

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

VANESSA DIXON,)	
Plaintiff)	
)	
vs.)	Docket No. 01-II806-WGY
)	
INTERNATIONAL BROTHERHOOD OF)	
POLICE OFFICERS; INTERNATIONAL)	
BROTHERHOOD OF POLICE OFFICERS,)	
LOCAL 382; KENNETH LYONS,)	
GERALD FLYNN, JOHN LEARY AND)	
DAVID PENDER,)	
Defendants)	

**DEFENDANT INTERNATIONAL BROTHERHOOD OF POLICE OFFICERS'
MOTION FOR A JUDGMENT AS A MATTER OF LAW PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE RULE 50(b) OR IN THE ALTERNATIVE, FOR A MOTION FOR NEW
TRIAL OR REMITTITUR**

Now comes the Defendant, the International Brotherhood of Police Officers, (hereinafter the IBPO) and pursuant to ***Fed R. Civ. P. 50(b)***, having moved for a directed verdict¹ at the close of the Plaintiff's case² and at the close of all of the evidence³, which motions were denied, hereby moves that the Court enter judgment as a matter of law in accordance with its motions for directed verdict and for the reasons stated in said motions for directed verdict or in the alternative pursuant to ***Fed R. Civ. P. 59*** for a new trial and/or remittitur. .

As reasons in support thereof, the IBPO submits the following grounds:

Retaliation Claims under Title VII and M.G.L. c. 151B

1. Based upon the evidence at trial and as a matter of law the conduct of neither the individual defendants nor that of the IBPO amounted to any act of retaliation because:

¹ The Defendants IBPO and the Local were asked by the Court to brief the issue of Union liability under **Title VII** and **M.G.L. c. 151B**. The Local responded in Document No. 129 and the IBPO responded in Document 132. Document 132 noted that it adopted and joined in the arguments advanced by the Local in Document 129.

² These motions were filed in hand at Court and argued on October 6, 2005. At the present time they are not reflected on the docket.

³ Documents numbered 147 thru 155.

- a. The IBPO was not an employer of the Plaintiff;
 - b. Though the IBPO, is a labor organization, and the Plaintiff was a union member, the IBPO did not discriminate⁴ or retaliate against the Plaintiff with respect to her union membership rights;
 - c. The Plaintiff did not suffer any adverse employment action, in that as a Union member, she was not denied any union benefit, expelled, suspended from any union position and was not otherwise disciplined by the union.
 - d. Not having been the recipient of any adverse employment action, there cannot be any causal connection between any claimed retaliatory act and an adverse employment action.
2. Based upon the evidence at trial and as a matter of law any alleged conduct of the IBPO cannot amount to retaliation because such conduct is protected by the First Amendment.
 - a. The actions⁵ of Leary, Pender and Rivera in filing civilian complaints with the Lowell Police Department against the Plaintiff for perjury, after the Civil Service Commission made findings that the Plaintiff perjured herself cannot be retaliatory since the 1) Plaintiff's perjury cannot be considered a protected activity and 2) the complaints to the Lowell Police regarding the Plaintiff's perjury are protected by the First Amendment's freedom to petition clause as well as the First Amendment's freedom of speech provisions regarding non-defamatory speech.
 - b. Even if the actions of Leary, Pender, Rivera and the IBPO in filing complaints or seeking an investigation of the Plaintiff can constitute retaliation under Federal law, Massachusetts law prohibits claims of retaliation that amount to a restriction on core political speech. The standard for that is that the accused may defend themselves with speech so long as it is not defamatory. ***Bain v. City of Springfield, 424 Mass. 758 (1997).***
3. Based upon the evidence at trial and as a matter of law any alleged conduct of the individual union members are insufficient to impose vicarious liability against the IBPO.

⁴ The Plaintiff at the hearing on the directed verdict was specifically asked by the Court what acts constituted retaliation by the IBPO. During the response, Plaintiff's counsel stated 1) the Challenge program and 2) probably statements to the press. The Court responded that those were items of discrimination and Plaintiff's counsel responded "Well, we're framing it as retaliation because it occurs as a result of her participation in the event". (Exhibit 1, p24). To the extent that the Court adopt Plaintiff's discrimination/retaliation argument, the IBPO submits that the same reasons apply as to why a directed verdict should have been allowed.

⁵ Assuming without conceding that there is vicarious liability on the part of the IBPO for these independent acts of these individuals.

4. Based upon the evidence at trial, and without regard to evidence that is protected by the First Amendment, there is no evidence to support the award of punitive damages against the IBPO.
5. Based upon the evidence at trial, and pursuant to the provisions of **42 U.S.C. § 1981a(b)(3)**, the damages for retaliation exceed the statutory cap and must be reduced. Moreover, because of the prohibition under Massachusetts law cited in **Bain**, the balance of any excess damages cannot be apportioned to the state law claims.

In the alternative, if the forgoing motion is not granted, the IBPO moves this Court for an order vacating and setting aside the verdict of the jury, and granting the IBPO a new trial or remittitur, for each of the following several reasons affecting materially the substantial rights of the IBPO, to wit;

1. The verdict is contrary to law (as outlined above).
2. The verdict is not sustained by sufficient evidence.
3. The verdict is against the weight of the evidence.
4. The verdict is against the law and the evidence.
5. Under the pleadings and all of the evidence in the case the verdict should be in favor of the Defendant IBPO.
6. Under the evidence in the case the compensatory damages awarded by the jury are excessive.
7. Under the evidence in the case the punitive damages awarded by the jury are excessive.
8. Under the evidence in the case the compensatory and punitive damages awarded by the jury are excessive and above the Federal statutory cap.

Accordingly, as more fully detailed in the accompanying affidavit, Exhibits and Memorandum of Law, the Defendant IBPO requests that this motion be allowed and judgment enter for the Defendant, IBPO, or in the alternative, the verdicts be set aside and a motion for new trial be granted and/or remittitur.

The Defendant requests a hearing on the within motion.

Respectfully submitted,
IBPO

"/s/Joseph W. Monahan, III

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Dated:October 28, 2005

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DISTRICT OF MASSACHUSETTS

VANESSA DIXON,)	
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**AFFIDAVIT IN SUPPORT OF DEFENDANT IBPO'S MOTION FOR JUDGMENT AS A
MATTER OF LAW OR IN THE ALTERNATIVE MOTION FOR NEW TRIAL AND/OR
REMITTITUR**

I, Joseph W. Monahan, III, being duly sworn, depose and state as follows:

1. I was the lead attorney for the Defendant IBPO in the above-entitled matter and am in good standing in the Court's of the Commonwealth of Massachusetts and the U.S. District Court for the District of Massachusetts;
2. The matters in this affidavit are stated on my information and belief and memory based upon my attendance at the trial of the underlying matter or alternatively are based upon transcripts of the trial and related hearings, copies of which are attached;
3. Attached and marked as Exhibit 1 are excerpts from the transcript of the hearing on the directed verdict motions.
4. Attached hereto is a copy Verdict Questionnaire made by the jury. (See Exhibit 2).
5. Upon information and belief, the Defendant IBPO had more than 200 but less than 501 employees in each of the 20 or more calendar weeks in the current or proceeding calendar year.

Subscribed and sworn to under the pains and penalties of perjury this **October 30,**
2005.

"/s/ Joseph W. Monahan, III

Joseph W. Monahan, III