Exploring Solutions to Workplace Bullying

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Workplace bullying is a severe and pervasive problem. Workplace bullying has devastating effects on the targets of the bullying and is severely detrimental to the organizations within which the bullying occurs. Despite the severe and pervasive nature of workplace bullying there is no clear and adequate remedial path for targets to follow. However, there are a number of potential areas that should be explored and developed to address this phenomena. In this paper, I will explore the potential legal, employer based and collective solutions to workplace bullying. Specifically, the potential for common law solutions, statutory solutions, alternative dispute resolution, employer based anti-bullying programs, concerted activity and the grievance process will be explored. While none of these avenues present a viable alternative today, each of them with some development and all of them collectively provide hope for targets of workplace bullying.

Keywords: Bullying, workplace bullying, employment law, common law, bullying solutions

Workplace bullying is a severe and pervasive problem that plagues workplaces throughout the globe. Bullying in the workplace is devastating to targets, causes severe harm to organizations and has no meaningful value in any workplace. However, despite these severe negative outcomes, targets of bullying in the American workplace currently there are no adequate solutions for targets of workplace bullying. However, there is the potential for various

paths including individual solutions as well as collective solutions being developed to eliminate workplace bullying. In order to address such a severe and pervasive problem that is so often overlooked targets of bullying and advocates for these targets must be willing to explore all potential avenues of redress. As such in this paper, I will present various paths and suggest that each of these should be explored further in research, theory and action.

In order to solve any problem we must understand it. As such I will present a brief overview of workplace bullying, its definition and its outcomes. I will then explore various potential solutions to bullying addressing the viability of these solutions. This will include exploration of legal solutions including common law and statutory solutions, voluntary employer solutions, alternative dispute resolution and collective action. I will explore how each of these can be developed and will offer some suggestions for future research and advocacy.

What is Workplace Bullying?

There are many different definitions of workplace bullying. While Randall (2005:3) explains that an "agreed definition of bullying do[es] not exist," according to Farrington(1993 : 384), "there is widespread agreement that bullying includes several key elements: physical, verbal or psychological attack or intimidation that is intended to cause fear, distress or harm to the victim; an imbalance of power . . . absence of provocation . . . repeated incidents." However, even these elements have much that can be debated. Namie and Namie (2003:3) define bullying as the "repeated, malicious verbal mistreatment of a Target. . . ." Perhaps the most basic starting point to gain some insight is to turn to the dictionary definition of the topic. Merriam Webster's Dictionary defines the verb "bully" as: "to behave as a bully toward: DOMINEER, syn. Browbeat, intimidate." "Domineer" is further defined as "to rule in an arrogant manner, to be overbearing, intimidate as to make timid or fearful, to compel or deter by or as if by threat." For the purpose of this article, Workplace bullying is defined as the unwanted, unwelcome, abuse of any source of power that has the effect of or intent to intimidate, control or otherwise strip a target of their right to esteem, growth, dignity, voice or other human rights in the workplace (Carbo and Hughes, 2010). This abuse of power is a severe and pervasive problem in workplaces in the United States as well as around the globe.

What are the Effects of Workplace Bullying?

For targets of bullying the outcomes of workplace bullying can be devastating. Bullying studies have shown a clear connection between health and bullying. Health outcomes for the victims have included anxiety, depression, insomnia, nervous symptoms, melancholy, apathy, socio-phobia, and post traumatic stress disorder symptoms (Rayner, Hoel and Cooper, 2002). Further, these health effects can be very pronounced, even early on in a bullying scenario.

According to Gardner and Johnson (2001:28), "bullying causes stress-related illnesses that shatter many careers. Anxiety, stress and excessive worry head the list of health consequences for targets, thereby interfering with their ability to be productive at work." Keashley and Neuman(2004:346) found that "exposure to bullying is associated with heightened levels of anxiety, depression, burnout, frustration, helplessness, negative emotions such as anger, resentment, and fear, difficulty concentrating, and lowered self-esteem and self-

efficacy." Bullying has also has been linked to symptoms consistent with post-traumatic stress syndrome, suicidal thoughts, and attempts. There is also clear evidence that some victims of bullying end up committing suicide (Rayner, Hoel and Cooper 2002). According to Davenport, Schwartz and Elliot (2002: 33), "For the victim, death—through illness or suicide—may be the final chapter in the mobbing story." According to Einarsen (1999:16), bullying may be "a more crippling and devastating problem for employees than all other work-related stress put together . . ."

Simply looking at the effects of workplace bullying on employees should be enough to convince employers to address this issue, and for the ethical or moral employers, this would most likely be enough to convince them to take steps to eliminate workplace bullying. However, the reality is that many employers put profit before even the most basic human rights of employees. For instance, profits come before safety for many miners, meatpackers, and others working in dangerous jobs.[1] Profit comes before the right to education and a childhood for MNCs that either directly use child labor or purchase products from manufacturers using child labor.[2] The right to a decent standard of living comes second to every employer that pays less than a living wage.[3] Therefore, for many employers it will take more than pointing out the human rights violations that occur when workplace bullying is allowed to exist. For this reason, I will look at the organizational impact of workplace bullying.

Just as workplace bullying can be devastating to victim employees, the effects can also be quite severe for organizations. Workplace bullying can lead to tragic events such as the report of two separate airline accidents that resulted from flight crews being afraid to question pilot decisions, or life-threatening and even life-ending medical mistakes in health care environments where the stress and fear from bullying interferes with the practice of medicine (Keashley and Neuman, 2004:350-351). Even where effects are not as catastrophic, they can still be devastating for organizational performance. Bullying in the workplace leads to lost work time, reduced organizational commitment. and decreased effort at work (Yamada 2004: 481). Workplace bullying has also been found to lead to higher turnover rates and potentially to increased lawsuits (Coleman, 2004: 265; Gardner and Johnson, 2001: 29). Workplace stress and workplace bullying cost employers billions of dollars (Coleman 2004: 265).

How Pervasive is Workplace Bullying?

Not only is workplace bullying a severe problem, it is also pervasive. A Michigan study by Keashley and Jagatic (2003) found 59% of respondents had "experienced at least one type of emotionally abusive behavior at the hands of fellow workers." Swedish research in the 90s found that 3.5% of the labor force fell victim to mobbing at any one time (Davenport et. al, 2002: 25). Hornstein (1996:5) suggests that 20% of the American workforce faces workplace abuse on a daily basis and 90% will face it at some point in their careers. The problem of workplace bullying is also a growing phenomena, "the incidence and the severity of occupational violence

[1] For an example *see* LANCE COMPA, BLOOD, SWEAT AND FEAR: WORKER'S RIGHTS IN THE U.S. MEAT AND POULTRY INDUSTRIES (Human Rights Watch 2004).
[2] *See* http://hrw.org/children/labor.htm
[3] For a discussion of a living wage *see* WILLIAM P. QUIGLEY, ENDING POVERTY AS WE KNOW IT: GUARANTEEING A RIGHT TO A JOB AT A LIVING WAGE (Temple University Press 2003) and also BARBARA EHRENREICH, NICKEL AND DIMED (2001) for a look at the conditions of working in jobs at less than a living wage.

are increasing across industrialized countries, particularly for workers who have significant levels of face to face contact with their clients or customers (McCarthy & Mayhew 2004: 148) ."

Solutions on the Individual Consciousness Side of the Model

While targets of workplace bullying lack viable alternatives to resolve this phenomena, there are a number of paths that offer some hope. These potential paths of resolving workplace bullying include legal solutions, alternative dispute resolution and individual and collective solutions. In the following section of this paper, I will explore the potentiality of a common law solution, a statutory solution, alternative dispute resolution processes and collective action as paths to addressing workplace bullying. While none of these solutions are currently adequate each of them presents a potential path if we further steps are taken.

Potential Paths of Individual Solutions

Legal solution—The common law

While current attempts to address workplace bullying through common law tort claims have not been successful (Yamada, 2000, 2004), this does not mean this path should be completely abandoned. While current attempts to address workplace bullying through IIED claims and other common claims have not been successful the common law in the United States is a dynamic, organic body of law. As such, perhaps there is indeed a role for creative lawyers, legal scholars, and judges to craft common law remedies to address workplace bullying. Plaintiff's attorneys will need to explore how workplace bullying may fit into the underlying theory of the US common law system and even specific tort claims in other areas of law outside of the employment realm. Exploration of potential claims such as negligent supervision or negligent hiring of bullying employees, breach of contract (implied or otherwise) claims, claims for allowing a dangerous working environment, may provide at least a partial solution to the problem with workplace bullying. Perhaps some power and control can be returned to targets of bullying through aggressive litigation.

While current judicial interpretations of perhaps the most salient, related common law claim of intentional infliction of emotional distress do not present a viable path to solving the majority of incidents of workplace bullying (Yamada, 2000, 2004, Carbo 2009), aggressive litigation may lead to reinterpretation of this claim. Therefore, plaintiff's attorney should be willing to pursue such claims even in the face of daunting odd with hopes that such litigation will lead to further development of this concept in such a way that it might address at least some forms of workplace bullying. Pursuit of these claims may also have a role in linking workplace bullying to collective action. For instance, knowledge of these suits may bring a quicker consciousness to targets of workplace bullying. As these claims become more common, the saliency of bullying acts will also increase. As targets become aware of other targets who have filed lawsuits, whether successfully or not, this might also lead to the class consciousness. In fact, Reger (2004) points to outside events such as the Thomas-Hill hearing as assisting in the

consciousness raising efforts of the NYC NOW chapter. These lawsuits might have this same effect. Bachman (2001: 16-17) likewise supports the idea that court decisions may assist social change if they change the views of the populace.

While we are far off from a common law solution to workplace bullying, aggressive and creative litigation does provide at least a glimmer of hope. Claims such as negligent interference with an employment contract, IIED and even negligent supervision have developed over time. Litigation can help to form reasonable expectation and the corresponding duties. Perhaps as this litigation progresses a common law duty to provide a workplace free of bullying will be recognized and employers will have been found to breach this duty where bullies have indeed harmed targets in the workplace.

Voluntary employer anti-bullying policies

Another potential individual solution to workplace bullying lies in a CSR approach to employer policies: in other words, an approach that relies on employers to take the necessary steps to eliminate bullying as part of their responsibility to society. Without legislation making workplace bullying unlawful and requiring employers to take steps to eliminate workplace bullying, we are left with simply relying on employers to eliminate workplace bullying, either for selfish reasons or for ethical reasons. Archie Carroll (1991, 1998) suggests that moral managers undertake a pyramid of responsibilities; these responsibilities include capital—the responsibility to make a fair return on profit for investors/shareholder, legal—the responsibility to follow all applicable laws, ethical—the responsibility to uphold societal expectations of the corporation, and philanthropic—the responsibility to give something back to society.

The astute employer would see that protecting employees' dignity at work and in particular ridding the workplace of bullying would be a benefit to each one of these responsibilities. Workplace bullying is damaging to organizations and makes it more difficult for managers to achieve capital goals. Workplace bullying can be devastating to employees. As a stakeholder in corporations, it is thus the ethical responsibility of corporations to eliminate workplace bullying. Targets of workplace bullying are also more likely to sue employers (Coleman, 2004). Therefore, based on Carroll's Pyramid of Corporate Social Responsibility, one would expect moral employers to eliminate workplace bullying as a way of meeting their capital, legal, and ethical responsibilities.

However, there is a great deal of evidence to suggest that employers will not eliminate workplace bullying out of some sense of responsibility to target employees or even as a means to meet legal responsibilities. For instance, problems with workplace harassment persist despite the fact that it is clearly an employer's responsibility to eliminate unlawful harassment from the workplace.[4] The fact that there are so many successful lawsuits against employers for

[4] For instance, in 1986, the Supreme Court first held that workplace harassment could definitively be considered a form of discrimination under *Title VII, Meritor Savings Bank v. Vinson*, 477 US 57 (1986); further standards for employer liability were established under *Harris v. Forklift Systems Inc*., 510 US 17 (1993), *Oncale v. Sundowner Offshore Services, Inc.* 118 S.Ct. 998 (1998), *Faragher v. The City of Boca Raton*, 524 US 775 (1998) and *Burlington Industries, Inc. v. Ellerth* 524 US 742 (1998). See Anne Lawton, "Operating in an Empirical Vacuum: The Ellerth and Faragher Affirmative Defense," 13 COLUMBIA JOURNAL OF GENDER AND LAW 197 (2004) for an

harassment, discrimination, retaliation, and other workplace violations suggests that left on their own, employers do not even meet the second level of Carroll's pyramid of social responsibility—legal obligations. Further, according to Anna-Marie Marshall (2005), harassment policies or grievance systems as they exist today in many companies may actually be counter-productive to eliminating harassment from the workplace. These systems often times redefine harassment in such a manner that many complaints are not filed and many actually harassing behaviors are never addressed. In other words, even when employers meet their legal responsibility under *Faragher* and *Ellerth*, the policies that are instituted do not meet the ethical responsibility of eliminating employee-damaging harassment from the workplace. Marshall (2005) proposes that these policies are not implemented to meet legal standards or to protect employees, but rather they are implemented to protect the employer.

If this is the case, then it would be doubtful that employers would meet the higher level of social responsibility of ethical obligations. Looking at corporate codes of conduct provides an idea of similar responses to ethical concerns. In a comprehensive study of corporate codes of conduct, Jenkins, Pearsons, and Seafring (2002: 28) found that corporate codes are not about corporations deciding to do good or to do the right thing. Corporate codes are rather the result of struggle between interested groups. In those codes that a corporation adopts without input from other stakeholders, the breadth of the code both in terms of substantive and procedural due process is very narrow. Only when other interest groups such as unions or NGOs are involved does one see codes that cover many topics and have strong enforcement measures. The Jenkins et al. research supports the conclusion by Namie and Namie (2003) that employer policies are not in place to meet employee interests. Therefore, it is unlikely that any voluntary employer anti-bullying policy will meet the needs or rights of the target employees, except where these needs overlap with those of the organization. This of course would apply to anti-bullying policies, harassment policies, and employer-implemented ADR policies.

According to Lieberwitz (2005), the current labor conditions in the US, including work reorganization, corporate relocations, subcontracting for cheap labor, and corporate bankruptcies, all point to a lack of true voluntary corporate social responsibility. Further, actual experiences with workplace bullying already suggest that employers will do little voluntarily. According to Namie and Namie (2003), in only 18% of cases where target employees went to their employers for help did the employer react in a helpful manner. In 43% of such cases, the bully's boss made the situation worse, and in 40% of the cases they did nothing. Further, few companies have HR policies that address bullying, and even fewer enforce these policies (Namie and Namie: 2003). Finally, a review of the sexual harassment literature post-Faragher and post-Suder reveals many articles such as Nagle's (2004:20) that suggest the courts have given employers "strong incentives" to implement harassment policies so that they have an affirmative defense to sexual harassment claims. The presumption is that the pervasive and severe effects of workplace bullying on individuals and organizations is simply not enough incentive that every employer should have a fully enforced anti-bullying policy.

However, there is still the possibility of having anti-bullying policies that are indeed enforced where such policies are also a benefit to the organization, or in other words, help

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analysis of the incentives for employers to simply construct policies rather than to truly attempt to eliminate harassment.

employers to meet their capital responsibilities. Just as workplace bullying can be devastating to victim employees, as discussed earlier, the effects can also be quite severe for organizations.

So while this solution is not the best option for eliminating workplace bullying, it still may hold some value and at the least merits further exploration. Very simply, a beginning step of exploration may be to determine whether these employer-based systems even exist and, if so, in what types of numbers. We will also have to explore whether where these employer policies exist whether they truly address the problems with workplace bullying or whether they simply provide employers cover. If these are found to exist we should look for ways to improve and to spread these policies. If they prove to be ineffective we should explore ways to improve them. One could study whether targets such as these were knowledgeable of their workplace harassment policies and whether these policies were enforced in such a way as to protect them from bullying behaviors. Case studies of willing employers and employers that are looking to implement true anti-bullying policies may also be telling. Higher education may be a particularly interesting area to study, as bullying has been found to be very prevalent in academia (McCarthy and Mayhew, 2004) , while many institutions at the same time have broad-based harassment policies (possibly due to *St. Paul v. R.A.V*., according to Coleman) and these policies are often open to the public.

Where new policies are implemented, a pre and post implementation study of employees would be a possible method of ascertaining the effectiveness of such policies. There are numerous surveys that are currently used to determine the level of bullying behavior in organizations, such as Lehman's LIPT Questionnaire, the NAQ, and the widely used and highly reliable GHQ. These surveys could be used prior to the implementation of such a policy and several months after the full implementation of a new policy to measure the difference. Further, qualitative interviews could then be used to determine why and if the policy made a difference in the environment.

There are many different avenues to study these broad-based harassment systems, and there are very few studies that provide much information even as to the existence of such policies. Further, we will need to dig deeper to understand whether these policies, where they exist, are effective at addressing the needs of the targets of workplace bullying. We should look to develop best practices for these internal systems, to push for the expansion of these systems and to push the idea that all responsible employers would have such a system and that the law (either common law or statutory) should recognize this duty

Employer ADR programs

Estreicher (2001:559) suggests that employer-implemented ADR programs that include mandatory arbitration are a benefit to employees, employers, and the court system. Estreicher suggests that the current legal system without ADR presents a system of "cadillacs" for wealthy employees and "rickshaws" for lower-level wage earners. The low-level wage earners, according to Estreicher, cannot often "attract the attention of private lawyers because the stakes are "too small," and "very few . . . are able to obtain a position in this 'litigation lottery.'" Seber and Lipsky (2006) suggest that the employment arbitrators as actors in this system may be at least in part replacing the collective action described below in the discussion of the collective solutions to workplace bullying.

Complaints that would not fall under any statutory or common law provision are often heard under these systems. Bullying could be one such type of complaint. Employees who have been the victims of bullying may not get a chance to have their case heard by a national tribunal unless they can show such bullying was based on a protected status and led to an adverse job effect, or that such bullying was intentional and extremely outrageous. However, perhaps in the arbitration or even an employer-mandated mediation program, claims of bullying may be addressed.

Leader and Burger (2004) suggest that ADR has the potential to "revolutionize employment law." They point out that in employment litigation, many complainants can never get to the courtroom because they cannot afford an attorney, and even when employees get into the courtroom their success rate at trial is less than 15%. They suggest that the greater access to employer-sponsored ADR systems than the courtroom will better help employees to bring their statutory claims. In addition to allowing employees to have a better opportunity to bring statutory claims, these systems may also allow employees to bring claims such as workplace bullying. However, the research here, as well as research by Fox and Stallworth (2004), suggests that there is limited support for internal employer-based dispute resolution systems as a means to address workplace bullying.

Again, future studies of these workplace ADR systems would be very similar to the studies of the employer-sponsored broad-based harassment systems. I would be very interested in a deeper understanding of these systems. Why might they provide greater avenues of redress? What are the views of arbitrators that make decisions under these systems in regards to the application of human rights versus legal rights, etc.? Qualitative studies of these systems will provide these types of details and help us to answer questions such as why these systems do/do not work, how employees feel about these systems, and whether the existence of these systems changes the employees' attitudes and actions toward litigation.

Collective Remedies

Legal solution—Statutory response

It is only through a strong law with strong enforcement that employees' rights to dignity in the workplace, their esteem, growth, and power, will be truly protected. Workplace bullying is not a new phenomenon; if employers were going to voluntarily address this issue, they could have already done so. Instead, we see that bullying has become more and more severe and pervasive in the workplace. In order to protect all targets of workplace bullying, legislation is necessary.

There is no specific US law that protects worker rights to dignity at work or to "just and favourable" working conditions. The protections afforded targets of workplace harassment under Title VII of the Civil Rights Act, the ADEA, NLRA, and ADA provide some level of protection for employees, but these fail to address more than 75% of bullying incidents (Namie and Namie: 2003). Further, common law claims of invasion of privacy and intentional infliction of emotional distress may also provide some protection for employees' dignity at work, but as discussed earlier, these protections are currently ineffective. Even for the limited protections provided by these statutes and common law rulings, access to the remedies are limited by the difficulty litigants have in obtaining counsel and succeeding at trial (Estreicher, 2001:750).

Passing legislation against workplace bullying, particularly in the current pro-business and anti-regulation of commerce environment, is a difficult task, to say the least. Until we can rid ourselves of the politicians who have, as Yates (2009) suggests, "bent over backwards to implement what amounts to a full-scale assault on working people," such a law will never come into effect. Further, even if legislation is passed, it often takes years to determine the definitions of legislation, and attorneys often work hard to find paths around and loopholes to such legislation. Legislation to protect the right to dignity at work would be a sweeping change to our current legal environment of the workplace. However, such sweeping changes have occurred in the past.

For instance, the Civil Rights Act of 1964 was clearly a major change to the environment of work. This change came about as a result of a social movement and collective action (Chong, 1991). On a national scale, collective action by advocates, attorneys, politicians, and others was vital to the passage of the Civil Rights Act (Chong, 1991). On a smaller scale, collective action has been critical in the push for a living wage and other local and state protections of worker rights. The best solution to workplace bullying will be a strong law with strong enforcement, and a collective social movement is critical to the passage of such a law.

Protection of workers' human rights in the workplace would indeed be a profound change to the current US legal system. As is suggested by Bachman (2001), such a change requires a social movement. In order to involve masses of people in such a movement, according to Chong (1991), it becomes necessary that individuals be able to identify social and psychological benefits from their participation. Much in the same way that one makes a decision to participate in the collective action of forming a union, I would suggest that individuals must be able to identify a benefit of such movement (or a detriment of the status quo) and believe that the movement will be able to produce such a benefit.[5]

First, there needs to be an education of workers to inform them that bullying does not have to be a part of work and that their human rights in the workplace could be afforded legal protections, as in the laws of Sweden, France, Quebec, and the United Kingdom. Workers are often unaware of what few legal protections they currently have in the workplace, especially in comparison to other industrialized countries. My experiences in teaching employment law to undergraduate students have been that many students believe employers in the United States can fire them only for good cause, that the United States must have the most employee-friendly leave laws, vacation time, and other benefits of any country around the world. Students are often shocked and outraged when they learn about the state of employment law in the United States and especially when I cover comparative laws. If the average worker is like my average student, they have no reason to be outraged, because they believe the laws in the United States are much more protective of their rights than they actually are. Targets of bullying also may not be aware of their own working conditions. Education about the current legal system in the United States and about workplace bullying is the first step to establishing this social movement.

[5] See Roger Weikle, Hoyt N. Wheeler, & John A. McClendon, *A Comparative Case Study of Union Organizing Success and Failure: Implications for Practical Strategy, in* ORGANIZING TO WIN Ch. 12 (Kate Broffenbrenner, Sheldon Friedman, Richard W. Hurd, Rudolph A. Oswald, & Ronald L. Seeber eds., 1998) and also JOHN W. BUDD, LABOR RELATIONS: STRIKING A BALANCE, Ch. 7, 239–204 (2nd ed. 2008).

Second, more needs to be done to convince workers that collective action can be successful and to convince individuals that only through such collective action will there be any benefit. Chong suggests that individuals will get a social benefit from participation when they have some sort of moral sense of requirement to participate, for instance, if they believe that their participation is important to benefit those with whom they have social ties. The sharing of stories of targeted employees may be one way to create such feeling of obligation. Chong also suggests that the potential to play the Good Samaritan and the potential feeling of accomplishment in engaging in a social movement can also spur individuals to participate. It is critical to spur such a movement. Without this social movement, there is little reason to expect that laws to protect employees will be passed, and without such laws it is unlikely that bullying will ever be eliminated from the workplace.

Unionization

A second solution is also possible through collective action. This solution is collective action through union organizing. Again, this solution received a great deal of support from research participants. According to Yates (2009), it is through collective action, organizing, and collective bargaining that many steps have been taken to protect worker dignity. As such, organizing and collective bargaining are other potential options to eliminating bullying from the workplace. Yamada presents three ways that collective bargaining can be used as a tool to combat workplace bullying. "First, unions can and should bargain for collective bargaining provisions that protect their members against abusive supervision. Second, even in the absence of specific protections against abusive supervision, the general substantive and procedural rights in an agreement may provide legal protections for a bullied union member. Third, effective shop stewards can serve as valuable mediators when bullying situations occur, including those between union members(Yamada, 2004: 494)." While these three potential solutions are viable, there are still many problems.

The first question to explore is whether anti-bullying clauses are indeed bargained for in CBAs. Second, even if these clauses exist, further examination would be needed to determine whether these clauses effectively eliminate workplace bullying. Third, even if these clauses exist and are effective, clauses that only address supervisor bullying still leave many cases of bullying unanswered. While the majority of bullying incidents may be supervisory bullying (Yamada, 2004) and while bullying from a supervisor does tend to have a greater impact on the victim (Keashley and Neuman, 2004), a policy that covers only supervisory harassment would leave many incidents uncovered. In particular, bullying that occurs between bargaining unit members may, at the least, present difficult situations for a union steward to manage. Fourth, the substantive and procedural rights that are addressed by Yamada do provide greater protection (most likely referring to just cause dismissal) and would be most related to the above discussion of constructive discharge in a just cause setting. Study should be undertaken to determine whether quitting as a result of workplace bullying is determined to be unjust dismissal in an organized setting. Finally, perhaps the biggest problem with union organizing as the means to eliminate bullying is that even if this is a viable solution, at this point, it will only be a viable solution for a very small percentage of the labor force as only around 12% of the total US labor force is organized. However, perhaps if there is success in eliminating workplace bullying

through CBAs this would be an additional organizing tool for labor organizations and a potential path to revitalization of the labor movement. The support for issues of dignity and justicve in organizing campaigns (Brofenbrenner and Hickey, 2003) combined with the lack of support for employer ADR systems in this study and that of Fox and Stallworth (2004), may indicate that a focus on the issue of bullying in the workplace within the course of organizing campaigns may bring more support to unionization and stem the tide of ADR as a replacement for traditional collective bargaining that Seber and Lipsky (2006) found in their study. Further, many of the legal protections afforded to employees came about due to the labor movement. Perhaps if bullying were first addressed in collective bargaining agreements, this would provide at least some momentum for the passage of anti-workplace bullying legislation.

Of course, even if targets of bullying supported organizing campaigns, this would not guarantee that there would be enough support for a successful campaign. However, it would be interesting to see what role bullying plays in collective bargaining agreements and in organizing drives. Further, information on this role may provide several benefits. If bullying is found to be a potential reason for organizing, labor organizers may have an avenue to help revitalize the labor movement. If bullying supervisors are a greater concern to employees than the health benefits and compensation drivers of organizing campaigns, then this may suggest the need to shift direction in the labor movement, at least in certain settings.

There are many potential methods to explore the connections between workplace bullying and collective action. First, a review of current CBAs to assess whether workplace bullying is a commonly addressed concern could be important. Second, further exploration of potential union members and whether the focus on workplace bullying would spur them to join a union would be an interesting study. Case studies of organizing campaigns and the role of workplace bullying would also be a potential avenue of research. Interviewing organizers, employees who have engaged in organizing and studying specific organizing campaigns, may provide a great deal of insight as to the role of bullying in organizing campaigns. Further, surveys of employees of successful and unsuccessful campaigns may shed light on whether bullying supervisors played a role in their thought process. Again, I feel this is a very interesting area to explore and has a great deal of potential for future research and also potential for at least a partial solution. A strong union that fights for the employees they represent does indeed return power and control to employees. The major problem with this decision again seems to be not whether the solution itself is a good idea, but rather how it can be implemented. In the current environment, organizing drives often fail not because employees do not want unions, but because of employer actions and lax labor law protections (Bronfenbrenner, 2009, Compa, 2000).

Grievance arbitration

Grievance arbitration is another potential alternative to legislation. While these arbitrations are based on the language of the CBA and thus this is related to the above discussion of CBAs, grievance arbitration could lead to other methods of eliminating workplace bullying and protecting the human right to dignity at work. For example, Professor Gross (2004) has proposed a human rights approach to grievance arbitration. If this standard were extended to grievance arbitration, then harassment disputes under CBAs would be decided in a manner more related to our definition of workplace bullying rather than the legal definition of harassment. At

the very least, some of the gaps in the harassment definition could be closed. For instance, the level of severity could be reduced. Less focus could be given to employer defenses that the harassment was not based on a protected status, and more focus could be placed on the outcomes to the employee of the harassment and not just concern for damaging job effects.

However, there have been studies of harassment complaints in the grievance arbitration process. It appears, at least according to Bornstein (2004), that the outcomes of these complaints follow the same definition as the legal definition of workplace harassment. However, again, further research specifically into the outcomes of claims of workplace bullying or general non-status based harassment would be a worthwhile undertaking.

While both of the solutions under the class-consciousness side of the model appear to be viable and strong possibilities for ending workplace bullying, there are still many gaps that need to be filled. In the university setting, there was definitely a link between a bullying president and the AFT organizing drive. Further, during the focus groups there was much support for collective action to eliminate workplace bullying. However, after these focus groups, the momentum was lost, and to my knowledge none of the participants actually engaged in collective action. While these focus groups created the consciousness necessary to lead to support for collective action, there are still missing pieces to actually get to the step of taking collective action. The pieces necessary for the next step may include a leader to push the group's agenda, continued discussions amongst the class members, a stronger acceptance of the utility of collective action, or a more secure feeling that the laws will protect them in their attempts at collective action. It is answering this question of what moves these individuals from this acceptance of collective action to engagement in collective action that is the most pressing piece of research in this area.

Conclusion

While targets of workplace bullying currently have few potential paths to resolving the bulling in their workplace, various solutions present potential if steps are taken to strengthen these solutions. The common law presents some hope if creative attorneys combined with willing judges and/or juries, would fight for expansion of responsibilities and rights in the workplace as well as taking more reasonable interpretations of claims such as intentional infliction of emotional distress. At the very least as workplace bullying becomes less and less acceptable common law remedies may become more viable. Progressive employers can also implement workplace bullying policies. However, these policies will need to be pushed from outside of organizations through anti-bullying campaigns and education. Further, these policies will need to be monitored to assure they are truly put in place to deal with the targets issues with workplace bullying rather simply implemented to conceal the majority of problems. Formal alternative dispute resolution programs also present a potential remedy if advocates are aggressive and neutrals are willing similar to the potential for common law remedies.

There is also a great deal of potential for collective remedies. Targets of bullying and advocates of targets could come together to push for a social movement that would lead to the passage of a statutory solutions. These types of solutions have been passed in other countries such as Sweden and Canada and we have seen recent movements that have led to new employment laws in the U.S. such as the Lilly Ledbetter Act. Because bullying is a phenomena

that is based on power, employees can also work together to strip the bully of power and to return power to the targets. This can be accomplished through concerted activity and the formation of unions. These employee organized unions can at least in part focus on workplace bullying as one of their issues. Further, this focus not only presents a potential solution for targets of bullying, but also presents a potential path for union revitalization.

Workplace bullying is a severe and pervasive problem. Bullying in all its forms is devastating to the target and damages organizations and even witnesses of bullying. There is no organizational benefit to bullying. Unfortunately for the vast majority of targets there is also no current viable, clear solution to workplace bullying. However, there are potential paths to resolving workplace bullying all of which provide potential and should be explored.

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