

CHAPTER 20

INVITED PAPER: MOBBING AND BULLYING IN THE WORKPLACE¹

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Introduction

Over the past 15 years in the United States and Canada, the phenomena of workplace bullying and mobbing (bullying by a group, rather than an individual) have been widely discussed and debated. There is a growing consensus among lay people and scholars on the definition of workplace bullying, its causes, and its effects on individuals as well as on the workplace itself. At the same time, translating this consensus into effective employment policies and contract provisions is challenging: the parties need clear and enforceable language that also meets the sometimes divergent interests of employees, employers, and unions.

Our purpose in this paper is to provide assistance to advocates and arbitrators as they deal with this complex workplace problem. We briefly review the definitions, prevalence, impact, and causes of workplace bullying and mobbing. We discuss the evolving approaches to workplace bullying by union and management representatives, providing a sampling of employer policy and contract language. Finally, we review a set of arbitration cases for insights into the grounds on which bullying and mobbing cases have been decided. Our conclusion outlines suggestions for

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further research. The bulk of our research focuses on cases, contracts, and employers in the United States. We have tried to add Canadian examples where possible, although differences in the legal and labor relations structures of the two countries limit the applicability of our conclusions.

The authors of this paper are labor educators at the Labor Education and Research Center, University of Oregon. In this capacity, among other duties, we train union staff and elected representatives in the technical aspects of labor-management relations. In the early 2000s, we began to notice increased frustration among these advocates with the problem of workplace bullying. For example, in a training class for a group of 30 stewards in a manufacturing facility, we were told that bullying by co-workers was one of the most prevalent and difficult problems the stewards faced. A year or two later, we were asked to conduct a seminar for a local governmental jurisdiction—for both union stewards and first-line supervisors—on the phenomenon of bullying and how it might be handled. Since that time, we have conducted several training sessions each year on bullying and mobbing, some for union locals, some for unions and management jointly, and the rest open to a range of union participants. It has become clear that the phenomenon persists in both the public and private sectors, and that there is little consensus on effective approaches.

What We Know About Bullying

Because much has been written recently about the phenomenon of workplace bullying, this section contains only a brief summary of definitions, prevalence, and causes of the problem.⁵

Much attention has been paid to defining the terms “bullying” and “mobbing.” The latter was first used by Swedish psychologist Heinz Leymann in the 1980s to refer to “hostile behaviors that were being directed at workers.”⁶ By the time U.S. researchers began to pay attention in the 1990s, the more popular term had become “bullying,” and “mobbing” was increasingly used to refer to bullying by a group rather than an individual.⁷ By this time, attention to workplace bullying was already developed in the U.K.,

⁵See Appendix B at the end of this chapter for a list of resources for further reference.

⁶David Yamada, *Workplace Bullying and American Employment Law: A Ten-Year Progress Report and Assessment*, 32 COMP. LAB. L. & POL'Y J. 252 (2010–2011).

⁷Ellen Pinkos Cobb, *Workplace Bullying: A Global Health and Safety Issue 4* (July 2012), available at <http://ilera2012.wharton.upenn.edu/refereedpapers/cobbellen.pdf>.

Canada, Australia, and many European countries.⁸ The Campaign Against Workplace Bullying, created by Drs. Gary and Ruth Namie, increased awareness of the phenomenon in the United States beyond academic circles and into mainstream media, as well as political action.

Most definitions today refer to workplace bullying as hostile behavior directed at employees that affects their ability to do their jobs. Bullying can come from supervisors, co-workers, customers, patients, or clients, and it is presumed that the hostile behavior occurs repeatedly, rather than as an isolated event. The specific behaviors that have been documented range from social ostracism to overt aggression (spreading rumors, harsh criticism, even violence). The ultimate consequence of bullying is generally to force the targeted employee out of his or her position.⁹

A widely accepted definition of bullying can be found in the Healthy Workplace Bill. The proposed language describes an abusive work environment as:

Conduct, including acts, omissions, or both, that a reasonable person would find hostile, based on the severity, nature, and frequency of the defendant's conduct. Abusive conduct may include, but is not limited to: repeated infliction of verbal abuse such as the use of derogatory remarks, insults, and epithets; verbal or physical conduct of a threatening, intimidating, or humiliating nature; the sabotage or undermining of an employee's work performance; or attempts to exploit an employee's known psychological or physical vulnerability. A single act normally will not constitute abusive conduct, but an especially severe act may meet this standard.¹⁰

The key terms in this definition are “that a reasonable person would find hostile” and “severity, nature and frequency.” The reasonable person standard attempts to add objectivity to what can seem a very subjective process. Some less severe behaviors, which may be borderline bullying, are very hard to prevent and correct, although they can have a cumulative effect that can result in negative outcomes.¹¹ A single act of anger or hostility—for example,

⁸Cobb, *Workplace Bullying*, at 8.

⁹Cobb, *Workplace Bullying*, at 3–4.

¹⁰Yamada, *Workplace Bullying*, at 262.

¹¹In a recent presentation, Sandy Hershcovis noted that seemingly minor forms of aggression are not so minor to the target and that incivility and bullying can produce similar negative outcomes. Sandy Hershcovis, *Workplace Aggression: Considering Multiple Perspectives*, presented at the Oregon Health Science University Center for Research on Occupational and Environmental Toxicology and Portland State University Occupational Health Psychology Program, Portland, OR, November 2012.

yelling at someone—might or might not be considered bullying, depending on the nature of the incident and the severity.

“Target” is the term used most often to refer to the person being bullied and avoids the negative connotations of the other common term, “victim.” The literature emphasizes that there are no “typical” targets—they might be outspoken or vulnerable, “nice,” or “unfriendly,” ethical or not—all employees can be targeted by bullies.¹²

Bullying behavior falls roughly into two categories: chronic and opportunistic. Chronic bullies have a pathological need to control and harass others. When they succeed in forcing their target to quit or move on, they move to another target. Opportunistic bullies take advantage of a workplace culture that tolerates abuse.¹³

We know that bullying takes a toll on the target. It affects work performance; it also affects the target’s health and can lead to severe illness and even suicide. The effects on the workplace and on co-workers have also been documented: increased absenteeism, rising healthcare and disability costs, low morale, decreased productivity, and increased turnover.¹⁴

A 2010 Zogby poll commissioned by the Workplace Bullying Institute showed that 35 percent of Americans reported being bullied at work and another 15 percent reported having witnessed it (approximately the same percentage (37 percent) of those who responded to a similar Zogby poll in 2007). Of the reported bullying in the 2010 poll, 68 percent was same-gender.¹⁵ Anecdotally, there has been a perceived increase in the number of bullying cases over the past 10 years. Some argue that the uptick in the reported incidence of bullying is an outgrowth of increased attention to the problem. And, certainly, finding a label for a problem that has doubtless always existed, and drawing attention to it, can lead to increased reporting of the phenomenon by those affected. Also, we know it is not uncommon for behavior that is *not* technically bullying (tough management, lost tempers, personal clashes, etc.) to be misunderstood or mislabeled by affected

¹²GARY NAMIE & RUTH NAMIE, *THE BULLY AT WORK* (2003).

¹³Denise Salin, *Ways of Explaining Workplace Bullying: A Review of Enabling, Motivating and Precipitating Structures and Processes in the Work Environment*, 56 *HUM. REL.* 1217 (2003).

¹⁴SUSAN HARTHILL, *WORKPLACE BULLYING AS AN OCCUPATIONAL SAFETY AND HEALTH MATTER: A COMPARATIVE ANALYSIS*, 13 (Aug. 2010), available at http://works.bepress.com/cgi/viewcontent.cgi?article=1002&context=susan_harthill.

¹⁵WORKPLACE BULLYING INSTITUTE, *RESULTS OF THE 2010 AND 2007 WORKPLACE BULLYING SURVEY* (2010), <http://www.workplacebullying.org/wbiresearch/2010-wbi-national-survey/>.

employees. However, incidents of bullying appear to increase in workplaces that are unstable, poorly managed, stressful, understaffed, undergoing major demographic changes, or otherwise in turmoil.¹⁶ Where global competition has undermined traditional patterns of employment stability, where recession has been long-lasting, where unionization rates have declined and turnover rates have increased, and where economic restructuring is widespread, it is not surprising that bullying has become a much more widespread concern.

How Unions and Management Approach Workplace Bullying

Bullying and mobbing behavior poses a daunting challenge for labor relations practitioners. The problem is complex, and there is little in the way of legal or contractual guidance for handling problems. In this paper we analyze strategies that unions and employers are using to deal with bullying in a collective bargaining environment. Unfortunately, it is difficult to recommend specific “best practices” for stopping bullying, because there is little evidence-based research on what actually works.¹⁷ With that disclaimer, it is still worthwhile to examine trends in how practitioners approach the problem, which include:

- employer policies that specifically prohibit bullying or bullying behaviors;
- anti-violence policies and/or policies that are broader in their scope, incorporating ideas such as “mutual respect,” “civil communication,” or “professional conduct” standards;
- contract language and the grievance procedure; and
- health and safety policies and law.¹⁸

¹⁶Salin, *Ways of Explaining Workplace Bullying*, at 1217.

¹⁷One exception is recent research showing positive outcomes related to civility policies and training in the Veteran’s Administration health system (and in other health care settings). Sandy Hershcovis, *Workplace Aggression: Considering Multiple Perspectives*, presented at the Oregon Health Science University Center for Research on Occupational and Environmental Toxicology and Portland State University Occupational Health Psychology Program, Portland, OR, November 2012.

¹⁸Another important trend is the use of conflict resolution training and alternative dispute resolution (ADR) procedures, but this area of research and practice is beyond the scope of this chapter. We include some examples of contract language that includes ADR procedures in the appendix to this chapter.

Employer Policy in the Absence of Effective Statutory Remedies

When workplace bullying is directed at a member of a protected class covered by federal, state, or local anti-discrimination statutes, it may be dealt with as illegal harassment. But, when there is no protected class issue, neither is there a statutory remedy in most jurisdictions. Over the last decade, there have been multiple attempts in the United States to pass legislation that would make bullying in the workplace illegal. The “Healthy Workplace Bill” was introduced in 13 states, including Oregon, Kansas, Missouri, and Hawaii, but failed in all.¹⁹ The effort to enact legislation continues in the United States, spurred by the fact that attention to bullying has increased greatly.

Canada is further along in the effort to enact legislation. Quebec has language in its safety and health statute prohibiting “psychological harassment” and in 2010 Ontario enacted changes to its Workplace Safety and Health Act, adding a definition of “workplace harassment” to the anti-violence language in the statute: “Engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome.”²⁰

Meanwhile, efforts to prevent bullying behavior have become more widespread in both countries. Many employers have implemented policies (which may or may not be mutually agreed upon) that deal with bullying or similar hostile behaviors.

Employer policies vary in how they handle bullying. Some take a broad approach, addressing workplace interactions between employees, mandating “professional conduct” or “civility.” Some have anti-violence or anti-harassment policies calling for a safe environment that is free of threats, intimidation, and physical harm, and these may or may not have a specific reference to bullying. The Oregon Nurses Association’s (ONA’s) 2011 publication “Nurses and Bullying in the Workplace: A Resource Guide” elaborates on the elements of a model employer policy: a statement that reflects the values of the hospital with regard to bullying,

¹⁹David Yamada, *Workplace Bullying and American Employment Law: A Ten-Year Progress Report and Assessment*, *HeinOnline*, 32 COMP. LAB. L. & POL’Y J. 259–60 (2010–2011).

²⁰Ontario Ministry of Labour, *Preventing Workplace Violence and Workplace Harassment* (July 2011), available at http://www.labour.gov.on.ca/english/hs/pdf/fs_workplaceviolence.pdf. The first case of a worker successfully using this statute (Bill 168 amendments) was won in Windsor, Ontario, in October, 2012. Craig Pearson, *WalMart Case Could Help Bullied Workers: Professor*, WINDSOR STAR (Oct. 12, 2012), <http://blogs.windsorstar.com/2012/10/12/walmart-case-could-help-all-bullied-workers-professor/>.

what the hospital will do in response, and a description of the consequences for bullying behavior.²¹

One challenge to employers is how to define exactly what constitutes bullying. This used to be one of the most difficult steps in coming up with an anti-bullying policy, however, the definition outlined in the proposed Healthy Workplace Bill may provide a template to aid the process.

Some employers go further and add caveats spelling out what will *not* be considered bullying. For example, the City of Portland, Oregon, discipline policy cites bullying as a reason for which an employee can be disciplined, and offers a very detailed guideline as to what would be considered bullying, versus what is not necessarily bullying.²² In addition, the policy specifies the consequences for bullying behavior, how to report instances of bullying, the steps for investigating claims of bullying, and, finally, a prohibition against retaliation. This kind of specificity can narrow the room for disagreement among the union, the employer, and, ultimately, if the issue is arbitrable, the arbitrator.

Another example comes from the State of Oregon's Department of Environmental Quality (DEQ), one of the earliest public agencies in Oregon to enact an anti-bullying policy, after being pushed vigorously to do so by the union representing its employees, the American Federation of State, County, and Municipal Employees (AFSCME), Local 3336.²³ The DEQ's Anti-Mobbing Policy defined mobbing as follows:

Workplace mobbing is a form of harassment that is not based on an individual's protected class status (i.e. gender, race, sexual orientation, religion, age, disability, national origin etc.) and is perpetrated by any employee against another employee. . . . Mobbing is intentional verbal or nonverbal conduct by one or more individuals against another individual over a period of time.²⁴

²¹OREGON NURSES ASSOCIATION, *NURSES AND BULLYING IN THE WORKPLACE: A RESOURCE GUIDE 10* (2011), available at <http://www.oregonrn.org/displaycommon.cfm?an=1&subarticlenbr=451>.

²²CITY OF PORTLAND HUMAN RES. ADMIN. R. 5.01 (Discipline; Prohibited Activities; Bullying; Guidance: Examples of Bullying and Discourteous Behavior), available at <http://www.portlandonline.com/auditor/index.cfm?a=11983&c=27937>.

²³As of January 2013, DEQ announced that they will not use the mobbing policy or other existing DEQ policies regarding communications and unprofessional conduct but will rely on existing Department of Administrative Services policy. See Oregon Department of Administrative Services, Statewide Policy No. 50.010.03, *Maintaining a Professional Workplace* (effective Nov. 1, 2013), available at <http://www.oregon.gov/DAS/CHRO/docs/advice/p5001003.pdf>.

²⁴State of Oregon, Department of Environmental Quality Anti-Mobbing Policy No. 50-110, *MOBBING USA* http://www.mobbing-usa.com/R_Legal/Oregon_Environment.html (last visited Mar. 7, 2013).

The DEQ policy listed the types of behavior and the various ways bullying could occur: “among co-workers; among co-workers with a manager siding against one of the co-workers. . . .” The DEQ policy also allowed, if requested by the target, a dispute resolution procedure with a mediator. One noteworthy element of the policy was its specification that the steps for resolving the bullying might include removing the targeted employee from the situation.

The DEQ policy allowed an employee to report the issue to the union steward or supervisor, but the investigation would be conducted by the Human Resources Department, and corrective action would “not preclude the requirement that management follow state policy regarding disciplinary actions or that the union provide fair representation to represented employees.”²⁵

The requirement to follow “existing guidelines for discipline” is a key consideration in formulating an employer policy in a union setting. Most of the literature on bullying recommends a “zero tolerance” policy as a best practice. However, in spite of the frequency of this recommendation in the literature, zero tolerance language can be problematic for both sides. Managers enforcing zero tolerance policies might feel empowered to ignore factors that an arbitrator might consider crucial to establishing an argument of just cause for discipline, such as the use of progressive discipline, whether the punishment fits the offense, or mitigating circumstances. Later in this chapter we give examples of arbitration cases where, in spite of the existence of zero tolerance language, the union filed a grievance alleging a violation of the just cause standard. With a zero tolerance policy, the arbitrator might give the employer more leeway in choosing the level of discipline, but in the cases we analyzed, the arbitrator considered the overall situation and extenuating circumstances before making a decision.²⁶

There are other problems with zero tolerance language. For example, there is both anecdotal information and evidence-based research that describes situations where the bullied employee “snaps” and becomes the perpetrator.²⁷ The zero tolerance policy could easily have the effect of capturing the behavior of the bullied employee, but not the bully’s. This does not meet the interest of management or union. The ONA guide cited above cautions against zero tolerance policies, noting that “while the organiza-

²⁵*Id.*

²⁶It would be an interesting question to ask arbitrators, all other factors being equal, if a zero-tolerance policy would influence their decision.

²⁷Hershcovis, *Workplace Aggression*.

tion may be trying to ‘signal their commitment to a bully-free workplace’...The unintended consequence may be a mandatory firing of an employee who should not have been.”²⁸

To be effective and credible, of course, any employer policy on bullying must be implemented consistently and energetically, and at all levels of management.²⁹ Recent research in healthcare settings indicates that front-line supervisory intervention is an effective way to change behavior.³⁰

Enforcement of an anti-bullying policy can be difficult, of course, especially when management must take action against a perpetrator who is in a position of power, a high producer, or strategically important. And if the work environment is unhealthy in other ways (unrealistic expectations, unclear job roles, job insecurity, and perceived injustices), bullying can be even more difficult to isolate and eradicate.³¹

Negotiated Contract Language

For many unions trying to address workplace bullying, having language in the collective bargaining agreement that deals with the issue is preferred over employer policy. Negotiating contract language can give unions more control over the process, including access to the grievance procedure. The process of negotiating the language can provide a means for internal discussion and debate among elected leaders and members as to the correct strategy to use.

Bullying can be a particularly difficult issue for unions, especially in member-against-member situations. “Bully boss” situations, in which the bully is a supervisor or other management representative, while possibly more damaging to the target(s) due to the inherent power of supervisors and other management,³² are in some ways more straightforward for unions to address. While dealing with a bullying supervisor is not in any way an easy

²⁸OREGON NURSES ASSOCIATION, *NURSES AND BULLYING*, at 10.

²⁹In our anecdotal experience, the best-intentioned and most well-reasoned employer policy will be viewed by employees as mere lip service without visible and effective implementation.

³⁰Liu-Qin Yang, *Workplace Aggression Towards Nurses: An Examination of Supervisors' Preventative Practices*, presented at the Oregon Health Science University Center for Research on Occupational and Environmental Toxicology and Portland State University Occupational Health Psychology Program, Portland, OR, November 2012.

³¹Salin, *Ways of Explaining Workplace Bullying*, at 1222.

³²Salin contends that a perceived power imbalance is a prerequisite for bullying, and that this partly explains the large number of victims being bullied by supervisors. Salin, *Ways of Explaining Workplace Bullying*, at 1219.

process, at least unions can use their usual “tools” to try to correct the behavior.

When the bully is a co-worker/union member, the situation is a bit trickier. Traditionally, unions have been averse to playing a role in member-on-member disputes, unless they have a legal mandate to do so, such as in discrimination and sexual harassment cases. After all, discipline is the responsibility of the employer. However, bullying is such a widespread issue, impacting so many members, that in the past decade many unions have pushed for contract language as well as employer policies that prohibit bullying, even if it has meant that they have had to represent the employees disciplined under the very policy for which they advocated.

Even if the employer has a policy on bullying, it makes sense, from the union’s perspective, to negotiate contract language. The language may make it possible to use the grievance procedure to pursue perpetrators, and while it may provide alternative resolution processes rather than access to the grievance and arbitration process, at least the process provides a label and visibility to the problem and, thus, a way to engage management in discussions of solutions.

The most basic type of contract provision is that which names disrespect, incivility, and/or bullying specifically as unacceptable in the workplace, but provides no specific resolution process. Some contract language provides that bullying behavior may be subject to discipline under a just cause provision.³³

Some anti-bullying provisions are grievable and even arbitrable.³⁴ Some are not, but are subject to an alternative resolution procedure. An example of such language can be found in the 2012–2013 bargaining agreement between Western Washington University and the Washington Federation of State Employees, AFSCME Council 28, Article 3—Workplace Behavior:

3.1 The Employer and the Union agree that all employees should work in an environment that fosters mutual respect and professionalism. The parties agree that inappropriate behavior in the workplace

³³For example, the Agreement Between the University of Massachusetts, Amherst, and the American Federation of State, County, and Municipal Employees, Council 99, Local 1776, AFL-CIO, July 1, 2009 to June 30, 2012, p. 68. Also, the Agreement by and Between the Board of Trustees of the University of Illinois and the American Federation of State, County, and Municipal Employees, Local 3700, Council 31, Clerical/Administrative Bargaining Unit, Effective August 21, 2011 through August 30, 2013, p. 17.

³⁴Appendix A at the end of this chapter has 11 examples of contract language. Only four of these provisions appear to be arbitrable. Two agreements have language that is grievable, but not arbitrable, and one allows a grievance only if a supervisor violates the contract language more than once.

does not promote the University's business, employee well being, or productivity. All employees are responsible for contributing to such an environment and are expected to treat others with courtesy and respect.

3.2 Inappropriate workplace behavior by employees, supervisors and/or managers will not be tolerated. If an employee and/or the employee's union representative believes the employee has been subjected to inappropriate workplace behavior, the employee and/or the employee's representative is encouraged to report this behavior to the employee's supervisor, a manager in the employee's chain of command and/or the Human Resources Office. The University will investigate the reported behavior and take appropriate action as necessary. The employee and/or union representative will be notified upon conclusion.

3.3 This Article is not subject to the grievance procedure in Article 30.³⁵

Without specific language that addresses bullying (or a related topic, such as healthy workplace or professional behavior), there might be a question as to whether a violation of employer policy on bullying is arbitrable. Having some type of related contract language—either specific to bullying or other types of language that refer to a healthy work environment or professional conduct—provides a “hook” for the grievance and can strengthen the argument that a violation of the employer policy is grievable.

Specific bullying language is relatively rare in labor-management agreements. Fortunately, that situation is changing as more contracts include language on respectful workplace, safe workplace, workplace violence, bullying and mobbing, and/or hostile behavior beyond that defined as illegal. Having clear, specific language that defines bullying behavior can narrow the dispute as to whether or not a behavior is bullying.

Like employer policies, some contracts have specific language that defines and addresses bullying or bullying behaviors, such as harassment, intimidation, or coercion. An example is the language negotiated in 2009 by Massachusetts public employee unions affiliated with the Service Employees International Union (SEIU) and the National Association of Government Employees (NAGE), which gives state workers some protections against workplace bullying and abusive supervision: “Behaviors that contrib-

³⁵Collective Bargaining Agreement by and Between Western Washington University and Washington Federation of State Employees (effective July 1, 2012 through June 30, 2013), at 2.

ute to a hostile, humiliating, or intimidating work environment, including abusive language or behavior, are unacceptable and will not be tolerated.”³⁶ The contract does not allow for this provision to be arbitrated, which reduces its effectiveness.³⁷

Many of the contracts reviewed for this study called for an alternative dispute resolution process rather than arbitration. The current contract between Rutgers University Union of Administrators and Rutgers includes “Non Hostile Work Environment” language:

The university and the union agree that the working environment shall be characterized by mutual respect for the common dignity to which all individuals are entitled. It is therefore agreed that verbal harassment of an employee or a supervisor is inappropriate and unacceptable.³⁸

While Rutgers retains the right to discipline, the process for resolution includes a labor-management conference that is attended by the employee, a representative or representatives of the union, and a representative of the department associated with the alleged violation, and agreements reached in this process are binding on the parties to the agreement. As in the Massachusetts SEIU/NAGE language, the article is not subject to the grievance procedure. However, if the supervisor is accused of hostile behavior more than once, the union can file a grievance:

Should a particular supervisor be the subject of more than one allegation under this Article and should the parties at a Labor Management Conference (see Article 19) agree that responsive action by the University is warranted to address a claimed violation of this Article in more than one such instance, then repeated or continuing behavior by the same supervisor may be grieved pursuant to article 12.³⁹

The ability to grieve when the supervisor repeatedly demonstrates bullying behavior gives this language a higher level of enforceability, and reinforces the definition of bullying as “continuing behavior.”

The Master Agreement of the British Columbia Government and Service Employees’ Union (BCGEU) with the BC Public Ser-

³⁶Collective Bargaining Agreement Between the Commonwealth of Massachusetts and the National Association of Government Employees Unit 3, at 17, available at <http://www.nage.org/state/pdf/Unit3Contract0709thru0612.pdf>.

³⁷Yamada, *Workplace Bullying*, at 271.

³⁸Agreement Between Rutgers, the State University of New Jersey and Union of Rutgers, American Federation of Teachers, 2007–2011, extended to August 31, 2014, in a Memorandum of Understanding, available at <http://www.ura-aft.org/2007-2011-contract/ura-aft-administrative-unit-contract-2007-2011/> and <http://uraaft.org/wordpress/wp-content/uploads/2012/05/Settlement-Agreement-1-10-12.pdf>.

³⁹Agreement Between Rutgers and AFT, at Article 26.

vice Agency provides for an alternative dispute resolution process ending in referral for a final decision to the bargaining principals. Under Memorandum of Understanding 13, *Bullying in the Workplace*, the union steward may be used by members involved in a bullying case, although cases cannot be processed using the grievance or arbitration procedure.⁴⁰

“Creative” Grievances, Direct Action, and Education Campaigns

In some cases the employer might not have a policy and/or the union might not have specific (or any) language related to bullying. In these cases, unions sometimes take actions designed to bring pressure for a settlement of the problem outside a formal process. In addition to the direct actions, the union may use the formal process to draw attention to the issue, even if it knows it cannot prevail in arbitration. These types of “creative” grievances—where the union files a grievance using language that was negotiated to deal with another type of situation—rarely come before an arbitrator. They provide a means for the union to make the issue more visible to management or even to the public or clients. For example, the union might use the discrimination article, even if the target is not a protected class. Or it could grieve based on the employer’s policy regarding workplace standards of behavior. Some unions have resorted to workplace direct action—for example, petitions, buttons, or lunchtime rallies. Again, this approach is designed to bring informal pressure to resolve an otherwise intractable bullying problem.

A number of unions have launched education campaigns aimed at informing members of their rights to bully-free workplaces, and increasing the visibility of the issue in an attempt to defuse its power in workplace settings. Just a few of many examples: the BCGEU has an active and on-going campaign,⁴¹ as does the Canadian Union of Public Employees (CUPE);⁴² the Service Employees International Union has taken on the issue, and locals in Oregon hold an annual “Bully Boss Action Day.”⁴³

⁴⁰Sixteenth Master Agreement between the Government of the Province of British Columbia Represented by the BC Public Service Agency and the B.C. Government and Service Employees’ Union (BCGEU), November 7, 2012–March 31, 2014, pp. 182–83.

⁴¹See http://www.bcgeu.ca/campaigns_and_issues/anti-bullying for examples of worksite efforts, materials, etc.

⁴²<http://www.cupe.bc.ca/campaigns/workplace-bullying-stops-here>.

⁴³<http://www.seiu503.org/2012/09/members-turn-out-for-bully-boss-day/>.

*Treating Bullying as an Occupational Health and Safety
(OSH) Issue*

There is a growing consensus among occupational health and safety experts that bullying is an OSH issue. In some countries, including Canada, this has been the case for many years.⁴⁴ As noted above, Ontario recently amended its occupational health and safety standard in order to explicitly include “bullying” as a form of workplace violence. This is a long overdue shift in thinking that incorporates a decade or more of research. Clearly the “safety climate” of a workplace is impacted by these behaviors, which form part of a continuum of workplace aggression and violence. In addition, as noted earlier, workers’ health is affected by these behaviors. The impact can extend beyond the bully’s target—there are recent studies that show that witnesses to bullying also experience stress and negative health outcomes.⁴⁵

The Washington State Department of Labor and Industries published a report in 2011 titled, “Workplace Bullying and Disruptive Behavior: What Everyone Needs to Know.”⁴⁶ Researched and written by Washington’s Safety and Health Assessment and Research for Prevention, this brief guide is groundbreaking in that a state agency places the problem squarely in the occupational health and safety arena. The report defines bullying and discusses factors that increase the risk of bullying behavior (including underlying causes), the effect on targets, and costs to organizations. The report provides general guidelines for employers, including a sample “Workplace Bullying Policy.” Interestingly, the 2011 report includes several pages specific to healthcare organizations, discussing ways to deal with “disruptive behavior in healthcare.”⁴⁷

Having a clear, evidence-based connection between bullying and workplace health and safety means that both employers and unions can use the existing occupational safety and health structures to resolve the issues. That being said, it might be difficult in a bullying situation to succeed in a charge with the Occupational Safety and Health Administration (OSHA) under the general duty

⁴⁴Cobb, *Workplace Bullying*, at 3.

⁴⁵Hershcovis, *Workplace Aggression*.

⁴⁶This report was published in 2008, and updated in 2011. WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES, WORKPLACE BULLYING AND DISRUPTIVE BEHAVIOR: WHAT EVERYONE NEEDS TO KNOW (2011), available at <http://www.lni.wa.gov/Safety/Research/Files/Bullying.pdf>.

⁴⁷*Id.* at 4–7. The focus on health care in this report reflects the recent increased interest and subsequent research on this topic in the health care sector.

clause⁴⁸ unless there was a clear pattern of threats and intimidation. However, most collective bargaining agreements have some language about providing a safe workplace and this language can (and often does) serve as the basis for a grievance against a bully boss. More research is needed on how many of these grievances are filed and what the outcomes are, but for many unions, it is the only contract language relevant to the issue.

Another less common strategy is the use of joint safety and health committees to resolve these issues. These committees are an excellent way to raise awareness of existing issues and to look for root causes that might increase the prevalence of bullying. AFSCME 1776 and University of Massachusetts Amherst have contract language that sets up a “union/management” safety committee to “promote a safe, clean, and wholesome environment.”⁴⁹ Health and safety committees may be reluctant to take up bullying given their usual focus on safety issues. However, given the growing consensus that bullying and mobbing are a valid OSH issue, this attitude may change.

Review of Arbitration Decisions

There are relatively few arbitration decisions focusing on bullying and mobbing behavior in the workplace, though more have begun to appear during the past 10 years. As more agreements address bullying through negotiated language, we can expect that more such decisions will surface. Thus, it is worth a review of decisions to date.

There are three primary scenarios where bullying becomes an arbitrable issue. In the first situation, an employee is disciplined or terminated for bullying behavior and files a grievance, challenging the disciplinary action for lack of just cause. The second scenario is when an employee is disciplined for performance-related

⁴⁸The OSHA website states that under the General Duty Clause, §5(a)(1) of the Occupational Safety and Health Act (OSH Act) of 1970, “employers are required to provide their employees with a place of employment that is free from recognizable hazards that are causing or likely to cause death or serious harm to employees.” The courts have interpreted the OSH Act’s general duty clause to mean that an employer has a legal obligation to provide a workplace free of conditions or activities that either the employer or industry recognizes as hazardous and that cause, or are likely to cause, death or serious physical harm to employees when there is a feasible method to abate the hazard. <http://www.osha.gov/SLTC/workplaceviolence/standards.html>.

⁴⁹Agreement Between The University of Massachusetts/Amherst and The American Federation of State, County And Municipal Employees Council 93, Local 1776, AFL-CIO, July 1, 2009 to June 30, 2012.

failures and alleges as a defense or mitigating factor that bullying or retaliation by others led to him/her being singled out. The third situation is when there is a “bully boss” and the employee and/or the union initiate an action to stop the harassing and intimidating behavior.

Challenges to Discipline or Termination for Bullying

The majority of cases we reviewed found that an employer has the right to terminate an employee if it can “be proved that s/he engaged in behavior that compromised a safe, respectful working environment for fellow employees.”⁵⁰ However, consistent with other termination grievances, the employer must produce evidence of the misconduct, must show that the level of discipline was reasonable for the specific incident being grieved, must consider the grievant’s employment record, and otherwise must follow just cause.

Several arbitrators have discussed the appropriate standard of proof when a grievant is challenging a disciplinary action, especially when there is a loss of pay or discharge. While some arbitrators have applied the *preponderance of the evidence* standard in bullying cases, others have used the higher *clear and convincing evidence* standard.⁵¹ While *preponderance of the evidence* means that, on balance, it is more likely than not that the facts support the employer’s claims, the *clear and convincing evidence* standard requires higher confidence and likelihood that the facts support the claims. This high standard is especially important in discharge cases because of the stigma attached to such misconduct and the potential that discharge for bullying and similar misconduct will impair the grievant’s ability to find subsequent work with another employer.⁵²

In a discharge case, the employer has the burden of establishing that the grievant is guilty of the specific misconduct charged, not merely that grievant has a propensity toward bad behavior or misconduct.⁵³ When the alleged misconduct is harassment, verbal abuse, or intimidation, the employer must bring forth credible evidence and testimony from unbiased witnesses.⁵⁴ Arbitrators

⁵⁰Penske Truck Leasing Co., 122 LA 1355 (Watkins, 2006).

⁵¹*Id.*

⁵²2011 AAA LEXIS 71, at *58 (parties’ names redacted) (Nelson, 2011); Equistar Chems., 126 LA 1480 (Goldstein, 2009).

⁵³2009 AAA LEXIS 207, at * 31 (parties’ names redacted) (Shea, 2009).

⁵⁴Penske Truck Leasing Co., 122 LA 1355 (Watkins, 2006).

usually define very narrowly the “incident” for which a grievant is being disciplined. However, this analysis also creates an evidentiary burden on employers to demonstrate that the record of the misconduct at issue and prior documented disciplinary actions justify the disciplinary action taken.

For example, in an unpublished case, the grievant was terminated for violating the union contract provision that all employees are expected to contribute to “creating an atmosphere of mutual respect, free from harassment or disparate treatment.”⁵⁵ The arbitrator found, however, that the grievant’s prior misconduct in which he had harassed female employees was not at issue in the present case where grievant was acting in his capacity as a shop steward. In deciding to terminate, the employer relied on the grievant’s past history and warnings, including a last chance reinstatement for misconduct toward other employees. However, in this case, the grievant alleged that his communications urging a new coworker to join the union fell within his right to conduct union business in the work place. Furthermore, the employer did not conduct a thorough investigation into the specific misconduct related to the grievant’s actions to induce the coworker to join the union.

The arbitrator agreed with the grievant and found that the employer did not meet its burden of proof because the decision to terminate was not based on a thorough investigation of the incident at hand and the employer had not interviewed relevant impartial witnesses. The employer’s view that the grievant had caused “inordinate stress” did not establish that the grievant’s behavior was in fact unreasonable or intended to harass. The arbitrator also alluded to the fact that the coworker may have been more sensitive and thin-skinned than the reasonable person standard that would apply, and the absence of objective testimony was also a factor in this conclusion.

In another case, *Horizon Milling*,⁵⁶ the grievant had been terminated for using “Bro” or “Brother” in a racially offensive manner. The arbitrator found that while this language was offensive and racially charged, it was not unlawful racial discrimination. It did, however, violate workplace policy assuring an “environment free of bullying, harassment, and unlawful discrimination.” The arbitrator overturned the termination and reinstated without back

⁵⁵2009 AAA LEXIS 776 (parties’ names redacted) (Bello, 2009).

⁵⁶2010 WL 5576200 (Chapdelaine, 2010).

pay. A key factor in the decision was the arbitrator's ruling that the employer could not bring in additional evidence during the arbitration hearing about prior incidents or new causes for termination that were not in the termination letter.

Arbitrators often defer to employers on the level of discipline if the record supports it. In *Hawaii Teamster Local 996*,⁵⁷ the arbitrator analyzed witness testimony, the culture of the workplace, and prior discipline. The grievant had a 20-year work history and was a shop steward, who alleged that he was the victim of mobbing and retaliation for his union activities and forceful personality. The employer had engaged an independent investigator and the arbitrator gave this significant weight in upholding the employer's decision to discharge the grievant. Also, in *Orbis Corp.*,⁵⁸ the arbitrator upheld a termination for the grievant's violation of the employer's code of ethics prohibiting harassment, "which includes all forms of intimidating physical behavior as well as physical aggression" where it was the employer's "judgment that it must remove grievant from the workplace to protect the security of its workforce against further acts."⁵⁹ The grievant had a prior history of antagonizing other employees and the arbitrator found that the grievant's behavior "approached bullying." The grievant had a long and successful work history, and the arbitrator found that although the grievant intentionally made physical contact with the co-worker, he probably did not intend to cause physical injury (which would have triggered a zero tolerance clause). The arbitrator also noted that even with this "harassment free workplace" or similar zero tolerance provisions, the arbitrator "must always look to the proportionality of the penalty and whether the penalty fits the crime."⁶⁰ Nonetheless, the long-term service and lack of intentional physical contact were not sufficient mitigating factors to overturn the employer's judgment that it must remove the grievant from the workplace to protect the safety and security of its workforce.

The just cause analysis considers whether the employer has a progressive discipline policy that is consistently enforced and whether the grievant has received prior progressive discipline and was therefore on notice that the specific misconduct could lead to a high level of discipline. For example, in one case a grievant

⁵⁷2009 WL 7323907 (Nauyokas, 2009).

⁵⁸2011 WL 7067473 (Goldberg, 2011).

⁵⁹*Id.* at 4.

⁶⁰*Id.* at 3.

received a five-day suspension without pay for sending a hostile e-mail to an employee who had complained about the grievant's behavior, after the grievant was warned not to retaliate. The arbitrator found that the hostile e-mail did violate the employer's instructions not to retaliate; however, in applying the principle of just cause, the arbitrator found that suspension was too harsh a penalty, given the grievant's generally laudable work history and lack of documented prior disciplinary actions.⁶¹ Although there had been conversations and coaching, there were no official contemporaneous records showing progressive discipline.

In another case, while the arbitrator found that a male employee had in fact put his fingers in a hole of the crotch area of another male employee's coveralls and made a hooting noise, this case was not sexual harassment and therefore did not justify discharge without progressive discipline. The arbitrator found it was misconduct and bullying subject to lesser discipline.⁶² In other words, while the company policy clearly was zero tolerance for sexual harassment, progressive discipline was part of the employer's written policy and practice for lesser offenses, including malicious horseplay and bullying. In this case, the arbitrator reduced the discipline from discharge to a 30-day suspension.

In discharge cases, arbitrators also consider whether an employer has adopted a zero tolerance policy specifically focused on bullying. In a Canadian case, the arbitrator found that there was clear evidence that the grievant had engaged in bullying and harassment, and that the employer had a zero tolerance policy prohibiting harassment.⁶³ The arbitrator decided that the bullying was ongoing, but subtle and not seriously damaging, and the employer should have suspended without pay. The arbitrator concluded that the employer did not show just cause to discharge the grievant and instead should have applied progressive discipline. Nonetheless the arbitrator found that reinstating the grievant would be harmful to the workplace environment and imposed the "extraordinary remedy" of payment in lieu of reinstatement.

In a 2012 case, the grievant was a 25-year United Parcel Service (UPS) employee with a good work record.⁶⁴ He was terminated for violation of the UPS anti-violence policy because he spat in another employee's face and made a derogatory racial remark.

⁶¹2011 AAA LEXIS 80 (parties' names redacted) (Whalen, 2011).

⁶²Equistar Chems., 126 LA 1480 (Goldstein, 2009).

⁶³*Peterborough Regional Health Centre* 111 C.L.A.S. 52 (Ont. Arb. Bd.) (Starkeman, 2012).

⁶⁴United Parcel Service, 130 LA 932 (Zaiger, 2012).

The arbitrator analyzed this case based on bullying and violent behavior, not as a racial harassment case. The grievant claimed in defense that his actions were the result of feeling intimidated and scared of coworkers, and there was some evidence at the hearing that a coworker (who was also discharged) had grabbed him in a chokehold and verbally threatened him at times in the past. However, the grievant had not reported these incidents contemporaneously.

The arbitrator looked to UPS's violence prevention policy statement that the company is "committed to a safe working environment free of threats, intimidation, and physical harm ... UPS has zero tolerance with respect to violence in the workplace. ... Any comments or behavior that could reasonably be interpreted as an intent to do harm to employees or property will be considered a threat."⁶⁵ The policy went on to state that violations will be treated appropriately with disciplinary action up to and including termination. UPS supported its discharge decision on the "legal obligation to maintain a workplace that is safe and free from discrimination."⁶⁶ The arbitrator found UPS, in this case, had just cause because it was enforcing a stated zero tolerance policy, and the facts supported that the grievant should have known of the posted policy. Furthermore, even if an employee is not aware of a policy, any employee "must be charged with knowledge that spitting in the face of a supervisor and calling him a [racially derogatory term] is unacceptable behavior that constitutes serious misconduct."⁶⁷ The arbitrator found that the decision to discharge the grievant was not arbitrary or unreasonable, especially since the coworker at issue was also discharged for misconduct.

In another recent case, the grievant was discharged for violating the employer's policy against harassment.⁶⁸ The company has a very specific and inclusive policy defining harassment as "unwelcome conduct that interferes with an employee's job performance. It can be spoken or written, graphic or physical. It can be done to offend or simply as insensitive joking."⁶⁹ The policy further states that if an investigation shows that harassment has occurred, the company will take disciplinary action that may include termination. This is an unusual employer policy because

⁶⁵*Id.* at 3.

⁶⁶*Id.* at 8.

⁶⁷*Id.* at 7.

⁶⁸Schweizer Aircraft Corp., 130 LA 941 (Kramer, 2012).

⁶⁹*Id.* at 1.

it has zero tolerance for a broad range of harassment. The arbitrator found that there was just cause for discharge because of credible testimony from witnesses that the grievant was a bully. "Witnesses all described the grievant as harsh, argumentative, angry, prone to scream at fellow employees, inspectors, and supervisors, constantly swearing, obnoxious, a bully, and very possessive of his work area."⁷⁰

In one termination case, numerous employees presented conflicting evidence about the grievant's unprofessional conduct, dishonesty, abuse of employees, and neglect of duty.⁷¹ The arbitrator noted this inconsistent testimony and the fact that there were no written disciplinary records or performance evaluations for the prior four years. The employer failed to establish wrongdoing justifying termination. The discipline was reduced to a warning and the grievant was reinstated without back pay.

In another case, a grievant had been employed by a city as a glazier for 16 years when he was terminated for bullying and harassment.⁷² By all accounts, the grievant had annoyed, harassed, glared at, and challenged another employee to fight. The employer discharged the grievant, who then challenged the discipline for lack of evidence justifying discharge. At arbitration, the discharge was overturned because the evidence did not establish that the grievant had engaged in bullying, rather than a mutually antagonistic relationship with another employee. The arbitrator recognized that the grievant had behaved badly, but the evidence was lacking to uphold discharge for bullying and misconduct.

The workplace culture also can affect the outcome of a bullying case. Where there is a fairly high level of "normal" banter, low-level antagonism, or horseplay that is regularly tolerated by the employer, it will be more difficult to demonstrate actual bullying. For example, where two servers at a casino were discharged following a verbal altercation, the arbitrator reduced the discipline for the grievant to a warning notice because the use of profanity and abusive language was a "fairly routine employee blow up, which called for fairly routine discipline," and the grievant had not received a prior warning that such conduct could result in termination.⁷³

⁷⁰*Id.* at 3.

⁷¹Ohio State University, 129 LA 1537 (Felice, 2012).

⁷²2009 AAA LEXIS 207 (parties' names redacted) (Shea, 2009).

⁷³Washington Trotting Ass'n, 130 LA 1478 (Frankiewicz, 2012) at 10.

Grievances Against Bully Bosses

In the situation where the bully is a supervisor or manager, the employee and/or the union may be able to file a grievance or, in extreme cases, bring a private tort action for negligent or intentional infliction of emotional distress. Few reported arbitration decisions were found for contract violations related to bully bosses.

The National Association of Letter Carriers has brought several grievances against the United States Postal Service (USPS) where supervisors were accused of intimidating and bullying letter carriers. One such grievance focused on a supervisor who had a history of losing his temper and verbally abusing employees he supervised.⁷⁴ The USPS and the union had a “Joint Statement on Violence and Behavior in the Workplace,” which the union alleged was violated by the supervisor.⁷⁵ Ordinarily, a supervisor would not be disciplined at arbitration under the provisions of the contract, but the arbitrator found that the Joint Statement was a two-way obligation of both employees and management. In his decision, the arbitrator found that the supervisor in question was subject to discipline and imposed a 90-day suspension from supervision and other ancillary requirements. The arbitrator also found that the supervisor’s training manager was also subject to discipline for failing to manage his subordinate when he was aware of the abuse. The manager was required to make a public apology to employees in the unit for “condoning by silence” the unacceptable behavior.⁷⁶

Tort claims alleging personal injury may be a basis for actions by employees who are bullied by their boss or where there is a pervasive intimidating environment. For intentional infliction of emotional distress (IIED), the bar is very high because the employee must show that the behavior was so outrageous and beyond the bounds of decency as to be considered “atrocious and utterly intolerable in a civilized community.”⁷⁷ These cases are idiosyncratic with widely different outcomes. In a case where the court found that the plaintiff (a medical technician) proved IIED, a physician had yelled at the plaintiff and threatened the technician to the extent that he feared he would be physically attacked. The

⁷⁴United States Postal Serv., C-21292 (unreported case) (Fields, 2000).

⁷⁵*Id.* at 5.

⁷⁶*Id.* at 13.

⁷⁷Eric Matusewitch, *Workplace Bullying Increasingly Surfacing in Courts and Legislatures*, 47 Gov’t Empl. Rel. Rep. (BNA) 1043 (2009); RESTATEMENT (SECOND) OF TORTS §46 (2000).

plaintiff demonstrated that he left employment and experienced physical symptoms, such as depression and anxiety, as a result of this verbal assault. In addition, at least one court has held that a victim of workplace bullying can bring a negligent infliction of emotional distress tort action outside of the collective bargaining grievance procedure.⁷⁸

Hospitals and health care facilities have tended to pay more attention to bullying, in part perhaps because of the high-stress nature of the work and relationships among doctors, nurses, and other staff, and in part because financial pressures can lead to under-staffing and other problems that exacerbate work stress.⁷⁹ Not surprisingly, one of the most often cited “bully boss” arbitrations arose in a hospital setting and involved a dispute over the difference between “bullying” and tough management style. Several nurses filed a grievance alleging that a new acting nurse manager violated the respectful workplace provisions in the union contract.⁸⁰ The contract had explicit language about fair and equitable treatment, providing a detailed description of respectful workplace expectations and that supervisors were responsible for maintaining a respectful atmosphere and employee morale. In spite of this language, the arbitrator found that the managing nurse merely had high expectations, and that she had been brought in to create change. The arbitrator noted the workplace tension and resistance to change by some of the nurses, and found that the evidence showed that the nurse manager’s behavior was not objectively disrespectful or bullying.

Conclusion: Where Do We Go From Here?

The arena of workplace bullying and harassment is evolving rapidly. Though few remedies are currently available in the courts, employer policies and negotiated contract language that deal with bullying are becoming increasingly available to employees who experience bullying. Unambiguous, enforceable contract language that defines bullying, and that is grievable and arbitrable, would allow a targeted employee and his/her union the most efficient and timely method of resolving the problem. Clearly

⁷⁸Strong v. Terrell, 147 Wash. App. 376 (Wash Ct. App. 2008).

⁷⁹Alison P. Smith, *An Interview with Linda H. Aiken* (2002), <http://www.ncbi.nlm.nih.gov/pubmed/11944531> (last visited Mar. 11, 2013).

⁸⁰Truman Mem’l Veterans Hosp., 129 LA 122 (Daly, 2011).

specified alternative resolution methods may also work, though they may lack the finality and neutrality of an arbitration decision.

But while contract language and employer policy are important, they are not enough. It is incumbent on practitioners, arbitrators, and scholars as well to continue their research and publicizing of the issue. We still need examples of evidence-based “best practices” for stopping a bully. Even with strong, enforceable employer policies and/or contract language, it is possible bullied employees will still suffer stress, negative health effects, and the need to change employment, due to the time it takes to investigate and enforce the policy or contract.

We need to explore approaches that have evolved from the occupational health and safety arena. Bullying can be dealt with as an offshoot of workplace violence, and the parties can take advantage of the fact that joint labor-management committees are already in place.

Finally, a developing body of arbitration decisions is available to arbitrators confronted with such cases. Because many cases are not published, it would be valuable to survey arbitrators to quantify how many of the different types of bullying cases have come before them, and to analyze how the arbitrators have dealt with them.

APPENDIX A

UNION CONTRACT LANGUAGE RELATED TO
BULLYING BEHAVIORS⁸¹**Example 1: Abbott Northwestern Hospital and SEIU-
Pharmacists, exp. 12-31-13***Article 29: Health and Safety*

29.1 Statement of Purpose: It shall be the policy of the Hospital that the safety of the employees, the protection of work areas, the adequate education and necessary safety practices, and the prevention of accidents are a continuing and integral part of its everyday responsibility. The Hospital is committed to a culture that reduces workplace exposures causing health effects and enhances overall safety and security in the workplace. *Further, the Hospital is committed to providing employees a work environment that is free from hostile, abusive and disrespectful behavior* and will make reasonable effort to provide employees with safe and adequate equipment, working environment and facilities.

29.2 Employee Responsibility: It shall be the responsibility of all employees to cooperate in programs to promote safety for themselves and for the public including participation on committees and compliance with rules and behaviors to promote safety and a violence-free workplace. Employee responsibility also includes the proper use of all safety devices in accordance with recognized safety procedures.

29.7 Respectful Workplace: The Union and Hospital are committed to providing a work environment that is free from hostile, abusive and disrespectful behavior.

http://www.dol.gov/olms/regs/compliance/cba/private/2430_pri.pdf

⁸¹Note: Language is arbitrable unless otherwise noted, and the emphasis is added.

**Example 2: Defense Finance & Accounting Service and AFGE
1083, exp. 4-30-11**

Article 49: Workplace Violence

Section 1. Commitment

The Agency and the Union are committed to promoting and maintaining a safe environment for DFAS employees. The Agency and the Union acknowledge a *mutual responsibility to work with all employees to maintain a work environment free from violence, harassment, intimidation, and other disruptive behavior.*

Section 2. General Information

A. *Physical violence, threats, harassment, intimidation, and other disruptive behavior in the workplace will not be tolerated in DFAS. Such behavior includes, but is not limited to, oral or written statements, or other actions that communicate a direct or indirect threat of physical harm.*

B. The Agency and the Union agree that acts, or threatened acts of workplace violence must be dealt with swiftly to prevent further occurrences. Individuals who commit such acts may be removed from the work area/Center and may be subject to disciplinary action up to and including removal, criminal penalties, or both, if warranted. Whenever possible employees will be removed with minimal disruption from the area, as required by the situation.

Section 3. Reporting Procedures

We agree that all DFAS employees have the responsibility to report workplace violence to a supervisor, manager or appropriate security personnel.

Section 4. Assessment

We agree that each Center will develop a Workplace Violence Assessment Team. This team will be responsible for reviewing instances of Workplace Violence and will make recommendations concerning training and other actions necessary to carry out the objective of this article.

http://www.dol.gov/olms/regs/compliance/cba/private/cbrp_2415_pri.pdf

**Example 3: Kaiser Foundation Hospitals So. CA and SEIU 535,
exp. 1-31-12**

The Union and the Employer, including all KP managers, supervisors, physicians, employees, and Union staff, agree:

- that ethical and fair treatment of one another is an integral part of providing high quality patient care.
- to treat one another, regardless of position or profession, with dignity, respect, and trust, and recognize and appreciate the individual contribution each of us makes in our daily work.
- to exhibit a personal, caring attitude toward each person we interact with and do so in ways that ensure courtesy, compassion, kindness and honesty.
- to treat one another in the ways we want to be treated ourselves, including clear communications of expectations regarding performance, support of individual opportunities for growth, and provision of opportunities for input into decisions when they impact people directly.

The Union and the Employer shall be responsible for improving communications among all levels of the organization, and shall be accountable for modeling and implementing the commitments of this section.

http://www.dol.gov/olms/regs/compliance/cba/private/2433_pri.pdf

Example 4:

Can grieve, but process ends at step 3

**Alliance AFCME/SEIU Bargaining Units 8 & 10 and
Commonwealth of Massachusetts, exp. 2011**

Article 6A—Mutual Respect

The Commonwealth and the Union agree that mutual respect between and among managers, employees, co-workers and supervisors is integral to the efficient conduct of the Commonwealth's business. *Behaviors that contribute to a hostile, humiliating or intimidating work environment, including abusive language or behavior, are*

unacceptable and will not be tolerated. Employees who believe they are subject to such behavior should raise their concerns with an appropriate manager or supervisor as soon as possible, but no later than ninety (90) days from the occurrence of the incident(s). In the event the employee's concerns are not addressed at the Agency level, whether informally or through the grievance procedure, within a reasonable period of time, the employee or the union may file a grievance at Step 3 of the grievance procedure as set forth in Article 23A. If an employee, or the Union, requests a hearing at Step 3, such hearing shall be granted. Grievances filed under this Article shall not be subject to the arbitration provisions set forth in Article 23A. No employee shall be subject to discrimination for filing a complaint, giving a statement, or otherwise participating in the administration of this process. Any employee who believes that he/she is subject to discrimination in this process may file his/her grievance directly to Step 3 as described above.

Article 20—Safety and Health

Section 11. Within each Department/Agency or work facility there shall be established a six (6) member Labor-Management Committee, three (3) representing the Union and three (3) representing the Employer, which shall meet on a monthly basis. The Committee shall identify sources of stress and hazard in the workplace and work environment and shall recommend the development of, or changes to, safety plans to the Appointing Authority, as needed. Additionally, this Labor-Management Committee shall recommend to the Appointing Authority procedures relating, but not limited to, Universal Precautions and the elimination of workplace violence, such as *bullying*, bomb threats, and other elements in any potentially threatening work environment.

Section 16. Grievances involving the interpretation or application of the provisions of this Article may be processed through Step 3 of the grievance procedure set forth in Article 23A, but may not be the subject of arbitration.

http://www.dol.gov/olms/regs/compliance/cba/public/6036_pub.pdf

**Example 5: Oregon Health & Science University (OHSU) OR
and Oregon Nurses Association, exp. 9-30-13***Article 6—Employment Practices***6.1 Equal Employment Opportunity and Affirmative Action.**

6.1.1 Non-discrimination in employment. The provisions of this Agreement shall apply equally to all employees in the bargaining unit without regard to age, race, religion, sex, color, disability, national origin, political affiliation, or sexual orientation. The Association further agrees that it will cooperate with the Employer's implementation of applicable Federal and State laws and regulations, including but not limited to Presidential Executive Order 11246 as amended by Presidential Executive Order 11375, pertaining to affirmative action.

6.1.2 Process for reporting harassment/discrimination due to protected class. OHSU is committed to providing a harassment free work environment for all employees. Any employee who believes s/he is being subjected to harassment or discrimination in violation of the Employer's applicable policies may file a complaint with the Affirmative Action Equal Opportunity (AAEO) Department, Human Resources or other AAEO designated authority. If the complaint is not satisfactorily resolved by the Employer's investigatory and grievance process, it may be submitted to the Bureau of Labor and Industries for resolution.

6.1.3 Process for reporting harassment for non-protected class. OHSU is committed to providing a harassment and hostile free working environment for all of its employees, regardless of protected class. Accordingly, an employee alleging harassing or hostile type behavior in her/his work environment for a non-protected class may choose to process a complaint through the grievance procedure under this Agreement. If the employee is alleging harassing or hostile behavior at his/her immediate supervisory level, the grievance will be filed at Step 2.

http://www.dol.gov/olms/regs/compliance/cba/public/6042_pub.pdf

Example 6:

Not grievable

Oregon University System (Eastern Oregon University, Oregon Institute of Technology, Oregon State University, Portland State University, Southern Oregon University, University of Oregon, Western Oregon University) and SEIU Local 503, OPEU, exp. 2013

Letter of Agreement— Inappropriate Workplace Conduct

1. The Employer and the Union agree that mutual respect between and among managers, faculty, employees, co-workers and supervisors is integral to the efficient conduct of the University's business. *Behaviors that contribute to an intimidating work environment, such as abusive language or behavior, are unacceptable and will not be tolerated.*
2. Employees who believe they are subject to such behavior should raise their concerns with an appropriate manager or supervisor as soon as possible, but no later than thirty (30) days from the occurrence of the incident(s). In the event the employee's concerns are not addressed by such manager or supervisor within thirty (30) days the Union, on behalf of the employee, may file a complaint with the Central Office of Human Resources. The Office of Human Resources will respond in writing to the complaint within thirty (30) days.
3. The parties agree that issues relating to inappropriate workplace conduct by employees or supervisors not covered by Article 19—No Discrimination, are appropriate for discussion at bi-monthly meetings under Article 18—Grievance and Arbitration Procedure, Section 12.
4. Every January, each university will remind employees of available university resources for dealing with inappropriate workplace conduct by means such as memoranda or electronic mail.
5. The Union acknowledges the university's right to deal directly with employees in resolving complaints of inappropriate workplace conduct, provided bargaining unit employees maintain their rights to grieve discipline under

applicable provisions of the Agreement, pursuant to the grievance procedure.

6. The provisions of this Letter of Agreement are not subject to grievance or arbitration.

http://www.oit.edu/libraries/hr_general_documents/final_complete_2011-13_ous-seiu_cba_12-6-11_1.pdf

Example 7:

Can grieve if supervisor violates more than once

Rutgers University Union of Administrators Contract and Rutgers University, exp. 2013

Article 26—Non-Hostile Work Environment

The university and the union agree that the working environment shall be characterized by mutual respect for the common dignity to which all individuals are entitled. It is *therefore agreed that verbal harassment of an employee or a supervisor is inappropriate and unacceptable.*

Any claims of a violation of this provision by employees covered by this agreement shall be the subject of a labor management conference. A full and fair investigation into any alleged violations of this provision shall be the sole and exclusive duty of the university.

The Labor Management Conference shall be presided over by the Office of Labor Relations and attended by the employee, a representative or representatives of the union, a representative of the department associated with the alleged violation. Any mutual agreements reached at a Labor Management Conference at which representatives of the Office of Labor Relations are present will be reduced to writing. Such agreement shall be binding on the parties to the agreement.

Should a particular supervisor be the subject of more than one allegation under this Article and should the parties at a Labor Management Conference (see Article 19) agree that responsive action by the University is warranted to address a claimed violation of this Article in more than one such instance, then repeated

or continuing behavior by the same supervisor may be grieved pursuant to Article 12.

The parties also acknowledge that the University Policy Prohibiting Harassment (University Policy Library Section 60.1.12) prohibits harassment based on certain enumerated protected categories. Employees may use the University Harassment Complaint Process to report and remedy complaints covered by the Policy Prohibiting Harassment.

<http://www.ura-aft.org/2007-2011-contract/ura-aft-administrative-unit-contract-2007-2011/>

Example 8:

Grievable but not arbitrable

The University of Massachusetts and University Staff Association, exp. 2014

Article 7: Anti-Discrimination

Section 6A. Respectful Workplace

The University and Association agree that mutual respect between and among managers, employees, co-workers and supervisors is integral to the efficient conduct of the University's business. *Behaviors that contribute to a hostile, humiliating or intimidating work environment, including abusive language or behavior, are unacceptable and will not be tolerated.*

Employees who believe they are subject to such behavior should raise their concerns with an appropriate manager or supervisor as soon as possible, but no later than ninety (90) days from the occurrence of the incident(s). In the event the employee(s) concerns are not addressed at the Departmental level, whether informally or through the grievance procedure, within a reasonable period of time, the employee or the union may file a grievance at Step 3 of the grievance procedure as set forth in Article 23A. If the Association, requests a hearing at Step 3, such hearing shall be granted. Grievances filed under this section shall not be subject to the arbitration provisions set forth in Article 27. No employee shall

be subject to retaliation for filing a complaint, giving a statement, or otherwise participating in the administration of this process.

B. Principles of Employee Conduct University of Massachusetts

The parties agree that the principles of employee conduct listed below apply to all University employees and should guide the conduct of employees and their supervisors in their work and serve as a basis *for creating a civil and respectful work environment.*

Institutions of higher education are entrusted with great resources and commensurably great responsibilities. They must meet their mission of research, teaching, and service in ways that truly enrich the society that supports them and truly serve the students, parents, and alumni who in joining the university community become life-long members of the extended university learning family. College and university leaders play a key role in assuring that high standards of ethical practice attend to the delivery of services to their various constituents and to the custody and use by all their faculty, staff and students of the resources entrusted to them. The University of Massachusetts embraces the values expressed in these Principles of Employee Conduct and expects their observance by all its employees.

- University employees are entrusted with public resources and are expected to understand their responsibilities with respect to conflicts of interest and to behave in ways consistent both with law and with University policy.
- University employees are expected to be competent and to strive to advance competence both in themselves and in others.
- The conduct of University employees is expected to be characterized by integrity and dignity, and they should expect and encourage such conduct by others.
- University employees are expected to be honest and conduct themselves in ways that accord respect to themselves and others.
- University employees are expected to accept full responsibility for their actions and to strive to serve others and accord fair and just treatment to all.

- University employees are expected to *conduct themselves in ways that foster forthright expression of opinion and tolerance for the view of others.*
- University employees are expected to be aware of and understand those institutional objectives and policies relevant to their job responsibilities, be capable of appropriately interpreting them within and beyond the institution, and contribute constructively to their ongoing evaluation and reformulation. The University is responsible for communicating to University employees the content of these Principles of Employee Conduct and for ensuring that the standards of conduct contained herein are met.

The University expects to provide its employees

- a work environment that is professional and supportive;
- a clear sense of the duties of their job, the procedures for performance review, and access to relevant University policies and procedures;
- within the scope of each employee's assigned areas of authority and responsibility, the duty to exercise appropriate judgment and initiative in performing duties;
- the right to seek appropriate review of matters that violate the ethical principles contained in these Principles.

Example 9:

Alternative dispute resolution procedure, not grievable or arbitrable

Collective Bargaining Agreement by and between Western Washington University and Washington Federation of State Employees, exp. 2013

Article 3 Workplace Behavior

3.1 The Employer and the Union agree that all employees *should work in an environment that fosters mutual respect and professionalism.* The parties agree that inappropriate behavior in the workplace does not promote the University's business, employee well being, or productivity. All employees are responsible for contributing to such an environment and are *expected to treat others with courtesy and respect.*

3.2 Inappropriate workplace behavior by employees, supervisors and/or managers will not be tolerated. If an employee and/or the employee's union representative believes the employee has been subjected to inappropriate workplace behavior, the employee and/or the employee's representative is encouraged to report this behavior to the employee's supervisor, a manager in the employee's chain of command and/or the Human Resources Office. The University will investigate the reported behavior and take appropriate action as necessary. The employee and/or union representative will be notified upon conclusion.

3.3 This Article is not subject to the grievance procedure in Article 30.

Example 10:

Use of agency complaint procedure, not grievable or arbitrable

Collective Bargaining Agreement between North Olympic Library System and Washington State Council of County and City Employees, Council 2, AFSCME, AFL-CIO, Local No. 1619L, exp. 2012

Article 2—Non-discrimination

Section 1. Non-discrimination. There shall be no discrimination by either the Employer or the Union in carrying out their respective obligations under this Agreement in matters of training, promotion, transfer, layoff, discipline, termination or otherwise because of age, sex, marital status, sexual orientation, race, creed, national origin, color, Union activities, or the presence of any sensory, mental, or physical disability unless based on a bona fide occupational qualification as defined by state law and/or the federal American with Disabilities Act.

It is agreed by the Employer and the Union that every Employee has a right to be treated with respect and dignity and a responsibility to treat others in the same way. Harassment and/or bullying in whatever form is proscribed behavior and is prohibited. Most often it takes the form of attitudes or behavior, either isolated or ongoing, that are reprehensible to those subjected to them. Any allegation of harassment is a sufficiently serious allegation to warrant it being addressed promptly and tactfully, with the utmost discretion. Prevention and resolution of such conflicts are best facilitated through frank

communication and a firm commitment to finding solutions and implementing them. *The Employer agrees that all agency complaint procedures for harassment shall be opened to Union participation at the request of the complaining Employee and that each appointing Authority/designee shall inform a complaining party of this right.*

The Employer agrees to establish Union representation on affirmative action or equal opportunity committees, where they exist, such as the Labor-Management Committee, with Union right to designate or elect representatives.

Section 2. Grievances Arising Under Article 2. Employees may process a grievance dealing with unlawful discrimination to Step 4 of the grievance process as described in Article 18. The parties may mutually agree to proceed to the alternative dispute resolution procedures as described in Article 18. Failing to reach a settlement, Employees may take the issues under this Article to the appropriate agency for adjudication.

Section 3. Gender interpretations. Words denoting gender in this Agreement are intended to apply equally to either gender.

Example 11:

Alternative resolution procedure

Sixteenth Master Agreement between the Government of the Province of British Columbia represented by the BC Public Service Agency and the B.C. Government and Services Employees' Union (BCGEU), exp. 2014

Memorandum of Understanding 13

Re: Bullying in the Workplace

(a) Employees have the right to work in an environment free from bullying and the parties agree that there is a need to take responsible action to prevent bullying and whenever they become aware of such behaviour, put a stop to it. Bullying refers to vexatious behaviour taking the form of repeated hostile conduct, comments, actions, or gestures that affects an employee's dignity and that results in a harmful work environment; or a single incident of such behaviour that has a lasting harmful effect on an employee may also constitute bullying.

(b)(1) Where a complaint of bullying between peers is brought to the attention of the Employer, within 30 days of the most recent alleged occurrence, it will be investigated by the appropriate supervisor or manager and, if substantiated, appropriate action will be taken to remedy the complaint. Details of the complaint will be provided to the respondent. The investigation shall be completed within 30 days of receiving the complaint. Any proposed resolution shall be issued within 14 days of receiving the results of the investigation. For the purpose of this memorandum of understanding “peers” refers to employees who are not in a reporting relationship where one employee is supervised by the other.

(2) If the disposition of the complaint is disputed by the complainant or respondent, either one of them may pursue the matter further with the excluded manager with jurisdiction for the worksite within 21 days of having received notification or resolution referenced in (b)(1). The excluded manager will investigate this matter and, if substantiated, take appropriate action within 30 days to resolve the complaint.

(3) A steward may be utilized to assist members at any point in this procedure.

(4) If the disposition of the complaint is still disputed by either employee, the complaint may be referred within 21 days to the Public Service Agency and the Union for resolution by the Bargaining Principals. Their decision regarding the complaint will be issued within 45 days and will be final and binding.

(5) Any decision or action taken in response to a bullying complaint is not subject to the grievance or arbitration procedures of Articles 8 and 9 of the Master Agreement.

(6) Clauses 1.7, 1.8, 1.9 and 32.15 of the Master Agreement do not apply to this process.

APPENDIX B

ADDITIONAL RESOURCES

1. Information about the AFSCME 328 and Oregon Health & Science University peer mediator program “Bridge Builders”:
 - <http://www.ohsu.edu/xd/about/services/human-resources/career-and-workplace-enhancement-center/conflict-management/bridge-builders.cfm>
2. Information about U.S. Department of Veterans Affairs training in respectful interactions for management and employees—Civility, Respect, and Engagement in the Workplace (CREW):
 - <http://www.va.gov/ncod/crew.asp>
3. “Minding the Workplace,” The New Workplace Institute Blog hosted by David Yamada:
 - <http://newworkplace.wordpress.com>
4. Ontario, Canada, website books, articles, and other resources related to bullying and mobbing:
 - <http://members.shaw.ca/mobbing/mobbingCA/books-1.htm>
5. Washington State Department of Labor and Industries website:
 - <http://www.lni.wa.gov/Safety/Research/Workplacebullying/Default.asp>
6. “Worksafe BC” website has resources related to mobbing and bullying:
 - <http://www2.worksafebc.com/Topics/Violence/Resources-BullyingAndHarassment.asp>
7. Workplace Bullying Institute:
 - <http://www.workplacebullying.org>