on the panel is Jordan Barab, Assistant Director for Health and Safety of AFSCME, the public employee union, that is based in Washington, D.C. He has written cogently about workplace violence from the union viewpoint. And finally, we have one of our Canadian hosts, Kenneth P. Swan, an arbitrator who has been a leader in professional education.

Among the workshops planned for the afternoon is a followup to this plenary session, led by National Academy of Arbitrators Member Marcia L. Greenbaum. It offers an opportunity to apply to an actual case some of the principles we discuss here. The morning's speakers and others will take part, and our problem-solving skills can be put to the test.

II. WHEN NEUTRALS CONFRONT CASES OF WORKPLACE VIOLENCE

MARK BRAVERMAN*

Neutrals are being increasingly called upon to rule on cases involving violence or threats of violence in the workplace. It is the rare practitioner in the field who has not heard cases involving disputes between employers and employees regarding violent or threatening behavior in the workplace. Ruling on cases of this sort, however, presents particular challenges to the arbitrator, and it is the wise practitioner who recognizes this. Neutrals, along with labor leaders, attorneys and legal experts, corporate managers, human resource managers, policy makers, and health care professionals are playing a part in determining how workplace violence is defined, conceptualized, and ultimately confronted. Three of the most crucial issues at stake here are:

1. *The limits of present concepts and laws regarding worker rights and employer responsibility.* Until recently, cases brought to arbitration typically involved disputes over contractual issues or over discipline for violations of proper workplace behavior or job performance. Rarely, however, were arbitrators required to render awards about issues involving life and death. However, this is precisely what many cases are about. Considerable uncertainty exists about the application of established

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principles of tort law and employment law in this emerging area. The violence issue has demonstrated that these concepts require reshaping and reinterpreting in light of changing conditions. Neutrals must recognize that established approaches to employment law may no longer be adequate for useful resolution of these cases.

2. *The dangers of adversarial-based systems of dispute resolution.* Time-honored principles of employment law such as duty of care, worker right to privacy, and protection from discrimination have shaped policy and practice in confronting conflict and behavioral problems in the workplace. Increasingly, however, these principles have been applied in a dispute-centered, adversarial atmosphere. Cases involving threats of violence and outright assaults in the workplace are increasing and are the direct result of higher stress levels in the workplace due to the rapid pace of change, economic conditions, and the loss of job security. However, anointing one party the winner or formally assigning blame rarely resolves the underlying conflict. Indeed, in many cases, as in those to be discussed here, such an approach may make matters worse.
3. *The limits of current human resources practices.* Dealing with threats of violence from both inside and outside the workplace challenges what we know about best practice in handling issues of interemployee conflict, impaired workers, and issues of safety and health on the job. Increasingly, human resource managers, sometimes in concert with internal security or legal departments, flounder in trying to deal with these complex and frightening situations. Most companies still do not have adequate policies to govern threats of violence; of those that do, many are unsure about how to apply the policies. When a company gets into trouble, the arbitrator is asked to fix something that cannot be fixed through a decision about who is right and who is wrong. Yet, this is how the case is framed by the time it gets to arbitration.

What Is the Nature of This Problem?

Kenneth Swan, a co-presenter at this symposium, compares the job of the arbitrator with that of the pathologist: "We don't see the patient until after he is dead." We have found that this is invariably the case in situations involving threat of violence. The appearance

of parties at an arbitration signifies the failure of other means of resolving a dispute or reaching agreement about the causes of a problem. The problem, however, is rarely as simple as determining whether an individual presents a threat to the workplace. Contrary to the image popularized by the media, cases of workplace violence are not about the so-called "disgruntled" employee who returns to the workplace with a gun to exact revenge. Rather, they are about individuals who are breaking down under stress. This stress assumes threatening or dangerous proportions usually because of a failure of the system to address the source of the stress and to find ways to resolve the problem. Violence occurs when other means of resolution or redress are not available and when the first "warning signals" of severe stress are not heeded. Violence is usually preventable. In no other class of disputes, therefore, is it more of a misfortune to reach the point in which the judgment rendered supports one side's position and thwarts the other's. Indeed, not being "heard" and understood is usually the reason a person resorts to violence. As the following cases illustrate, the arbitrator becomes involved only when that unfortunate point is reached.

A Post Office Tragedy

At 8:45 A.M. on a day early in November 1991, Thomas McIlvane, a fired U.S. Postal Service letter carrier, after being informed that he had lost his arbitration, entered the main Post Office in Royal Oak, Michigan, through an unsecured rear loading dock, armed with a loaded semiautomatic rifle. He strode through the building, climbing the stairs to the supervisors' offices on the second floor. Seeking out particular supervisors and managers who had been involved with his discipline and ultimate termination, McIlvane discharged more than 100 rounds from his weapon, shooting eight people and mortally wounding four before taking his own life. The shootings took place against the backdrop of poor labor relations in the Royal Oak Division, allegations of questionable management practices, operational and service problems, and recent management changes.

The official record tells us very little about McIlvane's background. The congressional investigation that followed the massacre described a brief tour of duty with the U.S. Marine Corps, which was characterized by insubordination; use of foul, aggressive language to superiors; and overt violent acts against people and

equipment, for which he was disciplined repeatedly, including a three-month incarceration. Ultimately, he was discharged under the confusing and sanitized military category of "general discharge under honorable conditions."

McIlvane was hired as a letter carrier in January 1985. Early in 1988, the record shows repeated and escalating conflicts with authority; insubordinate, rebellious behavior; and the frequent use of profanity when dealing with superiors. Between October 1988 and August 8, 1990, the date he was issued a notice of removal from the Postal Service, approximately nine incidents of behavioral and performance violations were recorded, which were responded to by a range of disciplinary and investigative procedures. These included an alleged assault on a postal customer, which resulted in an Inspection Service investigation; safety violations involving his vehicle, which resulted in a 14-day suspension; throwing a pencil at a supervisor during an argument; and uttering a string of profane and threatening remarks at a female supervisor during a telephone conversation.

In addition to the disciplinary record, two medical or mental health contacts are documented. In June 1988, McIlvane was sent to the Employee Assistance Program because of drug and alcohol abuse. This was followed by a visit to a physician (nonpsychiatrist), who noted "no history of emotional disorders" and found him free of emotional instability and not in need of a psychiatric consultation. It is not clear from the record whether McIlvane remained in counseling or any kind of treatment for a drug or alcohol problem. There is a record of a Fitness for Duty examination, which included a psychiatric examination, that took place on February 23, 1990. It is not clear why this exam was required or whether it was linked to a particular episode or suspension, which would be the usual reason for such a procedure.

On August 8, 1991, a removal notice was issued to McIlvane regarding "profane threats and insubordination" against three supervisors during telephone conversations. On that same day, McIlvane first lodged a complaint of sex discrimination through the equal employment opportunity (EEO) office and grieved the removal through his union. Over the next 14 months, the grievance procedure progressed through the prescribed steps of denial and resubmission on its way to arbitration, as well as the necessary investigative procedures in response to his EEO complaint. On June 25, 1991, the EEO complaint was denied with an administra-

tive judge finding no sex discrimination. The arbitration, which finally took place on October 29, 1991, upheld McIlvane's removal. The arbitrator's decision and award was dated November 8, 1991, *15 months after the removal notice was issued.*

During that period of 15 months between his removal and the denial of his grievance, there were more than 20 documented threats made by Thomas McIlvane toward postal supervisors. Several examples will illustrate: On September 20, 1990, McIlvane warned his former manager, "You are the one who got me fired. . . . I'm going to be watching you and I'm going to get you." At an unemployment compensation hearing several days later, McIlvane said to a supervisor, "You might win today, but I'm going to get you." In November, McIlvane visited the Post Office to file again for unemployment benefits. Before leaving, he crumpled the application and threw it in the face of one of the office staff. He then called out to the manager, "I'm going to come up there and kill you." Numerous attempts of several managers to obtain restraining orders through local law enforcement and to obtain protection from the Inspection Service yielded inconsistent responses, conflicting pieces of advice, and ultimately were without result.

The abusive and threatening phone calls continued throughout the following year and came to the attention of both management and union, at the same time that labor relations activity involving steps in the grievance process were pursued. Despite the severity and escalation of the threats, union and management did not discuss them, except for one instance when the shop steward who worked with McIlvane told a supervisor that McIlvane had a "list" of five supervisors whom he was "going to get." During the congressional investigation, the Letter Carriers Union Vice President told an investigator that he had been personally aware of threats but had felt that it would have been a violation of his legal responsibility to the grievant to discuss them with the Postal Service.

On November 8, 1991, the arbitration was concluded with McIlvane's termination upheld. He was notified by telephone, through a message left on an answering machine. Three days later, McIlvane went to the Post Office to carry out his retaliatory threats.

The arbitration process had been relatively brief and straightforward. After stating his reasons for denying the grievance, the arbitrator summed up his opinion by duly citing the article and

section of the collective bargaining agreement as support for the just removal:

> By his own actions, the grievant has rendered himself unfit for continued employment. Efforts to rehabilitate him through progressive discipline and counseling failed prior to his discharge, and just cause existed under Article 3B and Article 16, #1, for his removal as an employee of the Postal Service.

Then, the arbitrator closed his award with the following interesting statement: "His conduct following the discharge certainly will not allow this arbitrator to return him to employment."

We know what conduct the arbitrator was referring to in this statement, although these were not issues taken up in the opinion that preceded it, which appropriately limited itself to the behavior prior to termination. He was referring to the threats that were made by McIlvane *after his dismissal,* threats about *what he would do if he lost the arbitration.* The arbitrator, therefore, made clear that *he knew about these threats,* even to the extent of considering them as part of his decision to uphold the termination. Thus, he must be added to the list of people who were aware that a threat existed and who were unable to take any effective action in concert with the others who knew. Did he consider discussing the clear and present danger that existed with the representative of the Postal Service or of the union who had attended the arbitration sessions? Did he wonder if he were mandated by statute or precedent to warn possible victims? Was he aware that he was a potential target of the grievant?

Like the other players in this drama, the arbitrator should not be faulted for his failure to act on any of these questions. Like them, he may have been concerned about the danger and even frightened for his own safety, but he was accustomed to staying inside the confines of the role that had been defined for him by the system. This system, based on settling battles between adversaries, does not allow for communication, consultation, or management of these kinds of crises. In the case of threat of violence, it blocks people from their most basic sense of fear and even their common sense. The arbitrator, like the union president, the company lawyer, the medical director, and the human resources manager, was effectively trapped by the system. By using their example to examine this issue, we owe it to them to draw lessons from their experience and to ask the question: Does this have to be?

The Case of the Grumbling Mechanic

Following the Royal Oak incident and a string of other Post Office shootings, the Post Office became the symbol of workplace violence in America. "Going postal" has been invested with a grisly meaning, and mere references to "postal" violence can still be grounds for discipline. The Post Office, however, is not the only workplace in America in which there are concerns about violence. Throughout our society, there is a growing fear and anxiety about the rage and discontent that exist in American workplaces as a result of the pace of change and growing economic uncertainty for families and individuals. Indeed, the Post Office is simply a powerful symbol of that unease. The following case illustrates just such an instance.

Mr. L had been a mechanic in the pressroom of a major newspaper for more than 24 years. The paper, owned for generations by one family, was purchased by a conglomerate. Management philosophy changed. Although Mr. L's job security was not threatened, he was required to learn different work procedures, including the use of a computer, and to report to a new manager, a man much younger than himself. Mr. L became unhappy and openly resistant to the changes. He began to incur discipline for performance deficiencies. One day, his manager asked to meet with Mr. L to discuss why he had not complied with a new procedure designed to streamline productivity. During this conversation, Mr. L became increasingly agitated and angry. According to the manager's later report, Mr. L began to talk about the stress the changes were causing for him, complained about "management harassment," and twice made reference to "how this place could turn into a Post Office if you continue to do this to people." The manager's antennae went up. He backed off from the discipline he was about to impose and went straight to his superior to report the statements that he claimed threatened him.

The next morning, the vice presidents of operations and human resources met with corporate counsel, the health services nurse, and the shift superintendent. They learned of other statements that Mr. L had allegedly made over the past months referring to guns and "getting even" with people at work. Mr. L's supervisor reported that when Mr. L was given a letter that warned employees that misuse of a computer password could result in discharge, he said that "the only thing that will get discharged around here is

my .45," and "that there will be more police cars around here than were following OJ Simpson." Rumors of past violence in his personal life were also reported. He seemed to fit the "profile" of the violent employee they had read about: divorced, a white male in his 40s, a loner with an interest in guns.

Faced with what appeared to them to be a potentially dangerous situation, this group sought advice. The nurse called the employee assistance program office, which referred them to a local psychiatrist known to be an expert on violence. The attorney called the police to explore law enforcement options for dealing with threats. They described the statements that the employee allegedly made. Hearing these statements, both sources gave the same advice, which was to obtain a legal order for an emergency psychiatric examination. A judge was petitioned, who, after hearing the reports about Mr. L, duly granted the order. The next day, Mr. L received a letter informing him that he was suspended with pay and barred from the workplace because of what he had said. Soon after, the police arrived at the employee's house, served him with the order, and drove him to a nearby hospital where he underwent a psychiatric evaluation. Mr. L was released immediately following the examination. Two days later, on Monday morning, the psychiatrist called to report his opinion that "there is no evidence that the patient is a danger to others or to himself by virtue of a mental disorder."

Confused, frightened, and enraged at what had happened to him, Mr. L contacted his union and his personal lawyer. By the end of Monday, the human resources manager had been contacted by the union's administrative director, who, furious at this treatment of their member, demanded that he be reinstated immediately. A letter from the lawyer signaled the beginning of possible legal action to seek redress. The human resources manager, however, aware that people were genuinely frightened by Mr. L and unsure of how to interpret the psychiatrist's report, was unwilling to return him to the workplace. Thus, anxious and uncertain top executives, while acting quickly in response to a reported threat of violence, had perhaps made the situation worse. They had a psychiatric opinion that they did not trust and that provided them little information They had a feared and possibly dangerous employee who was rapidly moving beyond their reach, in all likelihood becoming increasingly angrier and more afraid and mistrustful. They had a furious union that was mounting a counterattack in order to restore the rights and dignity that it felt had been violated. And they had no clear direction or plan.

Aware of additional rumors that were surfacing concerning Mr. L's alleged violence in the past, the vice president directed the human resources manager to conduct a complete investigation. The manager remembered that one of the recommendations of the police psychologist was that there be a systematic risk assessment because the psychiatric exam would not be sufficient to assess whether the grievant posed a threat. He contacted a psychologist who was a specialist in workplace violence and who periodically came to the workplace to review records and interview a number of employees. However, Mr. L refused to meet with the expert, who then concluded that it was impossible to complete the assessment without such a meeting. While the company attempted to negotiate with Mr. L and the union, Mr. L steadfastly refused to comply, maintaining that he had already undergone one examination and should not be subjected to another one. The expert and the company maintained that this was a different kind of interview, one that was necessary in order to reach a resolution. After giving Mr. L an ultimatum that he would face discharge unless he complied, the company terminated Mr. L. The union filed a grievance, which was appealed to arbitration.

The arbitrator heard arguments from both sides during a hearing that lasted more than five days. Midway through the process, the arbitrator attempted to mediate a settlement that involved Mr. L agreeing to meet with the psychologist in exchange for certain concessions from the company. These efforts failed. Ultimately, the arbitrator was persuaded that the psychiatric examination was insufficient to determine whether Mr. L posed a risk of violence in the workplace. In his award, he found that the company correctly decided that a risk assessment was necessary and that the grievant had a duty to cooperate and was not justified in refusing to participate. He ruled that the employer acted reasonably in this case when it gave a clear warning of the consequences of failure to cooperate in the investigation, and then acted on it by discharging Mr. L. He also found the grievant's claim that he did not mean to convey a threat as unpersuasive. He then upheld the discharge of this 24-year employee as having been for just cause.

Lessons Learned

Here are two cases where neutrals were asked to play a crucial role in situations fraught with peril and uncertainty. In both cases, the arbitrator upheld the actions of an employer in discharging an

employee who was deemed potentially dangerous. In both cases, the employer, having "won," was now vulnerable to the possible retributions of an individual who was no longer its employee. In both cases, the arbitrator acted in a responsible, professional manner; in one case, he even attempted to give both parties another chance to retire from their positions and resolve their dispute. In this author's opinion, both resolutions were disastrous. In the Post Office case, the disaster was of major proportions. But the newspaper case was a disaster as well due to the unnecessary pain and fear suffered by all parties as well as the ultimate loss of the employee to the Company. It is also important to point out that in this case, subsequent to the arbitrator's award, the "Postal" outcome was entirely possible: was this not a man suspected of being capable of violence, who had made a threat, and who now had even more reason to carry it out?

Cases of workplace violence have their genesis in one of two, and often both, sets of circumstances: (1) severe behavioral or psychosocial impairment originating from stress at work or elsewhere, and (2) conflict between employees or between employees and superiors. Thus, when a case reaches an arbitrator, it usually implies that the event arose from the failure to manage stress and the resulting progressive breakdown of a relationship. The real issues were probably never dealt with or recognized. In other words, the source of stress and the nature of the impairment were never identified. What can we learn from these cases?

1. These scenarios are preventable.
2. Unions are rendered helpless and, worse, become accomplices when they adopt a position of strict advocacy for their members in these cases. There *must* be teamwork here; there is no alternative. It is the responsibility of both labor and management to work together to forge this alternative and to free each side from a rigid, adversarial position.
3. Other players, such as neutrals, attorneys, health professionals, and judges, are just as susceptible to being passive accomplices. Saying, "I'm just doing my job," makes you part of the problem.
4. We must devise alternatives to standard disciplinary procedures in dealing with threats and intimidating behavior.
5. Standard medical and disability policies and procedures are dangerously inadequate for assessing behavior associated with violence and threats.

6. Time-honored means of interpreting and implementing principles of employment law must be reexamined in the light of these cases. Responding to threats of violence appears to place the legal responsibility of the employer to provide a safe workplace directly in conflict with the constraints against violating employees' legal rights to privacy and protections against discrimination. As demonstrated by these cases, and in countless others in our experience, choosing to follow one set of principles and ignoring the other may lead to disaster. Clearly, the conflict must be confronted and resolved by innovative approaches to dispute resolution and other alternatives to rigid, adversarial-based thinking and practice.

Beyond "Profiling:" Creating the Crisis-Prepared Organization

Most of the literature on violence focuses on qualities that mark a predisposition for violence or that are signs of increased risk that violence will be committed. This has led to the popular concept of the "profile" of the violent employee. Prediction of violence on the basis of matching a profile of characteristics is unreliable, and, in an employment context, fraught with legal and ethical difficulties. It is patently and obviously simplistic to claim that if you can just pinpoint the "profile" of the violent employee, you can prevent violence. However, in the case of the Postal Service, it is equally simplistic to "blame" the failures or abuses of the employer. In the rage and shock after the Royal Oak shootings, there was much discussion about the oppressive conditions under which Postal employees work. Unions pointed to management abuses, as if these were somehow responsible for the carnage of November 14, 1991. The media catered to popular opinion and prejudices that mirrored this point of view. The newspaper management's panicky response to Mr. L also bears witness to the hysteria that often leads to mistakes and costly errors in judgment. Common sense tells us that abusive managers do not create murderers. They are, however, symptoms of a system that is not working, and that is the very system that may react poorly to signs of an employee beginning to spin out of control.

Components of a Crisis Prevention Plan

When a company or agency begins to acknowledge its ability to prevent violence, it has taken the first step toward transforming

itself from "crisis prone" to "crisis prepared." In general, a crisis prevention plan will incorporate the following components:

1. Clear rules and expectations for behavior in the workplace with respect to harassment, threat of violence, and violent or disruptive behavior. Typically, this occurs in the form of a "zero tolerance" workplace violence policy.
2. A system for early identification of potentially dangerous situations or behavior, including specific criteria developed through an organizational audit.
3. Alternatives to standard disciplinary and occupational health policies for responding to violence and threat. This is most usefully implemented through a special team drawn from different parts of the organization, including representatives from unions.
4. Collaboration between organizational functions and stakeholders in the development and ongoing implementation of these violence-prevention policies and activities.
5. Easy, nonpunitive access to medical and mental health resources (e.g., not linked to discipline) in cases of violence or threat.
6. Training for managers in early identification of problem employee situations.
7. Real support from company management at the highest level for reporting of early signals of trouble.
8. Thoughtful, proactive, common-sense policies to handle downsizings, layoffs, and terminations.

To the Mediator/Neutral

Awareness of workplace violence is on the rise. Neutrals are increasingly being called upon to become involved in the situations and conflicts that arise out of this crisis-producing culture of stress, tension, and organizational deterioration. What will be the role of the neutral or mediator in the coming years as we begin to forge new structures and approaches to this problem? I suggest that neutrals have a potentially useful role to play. First, this involves being open to change. Second, it involves keeping before you at all times an awareness of your own comfort with the role you play. This, of course, is good practice in any situation as a neutral. In these cases, given the higher levels of complexity and risk, it becomes essential.

- Be aware of the trap of helplessness and isolation. Like everyone else in the system, you can be trapped in such a position. Like everyone else, you have a choice.
- Question the rules and the assumptions underlying what the parties present to you. Are they founded in a belief in the inevitability of conflict and that there must be a loser? Can you help them open their minds to alternatives?
- Create alliances and supports. No one should confront these situations alone. As a professional called upon for assistance, you are in position to *model* alliance-building and collaborative behavior. In these situations, more than in any other dispute scenario, the principals seeking you out are desperate to escape the frightening straits in which they find themselves.

Neutrals, along with labor leaders, attorneys and legal experts, corporate managers, human resource managers, policy makers, and health care professionals, are being challenged by the problem of violence in the workplace. Threats in the workplace are only the tip of the iceberg. The "iceberg" itself consists of domestic violence intruding into the workplace, interemployee stalkings, workers at daily risk of armed robbery by criminals, abuse and threat by customers, and threat or harassment by superiors or co-workers.

How we as professionals respond to this challenge will help determine the survivability of the modern corporation in the face of increasingly complex human resource issues and the growing vulnerability of its employees to the stress of relentless change. As professionals involved in these issues, whatever our field, we must take on a portion of the responsibility for the usefulness and effectiveness of those solutions. This is best accomplished in an interdisciplinary effort that makes use of the most innovative approaches available.

For example, Workplace Solutions, of which the author is a principal, is a not for profit, cooperative effort on the part of professionals in the fields of crisis management, conflict resolution, and alternate dispute resolution. Supported initially by a private grant, we are working with companies and unions to develop alternative, nonadversarial approaches to the kinds of situations described here. The key to unraveling the complex, often frightening situations faced daily in our workplaces is the creation of structures that promote teamwork and the sharing of ideas. If we work together, we can all play a part in preserving our

workplace as a humane, profitable, and stable institution in the face of the violence, desperation, and upheaval that are threatening the world around it.

III. UNION PERSPECTIVE

JORDAN BARAB*

At a hospital in Philadelphia, a maintenance worker requested a few days off to care for his daughter who was about to undergo surgery for a potentially life-threatening health problem. At the last minute, his supervisor withdrew the permission for vacation time and suspended him when he took it anyway. The worker took a gun to work, entered the supervisor's office, and ordered him to take off his clothes. Someone who had seen the worker enter the supervisor's office called the police and the SWAT team presently arrived. When the worker saw the SWAT team, he "woke up" and realized he was in big trouble. He called his steward, who arrived and managed to defuse the situation.

Early in 1996, a former employee of the City of Fort Lauderdale, Florida, entered his old workplace and killed his supervisor and four employees before fatally shooting himself. He had been fired from his job two years prior for poor work performance and belligerent comments to co-workers and the public. In the intervening years he had lost several jobs and most recently he had lost a job, his wife needed surgery, and his refrigerator was repossessed.

The Dilemma for the Union Representative

There is almost no more difficult a problem for a union steward to deal with than worker-on-worker violence, especially when assaults involve two members. The steward is often faced with serious problems and conflicting objectives. If a member is being disciplined for erratic, violent, or potentially violent behavior against either co-workers or supervisors, the steward's first duty is to represent that employee. This may involve negotiating to have the discipline reduced while providing help to the threatening employee through an employee assistance program (EAP) or other means.

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