A Hostile Work Environment for Her:

49. The combination of repeated threats at work to sue Complainant Abbas because of statements she made in the complaint, the silent treatment, the refusal to tell her the information she needed to do her work, the reduction in her duties, and informing her that she was being reduced to part- time because of the "civil rights mess" constituted a pattern of retaliatory actions which created a continuously hostile working environment for Complainant Abbas. While the emotional impact of Respondent's retaliatory acts shall be set forth in detail in the findings on emotional distress, the environment was sufficiently hostile to result in Complainant Abbas dreading going to work. (Tr. at 151). This was a reasonable response to these acts. Given the pervasiveness and severity of these events, any reasonable person would perceive that a hostile work environment had been created.

Respondent Has Failed to Prove by the Greater Weight of the Evidence That It Would Have Reduced Complainant Abbas to Part-Time Even if Retaliation Had Not Been a Factor In the Decision:

50. Respondent City of Hampton has failed to prove by the greater weight of the credible evidence that the City's legitimate reasons for reducing Complainant Abbas to part- time, standing alone, would have induced it to make the same decision in the absence of a retaliatory motive. The prime mover for the City of Hampton in the process leading to Complainant Abbas' reduction to part-time was City Clerk Ken Herwig. There is no question that retaliation was the predominant motivating factor in his recommendations to reduce Abbas' position and that these recommendations were determinative in the City's final decision. It is not sufficient for the Respondent to have demonstrated that legitimate reasons played a part in the reduction or that the reduction would have been justified under the facts as they existed at that time. See Conclusions of Law. For the reasons set forth below, the Respondent has not proven by a preponderance of the evidence that, in the absence of the retaliatory motivation, Ken Herwig's recommendation to reduce Complainant Abbas' position to part-time would have been the same. Without such proof, it cannot be said that the city's final decision would have been the same.

Respondent's Other Reasons for Reduction of Complainant Abbas' Hours:

51. On brief, the Respondent argues, based on Respondent's Exhibit # 3, that three legitimate reasons were given for Complainant Abbas' reduction. (Respondent's Brief at 10). This exhibit was the September 30, 1988 letter from Ken Herwig to Respondent's counsel setting forth

reasons for Complainant's reduction. (R. EX. # 3). See Finding of Fact No. 45. These three reasons were also reiterated in Herwig's letter to Abbas of October 10, 1988 informing her of the reduction. (CP. EX. # 5). Three of the reasons given are:

1. Reduction in workload due to the completion of the Community Block Grant Program.

2. Reduction in workload due to the implementation of the City's new computer system.

3. The poor economic condition of the City and the reduction of property tax valuations. (Respondent's Brief at 10, 11, 12). An examination of Respondent's Exhibit # 3 reveals two more reasons for the reduction. First, Herwig asserted, based on a statement made in Abbas' May 29, 1987 letter to the city council requesting that she be given appropriate compensation for the deputy city clerk position, that Abbas would not accept any additional duties or responsibilities. (R. EX. # 3; CP. EX, # 1). See Finding of Fact No. 5. Second, Herwig noted Complainant Abbas was doing personal work on city time. (R. EX. # 3). These fourth and fifth reasons were not mentioned in the letter to Abbas. (CP. EX. # 5).

Reason # 1: Reduction in Workload Due to the Completion of the Community Development Block Grant Program:

52. Herwig's letter of September 30, 1988 to Respondent's counsel states, in part:

> In **June of 1987,** the City **completed** a **three-year** Community Block Grant Program in which the **housing rehabilitation project** created substantial paper work. The City does not anticipate having any further grant program which will involve extensive paper work and office time.

(R. EX. # 3)(emphasis added).

53. in either 1980 or 1981, the first Community Development Block Grant (CDBG) was given to the City of Hampton through the Department of Housing and Urban Development (HUD) for housing rehabilitation and sewer work. Another three grants were issued in the years 1983 through 1985 for housing rehabilitation, streets, and building demolition work. The grants were administered through the City in cooperation with the North Iowa Area Council of Governments (NIACOG). Approximately 2/3 of grant budget and disbursements for the last grant were for housing rehabilitation. The work funded by all these grants was completed in 1986. (R. EX. # 5 at p. 51; Tr. at 275, 280).

54. As suggested by Herwig's letter of September 30th, the extensive paper work and office time expended on HUD grants at the City Clerk's office were related to the housing rehabilitation program. (R. Ex. # 3; Tr. at 278). The rehabilitation program requirements involved four time consuming functions: (1) general record keeping (2) financial record keeping (3) coordination and communication with NIACOG, and (4) dealing with problems raised by the property owners. (Tr. at 275-78).

55. General record keeping involved maintaining files on 67 homeowners in the three year 1983-85 grants program. (Tr. at 275). Financial record keeping involved processing pay estimates (for payments to the contractors) each month, posting the entries onto a ledger sheet, writing out the checks and delivering them to the contractor. Coordination and communication with NIACOG involved telephone calls, mailings, exchanges of information and making certain the City of Hampton and NIACOG agreed on what amounts had been disbursed and what remained to be spent. (Tr. at 276). Problems with property owners included contractor-homeowner conflicts, answering questions, and taking initial homeowner applications. (Tr. at 277).

56. Although Respondent suggests on brief that Abbas "spent somewhere between twenty and twenty-four hours per month on the HUD grants until concluded sometime **in late 1987 or the first part of 1988**," this conclusion is contradicted by the greater weight of the evidence, including Herwig's own statement, quoted above, which indicates that this project was completed by June of 1987. (Respondent's Brief at R. EX. # 3). A more accurate statement would be that this project was completed during the fiscal year ending June 30, 1987. **According to the auditor's report for the year ending June 30,1987, all but $157.00 of the Community Development Block Grant funds for all CDBG programs, including housing rehabilitation, were expendedby November 30, 1986, which was the end of the contract period for the last grant. (R. EX. # 5 at p. 51).** The total financial activity concerning this grant in the next fiscal year ending June 30, 1988 was the receipt of $49.00, the disbursement of $156.00 on administration of the program, with a zero balance at the end of the year. (R. EX. # 6 at p. 33). The entire $156.00 disbursement on administration that year may have consisted of the return of monies that were received in excess of the grant agreement, as recommended by the previous year's audit. (R. EX. # 5 at p. 64). An excerpt from the city budget reflected no expectation of CDBG revenues for that year. (R. EX. # 8; Tr. at 192). This grant wasn't even mentioned in the audit for the fiscal year ending June 30, 1989. (R. EX. # 7). In summary, there was no significant financial activity with respect to this program during the entire 23 month period from November 30, 1986, the end date of the last grant, to October 31, 1988, the effective date of Abbas' reduction. 57. In light of the above evidence, it is clear that the most credible testimony on the length of the grant and paperwork on the grant is that of Marsha Cory, the Deputy Director of NIACOG from 1979 to 1985. (Tr. at 273). She testified that the work would have been completed about the end of 1986, which conforms to the contract end date, with some closeout and audit extending into 1987. (Tr. at 280).

58. Respondent suggested, on brief, that Complainant Abbas' testimony indicates the grant ended in 1988. (Respondent's brief at 10). Abbas did not have a clear recollection of the dates or extent of the grants. (Tr. at 136-37, 138). Also, her initial testimony, like Herwig's letter, referred to the grants as a three year program. (Tr. at 137). Only later was there an affirmative answer by her, elicited on cross-examination, to the question of "if they take three years to complete the one in '85 [would have been done] in '88?" (Tr. at 137, 138). Given the contract end date, the other information from the auditor's reports discussed above, and Cory's testimony, Abbas' testimony is not sufficient to establish that work on the grants continued into late 1987 or early 1988.

59. The financial record keeping functions of processing payments to contractors and dealing with homeowner problems were ended by November 30, 1986. No further contractor payments or rehabilitation work were being done or could have been done with the remaining balance of

$157.00, given the small amount of money, the contract end date of November 30th, and the requirement to return monies back to NIACOG. These financial record keeping functions were the functions performed by Abbas. (Tr. at 139-141). The remaining paperwork functions would have been severely reduced or eliminated on or shortly after that date.

60. Abbas did not work on the CDBG grants every week. (Tr. at 169). When she did, they would account for 3 to 5 hours of work in that week. (Tr. at 170). Marsha Cory agreed that the hours spent on the grants would be sporadic and vary. (Tr. at 278). Ms. Cory's observations of the handling of grants in Hampton would have ended in late 1985, a year with heavy grant activity as two or more of the grants would have been administered due to overlapping time periods. Based on these observations, she estimated that the clerk's office overall would have required an average of 10 hours per week or more to handle the grants. (Tr. at 273, 279-80).

61. Whatever impact the ending of the CBDG grants had on the City Clerk's and Abbas' workload should have been evident by late 1986 or early 1987. Yet, there was no effective reduction in Abbas' workload until the retaliatory reduction of her duties after the filing of her complaint in August 1987. The Herwigs worked overtime to make up the shortfall after the retaliatory reduction of her duties. See Findings of Facts Nos. 1, 21, 28-30. There would be no need for such overtime if the end of the CDBG grant resulted in an overall 20 to 50 hour per month workload reduction in the Clerk's office. Nor was there any proposal to reduce her to part-time until after the complaint was filed. Finally, the Clerk's office had a full-time staff of the clerk and two secretaries from at least 1975, five years prior to the first grant, until October 31, 1988, almost two years after the last grant ended. See Findings of Fact Nos. 4, 8, 41, 56. The Commission is not persuaded that Herwig would have recommended Complainant Abbas' reduction to part-time in 1988, based on the completion of the CBDG grants in 1986, in the absence of a retaliatory motive.

Reason # 2: Reduction in Workload Due to Implementation of the New Computer System:

62. Herwig's letter of September 30, 1988 to Respondent's counsel states, in part:

> The implementation of the City's computer system has substantially reduced detail work and typing time in invoice and claim preparation and processing, check writing time, bookkeeping time and report preparation and printing time.

(R. EX. # 3).

63. The city obtained two computer systems. The first was an electronic posting machine, sold in approximately 1978, used for payroll checks and utility billing. (Tr. at 224, 225). The second computer, installed in the summer of 1986, was a super microcomputer used for payroll, utility billing, and fund budgeting which included budgetary functions, general ledger and accounts payable. (Tr. at 225). The general ledger portion, however, was never installed. (Tr. at 229). This system was fully operational by January 1, 1987. All training had been completed by that date. (Tr. at 230). It is this second system which is referred to in Herwig's letter of September 30, 1988.

64. The 1986 computer enabled Complainant Abbas to do all checks on the computer. Prior to this, some checks were written by hand. (Tr. at 105). Specifically, accounts payable checks were done by hand. Payroll and utility billing checks were done by the first computer. (Tr. at 106, 226-27). Abbas credibly testified that the 1986 computer saved her approximately four to eight hours of time per month, all in the checkwriting function. (Tr. at 143). Abbas' testimony is considered credible because she actively used the system.

65. The testimony on this issue does not yield a reliable estimate of the total amount of time saved by the system in the clerk's office. Ken Herwig estimated that it saved 30 or more hours per month, with the time savings approximately equally split between Rozann Herwig and the complainant. (Tr. at 210). Herwig, however, did no input on the computer. (Tr. at 226). He acknowledged that the time savings for him were negligible. (Tr. at 211-212).

66. Caryle Merritt's computer software and hardware business, Merritt Computer Service, Inc., sold both computer systems to the city. (Tr. at 224-25). Merritt's business received, from the City of Hampton, $77,000 for software for the 1986 system, including installation and training, with an additional 10%-12% of the software price for software maintenance and customer support services. (Tr. at 233-35). Merritt also handled, as the support group for NCR, the installation of the hardware, a $25,000 minicomputer and a $13,000 printer sold through NCR. (232-33, 235). The amount Merritt received from the City for such installation is not clear in the record.

67. Merritt estimated the 1986 system saved the clerk's office 40 to 60 hours per month just for utility billing and replacing handwritten checks. (Tr. at 228, 230). He acknowledged, however, it would be difficult to accurately estimate the amount of time the system saved the city clerk's office. (Tr. at 228). Furthermore, he was familiar only with the basics and not the details of the internal operations of the clerk's office. (Tr. at 232). After installation he would not spend much time there. (Tr. at 232).

68. Whatever impact on the city clerk's workload the computer system had would have been evident by early 1987, as the system was fully operational by then. Yet, there was no proposal to reduce Abbas hours until late 1987, after the filing of the complaint. There is no evidence of Abbas' total workload being reduced to the point that there wasn't enough to do to keep her busy until the retaliatory reduction of her duties after she filed her complaint in August 1987. Also, if the computer system had a dramatic effect on the total workload at the city clerk's office, why was it necessary for the Herwigs to work overtime to perform the duties they had taken from Abbas? See Findings of Facts Nos. 1, 21, 28-30. The Commission is not persuaded that Herwig would have recommended Abbas' reduction to part-time, based on the time savings resulting from the installation of the 1986 computer, in the absence of a retaliatory motive.

Reason # 3: The Poor Economic Condition of the City and the Reduction of Property Tax Valuations:

69. Herwig's letter of September 30, 1988 to Respondent's counsel states, in part:

> The City's poor economic condition and the reduction in property tax valuations of over $12,276,000, in the last three years which at the $8.10 per thousand levy

> limit imposed by the state has resulted in a $99,435 decrease in general fund property tax receipts. In trying to cope with this large decrease, the police department did not replace one police officer who resigned in May of 1988 and when the fixed based operators left at the airport, they were replaced by an employee from the water department so the police department and the water department have each sacrificed one employee each in order to help offset the decline in revenues. In keeping with these efforts, I am not able to reconcile paying full time salary for half time work.

(R. EX. # 3).

70. There is no question that the City of Hampton faced serious adverse economic conditions in the years 1986-88 which required budget cutting measures. See Findings of Fact Nos. 72-74, 76. But, the only employee in the entire city workforce who suffered any economic loss due to budget cutbacks was Complainant Abbas. All other budget cutting measures were either directed at non-personnel items or relied on reductions through attrition and transfers. See Finding of Fact No. 75. As demonstrated by a comparison of the amount of the positive balance of $75,865.00 in the general fund, achieved by the fiscal year ending June 30, 1989, only 8 months after Abbas' reduction to part-time, and the amounts of savings achieved by the other budget measures, with the savings of $8,100.20 achieved by the reduction of Abbas, it is clear that Abbas' reduction to part-time had a relatively minor impact on the deficit problem. See Findings of Fact Nos. 77-79. The elimination of the deficit and the restoration of the general fund to a positive balance, even in the absence of any reduction of Abbas' position, was certainly anticipated by February of 1989 and probably anticipated by September of 1988, prior to her reduction. See Finding of Fact No. 77. Under these circumstances, the Commission is not persuaded that the budget situation, in the absence of retaliation, would have resulted in the reduction of Abbas to a part-time position.

The General Fund Deficit as of June 30, 1987:

71.

> The General Fund is the general operating fund of the City. All General tax revenues and other receipts that are not allocated by law or contractual agreement to some other fund are accounted for in this fund. From the fund are paid the general operating expenses, the fixed charges, and the capital improvement costs that are not paid through other funds.

(R. EX. # 5). The general fund includes salaries for the city clerk's office.

72. On January 20, 1988, Herwig reported to the city council that property valuations as of January 1, 1987 would be utilized for the 1988-89 budget. The valuations had decreased from $67,287,911 on January 1, 1986, to $59,102,955 on January 1, 1987, an $8,184,956 decrease. This resulted in an expected decrease of $66,298 for the General Fund if the property tax rate was maintained at $8.10 per thousand, the maximum allowable level. Agricultural land valuations also decreased by $73,804, resulting in an additional decrease of $222 for the general fund. This total reduction in the General Fund levy of**$66,520** resulted in a decrease of

approximately **11.5%** from the amount which was available for the 1987-88 budget year in the General Fund. (R. EX. # 12, 13; Tr. at 132, 135, 194, 196).

73. The general fund was also impacted by a decrease in federal revenue sharing funds from $21,709.00 for the fiscal year ending June 30, 1987 to zero for the fiscal year ending June 30, 1988. (R. EX. # 5 at p. 20, 30, # 8; Tr. at 197).

74. On March 7, 1988, the state auditor issued its audit of City of Hampton finances for the fiscal year ending June 30, 1987. The audit indicates there was a $496.00 deficit at the end of that year for the general fund. The prior fiscal year had ended with a debit (i.e. positive) balance of $27,859. The auditor recommended that the city investigate alternatives to eliminate the 1987 deficit. (R. EX. # 5 at p. 25, 63).

Abbas - The Only City Employee Sustaining Economic Loss Due to Cutbacks:

75. On June 8, 1988, the city council passed the salary resolution giving Herwig the authority to reduce Abbas to part-time. See Findings of Fact Nos. 43, 45. The city council minutes reflect that "[i]n accordance with the union negotiations and contracts the salary schedule for both union and non-union members remain the same for the 1988-89 fiscal year as they were for the 1987-88 fiscal year. The fringe benefits remain the same also with the exception of the increase in premium for health and medical insurance which is paid by the city." (R. EX. # 12). The evidence in the record on budget cuts does not reveal any reduction in salary, hours, health insurance benefits or any other economic loss for any employee except Abbas. She was reduced from full-time to half-time with Herwig reserving the right to adjust the hours weekly for a greater or lesser amount. (CP. EX. # 5). Her hourly pay was reduced from $6.548 per hour to $5.50 per hour. (CP. EX. # 5; Tr. at 42). She was required to begin paying for her own health insurance benefits which were previously carried by the city. The initial monthly premium cost was $316.00 per month. (CP. EX. # 5).

General Fund Deficit As Of June 30, 1988:

76. On September 7, 1988, the city council was informed by Ken Herwig that the deficit in the General Fund had increased for the year ending June 30, 1988 to $21,663.08. (R. EX. # 12). As previously noted, Complainant Abbas' reduction to part-time was effective on October 31, 1988. (CP. EX. # 5).

Restoration of Positive General Fund Balance Anticipated By September 1988:

77. At the time budget cuts were implemented, Ken Herwig was aware that the total amount of the budget cuts was in the range of $70,000 to $80,000 per year. (Tr. at 220- 21). At sometime prior to February 9, 1989, Herwig was aware that the city's budget projections showed that the General Fund would be balanced by June 30, 1989 due to its budget cutting efforts. (R. EX. # 6 at p. 59; Tr. at 199- 200). This was probably known to him on or shortly after September 7, 1988. By that time, the following facts were known: (a) all the information in the city's financial report for the fiscal year ending June 30, 1988 including the amount ($21,663) of the general fund deficit for that fiscal year, (b) that $17,000 of this deficit was due to delinquent payment of

property taxes, (c) property valuations utilized and anticipated general fund revenue for the fiscal year ending June 30, 1989, (d) all the facts in the budget and salary resolutions for the fiscal year ending June 30, 1989, and (e) that all the budget cutting measures set forth below except the reduction of Abbas (which had already been authorized) and the replacement of a resigned street department employee with a mechanic in May of 1989 had been implemented. Most of these budget measures were initially implemented during or after the fiscal year ending June 30, 1988. Some were initiated in 1987. (R. EX. # 12). See Finding of Fact No. 79.

General Fund Deficit Eliminated and Positive Balance Restored By June 30, 1989:

78. The City's budget cutting efforts resulted in the elimination of the deficit and restoration of a debit (i.e. positive) balance for the general fund of $75,865.00 by June 30, 1989. (R. EX. # 7 at p. 9.; Tr. at 202).

Budget Cutting Measures In Detail:

79. Official notice is taken of (a) the budget cutting measures undertaken by the City of Hampton and savings therefrom listed in Respondent's Answers to Interrogatories Numbers 17 and 18, and (b) the lost wages and benefits for Abbas which were listed in Complainant's Answers to Interrogatory Number 4, both of which were referred to during the course of the testimony. (Tr. at 43, 207). The savings have been calculated from the date the measure took effect to June 30, 1989, the end of the fiscal year in which Abbas was reduced to part-time, the deficit eliminated, and a positive balance restored to the general fund. Fairness to the parties does not require that they be given the opportunity to contest these facts: (Some of these facts were also directly mentioned in the testimony as indicated by transcript references):

A. Non-Personnel Cuts:

1. Police Car Replacement Schedule. Prior to 1987, the practice was to replace one car annually. Since that time, practice changed to replacement of one car every two years. Total savings as of 6/30/89: $28,000. (2 cars not purchased - 1987 and 1989). (Int. # 17; Tr. at 121, 205-06).

2. Street Department Truck Replacement: Prior practice was to replace dump trucks every two to three years. No replacement now since 1985. Anticipated replacement would have been in 1987 or 1988. Total Savings as of 6/30/89: $35,000. (1 truck not purchased - 1985-89). (Int. # 17; Tr. at 206).

3. Street Department Sweeper Replacement: Sweeper not replaced in 1988 as scheduled. Total Savings as of 6/30/89: $75,000. (Int. # 17; Tr. at 206).

4. Fire Truck Replacement: The city had established a fire truck replacement fund in which it had planned to place $10,000 per year in FY 1986, 1987, 1988. This $10,000 per year contribution was to continue until $100,000 was reached. The city could not complete its commitment and shifted the funds to general operations. Total Savings as of 6/30/89: $40,000. (Int. # 17).

5. In House Equipment Repairs: On May 1, 1989 city hired a certified mechanic to replace a street department employee who resigned. Mechanic now repairs city vehicles and equipment formerly sent to private shops. Total Savings: Unspecified costs for labor due to increased repairs given age of equipment. (Int. # 17; Tr. at 206-07).

B. Personnel Costs:

1. Airport operators and managers resigned. A water department employee assumed their duties effective June 1, 1987. No additional employees were hired to replace them. Total Savings as of 6/30/89: $30,000 in salary. (Int. # 18; Tr. at 122, 206).

2. Police officer resigned effective May 1, 1988. He was not replaced. Total Savings as of 6/30/89: $30,045.32 in salaries and benefits. (Int. # 18; Tr. at 121, 206).

3. Reduction of Complainant Abbas to part time effective October 31, 1988. Total Savings as of 6/30/89: ($5317.20 in salary + $4801.75 in benefits, i.e. vacation, holidays, health, IPERS, FICA, longevity) = $10118.95. (Int. # 4, 18). See Findings of Facts Nos. 94-95.

Reason # 4: Abbas' Statement In Her Letter of May 29, 1987:

80. Herwig's letter of September 30, 1988 to Respondent's counsel states, in part:

> Following is a direct quote from a letter dated May 29, 1987 from Dorothy Abbas sent to me to be presented to the City Council-(which I did)
>
> > "I do not expect that any consideration and/or compensation given to me to include or require any additional duties or responsibilities."
>
> It is rather difficult to adjust work loads and direct the activities of an employee who will not accept any additional duties or responsibilities.

(R. EX. # 3).

81. Abbas' letter to Herwig is the one which requested that she be recognized and compensated as "Deputy Clerk." (CP. EX. # 1). **The failure to respondfavorably to that request directly led to the filing of her sex discrimination complaint.** See Finding of Fact No. 5. **The letter and its request arespecifically mentioned in that complaint.** (Complaint No. 16590 - Attachment to Request for Admissions).

82. The quote given in Herwig's letter to McManigal is only a fragment of the sentence from Abbas' letter and is taken completely out of context. In her letter, Abbas asks Herwig to petition the council to request that her title "Deputy Clerk" become recognized in the salary resolution and that she be compensated for that position in accordance with a local government salary

survey. She states her belief that she has served as Deputy Clerk for eight years to Herwig's express satisfaction and requests the recognition and compensation which she believes is due her. (CP. EX. # 1).

83. The last two full paragraphs of her letter, a portion of which was quoted by Herwig, state:

> I wish to continue handling the same duties and responsibilities in the future, as your assistant, as I have in the past, but *I do not expect that any consideration and/or compensation given me to include or require any additional duties or responsibilities.*
>
> I respectfully await your prompt action on this request.

(CP. EX. # 1)(emphasis added). The sentence, when taken in context, is clearly intended to convey the idea that Abbas wished to receive increased compensation for the duties she was performing in May of 1987, without that compensation being tied to additional duties. It did not constitute a blanket refusal to take additional duties under any condition. (CP. EX. # 1; Tr. at 14). Abbas "meant that if they did recognize my job title and compensate me as deputy clerk, I didn't want to be dumped on. I didn't want them to load me down with work." (Tr. at 14).

84. Herwig never asked Abbas if she would accept additional duties or responsibilities, but assumed, based on his reading of the letter, that she would not. (Tr. at 255). The letter is directly and clearly linked to the original discrimination complaint. It is difficult to believe that, in the absence of a retaliatory motive, this unique interpretation would have been given the quoted statement in Abbas' letter. This reason stands as evidence of a retaliatory motive for the reduction in hours and not as a legitimate reason for the reduction.

Reason # 5: Complainant Abbas Was Doing Personal Work on City Time:

85. Herwig's letter of September 30, 1988 to Respondent's counsel states, in part:

> When Mrs. Abbas is not busy doing City work she writes personal letters, reads books and magazines and studies Gregg shorthand.

(R. EX. # 3). Herwig's testimony also indicated that Abbas' doing personal work, as recorded in his log and on other occasions, was part of the reason for the reduction in her hours. (Tr. at 291, 293).

86. As set forth in detail in previous findings of fact, Abbas' performance of personal work during her city employment was done only as a response to the retaliatory reduction in her hours. See Findings of Fact Nos. 21-22, 26- 27, 31, 33. The log which was kept on these activities was also done for retaliatory purposes. See Findings of Fact Nos. 34-39. Under these circumstances, this does not constitute a legitimate reason for the reduction in her hours.

Credibility:

87. Dorothy Abbas was a credible witness. Her testimony on material issues was internally consistent and consistent with the greater weight of the evidence. City Clerk Herwig agreed that he would not question Abbas' integrity or work ethics. (Tr. at 186). Her testimony to the effect that City Clerk Herwig made repeated threats to sue her because of what she said in her complaint is, for example, not disputed. See Findings of Fact Nos. 12-15. Her testimony that Herwig told her that she was being reduced to part-time because of the "civil rights mess" is highly credible. At the point where Abbas began to testify about this statement, she started to cry and it was necessary to take a five minute recess. (Tr. at 30-31). That statement's intense emotional impact on her demonstrated its reality. This testimony is also plausible because it is consistent with Herwig's threats to inflict economic harm upon her through a lawsuit and with his other retaliatory actions. See Findings of Facts Nos. 12-15, 48.

88. It should be noted that, as previously discussed, Abbas' memory was not clear with respect to the length of the CDBG grants and when paperwork on the grants ended. See Finding of Fact No. 58. Also, although Abbas initially estimated, while being deposed, that she had worked an average of 30 hours per week in 1991, she readily admitted her error when confronted with Bruce Slagle's calculations showing she had worked an average of 23.32 hours per week. (R. EX. # 1; Tr. at 172-74). This time covered 13 two week pay periods when her hours varied from 40 to 71.5 hours. (R. EX. # 1). Given that there is no reason to believe she ever testified that her estimate was an exact calculation, her willingness to admit her erroneous estimate and to accept the accuracy of Slagle's calculations bolsters and does not detract from her credibility. In any event, her hours worked in 1991 are not material to determining whether, in 1988, Herwig would have recommended her reduction to part-time in the absence of a retaliatory motive.

89. Ken Herwig's credibility is highly questionable. Herwig repeatedly gave willfully false testimony on a material issue when he stated that retaliation did not play any part in his decision to recommend the reduction of Complainant Abbas' position to half-time. (Tr. at 217-19, 302). His testimony with respect to whether he told Abbas that he reduced her hours due to the complaint (i.e. "the civil rights mess") was:

> Q. And you told her that day that you were tired of the civil rights mess hanging over your head, is that right?
>
> A. **I don't recall saying those exact words.**
>
> Q. Something to that effect?
>
> A. **I don't recall.**

(Tr. at 300). This is not a convincing response. Herwig's denials to the effect that retaliation played no role in the reduction of hours are incredible in light of his admission that, in this same conversation, he again threatened Complainant Abbas with a lawsuit; his testimony concerning how upset he was over the filing of the complaint; Complainant Abbas' highly credible testimony on the "civil rights mess" statement; and the variety of other retaliatory acts demonstrated by the evidence. See Findings of Facts Nos. 11, 14, 20-22, 26-27, 48, 87.

90. Herwig's testimony to the effect Norman Cole complained about Abbas' personal work before July 1, 1987 has already been found to not be credible. See Finding of Fact No. 31. Some of Herwig's testimony is relied on when it constitutes an admission or is supported by other credible evidence. While it might be thought that his admissions of threatening to sue Complainant Abbas enhance his testimony, he had expressed this sentiment to a newsman, and his feelings on this issue had literally been broadcast on the radio, prior to the filing of the retaliation complaint. He could hardly deny it. All of his testimony, therefore, should be viewed with a great deal of caution.

91. Caryle Merritt's testimony was credible in many respects, but his estimate of time saved by the 1986 computer system was not believable for the reasons stated, in part, in Finding of Fact Number 67. In addition, Merritt's testimony may have been influenced by his substantial business with the city and an overoptimistic view of the effectiveness of his products resulting in a very high estimate of overall time savings. See Findings of Fact Nos. 66-67.

92. Michelle Craighton, Bob Davies, Jr., Don Springer, Marsha Cory, Lawrence Gilchrist, Howard Werner, Denny Edwards, Keith Miller, Kathy Cooper, Bruce Slagle, and Paul Sensor were all credible witnesses.

Remedies - Reinstatement and Front Pay:

93. Complainant Abbas is seeking reinstatement to a full-time 40 hour per week position with a salary, medical insurance, and all other benefits currently received by a full-time employee of the City of Hampton. (See Int. # 4). Since Respondent has failed to prove by the greater weight of the evidence that Ms. Abbas would have been reduced in the absence of retaliation, such a compensatory remedy would be appropriate. Front pay in an amount equal to the difference between her current salary and benefits and those of a full- time position as secretary, including an amount equal to that expended by the city for medical insurance and other benefits for a full time position, should be awarded from the date of the final decision and order in this case (which may come about by vote of the Commission or by operation of law) until the date such reinstatement is effected.

Remedies: Back Pay and Benefits:

Back Pay and Benefits After Deduction of Interim Earnings, and Unemployment Insurance Benefits:

94.

Back Pay:

Gross Salary Minus Interim Earnings (Incorporating 4% Annual Raises Through 6/30/91):

October 31, 1988 to June 30, 1989 = [(Gross Salary) - (Interim Earnings)] = [35 weeks X 40 hour/week X $6.548/hour) -(35 weeks X 20 hour/week X $5.50/hour)] = [$9167.20 - $3850.00)] = $5317.20.

July 1, 1989 to June 30, 1990 = [(52 weeks X 40 hour/week X $6.81/hour) - (52 weeks X 20 hour/week X $5.72/hour)] = [$14164.80 - $5948.80] = $8216.00.

July 1, 1990 to December 30, 1990 = [(26 weeks X 40 hour/week X $7.08/hour) - (26 weeks X 20 hour/week X $5.95/hour) = [$7363.20 - $3094.00] = $4269.20.

January 1, 1991 to June 30, 1991 = [(26 weeks X 40 hour/week X $7.08/hour) -(606.25 hours X $5.95/hour) = [$7363.20 - $3607.19] = $3756.01

July 1, 1991 to January 1, 1993 = [(79 weeks X 40 hour/week X $7.46/hour) - (79 weeks X 20 hour/week X $6.27/hour)] = [$23573.60 - $9906.60] = $13667.00. Note: This reflects the 5.37% increase from $5.95 to $6.27. Since increases appear to have been across the board, this increase is also applied to the full-time position.

Gross Salary Less Interim Earnings October 31, 1988 to January 1, 1993 = $5317.20 + $8216.00 + $4269.20 + $3756.01 + $13667.00 = $35225.41.

Gross Salary Less Interim Earnings and Unemployment Benefits October 31, 1988 to January 1, 1993:

Total Unemployment Benefits =	
Calendar Year 1988	$ 495.00
Calendar Year 1989	$ 4367.00
Calendar Year 1990	$ 2173.00
Calendar Year 1991	
and beyond	$ 0.00
TOTAL:	$7035.00

[(Gross Salary Less Interim Earnings) - (Unemployment Benefits)] = [$35225.41 - $7035.00] = **$28190.41 Back Pay From October 31, 1988 to January1, 1993**. (Int. # 4; R. EX. # 1; CP. EX. # 25; Tr. at 42, 43, 44, 83, 128).

Benefits:

95.

Benefits October 31, 1988 to June 30, 1989:

Paid Holidays:

1988: All Holidays Used or Paid:	$ 0.00
1/1/89 - 6/30/89 Approximately 4.5 holidays X $52.38 per day =	$ 235.71

Total Paid Holidays to 06/30/89 =	**$ 235.71**

Paid Vacation:

1988: All Vacation Paid:	$ 0.00
1/1/89 - 6/30/89 Approximately 7.5 Vacation Days X $52.38 per day =	$ 392.85
Total Vacation to 06/30/89 =	**$ 392.85**

Health Insurance Premiums:

10/31/88 - 06/30/89 = $316.00/month X 8 mos. =	**$ 2528.00**

Disability Insurance Premiums:

10/31/88 - 06/30/89 = $205.68/year X .667 year =	**$ 137.19**

Employer IPERS Contributions:

10/31/88 - 06/30/89 = $783.15/year X .667 year =	**$ 522.36**

Employer FICA Contributions:

10/31/88 - 06/30/89 = $608.16/year X .667 year =	**$ 405.64**

Longevity Pay:

10/31/88-01/01/89 = $65.00/month X 2 mos. =	$ 130.00
01/01/89 - 06/30/89 = $70.00 X 6 mos. =	$ 420.00
	$ 580.00

Total Benefits October 31, 1988 to June 30, 1989 = **$235.71** + **$392.85** + **$2528.00** + **$137.19** + **$522.36** + **$405.64** + **$580.00** = **$4801.75** (Int. # 4; Tr. at 43-45).

96.

Benefits July 1, 1989 to June 30, 1990:

Paid Holidays:

7/01/89 - 12/30/89 Approximately 4.5 holidays X $6.81/hour X 8 hour/day =	$245.16
01/01/90-6/30/90 Approximately 5 holidays X $6.81/hour X 8 hour/day =	$272.40
Total Paid Holidays 7/01/89 - 6/30/90 =	**$517.56**

Paid Vacation:

7/01/89 - 12/30/89: 7.5 Vacation Days X $6.81/hour X 8 hour/day =	$408.60
01/01/90 - 6/30/90 10 Vacation Days X $6.81/hour X 8 hour/day =	$544.80
Total Vacation 7/01/89 - 6/30/90 =	**$953.40**

Health Insurance Premiums:

07/01/89 - 06/30/90 = $331.66/month X 12 mos. =	**$3979.92**

Disability Insurance Premiums:

07/01/89 - 06/30/90 = $205.68/year =	**$ 205.68**

Employer IPERS Contributions:

07/01/89 - 06/30/90 = $783.15/year =	**$783.15**

Employer FICA Contributions:

07/01/89 - 06/30/90 = $608.16/year =	**$608.16**

Longevity Pay:

07/01/89 - 12/30/89 = $70.00/month X 6 mos. =	$420.00
01/01/90 - 6/30/90 = $75.00/month X 6 mos. =	$450.00
	$870.00

Total Benefits July 1, 1989 to June 30, 1990 = **$517.56** + **$953.40** + **$3979.92** + **$205.68** + **$783.15** + **$608.16** + **$870.00** = **$7917.87.** (Int. # 4: Tr. at 43-45).

97.

Benefits July 1, 1990 to June 30, 1991:

Paid Holidays:

7/01/90 - 12/30/90 Approximately 5 holidays X $7.08/hour X 8 hour/day =	$283.20
01/01/91 - 06/30/91 Approximately 5 holidays X $7.08/hour X 8 hour/day =	$283.20
Total Paid Holidays 7/01/90 - 6/30/91 =	**$566.40**

Paid Vacation:

7/01/90 - 12/30/90: 10 Vacation Days X $7.08/hour X 8 hour/day =	$566.40
01/01/91 - 6/30/91 10 Vacation Days X $7.08/hour X 8 hour/day =	$566.40
Total Vacation 7/01/90 - 6/30/91 =	**$1132.80**

Health Insurance Premiums:

07/01/90 - 06/30/91 = $374.74/month X 12 mos. =	**$4496.88**

Disability Insurance Premiums:

07/01/90 - 06/30/91 = $205.68/year =	**$ 205.68**

Employer IPERS Contributions:

07/01/90 - 06/30/91 = $783.15/year =	**$783.15**

Employer FICA Contributions:

07/01/90 - 06/30/91 = $608.16/year =	**$608.16**

Longevity Pay:

07/01/90 - 12/30/90 = $75.00/month X 6 mos. =	$450.00
01/01/91 - 6/30/91 = $80.00/month X 6 mos. =	$480.00
	$930.00

Total Benefits July 1, 1990 to June 30, 1991 = **$566.40** + **$1132.80** + **$4496.88** + **$205.68** + **$783.15** + **$608.16** + **$930.00** = **$8723.07.** (Int. # 4: Tr. at 43-45).

98.

Benefits July 1, 1991 to January 1, 1993:

Paid Holidays:

7/01/91 - 12/30/91 Approximately 5 holidays X $7.46/hour X 8 hour/day =	$298.40
01/01/92 - 01/01/93 Approximately 10 holidays X $7.46/hour X 8 hour/day =	$596.80
Total Paid Holidays 7/01/90 - 6/30/91 =	**$895.20**

Paid Vacation:

7/01/91 - 12/30/91: 10 Vacation Days X $7.46/hour X 8 hour/day =	$596.80
01/01/91 - 01/01/93 20 Vacation Days X $7.46/hour X 8 hour/day =	$1193.60
Total Vacation 7/01/91 - 01/01/93 =	**$1790.40**

Health Insurance Premiums:

07/01/91 - 01/01/93 = $420.08/month X 18 mos. =	**$7561.44**

Disability Insurance Premiums:

07/01/91 - 01/01/93 = $205.68/year X 1.5 yrs.=	**$ 308.52**

Employer IPERS Contributions:

07/01/91 - 01/01/93 = $783.15/year X 1.5 yrs. =	**$1174.73**

Employer FICA Contributions:

07/01/91 - 01/01/93 = $608.16/year X 1.5 yrs. =	**$912.24**

Longevity Pay:

07/01/91 - 12/30/91 = $80.00/month X 6 mos. =	$480.00
01/01/92 - 01/01/93 = $85.00/month X 12 mos. =	$1020.00.
	$1500.00

Total Benefits July 1, 1991 to January 1, 1993 = **$895.20** + **$1790.40** + **$7561.44** + **$308.52** + **$1174.73** + **$912.24** + **$1500.00** = **$14142.53**. (Int. # 4: Tr. at 43-45).

99. Total Benefits From October 31, 1988 to January 1, 1993 = **$4801.75** + **$7917.87** + **$8723.07** + **$14142.53** = **$35585.22.** See Findings of Facts Nos. 95-98.

TOTAL BACK PAY AND BENEFITS FROM OCTOBER 31, 1988 TO JANUARY 1, 1993 = [(BACK PAY) + (BENEFITS)] = [(**$28190.41)** + (**$35585.22**)] = ***$63775.63.***

Remedies: Mitigation of Damages:

100. The Respondent City of Hampton has failed to show that Complainant Abbas has failed to mitigate her damages with respect to back pay and benefits. The record shows that Abbas did mitigate her back pay and benefit damages by continuing in her employment, by receiving unemployment compensation, and by making a reasonable good faith effort to seek other employment after the reduction in her hours. See Finding of Fact No. 94. (CP. EX. # 22-25). Her work search efforts were demonstrated by her testimony describing her work search and by her letters of application for various positions which were entered in the record. (CP. EX. # 13- 21; Tr. at 47-52, 87-88).

101. Although, for reasons set forth in the conclusions of law, Abbas did not need to show she mitigated damages with respect to the insurance premiums which would have been paid by the City if she had remained in the full-time position, Abbas did obtain health insurance coverage through her husband's employment. He paid some premium for this coverage, but it is not shown in the record and, therefore, it cannot be determined whether it exceeded the amount of premiums the employer would have paid. (Tr. at 84).

Remedies: Damages for Emotional Distress:

102. Complainant Abbas suffered severe emotional distress as a direct result of the retaliatory actions of the Respondent which have been set forth above. There is no evidence of any other independent cause for the distress sustained by Dorothy Abbas. The distress was continuing as of the date of the hearing and there is no way of telling when, if ever, it will end. (Tr. at 46, 158-59).

103. The pain caused by the retaliatory statements and actions to which Abbas was subjected to was evident in her demeanor at the times she testified to her recollection of these events. While it is not unusual for complainants to become upset at hearing, or even cry, it is rare for such severe pain to be reflected in a complainant's voice, demeanor, and testimony.

104. Complainant Abbas' voice would crack at various times and it was clear it was emotionally very difficult for her to talk about these events. At the point where she recalled Ken Herwig threatening to take away everything she and her husband had worked for through a lawsuit based on what she said in the complaint, she appeared to be so upset that the Administrative Law Judge asked her if she wished to take a break. (Tr. at 19-20). She declined, but, shortly thereafter, it was necessary take a five minute recess while she was testifying as to what Herwig had told her with respect to why she was being reduced to part-time, i.e. the "civil rights mess" statement. (Tr. at 30-31). Her voice cracked as she described how she would respond to the feeling of worthlessness which resulted from retaliatory actions: "I went ahead with my work and I did the best I could every day. And every time they did something mean to me, I would do something nice for somebody else." (Tr. at 46). Complainant Abbas again broke down crying after being

asked to describe how the reduction to part-time made her feel, and it was necessary to take another five minute break. (Tr. at 46-47).

105. Complainant Abbas' emotional reaction to retaliation was certainly not limited to the response at the hearing. As her daughter, Michelle Craighton, credibly testified, she was "crushed when Mr. Herwig threatened to sue her because of the complaint. And one thing that she couldn't discuss--even now--without crying about it was that he had said he was going to take away everything that she and my father had worked for all these years when he sued her." (Tr. at 151). The discussion of the threats with her daughter would bring tears to Abbas' eyes. Abbas would say to her "'He's going to sue me. He's going to take everything that Daddy', referring to my father, 'Daddy and I have worked for all these years.'" (Tr. at 153).

106. Abbas took these threats seriously and worried about them constantly. She felt she did not deserve these threats as she had a right to file the complaint. (Tr. at 45-46, 152-53). Complainant Abbas feared these threats to such a degree that she contemplated withdrawing her sex discrimination complaint in exchange for Herwig's promise not to sue her. On November 3, 1988, she left a message with Respondent's counsel asking him to ascertain if Herwig would agree to such an exchange. After she was assured Herwig had said he would agree, Abbas indicated she understood and would get back to him. She did not pursue the matter further. (CP. EX. # 28 at p. 22-23).

107. These threats and other retaliatory acts resulted in an inability to sleep. Abbas would then get up from her bed and walk through her house crying. Almost every day, she would go for a walk and cry while thinking about these retaliatory actions. She continued to do this as of the date of the hearing. (Tr. at 45-46, 85, 153). Complainant Abbas obtained medication from her physician because of the difficulty she had in sleeping. (Tr. at 85-86).

108. Abbas was emotionally devastated when she received the letter from Herwig informing her that she was going to be reduced to part-time. (Tr. at 29). When Ken and Rozann Herwig gave her the silent treatment, Abbas, "felt pretty worthless. That's what they wanted me to do, feel worthless. I believe that they wanted me to buckle under and leave. They wanted me to quit." (Tr. at 46).

109. Her daughter observed Dorothy Abbas become a changed person as a result of the retaliation inflicted upon her. (Tr. at 159). In addition to Abbas' becoming more emotional, sustaining an inability to sleep and engaging in frequent crying, particularly when these matters were discussed, (Tr. at 151, 153-54), she became nearly obsessed by her situation at work. (Tr. 151-52). When her daughter tried to discuss her own work, Abbas would bring the conversation around to her work situation and discuss it for several minutes. Abbas seemed to have no control over whether she did this. For example, when Abbas' daughter mentioned that her husband had gotten a raise, Abbas responded by saying that she was glad he had "a boss that appreciated us or things like that, whereas she didn't." (Tr. at 151-52). Prior to experiencing retaliation, Abbas was a more positive person who would responded with congratulations and not bring up other problems. The situation at her work seemed to be in Abbas' every thought. (Tr. at 152-53).

110. The severity of the impact of the retaliation on Abbas' emotions may be best demonstrated by Abbas' reactions, observed by her daughter, when a Commission investigator telephoned her to interview her concerning the retaliation complaint. Abbas' daughter noted that, when Abbas told the investigator about the reduction to part-time:

> [S]he cried quite a lot on the phone, and afterwards, when she talked to me, it was very hard on her and she would just sob. And it was difficult for me because I just held her and she was doing hard cries like it was coming from deep. It--it was hard for me because I felt like our roles had been reversed. I was now a parent to who would normally be comforting a child.

(Tr. at 154).

111. Complainant Abbas is seeking an award of fifty thousand dollars ($50,000.00) as compensation for emotional distress damages. (Int. # 4). Under this record, bearing in mind the severity and duration of the retaliatory emotional distress inflicted upon Complainant Abbas, an award of the sum of fifty thousand dollars ($50,000.00) is full, reasonable, and appropriate "make whole" relief. Therefore, this sum shall be awarded.

CONCLUSIONS OF LAW

Jurisdiction:

1. Complainant Abbas' complaint was timely filed within one hundred eighty days of the alleged discriminatory practice. Iowa Code *S* 601A.15(11) (1987). See Finding of Fact No. 2. All the statutory perquisites for hearing have been met, i.e. investigation, finding of probable cause, attempted conciliation, and issuance of Notice of Hearing. Iowa Code § 601A.15 (1987). See Finding of Fact No. 3.

2. Ms. Abbas' complaint is also within the subject matter jurisdiction of the Commission as the allegation that the Respondent City of Hampton retaliated against her because she filed a complaint falls within the statutory prohibition against unfair employment practices. Iowa Code *S* 601A.11 (1987).

3.

> It shall be an unfair or discriminatory practice for:
>
> . . .
>
> (2) Any person to discriminate against another person in any of the rights protected against discrimination on the basis of age, race, creed, color, sex, national origin, religion or disability by this chapter because such person has lawfully opposed any practice forbidden under this chapter, obeys the provisions of this chapter, or has filed a complaint, testified, or assisted in any proceeding under this chapter.

Id.

Official Notice:

4. Official notice may be taken of all facts of which judicial notice may be taken and of matters within the specialized knowledge of the agency. Iowa Code § 17A.14(4). Judicial notice may be taken of matters which are "common knowledge or capable of certain verification." In Re Tresnak, 297 N.W.2d 109, 112 (Iowa 1980). Judicial notice may be taken of all papers properly issued or filed or returned in the case then before the adjudicator. Slater v. Roche, 148 Iowa 413, 418, 126 N.W. 921, 927 (1910). *See also* C. McCormick, McCormick on Evidence 927 (2nd ed. 1984).

Persuasive Value of Opinions From Other Jurisdictions:

5. Federal court decisions applying Federal anti-discrimination laws are not controlling or governing authority in cases arising under the Iowa Civil Rights Act. *E.g.* Franklin Manufacturing Co. v. Iowa Civil Rights Commission, 270 N.W.2d 829, 831 (Iowa 1978). Nonetheless, they are often relied on as persuasive authority in these cases. *E.g.* Iowa State Fairgrounds Security v. Iowa Civil Rights Commission, 322 N.W.2d 293, 296 (Iowa 1982). Although even decisions of the United States Supreme Court have been rejected as persuasive authority when their reasoning is inconsistent with the broad remedial purposes of the Act, Franklin Manufacturing Co. v. Iowa Civil Rights Commission, 270 N.W.2d at 831; Quaker Oats Company v. Cedar Rapids Human Rights Commission, 268 N.W.2d 862, 866-67 (Iowa 1978), its opinions are often entitled to great deference. Quaker Oats Company v. Cedar Rapids Human Rights Commission at 866.

6. In determining the persuasive value of any Federal decision, or decision of another state, or other legal authority, it must be borne in mind that the Act is a "manifestation of a massive national drive to right wrongs prevailing in our social and economic structures of our country," Iron Workers Local No. 67 v. Hart, 191 N.W.2d 758, 765 (Iowa 1971).

7. Decisions from other jurisdictions should be rejected as persuasive authority when violative of the controlling authority requiring liberal interpretation and construction of the Iowa Civil Rights Act. When determining the sense and meaning of the written text of a statute providing regulations conducive to public good or welfare, the statute is liberally interpreted. State ex. rel. Turner v. Koscot Interplanetary, Inc., 191 N.W.2d 624, 629 (Iowa 1971). When determining the legal effect of its provisions, the Iowa Civil Rights Act "shall be broadly construed to effectuate its purposes," Iowa Code *S* 601A.18 (1991), and "liberally construed with a view to promote its objects and assist the parties in obtaining justice." Iowa Code *S* 4.2. "In construing a statute, the court must look to the object to be accomplished, the evils and mischief sought to be remedied, or the purpose to be subserved, and place on it a reasonable or liberal construction which will best effect its purpose rather than one which will defeat it." Monroe Community School District v. Marion County Board of Education, 251 Iowa 992, 998, 103 N.W.2d 746 (1960); Franklin Manufacturing Co. v. Iowa Civil Rights Commission, 270 N.W.2d 829, 832 (Iowa 1978). Therefore, constructions of the statute which "effectively defeat the remedial purpose of Chapter

601A [the Iowa Civil Rights Act]." should be rejected. *See* Foods, Inc. v. Iowa Civil Rights Commission, 318 N.W.2d 162, 167 (Iowa 1982).

Repeated Threats By Her Supervisor at Work to Sue Complainant For Libel Because of Statements Made In Her Complaint Constitute Illegal Retaliation Under the Iowa Civil Rights Act:

8. The anti-retaliation language of the Iowa Civil Rights Act protects an employee against adverse employment action due to his or her filing of a complaint. Iowa Code *S* 601A.11. It is beyond cavil that the protection against illegal employment practices encompasses threats or other harassing activities at the worksite. *See* Vaughn v. Ag Processing, Inc., 459 N.W.2d 627, 632 (Iowa 1990); Lynch v. City of Des Moines, 454 N.W.2d 827, 833, 834 (Iowa 1990); Chauffeurs, Teamsters and Helpers, Local Union No. 238 v. Iowa Civil Rights Commission, 394 N.W.2d 375, 378 (Iowa 1986). In other words, it is just as illegal for an employer or an employer's agent or supervisor to threaten an employee at work because she has filed a complaint as it would be to threaten her at work because of her race, sex or other protected characteristic. *Cf. e.g.* Chauffeurs, Teamsters and Helpers, Local Union No. 238 v. Iowa Civil Rights Commission, 394 N.W.2d 375, 379-80 (Iowa 1986)(union liable for discriminatory racial threats at the worksite by union steward).

9. On brief, Respondent asserts that Herwig's threats of a lawsuit based on defamation, slander, and libel should not be considered retaliatory for two reasons. First, Respondent argues that the threats were based on the erroneous statement made in the complaint concerning Herwig's mental health and not on her filing of the complaint. Second, "suits having a reasonable basis in law and fact and filed in good faith may be brought by the person suffering from the alleged libel." Respondents' Brief at 7-8.

10. Respondent's arguments are not persuasive. The *threats* made *at work* by Abbas' supervisor to sue her constituted *employment* activity affecting her*working* environment. To permit a distinction between retaliatory employment activity undertaken because of *what was said* in the complaint, on the one hand, and such activity undertaken because of the *filing* of the complaint, on the other, would effectively nullify the protection against retaliation provided by the Act. An employer would, through this distinction, be able to justify virtually any retaliatory activity within its power, e.g. "'I did not fire the complainant because he *filed* a race discrimination complaint. I discharged him because *he said in his complaint* that I used racially derogatory language' or 'I did not threaten, at work, to sue the complainant because she *filed* a complaint, I threatened to sue her because *in the complaint she falsely stated* I had a mental illness.'" To adopt such a woodenly literal construction of the prohibition against retaliation "because such person has . . . *filed* a complaint," Iowa Code *S* 601A.11, would obstruct, evade, circumvent, and frustrate the purposes of the Act. It must be rejected as it is inconsistent with the duty to liberally construe the act to effectuate its purposes. Iowa Code *S* 601A.18. See Conclusion of Law No. 7.

11. Even if the filing of a lawsuit based on statements made in the complaint were permissible as a matter of law, it does not follow that repeated threats at work to initiate such a lawsuit, or to thereby take away all of a complainant's possessions, are lawful. A distinction must be drawn between the commencement of such a lawsuit and the infliction on a complainant of repeated, retaliatory threats at a worksite by a supervisor to commence such a lawsuit. As previously

noted, such threats constitute prohibited retaliatory *employment* activity. A lawsuit, on the other hand, would be initiated and prosecuted at locations other than the complainant's working environment. The ultimate outcome for the complainant defending such a lawsuit, assuming such a lawsuit is permissible, would be determined by the court and not by the employer. *See* Womack v. Munson, 619 F.2d 1292 (8th Cir. 1980)("administrative and judicial mechanisms determine the truth, falsity, . . . or maliciousness of an EEOC charge. . . . [E]mployer retaliation even against those whose charges are unwarranted cannot be sanctioned"); Pettway v. American Cast Iron Pipe Co., 411 F.2d 998, 1 Fair Empl. Prac. 752, 758 (5th Cir. 1969)("the employer may not take it upon itself to determine the correctness or consequences of [a discrimination complaint]").

12. The Commission is also not persuaded that suits for defamation, libel, or slander directly *based upon the contents of an administrative civil rightscomplaint* are permissible. The cases cited by Respondent involve libel suits based on non-complaint defamatory statements made to third parties or published by the complainant outside of the complaint process. See Bill Johnson's Restaurant, Inc. v. NLRB, 461 U.S. 731, 113 LRRM 2647, 2649 (1983)(leaflets); EEOC v. Levi Straus & Co., 515 F. Supp. 640, 27 Fair Empl. Prac. Cas. 346, 349 (N.D. Ill 1981)(oral statements to employees and subordinates). For the reasons set forth below, defamatory statements made in administrative complaints filed with the Iowa Civil Rights Commission are absolutely privileged and may not be the subject of such a suit.

13. "Neither a lawyer nor a party is liable in Iowa for defamation in statements that have some relation to issues in a judicial proceeding. (citations omitted). The purpose of this immunity is to encourage the open resolution of disputes by removing the cloud of later civil suits from statements made in judicial proceedings." Beeck v. Kapalis, 302 N.W.2d 90, 97 (Iowa 1981). The public interest in conferring such immunity is even stronger in administrative proceedings where the purpose is not merely to resolve a private dispute, but to determine whether statutes enacted in the public interest are being violated. Rainer's Diaries v. Raritan Valley Farms, 19 N.J. 552, 117 A.2d 889, 892-93 (1955); *See* Iron Worker's Local No. 67 v. Hart, 191 N.W.2d 758, 770 (Iowa 1971)(Act designed to address the practice of discrimination, not merely to resolve a private dispute). "A matter that is reasonably pertinent to the issues is absolutely privileged whether contained in **pleadings,** affidavits, statements made by witnesses to counsel before a tribunal or made in open court." Tallman v. Hanssen, 427 N.W.2d 868, 869 (Iowa 1988)(emphasis added).

14.The "judicial proceeding" to which the immunity attaches has not been defined very exactly. It includes any hearing before a tribunal which performs a judicial function. . . . It extends also to the proceedings of many administrative officers, such as boards and commissions so far as they have powers of discretion in applying the law to the facts which are regarded as judicial or "quasi-judicial," in character.

. . .

The immunity extends to every step in the proceeding until final disposition.

W. Keeton, Prosser and Keeton on the Law of Torts *S* 114 (1984)(emphasis added). "Judicial proceedings include all proceedings in which an officer or tribunal exercises judicial functions." Restatement (Second) of Torts *S* 587 comment f (1977).

15. The Iowa Supreme Court has recognized that "a worker's compensation proceeding is a judicial proceeding" based upon "Iowa Code chapters 85 and 86 (1987), [which] in conjunction with Iowa Code chapter 17A, the Iowa Administrative Procedure Act, provide a tribunal in which the rights of injured employees are recognized and protected. The proceeding is confrontational and judicial in nature." Tallman v. Hanssen, 427 N.W.2d 868, 870 (Iowa 1988). The Court held that defamatory statements in a brief filed before the Iowa industrial commissioner were privileged. Id.

16. Similarly, Iowa Code Chapters 601A and 17A operate together to establish a tribunal in which the rights of persons to be free from employment discrimination and retaliation are recognized and protected. The public hearing is confrontational and judicial in nature and is, therefore, a judicial or quasi-judicial proceeding. *See* Id. Proceedings before other anti-discrimination administrative enforcement agencies have also been held to be judicial or quasi-judicial proceedings. Thomas v. Petrulis, 465 N.E.2d 1059, 1063, 1065 (Ill. App. 1984)(EEOC is a quasi-judicial body); Id. at 1062 (citing Silver v. Mohasco, 94 A.D.2d 820, 462 N.Y.S.2d 917 (1983)(State Division of Human rights a quasi-judicial body). Defamatory statements in complaints and other proceedings before such agencies have been held to be absolutely privileged. Id.

17. The filing of the complaint is the first step in the process leading to a public hearing. Iowa Code *S* 601A.15(1). Therefore, statements in the complaint which bear some relationship to the issues in the complaint are absolutely privileged. See Conclusions of Law Nos. **13-14.** This relationship is determined by a good faith standard which does not require that the statement be relevant or material to the issues before the adjudicator. It merely "must have some reference to the subject of the inquiry." Restatement (Second) of Torts *S* 587 comment c (1977). This good faith standard requires only that "the statement have some reasonable relation or reference to the subject of inquiry or be one that 'may possibly be pertinent,' with all doubts resolved in favor of the [alleged defamer]." W. Keeton, Prosser and Keeton on the Law of Torts *S* 114 (1984). An honest belief that the statement is pertinent is enough. Id. at n. 31. Complainant Abbas' statements meet this standard. See Finding of Fact No. 17.

Order and Allocation of Proof Where Complainant Relies on Direct Evidence of Discrimination:

18. The order and allocation of proof used in cases where there is direct evidence of discrimination was used with respect to the allegations that Complainant Abbas was retaliated against by (1) being threatened with a lawsuit due to the statements made in her complaint while at work, and (2) being reduced to part-time. See Findings of Facts Nos. 12-17, 47-48. "Direct evidence" is that "evidence, which if believed, proves existence of [the] fact in issue without inference or presumption." It is "that means of proof which tends to show the existence of a fact in question, without the intervention of the proof of any other fact, and is distinguished from circumstantial evidence, which is often called "indirect". BLACK'S LAW DICTIONARY 413-14 (1979).

19. The proper analytical approach in a case with direct evidence of discrimination is, first, to note the presence of such evidence; second, to make the finding, if the evidence is sufficiently probative, that the challenged practice discriminates against the complainant because of the prohibited basis; third, to consider any affirmative defenses of the respondent; and, fourth, to then conclude whether or not illegal discrimination has occurred. *See* Trans World Airlines v. Thurston, 469 U.S. 111, 121-22, 124-25, 105 S. Ct. 613, 83 L.Ed. 2d 523, 533, 535 (1985)(Age Discrimination in Employment Act). **With thepresence of such direct evidence, the analytical framework, involving shifting burdens of production, which was originally set forth in** McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L.Ed. 2d 207 (1973), **and subsequently adopted by the Iowa Supreme Court**, *e.g.* Iowa State Fairgrounds Security v. Iowa Civil Rights Commission, 322 N.W.2d 293, 296 (Iowa 1982); Consolidated Freightways v. Cedar Rapids Civil Rights Commission, 366 N.W.2d 522, 530 (Iowa 1985), **is inapplicable. Landals v. Rolfes Co**., 454 N.W.2d 891, 893-94 (Iowa 1990); Price-Waterhouse v. Hopkins, 490 U.S. 228, 109 S. Ct. 1775, 104 L. Ed. 2d 268, 301 (1989)(O'Connor, J. concurring); Trans World Airlines v. Thurston, 469 U.S. 111, 121, 124-25, 105 S. Ct. 613, 83 L.Ed. 2d 523, 533 (1985); Schlei & Grossman, Employment Discrimination Law: Five Year Cumulative Supplement 473, 476 (2nd ed. 1989).

20. The reason why the McDonnell Douglas order and allocation of proof is not applicable where there is direct evidence of discrimination, and why the employer's defenses are then treated as affirmative defenses, i.e. the employer has a burden of persuasion and not just of production, is because:

> [T]he entire purpose of the McDonnell Douglas prima facie case is to compensate for the fact that direct evidence of intentional discrimination is hard to come by. That the employer's burden in rebutting such an inferential case of discrimination is only one of production does not mean that the scales should be weighted in the same manner where there is direct evidence of intentional discrimination.

Price-Waterhouse v. Hopkins, 490 U.S. 228, 109 S. Ct. 1775, 104 L. Ed. 2d 268, 301 (1989)(O'Connor, J. concurring). *See also* Landals v. Rolfes Co., 454 N.W.2d 891, 893-94 (Iowa 1990).

21. In this case, there is direct evidence in the record that retaliation was the motivating factor in Respondent's supervisor's threats to sue Abbas and in the reduction of Abbas' position to part-time. See Findings of Facts Nos. 12-14, 47-48. With such direct evidence, it is not necessary to address inferential evidence of discrimination such as timing of the complaint and reduction of Complainant Abbas to part-time. The inquiry, however, does not end there, for the affirmative defenses of the Respondent must be examined. Trans World Airlines v. Thurston, 469 U.S. 111, 121, 124-25, 105 S. Ct. 613, 83 L.Ed. 2d 523, 533 (1985). The Respondents' failed to meet their burden of persuasion with regard to establishing any affirmative defenses to these allegations. See Findings of Facts Nos. 50-86.

Mixed Motive Analysis Applied to Abbas' Reduction to Part- time:

22. It should be noted that, under current Federal Title VII law, due to the amendments enacted under Section 107 of the Civil Rights Act of 1991, under no circumstances can the employer, by proving that it would have made the same decision irrespective of the fact that race, color, religion, sex or national origin was a motivating factor in its decision, effect a complete defense to liability. Such proof will only limit the remedies available to declaratory and injunctive relief, attorney's fees and costs. 42 U.S.C. *SS* 2000e-3(m); 2000e-5(g)(2)(B). This section was enacted in order to legislatively overrule the United States Supreme Court's Price-Waterhouse decision, a Title VII decision, which allows such a complete defense. 4 Employment Discrimination Coordinator 58597 (RIA)(1992)(citing S. Rept. No. 101-315, 6/8/90, pp. 6, 7, 48); Price-Waterhouse v. Hopkins, 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed. 2d 268, 293). Section 107, therefore, seriously weakens the persuasive effect of this holding of Price-Waterhouse.

23. Although Price-Waterhouse and the mixed motive defense have been discussed as a matter of legal theory in two Iowa Supreme Court opinions written prior to the Title VII amendments, the discussion was not essential to the decisions and the theory was never been applied to the facts of the cases. Landals v. Rolfes Co., 454 N.W.2d 891, 893-94 (Iowa 1990); Hy-Vee Food Stores v. Iowa Civil Rights Commission, 453 N.W.2d 512, 517 (Iowa 1990). The discussion, in other words, is dicta, and not controlling law.

24. It is the Commission's position that the mixed motive defense should be limited, as it now is under Title VII, and was in the 8th and 9th Circuits prior to Price-Waterhouse, *see* Price-Waterhouse, 104 L.Ed. 2d at 280 n.2 (citing Bibbs v. Block, 778 F.2d 1318, 1320-24 (8th Cir. 1985), to limiting the damages remedy of the Complainant while not establishing a complete defense to liability. This would allow attorney's fees and injunctive relief to end discriminatory practices while ensuring that damages were not awarded in inappropriate cases.

25. "Where direct evidence is presented and the employer suggests other factors influenced the decision, the employer has the burden of proving by a preponderance of the evidence that it would have made the same decision even if it had not considered the improper factor." Landals v. Rolfes Co., 454 N.W.2d 891, 893-94 (Iowa 1990)(citing Price- Waterhouse v. Hopkins, 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed. 2d 268, 293)(emphasis added). "When . . . an employer considers both [retaliation] and legitimate factors at the time of making a decision, that decision was 'because of' [retaliation]." Price-Waterhouse v. Hopkins, 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed. 2d 268, 281 (1989)(emphasis added).

26. This defense is an affirmative defense. Id. at 287. The Respondent bears the burden of persuading the finder of fact by a preponderance of the evidence that "it would have made the same decision even if it had not taken [retaliation] into account." Id. & 293. A finding of liability can be avoided by the Respondent only if it meets this burden of proof. Id. at 293.
27.

> [T]he employer should be able to present some objective evidence as to its probable decision in the absence of an impermissible motive. Moreover, proving "that the same decision would have been justified . . . is not the same as proving that the same decision would have been made." . . . An employer may not, in other words prevail in a mixed-motives case by offering a legitimate and

> sufficient reason for its decision if that reason did not motivate it at the time of the decision. Finally, an employer may not meet its burden in such a case by merely showing that at the time of the decision it was motivated only in part by a legitimate reason. . . . The employer instead must show that its legitimate reason, standing alone, would have induced it to make the same decision.

Id. at 289. (emphasis added). Although objective evidence must be presented, the Respondent's ultimate burden is one of persuasion and not mere production of objective evidence. Id. The ultimate question is one of human motivation, i.e. "what the person would have done absent that [retaliatory] motivation," an issue that involves many credibility and other evaluative choices. Ayers v. Western Line Consolidation School District, 555 F.2d 1309, 18 Fair Empl. Prac. Cas. 1407, 1411 (5th Cir. 1977). The Respondent did not meet its burden of persuasion with respect to the legitimate reasons given for the reduction of Complainant Abbas to part-time.

Order and Allocation of Proof Where Complainant Relies on Circumstantial Evidence of Discrimination:

28. Circumstantial evidence of retaliation was relied on to prove the allegations that retaliation was implemented through giving Abbas the silent treatment, withholding information from her, decreasing her work assignments, and maintaining a log on her personal work activities. The following principles were applied with respect to those allegations and with respect to the unproven allegation that maintenance of correspondence files constituted retaliation.

29. When the complainant uses circumstantial evidence to prove disparate treatment on a prohibited basis, the burdens of production, but not of persuasion, shift. Iowa Civil Rights Commission v. Woodbury County Community Action Agency, 304 N.W.2d 443, 448 (Iowa Ct. App. 1981). **These shiftingburdens of production** "***are designed to assure that the [Complainant has] his day in court despite the unavailability of direct evidence***." Trans World Airlines v. Thurston, 469 U.S. 111, 121, 105 S. Ct. 613, 83 L. Ed. 2d 523, 533 (1985)(emphasis added).

30. The Complainant has the initial burden of proving a prima facie case of discrimination. Trobaugh v. Hy-Vee Food Stores, Inc., 392 N.W.2d 154, 156 (Iowa 1986). The burden of establishing a prima facie case of discrimination is not onerous. Texas Dep't. of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). The complainant is merely required to produce enough evidence to permit the trier of fact to infer that the employer's action was taken for a discriminatory or retaliatory reason. Id. at 254 n.7. This showing is not the equivalent of an ultimate factual finding of discrimination. Furnco Construction Corp. v. Waters, 438 U.S. 579 (1978). Once a prima facie case is established, a presumption of discrimination arises. Trobaugh v. Hy-Vee Food Stores, Inc., 392 N.W.2d 154, 156 (Iowa 1986).

31. The burden of production then shifts to the Respondent, i.e. the Respondent is required to produce evidence that shows a legitimate, non-discriminatory reason for its action. Id.; Linn Co-operative Oil Company v. Quigley, 305 N.W.2d 728, 733 (Iowa 1981); Wing v. Iowa Lutheran Hospital, 426 N.W.2d 175, 178 (Iowa Ct. App. 1988). If the Respondent does nothing in the face of the presumption of discrimination which arises from the establishment of a prima facie case,

judgment must be entered for Complainant as no issue of fact remains. Hamilton v. First Baptist Elderly Housing Foundation, 436 N.W.2d 336, 338 (Iowa 1989). If Respondent does produce evidence of a legitimate non-discriminatory reason for its actions, the presumption of discrimination drops from the case. Trobaugh v. Hy-Vee Food Stores, Inc., 392 N.W.2d 154, 156 (Iowa 1986).

32. Once the Respondent has produced evidence in support of such reasons, the burden of production then shifts back to the Complainant to show that the reasons given are pretextual. Trobaugh v. Hy-Vee Food Stores, Inc., 392 N.W.2d 154, 157 (Iowa 1986); Wing v. Iowa Lutheran Hospital, 426 N.W.2d 175, 178 (Iowa Ct. App. 1988). Pretext may be shown by "persuading the [finder of fact] that a discriminatory reason more likely motivated the [Respondent] or indirectly by showing that the [Respondent's] proffered explanation is unworthy of credence." Wing v. Iowa Lutheran Hospital, 426 N.W.2d 175, 178 (Iowa Ct. App. 1988) (quoting Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 256, 101 S. Ct. 1089, 1095, 67 L. Ed. 2d 207, 216 & n.10 (1981)).

33. This burden of production may be met through the introduction of evidence or by cross-examination. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 255, 101 S. Ct. 1089, 1095, 67 L. Ed. 2d 207, 216 & n.10 (1981). The Complainant's initial evidence and inferences drawn therefrom may be considered on the issue of pretext. Id. at n.10. This burden of production merges with the Complainant's ultimate burden of persuasion, i.e. the burden of persuading the finder of fact that intentional discrimination occurred. Id. 450 U.S. at 256, 101 S. Ct. at , 67 L. Ed. 2d at 217. When the Complainant demonstrates that the Respondent's reasons are pretextual, the Complainant must prevail and is entitled to judgment as a matter of law. United States Postal Service Board of Governors v. Aikens, 460 U.S. 711, 717-18 (1983)(Blackmun, J. concurring); Hicks v. St. Mary's Honor Center, ___ F.2d ___, 59 Fair Empl. Prac. Cas. 588, 592-93 (8th Cir. 1992)(citing *e.g.* Williams v. Valentec Kisco, Inc., 964 F.2d 723, 58 Fair Empl. Prac. Cas. 1154 (8th Cir. 1992); Adams v. Nolan, 962 F.2d 791, 58 Fair Empl. Prac. Cas. 1189 (8th Cir. 1992)).

Retaliation - Burden Shifting Analysis:

34. The principles previously outlined concerning the analysis used when proof of discrimination is made through circumstantial evidence also apply to proof of retaliation. Lynch v. City of Des Moines, 454 N.W.2d 827, 834 n.6 (Iowa 1990). See Conclusions of Law Nos. 28-33.

35. A prima facie case of retaliation may be established by the Complainant by producing evidence which shows:

> (1) she was engaged in statutorily protected activity, (2) she suffered adverse employment action, and (3) a causal connection between the two.

Hulme v. Barrett, 449 N.W.2d 629, 633 (Iowa 1989).

36.

> The causal link in the formula [is not] the sort of logical connection that would justify a prescription that the protected participation prompted the adverse action. . . . [T]he 'causal link' element requires merely that the [complainant] establish that the protected activity and the adverse action were not wholly unrelated.

Weaver v. Casa Gallardo, 55 Fair Empl. Prac. Cas. 27, 35 (11th Cir. 1991).

37. Some ways in which a causal connection between the filing of the complaint and the adverse decision can be shown are (a) proximity in time of the filing and the adverse decision; (b) treating the complainant differently than employees who have not filed; (c) failing to follow established procedures and policies with regard to the action taken against the complainant; and (d) different treatment of complainant after the filing of the complaint than before the filing. Schlei & Grossman, Employment Discrimination Law 558-59 (2nd ed. 1983). See Findings of Fact Nos. 20, 21-22, 26, 34-35.

Pretexts for Retaliation:

38. The Complainant may meet her burden of producing evidence sufficient to show that Respondent's articulated reasons for employment actions are pretexts for discrimination in a variety of ways, and these comments are not intended to enumerate all the ways in which pretext may be shown. *See* La Montagne v. American Convenience Products, Inc., 750 F.2d 1405, 1409, 36 Fair Empl. Prac. Cas. 913, 922 n.6 (7th Cir. 1984).

39. Reasons articulated for a challenged employment action may be shown to be pretexts for discrimination by evidence showing:

> (1) that the proffered reasons had no basis in fact, (2) that the proffered reasons did not actually motivate the [challenged employment action], or (3) that the proffered reasons were insufficient to motivate the [challenged employment action].

Bechold v. IGW Systems, Inc., 817 F.2d 1282, 43 Fair Empl. Prac. Cas. 1512, 1515 (7th Cir. 1987).

40. After application of these principles, it was determined the Complainant was not able to show that Respondents' reasons for their actions were pretexts for discrimination in regard to the maintenance of correspondence files. See Finding of Fact No. 40.

41. Through application of the same principles, Respondents' reasons were found to be shown to be pretextual in regard to the maintenance of the personal work log. See Finding of Fact No. 34, 38, 39. Respondents suggested that this log was justified by Abbas performance of personal work on city time. This conduct was found to result directly from the retaliatory reduction of Abbas' duties. Under such circumstances:

> [The] reason is ultimately "not legitimate because the Defendant employer created the problem initially." Lamb v. Smith International, Inc., 32 Empl. Prac. Dec. §

33770 at 30712, 30713, 32 Fair Empl. Prac. Cas. 105 (S.D. Tex. 1983)(discharge for poor work performance resulting from sexual harassment). This reasoning has been applied not only to situations where discriminatory or retaliatory practices have resulted in poor work performance, but also to cases where such practices have resulted in various forms of misconduct. *See* Ruth Miller, CP # 08-85-13343, slip op. at 70-71 (Iowa Civil Rights Commission October 28, 1990)(discharge of jailer for sleeping on the job found to be pretext where stress from discrimination and retaliation and discriminatory denial of shift change from midnight shift resulted in sleep loss); DeGrace v. Rumsfield, 21 Fair Empl. Prac. Cas. 1444, 1449 (1st Cir. 1980)(discharge for absenteeism resulting from racially hostile working environment); EEOC Decision No. 71-720, EEOC Decisions (CCH) § 6179 (1970)(discharge due to physical assault on supervisor resulting from racial harassment by supervisor). *See also* NLRB v. Vought Corporation, 788 F.2d 1378, (8th Cir. 1986)(discharge due to abusive language to supervisor resulting from warning given to employee who informed blacks that a white employee was being groomed to supervise a newly promoted black employee); Trustees v. NLRB, 548 F.2d 391, 393-94 (1st Cir. 1977)(discharge for repeated offensive behavior, including at one time brandishing scissors, where misconduct a response to employer hostility to employee's union activities); NLRB v. Mueller Brass Co., 501 F.2d 680, 686 (5th Cir. 1974)(discharge for abusive outburst at supervisor on receiving suspension resulting from employer's anti-union bias); and NLRB v. M & B Headwear Co., 349 F.2d 170, 174 (4th Cir. 1965)(failure to rehire employee due to outburst of anger resulting from layoff due to union activities).

Cristen Harms, CP. # 11-89-19422, slip. op. at 153-55 (Iowa Civil Rights Comm. February 29, 1992)(Friedman Motors Cases).

42. No evidence was produced articulating reasons for imposing the silent treatment on Abbas, withholding information about her work, or decreasing her work assignments. See Findings of Fact Nos. 20, 21, 23, 26.

Retaliatory Harassment:

43. To establish a valid claim of harassment on the basis of having filed a discrimination complaint, the Complainant must prove:

1) She is a member of a protected class, [i.e. she filed a complaint].

2) She was subjected to harassment, i.e. adverse conduct regarded by her as unwelcome and reasonably considered to be undesirable or offensive.

3) The harassment was based upon her protected class status, [i.e. on the filing of the complaint].

4) The harassment affected a term, condition, or privilege of employment, [e.g. her working environment];

5) The employer knew or should have known of the harassment and failed to take prompt and appropriate remedial action.

See Vaughn v. Ag Processing, Inc., 459 N.W.2d 627, 632 (Iowa 1990)(requirements for religious harassment case); Lynch v. City of Des Moines, 454 N.W.2d 827, 833, 834 (Iowa 1990)(sexual harassment); Chauffeurs, Teamsters and Helpers, Local Union No. 238 v. Iowa Civil Rights Commission, 394 N.W.2d 375, 378 (Iowa 1986)(racial harassment); Henson v. City of Dundee, 682 F.2d 897, 903-05 (11th Cir. 1982).

Participation In Harassment By Corporate Officer:

44. The fifth element need not be proven "where a proprietor, partner or corporate officer participates personally in the harassing behavior." Katz v. Dole, 709 F.2d 251, 255 (4th Cir. 1983). Corporate officers include not only "[t]hose persons who fill the offices which are provided for in the charter such as president, treasurer etc., [but also] in a broader sense the term includes vice presidents, general manager, and other officials of the corporation." BLACK'S LAW DICTIONARY 307 (5th ed. 1979). In light of his position and authority, it is clear that Ken Herwig was an officer of Respondent City of Hampton who participated personally in the harassment. See Finding of Fact No. 7. Also, Respondent City of Hampton agreed to not contest liability for the actions of Mr. Herwig. See Finding of Fact No. 3.

Proper Order and Allocation of Proof:

45. "It is questionable whether the traditional burden-shifting analysis is appropriate or necessary in hostile work environment cases where the alleged discrimination does not involve deprivation of a tangible job benefit." Lynch v. City of Des Moines, 454 N.W.2d 827, 834 n.6 (Iowa 1990)(citing Henson v. City of Dundee, 682 F.2d at 905 n.11 and Katz v. Dole, 709 F.2d at 255-56). This is so because the burden shifting analysis, utilized in disparate treatment cases relying primarily on circumstantial evidence as the means of proof, "serves to 'progressively sharpen the inquiry into the elusive factual question of intentional discrimination,' . . . in . . . case[s] where prohibited criteria and legitimate job related criteria often blend in the employment decision." Henson v. City of Dundee, 682 F.2d at 905 n.11. In a case involving repeated threats to sue the complainant because of what she said in her complaint and the express reduction of her hours due to "the civil rights mess" the question of intentional discrimination is not at all elusive. *Cf.* Id. (sexual harassment creating offensive environment does not present elusive factual question of intentional discrimination).

Term, Condition or Privilege of Employment:

46. The requirement that a term, condition or privilege of employment be affected by the harassment does not require that the harassment result in "the loss of a tangible job benefit." Lynch v. City of Des Moines, 454 N.W.2d 827, 834 (Iowa 1990). "Where [retaliatory] harassment in the workplace is so pervasive and severe that it creates a hostile or abusive work

environment, so that the [complainant] must endure an unreasonably offensive environment or quit working, the [retaliatory] harassment affects a condition of employment." *See* Id.

Existence of A Hostile Working Environment:

47. The determination that a hostile or abusive working environment existed at Respondent was based on application of the following principles:

> The existence of hostile or abusive working environment must be established by the totality of the circumstances. . . . Whether . . . use of [retaliatory threats and acts] is continuous, severe and pervasive enough to rise to a violation of the Iowa Civil Rights Act is a question of fact.
>
> . . .
>
> [T]he determination of whether defendant's conduct is sufficiently severe and pervasive to constitute [retaliatory] harassment does not turn solely on the number of incidents alleged by plaintiff. . . . The totality of the circumstances requires the factfinder to examine the severity, as well as the number, of the incidents of harassment. . . . In some situations the severity of the offensive conduct may lessen the need for sustained exposure. . . . "The prima facie showing in a hostile environment case is likely to consist of evidence of many or very few acts or statements by the defendant which, taken together, constitute harassment."

Vaughn v. Ag Processing, Inc., 459 N.W.2d 627, 633-34 (Iowa 1990)(citations omitted). See Finding of Fact No. 49.

Credibility and Testimony:

48. In addition to the factors mentioned in the section entitled "Course of Proceedings" and in the findings on credibility in the Findings of Fact, the Administrative Law Judge has been guided by the following principles: First, "[w]hen the trier of fact . . . finds that any witness has willfully testified falsely to any material matter, it should take that fact into consideration in determining what credit, if any, is to be given to the rest of his testimony." Arthur Elevator Company v. Grove, 236 N.W.2d 383, 388 (Iowa 1975). "[I]n the determination of litigated facts, the testimony of one who has been found unreliable as to one issue may properly be accorded little weight as to the next." NLRB. v. Pittsburgh Steamship Company, 337 U.S. 656, 659 (1949) (rejecting proposition that consistently crediting witnesses of one party and discrediting those of the other indicates bias). Second, "[t]he trier of facts may not totally disregard evidence but it has the duty to weigh the evidence and determine the credibility of witnesses. Stated otherwise, the trier of facts . . . is not bound to accept testimony as true because it is not contradicted. In Re Boyd, 200 N.W.2d 845, 851-52 (Iowa 1972).

49. Furthermore, the ultimate determination of the finder of fact "is not dependent on the number of witnesses. The weight of the testimony is the important factor." Wiese v. Hoffman, 249 Iowa 416, 424, 86 N.W.2d 861, 867 (1957). In determining the credibility of a witness and what

weight is to be given to testimony, the factfinder may consider the witness' "conduct and demeanor. . . [including] the frankness, or lack thereof, and the general demeanor of witnesses," In Re Moffatt, 279 N.W.2d 15, 17-18 (Iowa 1979); Wiese v. Hoffman, 249 Iowa 416, 424, 86 N.W.2d 861, 867 (1957), as well as "the plausibility of the evidence. The [factfinder] may use its good judgment as to the details of the occurrence . . . and all proper and reasonable deductions to be drawn from the evidence." Wiese v. Hoffman, 249 Iowa 416, 424-25, 86 N.W.2d 861 (1957).

50.

> Evidence on an issue of fact is not necessarily in equilibrium because the witnesses who testify to the existence of the fact are directly contradicted by the same number of witnesses, even though there is but a single witness on each side and their testimony is in direct conflict.
>
> . . .
>
> Numerical preponderance of the witnesses does not necessarily constitute a preponderance of the evidence so as to require a contested question of fact to be decided in accordance therewith. . . . [T]he intelligence, fairness, and means of observation of the witnesses, and various other recognized factors in determining the weight of the evidence . . . should be taken into consideration. . . . It is, of course, well recognized that the preponderance of the evidence does not depend upon the number of witnesses.

Id., 249 Iowa at 425, 86 N.W.2d 861.

Remedies:

51. Violation of Iowa Code section 601A.11 having been established the Commission has the duty to carry out other necessary remedial action. Iowa Code § 601A.15(8) (1989). In formulating these measures, the Commission does not merely provide a remedy for this specific dispute, but corrects broader patterns of behavior which constitute the practice of discrimination. Iron Workers Local No. 67 v. Hart, 191 N.W.2d 758, 770 (Iowa 1971). "An appropriate remedial order should close off 'untraveled roads' to the illicit end and not 'only the worn one.'" Id. at 771.
Reinstatement and Compensation:

52. The Commission has the authority to require "reinstatement or upgrading of employees with . . . pay." Iowa Code *S* 601A.15(8)(a)(1) (1991). In making such awards, interim earnings and unemployment compensation received during the backpay period are to be deducted. Id.

The Complainant bears the burden of proof in establishing his or her damages. Diane Humburd, 10 Iowa Civil Rights Commission Case Rpts. 1, 9 (1989)(citing Poulsen v. Russell, 300 N.W.2d 289, 295 (Iowa 1981)). *See* Children's Home v. Cedar Rapids Civil Rights Commission, 464 N.W.2d 478, 481 (Iowa Ct. App. 1990). The Complainant may meet that burden of proof by establishing the gross backpay due for the period for which backpay is sought. Diane Humburd at 10 (citing *e.g.* EEOC v. Kallir, Phillips, Ross, Inc., 420 F. Supp. 919, 924 (S.D. N.Y. 1976),

aff'd mem., 559 F.2d 1203 (2d Cir.), *cert. denied*, 434 U.S. 920 (1977)). This the Complainant has done. See Findings of Fact Nos. 94. Backpay may include compensation for health and disability insurance. R. Belton, Remedies in Employment Discrimination Law 338-40 (1992); Schlei & Grossman, Employment Discrimination Law: Five Year Cumulative Supplement 536 (2nd ed. 1989). Even if a complainant does not obtain other insurance to replace that paid for by her employer, she is entitled to the amount of premiums paid by her employer. R. Belton, Remedies in Employment Discrimination Law 338-40 (1992).

53. The burden of proof for establishing the interim earnings, including unemployment insurance payments, of the Complainant rests with the Respondent. Diane Humburd at 10 (citing Stauter v. Walnut Grove Products, 188 N.W.2d 305, 312 (Iowa 1973); EEOC v. Kallir, Phillips, Ross, Inc., 420 F. Supp. at 924)). The Respondent also bears the burden of proof for establishing any failure of the Complainant to mitigate damages. Children's Home of Cedar Rapids v. Cedar Rapids Civil Rights Commission, 464 N.W.2d 478, 481 (Iowa Ct. App. 1990). The Complainant may, as Complainant Abbas has done here, choose to provide evidence of interim earnings she is willing to concede. Diane Humburd at 10. See Finding of Fact No. 94.

54. The award of backpay in employment discrimination cases serves two purposes. First, "the reasonably certain prospect of a backpay award . . . provide[s] the spur or catalyst which causes employers and unions to self-examine and to self-evaluate their employment practices and to endeavor to eliminate [employment discrimination]." Albemarle Paper Company v. Moody, 422 U.S. 405, 418-19, 95 S.Ct. 2362, 2371-72, 45 L. Ed. 2d 280 (1975). Second, backpay serves to "make persons whole for injuries suffered on account of unlawful employment discrimination." Id. 422 U.S. at 419, 95 S.Ct. at 2372. Both of these purposes would be served by an award of backpay in the present case.

55. "Iowa Code section 601A.15(8) gives the Commissionconsiderable discretion in fashioning an appropriate remedy that will accomplish the purposes of chapter 601A." Hy Vee Food Stores, Inc. v. Iowa Civil Rights Commission, 453 N.W.2d 512, 531 (Iowa 1990). The Iowa Supreme Court has approved two basic principles to be followed in computing awards in discrimination cases: "First, an unrealistic exactitude is not required. Second, uncertainties in determining what an employee would have earned before the discrimination should be resolved against the employer." Id. at 530-531. "It suffices for the [agency] to determine the amount of back wages as a matter of just and reasonable inferences. Difficulty of ascertainment is no longer confused with right of recovery." Id. at 531 (Quoting with approval Brennan v. City Stores, Inc., 479 F.2d 235, 242 (5th Cir. 1973)).

Damages for Emotional Distress:

56. In accordance with the statutory authority to award actual damages, the Iowa Civil Rights Commission has the power to award damages as compensation for emotional distress sustained as a result of discrimination. Chauffeurs Local Union 238 v. Iowa Civil Rights Commission, 394 N.W.2d 375, 383 (Iowa 1986)(interpreting Iowa Code § 601A.15(8)). The following principles were applied in determining whether an award of damages for emotional distress should be made and the amount of such award.

Proof of Emotional Distress:

57. "[A] civil rights complainant may recover compensable damages for emotional distress without a showing of physical injury, severe distress, or outrageous conduct." Hy Vee Food Stores, Inc. v. Iowa Civil Rights Commission, 453 N.W.2d 512, 526 (Iowa 1990). "Humiliation can be inferred from the circumstances as well as established by the testimony." Seaton v. Sky Realty, 491 F.2d at 636 (quoted with approval in Blessum v. Howard County Board, 245 N.W.2d 836, 845 (Iowa 1980)).

58. Even slight testimony of emotional distress, when combined with evidence of circumstances which would be expected to result in emotional distress, can be sufficient to show the existence of distress. *See* Dickerson v. Young, 332 N.W.2d 93, 98-99 (Iowa 1983). Testimony of the complainant alone may be sufficient to prove emotional distress damages in discrimination cases. *See* Crumble v. Blumthal, 549 F.2d 462, 467 (7th Cir. 1977; Smith v. Anchor Building Corp., 536 F.2d 231, 236 (8th Cir. 1976); Phillips v. Butler, 3 Eq. Opp. Hous. Cas. § 15388 (N.D. Ill. 1981).

59. In discrimination cases, an award of damages for emotional distress can be made in the absence of "evidence of economic or financial loss, or medical evidence of mental or emotional impairment." Seaton v. Sky Realty, 491 F.2d 634, 636 (7th Cir. 1974). Nonetheless, such evidence in the record may be considered when assessing the existence or extent of emotional distress. *See* Fellows v. Iowa Civil Rights Commission, 236 N.W.2d 671, 676 (Iowa Ct. App. 1988).

Determining the Amount of Damages for Emotional Distress:

60.

> Because compensatory damage awards for mental distress are designed to compensate a victim of discrimination for an intangible injury, determining the amount to be awarded for that injury is a difficult task. As one court has suggested, "compensation for damages on account of injuries of this nature is, of course, incapable of yardstick measurement. It is impossible to lay down any definite rule for measuring such damages."
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> . . .
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> Computing the dollar amount to be awarded is a function of the finder of fact. Juries and judges have been making such decisions for years without minimums or maximums, based on the facts of the case [and] the evidence presented on the issue of mental distress.

2 Kentucky Commission on Human Rights, Damages for Embarrassment and Humiliation in Discrimination Cases 24-29 (1982)(quoting Randall v. Cowlitz Amusements, 76 P.2d 1017 (Wash. 1938)).

61. The two primary determinants of the amount awarded for damages for emotional distress are the severity of the distress and the duration of the distress. Bean v. Best, 93 N.W.2d 403, 408 (S.D. 1958)(citing Restatement of Torts § 905). "'In determining this, all relevant circumstances are considered, including sex, age, condition of life, and any other fact indicating the susceptibility of the injured person to this type of harm.' And continuing 'The extent and duration of emotional distress produced by the tortious conduct depend upon the sensitiveness of the injured person.'" Id. (quoting Restatement of Torts § 905). *See also* Restatement (Second) of Torts § 905 (comment i).

Interest:

Pre-Judgment Interest:

62. The Iowa Civil Rights Act allows an award of actual damages to persons injured by discriminatory practices. Iowa Code § 601A.15(8)(a)(8). Pre-judgment interest is a form of damages. Dobbs, Hornbook on Remedies 164 (1973). It "is allowed to repay the lost value of the use of the money awarded and to prevent persons obligated to pay money to another from profiting through delay in litigation." Landals v. Rolfes Company, 454 N.W.2d 891, 898 (Iowa 1990). Pre- judgment interest is properly awarded on an ascertainable claim. Dobbs, Hornbook on Remedies 166-67 (1973). Because the amount of back pay due Complainants at any given time has been an ascertainable claim since the time their employment ended, pre-judgment interest should be awarded on the back pay. Such interest should run from the date on which back pay would have been paid if there were no discrimination. Hunter v. Allis Chalmers Corp., 797 F.2d 1417, 1425-26 (7th Cir. 1986)(common law rule). The method of computing pre-judgment interest is left to the reasonable discretion of the Commission. Schei & Grossman, Employment Discrimination Law: Five Year Cumulative Supplement 543 (2nd ed. 1989). No pre- judgment interest is awarded on emotional distress damages because these are not ascertainable before a final judgment. *See* Dobbs, Hornbook on Remedies 165 (1973).

Post-Judgment Interest:

63. Post-judgment interest is usually awarded upon almost all money judgments, including judgments for emotional distress damages. Dobbs, Hornbook on Remedies 164 (1973).

DECISION AND ORDER

IT IS ORDERED, ADJUDGED, AND DECREED that:

A. Complainant Dorothy A. Abbas and (through her complaint) the Iowa Civil Rights Commission are entitled to judgment because they have proven retaliation, in violation of Iowa Code section 601A.11, by Respondent City of Hampton through repeated threats by her supervisor to sue Abbas for what she said in the complaint; through her supervisor refusing to speak with her or provide her with information required to do her work; through decreasing her work assignments; through increased scrutiny of her work; and through the reduction of her position from a full-time to part-time status; and through the creation, by these acts, of a hostile, retaliatory working environment.

B. Complainant Abbas shall be reinstated to a full-time, 40 hour per week, position as secretary in the city clerk's office with the salary, medical and disability insurance, and all other benefits currently received by full- time employees of the City of Hampton. Front pay in an amount equal to the difference between her half-time salary and benefits and those of a full-time position of secretary, including an amount equal to that currently expended by the City of Hampton for medical insurance and other full-time benefits, is awarded effective as of the date of the final decision and order in this case. This front pay shall continue until such date as Complainant Abbas' full-time reinstatement is in effect.

C. Complainant Abbas is entitled to a judgment of sixty-three thousand seven hundred seventy-five dollars and sixty-three cents ($63775.63) in back pay, including benefits, for the loss resulting from the reduction of her position to part-time at Respondent City of Hampton.

D. Complainant Abbas is entitled to a judgment of fifty thousand dollars and zero cents ($50000.00) in compensatory damages for the emotional distress she sustained as a result of the retaliation she was subjected to by Respondent.

E. Interest at the rate of ten percent per annum shall be paid by the Respondent to Complainant Abbas on her award of back pay commencing on the date payment would have been made if Complainant had remained in her full-time employment with Respondent and continuing until date of payment.

F. Interest at the rate of ten percent per annum shall be paid by the Respondent to Complainant Abbas on the above award of emotional distress damages commencing on the date this decision becomes final, either by Commission decision or by operation of law, and continuing until date of payment.

G. Respondent City of Hampton shall post, within 60 days of the date of this order, in conspicuous places in its city hall at Hampton, Iowa, in areas readily accessible to and frequented by employees, at least two copies of the poster, entitled "Equal Employment Opportunity is the Law" which is available from the Commission.

H. Respondent City of Hampton shall file a report with the Commission within 150 calendar days of the date of this order detailing what steps it has taken to comply with paragraphs B through G inclusive of this order.

Signed this the 29th day of December 1992.

DONALD W. BOHLKEN
Administrative Law Judge
Iowa Civil Rights Commission
211 E. Maple
Des Moines, Iowa 50319
515-281-4480

FINAL DECISION AND ORDER

1. On February 26, 1993, the Iowa Civil Rights Commission, at its regular meeting, approved, by a three to two vote, a motion that the findings of fact and order of the Administrative Law Judge not be adopted, that judgment be for the Respondent, and that the case be dismissed.

2. Findings of Fact Numbers 1 through 111 are stricken from the proposed decision and order. The section entitled "Decision and Order" is also stricken.

3. Judgment is found for the Respondent City of Hampton. The case is dismissed.

IT IS SO ORDERED.

Signed this the 16th day of March, 1993.

Carolyn Rants
Chairperson
Iowa Civil Rights Commission
211 E. Maple
Des Moines, Iowa 50319

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Assistant Attorney General

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City of Hampton
122 - First Avenue, N.W.
P.O. Box 236
Hampton, Iowa 50441

NOTE: This decision was appealed to the Polk County District Court by the complainant after her application for rehearing was denied. On February 22, 1994, the court remanded the case to the Commission because the final decision lacked findings of fact and conclusions of law. On May 26, 1994, the Commission voted, on remand, to adopt the proposed decision originally issued on December 29, 1992. Respondent's application for rehearing was denied on June 24,

1994. Respondent filed a petition for judicial review with the Franklin County District Court. On April 5, 1995 the Court rendered an opinion affirming the Commission's decision.

RULING ON APPLICATION FOR REHEARING:

1. On March 26, 1993, the Iowa Civil Rights Commission, at its regular meeting, voted on a motion to grant Complainant Dorothy Abbas' Application for Rehearing, which was filed on March 18, 1993. The vote on this motion resulted in a two to two tie vote.

2. The Commission then voted on a motion to deny Complainant Dorothy Abbas' Application for Rehearing. The vote on this motion resulted in a two to two tie vote.

3. Since a majority of the quorum present could not agree on whether to grant or deny Complainant Abbas' Application for Rehearing, the application shall be deemed denied on April 7, 1993, which is 20 calendar days after the filing of the Application for Rehearing.

IT IS SO ORDERED.

Signed this the 30th day of March, 1993.

Sally O'Donnell
Vice-Chairperson
Iowa Civil Rights Commission
211 E. Maple
Des Moines, Iowa 50309

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FINAL DECISION AND ORDER ON REMAND:

On May 20, 1994, the Iowa Civil Rights Commission, at its regular meeting, reconsidered its decision in this case in accordance with the Ruling on Petition for Judicial Review entered by the Iowa District Court for Polk County on February 22, 1994. This order required the Commission to render a final decision with "findings of fact and conclusions of law, separately stated." Iowa Code section 17A.16(1) (1993). The Commission voted to adopt, as its final order, Administrative Law Judge Donald W. Bohlken's original proposed decision and order of December 29, 1992, which is hereby incorporated in its entirety as if fully set forth herein.

IT IS SO ORDERED.

Signed this the 26th day of May, 1994.

Sally O'Donnell
Chairperson
Iowa Civil Rights Commission
211 E. Maple
Des Moines, Iowa 50309

Copies to:

Rick Autry
Assistant Attorney General

Dorothy A. Abbas
1204 - 3rd Street
Hampton, Iowa 50441

RULING ON APPLICATION FOR REHEARING:

1. On this date, the Iowa Civil Rights Commission, at its regular meeting, voted on a motion to deny Respondent City of Hampton's Application for Rehearing, which was filed on June 20, 1994. The vote on this motion resulted in a six to zero vote to deny the application for rehearing.
2. Respondent City of Hampton's Application for Rehearing is denied.

IT IS SO ORDERED.

Signed this the 23rd day of June, 1994.

Sally O'Donnell
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Iowa Civil Rights Commission
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