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The Illinois Public Employee Relations Report

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Fall 2014

Vol. 31, No. 4

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Bailey, Gary, "Vol. 31, No. 4" (2014). *The Illinois Public Employee Relations Report*. 93.  
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# ILLINOIS PUBLIC EMPLOYEE RELATIONS REPORT

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VOLUME 31

FALL 2014

ISSUE 4

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# **THE WORKPLACE BULLY IN THE SPOTLIGHT**

**By, Gary Bailey**

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**RECENT DEVELOPMENTS**

Recent Developments is a regular feature of the Illinois Public Employee Relations Report. It highlights recent legal developments of interest to the public employment relations community. This issue focuses on developments under the public employee collective bargaining statutes.

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## THE WORKPLACE BULLY IN THE SPOTLIGHT

**By, Gary Bailey**

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### I. INTRODUCTION

Few get more attention these days than the character known as the bully.

School administrators, principals and teachers spend countless hours applying calculated strategies so they can combat bullies and assure parents that their sons and daughters are safe on school grounds.[1] Movie producers, directors and screenwriters meanwhile toil to develop sensational stories of bullies (antagonists) and the underdogs (protagonists) who rise to confront and defeat them.[2] Most recently, it is the bully at the workplace who has moved into the spotlight. The issue of workplace bullying is being reported in books,[3] newspaper stories,[4] professional journal articles,[5] speeches,[6] and websites[7] on both the national and international scale.

Organizations, such as the Workplace Bullying Institute and the International Association on Workplace Bullying and Harassment, have been formed to study and combat the problems caused by the workplace bully. While complaints of incivility at the workplace (a.k.a., "Desk Rage") are receiving greater attention by concerned employers, it is the bully whose conduct commands immediate intervention.

And yet, the workplace bully has not become the focus of employment laws that prohibit the perpetration of the abusive and hostile conduct the bully commits. Rather, the legal focus remains on prohibiting employers from discriminating against their employees on the basis of race, national origin, gender, age and, most recently, sexual orientation. But it seems strange that bullies left the schoolyard, where so much effort was made to prevent from them from becoming a destructive force, only to reappear and find sanctuary in employment at a workplace where, until recently, their abusive and malicious conduct has for the most part gone unregulated and unrestrained.

## II. WHAT IS BULLYING? WHAT IS MOBBING?

The best definition of workplace bullying may be the one offered by Gary Namie and Ruth Namie:

Bullying at work is repeated, health-harming mistreatment of a person by one or more workers that takes the form of verbal abuse; conduct or behaviors that are threatening, intimidating, or humiliating; sabotage that prevents work from getting done; or some combination of the three.

It is psychological violence – sublethal and nonphysical – a mix of verbal and strategic assaults to prevent the Target from performing work well. It is illegitimate conduct in that it prevents work from getting done. Thus, an employer’s legitimate business interests are not met.

The bully puts her or his personal agenda of controlling another human being above the needs of the employing organization. That control is typically a combination of deliberate humiliation and the withholding of resources that the target requires to succeed in the workplace. As a result of pressure from the bully’s campaign of unremitting pressure, the Target’s health – physical and psychological – social support network, family, and career are jeopardized.[8]

To be sure, “bullying” is not the occasional negative interaction that occurs at the workplace. As adults, we expect that during our working careers we will encounter personality conflicts and heated disagreements from time to time. Especially in a stressful work atmosphere, such moments can leave employees frustrated and angry, concerned about their future and questioning their continued desire to remain at the workplace. These may be unpleasant occasions, but if they are not part of a repetitious campaign, they are not examples of “bullying.” Where the actions are repeated, hostile and intended to cause harm, the conduct is bullying.[9] Examples of bullying include:

- *yelling and shouting insults in public;*
- *spreading rumors and gossip;*
- *name-calling and ridicule;*
- *spreading false information;*
- *leaking personal or confidential information;*
- *intimidating physically and psychologically;*
- *isolating or ignoring (socially);*
- *assigning meaningless and /or impossible tasks;*
- *issuing excessive reprimands;*

- *issuing inaccurate performance evaluations;*
- *denying access to necessary information*[10]

A workplace bully seeks to cause harm to a fellow employee through repeated abuse.

When one person engages in malicious abusive conduct, it is referred to as “bullying”; when individuals or groups target a victim, it is often referred to as “mobbing.”[11] Some believe the terms “workplace bullying” and “workplace mobbing” describe the same conduct, but there is a difference. “Bullying” occurs when an individual targets a victim for hostile conduct using his own devices, whereas “mobbing” occurs when individuals target a victim for hostile conduct by using the organizational structure of the employment relationship such as imposing inaccurate performance evaluations, excessive discipline, or impossible deadlines.[12]

At the workplace, a majority of employees seek to gain respect and dignity.[13] Most employees desire to take pride in their work and gain meaning from it.[14] The workplace bully seeks to destroy an employee’s desire for respect and dignity through psychological torture.[15] Victims of workplace mobbing and bullying often develop the same type of problems: their health significantly deteriorates; their sense of self-esteem and self-worth is compromised; and the damage to their ability to be a contributing and productive part of the workforce may be irreparable.[16]

Many imagine that bullying includes physical violence. That is not usually true.[17] If bullying does escalate into physical violence, the victim of workplace violence, as opposed to the victim of workplace bullying, can seek protection under criminal statutes: the bully can be charged by local law enforcement officers for the abusive and illegal violent conduct. Victims of non-violent bullying do not have an adequate and instant legal remedy available to them.[18]

Workplace bullies rarely resort to physical violence, but rather engage in psychological terror (sometimes with a threat of violence).[19] They wage their campaign through a variety of mind games, but seldom resort to physical violence because such conduct would risk their status at the workplace.[20]

### **III. WHO ARE THESE BULLIES?**

According to a frequently cited survey regarding workplace bullying, most victims are subordinate employees. In workplace bullying, 72 percent of the bullies are

bosses, leaving a minority of bullying carried out by others in the organization who are not bosses or supervisors[21].

According to Dr. Namie, this shouldn't be a surprise: "It makes sense that if bullies threaten the economic livelihood of their Targets, they do so only with the power and authority to make good on their combative promise. Petty tyrants need the title power of supervisor, manager, or executive to operate." [22]

Most instances of bullying involves bosses harassing subordinates; however, in mobbing, the group that gangs up on a victim may be of lesser rank or status in the organizational structure.[23] Mobbing occurs across all organizational hierarchies. Victims may be high-ranking bosses ganged-up on by mid-level supervisors who want to drive their superior out or they may be low-level subordinates harassed by first-line supervisors and their superiors who want to damage the victim's reputation, work product and chances for promotion or recognition.[24] So, although bullies are usually bosses, "mobbers" may be employees with or without command authority and power in the organization.

Although it might be an interesting exercise to categorize workplace bullies and proclaim they all have some inherent characteristics that force them to be abusive, bullies are not psychotics. Rather, many are simply politicians, who employ cruel methods to fuel their career ambitions and to control their victims.[25] They think the best way to prosper in their work environment is to exercise control over those who they deem powerless to stop them.[26]

"Bullies" have been around for a long time, but the "Baby Boomer" generation may deserve some blame for the proliferation of the workplace bully. With their adoption of Machiavellian, "take-no-prisoners" business and employment tactics, present-day managers and executives have created corporate environments where morality and decency are expendable in the quest for profit and power.[27]

The modern corporate world seems like a perfect place to find a bully, but perhaps the future is brighter. It is quite possible that younger generations (unlike their boomer parents) who have been lectured in school about the evils of bullying may proceed into the workforce with a greater intolerance for bullies than previous generations.[28]

At present, however, the notion that someone's boss is a "bully" is not exactly news that will disturb many people. Perhaps one of the reasons that workplace bullying has been unexamined and unabated for years is because the complaint that "someone's boss is a bully" seems overly dramatic and weak. To many outsiders,

standing up to (or being bullied by) the boss is all a part of normal office politics.[29]

We expect bosses to make decisions to operate the business and some decisions are going to be unpopular with workers. Thus, when a worker complains that the boss is being tough or being unreasonable, an outsider may sympathize but not be outraged. When the complaint is that the boss is being a bully, a similar reaction is common.

Aaron James has noted that a boss, however, can take advantage of that indifference to abusive conduct:

That statement “My boss is such an asshole” has become something of a cliché. All too often it has an element of truth. For many people, a position of power becomes a standing license for privileges that do not necessarily come with the job – things such as barking orders when a polite request will do, routinely being late for staff meetings because of supposedly more pressing business, knowing that being the boss means never having to say “I’m sorry,” regularly reminding all who is in power, and so on.[30]

It is important to note, however, that bosses who do not appreciate their subordinates or bosses who take credit for their subordinates’ work or bosses who treat their subordinates poorly are not actually “bullies.” An employee who works for an ungrateful, unsupportive, disparaging jerk is fortunate that this boss is not also a bully.

#### **IV. WHO GETS BULLIED?**

No reliable pattern of psychological type has emerged to identify likely mobbing or bullying victims.[31] There are some personality traits that are often present.

Some victims are politically naïve, and believe that their employer and co-workers believe in justice and integrity.[32] Some victims believe that the most talented and smartest in an organization will be rewarded more than others.[33]

The character traits of bullying targets have been the subject of much scholarly commentary. In *Preventing Workplace Bullying: An Evidence-Based Guide for Managers and Employees*, the authors provide some empirical data on victims:

There is some evidence to support the idea that targets can lack social skills, conflict management skills, and be unassertive. Targets have been found to have low self-esteem and low social competency. Other evidence suggests that targets can be ‘overachievers’ in the workplace. They have been found to be punctual, honest, and rule-bound compared to non-targets. These attributes may violate the norms of their workplace, resulting in aggression and undermining behaviour by others. Some targets are very capable, professional and accomplished in their job and envy is thought to be one the major reasons for workplace bullying.[34]

They make an additional point that certainly seems important:

If we promoted the idea that targets become targets because of some inherent deficiency in their personality that makes them weak and vulnerable, then additional pressure would be placed on them to try to change.[35]

Nevertheless, it is remarkable how frequently the victim of bullying/mobbing is blamed for the mayhem that is being inflicted.

“Victim blaming” is particularly common in cases of mobbing. In *Overcoming Mobbing: A Recovery Guide for Workplace Aggression and Bullying*, the authors note:

In the United States and Western world more generally, we tend to place blame on individuals rather than on groups or larger contexts when bad things happen. . . . Our first and strongest impulse when looking for explanations of why something happened that we don't like is to focus on individually-based explanations – especially on personality factors.

This impulse is so strong – and so erroneously biased – that social psychologists have a name for it. They call it *fundamental attribution error*. This bias or error describes how people commonly overemphasize individually based explanations for events and situations and underemphasize group, organizational, and contextual explanations. So when someone becomes a victim of workplace mobbing and loses his job by being fired or quitting, the fundamental attribution error leads people to explain what happened by looking for something wrong in the individual – rather than by looking for problems at the organizational and contextual levels.[36]

If some people are more prone to bullying, there must be those who are more likely to be free from it. Studies show that “temporary workers” are rarely bullied.[37] These workers who have a limited employment duration, and pose no long-term threat or competition to others working at the job site, are not subject to a bully's time or trouble.

## V. HOW OFTEN DO PEOPLE GET BULLIED?

Is workplace bullying a widespread phenomenon or a rare transgression? Workplace-abuse researcher Pamela Lutgen-Sandvik and her colleagues conducted a recent study to measure the frequency with which workplace bullying occurs. They concluded that “given the data available, we can speculate that 35-50 percent of U.S. workers experience one negative act at least weekly in any 6-12 month period, and nearly 30 percent experience at least two types of negativity frequently.”[38] The Workplace Bullying Institute/Zogby International U.S. Workplace Bullying Survey, the largest survey of its kind, found

that 35 percent of American workers had experienced workplace abuse at some time during their working careers.[39]

One cannot help but be skeptical about these figures. Workplace bullying, by its very nature, is not something that likely gets reported for several reasons:

1. **Subtlety of behavior.** In some cases, bullying is covert and done behind an employee's back. As a result, a victim may not report the behavior because he/she may not be convinced that it is actually happening.
2. **Embarrassment.** In some cases, the bullying is childish (e.g., name calling) and reporting the behavior would likely cast the victim as a person who "can't take a joke" or as a "tattletale."
3. **Fear.** Many victims are afraid if they report bullying they will lose their job or at the very least be perceived as a troublemaker. Victims also fear retaliation from the bully if the conduct is officially reported.
4. **Unsure of Options.** Many victims will not report bullying because they are not aware of what behavior constitutes violations of company rules or how to report it to the proper authorities.
5. **Bully's Role at Work.** Not surprisingly, bullying goes unreported when the official to whom complaints are submitted is the bully. If the bully is a valuable employee whom the employer will protect against allegations of misconduct, chances are the victim will not report the abuse.
6. **Nature of the industry.** In para-military organizations, such as police and fire departments, where maintaining discipline is emphasized as an accepted method for reaching goals, bullying is normal and complaints about treatment by superiors are deemed to be from the weak and incompetent.[40]

So it is understandable that much bullying goes unreported, making it difficult to measure how often bullying occurs.

Additionally, a victim's perspective on bullying depends upon the victim's own valuation and attitude toward career. An employee's perception about work, referred to as "work orientation," has three distinct categories:[41]

**Job Orientation:** where employees perceive work as a financial transaction to earn money so they can do things in their lives that hold value;

**Career Orientation:** where employees value work as their way to gain greater social status and self-esteem; and

**Calling Orientation:** where employees are passionate about their work and value the sense of fulfillment and meaning it provides them.[42]

Given these different types of attitudes toward work, it should be obvious that those with a “job orientation” are less likely to care about being bullied and may never report it. The individuals with job orientation are more likely to simply resign if the abuse becomes significant, as opposed to those with a “calling orientation”, who are subjected to much more stress by a bully because the conduct is affecting the soul of their very being (their job identity).

## **VI. WHAT HAPPENS TO PEOPLE WHO GET BULLIED?**

For those victims of bullying or mobbing who have the ability to simply quit the job (rather than remain subject to constant abuse), resigning from the workplace may seem like the logical choice and a decision that ensures escape from the bully’s grasp. But that choice may not be as effective as one might think.

Ex-employees who have been mobbed are unlikely to get a decent job references from their former employers.[43] A mobbing victim is often portrayed as the “bad apple” by the gang that perpetrated the abuse. The victim may be able to escape the daily abuse by quitting, but the damage to the victim’s character and reputation may not cease. Bullies often feel compelled to justify their hostility toward the victim even after the person has left, so the character assassination may follow the victim for a considerable time.

Those who stay on the job and attempt to endure the abuse may find the toll it takes on them overwhelming. The daily abuse subjects the victim to extraordinary anxiety, similar to that found with those suffering from post-traumatic stress disorder (or PTSD).[44] Bullying and mobbing victims are often subject to depression, loneliness, loss of identity, and disengagement.[45] They may also contract gastrointestinal issues, headaches, sleep disorders, exhaustion, and even suicidal thoughts.[46]

The abuse impacts social interactions as well. Mobbing victims experience loss of trust in co-workers, a loss of social connections to colleagues, and ostracism.[47] These negative effects also weigh upon family relationships because the loss of self-esteem, the loss of financial security and the stress associated with implications of these painful attacks are not left at the office, but follow the victim home.[48]

The workplace is where many employees socialize, befriend co-workers, share life-stories (such as engagements, marriages, child-births, and graduations) and seek satisfaction and recognition for meeting occupational challenges. When that environment becomes the place for humiliation, fear, and attacks on a person’s character, the result is what one psychologist called “psychic terror.”[49]

## VII. WHAT HAPPENS TO ORGANIZATIONS WHEN EMPLOYEES GET BULLIED?

When employees are being bullied, an employer can expect a reduction in productivity and morale, increased absenteeism, employee turnover, and an expansion in training and job search costs.[50] There are also indirect expenses such as increased sick leave and workers compensation claims, which drive up the costs of insurance.[51] The loss of experienced, skilled workers with considerable institutional knowledge is not easy to calculate, but it can be costly and damaging to the organization's finances.[52]

Also, the costs related to employee investigations (including gathering evidence, preparing reports, and hiring legal advisors and counselors) can cripple even a cash-rich company.[53] The bully can also damage the reputation and goodwill a company has built, not only with its own employees but with its customers.

Let there be no mistake, bullying will negatively impact the bottom line of any organization. Whether an employer is willing to accept such losses depends upon on its view of what damage the bully has done and can still do. When an employer is notified that the workplace contains mobs or bullies, there are three basic responses that are likely to occur:

1. Condemnation. The Employer disapproves of such actions, investigates the allegations and disciplines the perpetrator.
2. Ignorance. The Employer does nothing, which signals its tacit approval of such conduct.
3. Encouragement. The Employer triumphs the actions of bully for supporting the organization against a problem employee.[54]

The organization's response is not always predictable. One thought by upper management may be that bullies cause unacceptable harm and under no circumstances should an organization permit them to operate. And yet bullies are a fact of life and upper management may find it natural to acquiesce to the presence of something that is a normal phenomenon of human existence (like death and taxes).

Should the organization seek to eliminate the unacceptable?[55] Should the organization accept the inescapable? Employers are well aware that bullying is not *per se* illegal and thus they are not necessarily mandated by law to act.

In 1999, San Francisco employment attorney Jeff Tannenbaum asserted, “This country was built by mean, aggressive, sons of bitches. Would Microsoft have made so many millionaires if Bill Gates hadn’t been so aggressive?”[56] Some employers believe that many of their workers need to be threatened to do a good job.

Nevertheless, many adroit businesspersons say that the best advice on how to succeed in business is to hire good people. This hardly seems like a revelation. But when a company/business/government employs motivated, hard-working and talented employees, its chances for success seem practically inevitable. Bullies can ruin a business’ greatest asset: its employees.

### **VIII. IF AN EMPLOYER TAKES ACTION, WHAT SHOULD IT DO?**

It’s easy to say: find the bully and off with his head! Removing the bully from the workplace seems like a logical action, but there are those who think that discharging the aggressor does not solve an employer’s real problem:

Going after all the participants in a mobbing to discipline or review them from an organization, even if it were possible, would be highly disruptive for any organization . . . . Singling out an individual “bully” to blame and purge from the organization is generally a poor and wrong-headed solution to what is an organizational and not an individual problem. While it is very attractive for mobbing-prone organizations to go after individual “bullies” when there have been instances of workplace mobbing and other forms of abuse, the problem with such “bully-hunting” is that it allows organizations to sidestep the more important and serious responsibility of examining its own role when a mobbing occurs.[57]

If the bullying investigation uncovers a “mobbing,” an employer may not be able to discharge a large number of its employees. The bully may also be “discharge-proof” by virtue of his status in the organization (e.g., the CEO’s nephew or golfing buddy). If so, then the employer must find a way to carry on with the offender(s) and the victim sharing the same workplace.

Can an employer “re-program” the bully into a more mature worker (or boss)? If so, the organization would not lose an experienced worker, and chances are the workforce would embrace an employer that it is willing to help an employee through “rehab.” It’s a win-win for the employer to try and change the bully into a valued employee: if the bully is rehabilitated, no more conflict; if the bully fails to rehabilitate, then most co-workers expect the bully to be fired and blame the bully for failure to take the opportunity for redemption.

Suzy Fox and Lamont E. Stallworth argue that workplace bullying is the type of conflict dispute that can be addressed effectively through mediation or other integrated conflict management systems.[58] During this process, however, the employer should focus on not just reforming the bully, but also restoring the victim's status a productive part of the employer's workforce. "Workplace justice" will not be satisfied by merely a cessation of the bullying, but rather a remedy to any injury (lasting or otherwise) inflicted upon the victim is also needed.

As previously mentioned herein, workplace satisfaction is based primarily on dignity and respect.[59] While each employee may have a different set of skills, different levels of education and training, and a different level of acumen for the job, each employee wants dignity and respect for his or her contribution to the workplace.

How does one restore dignity and respect to a victim of bullying? The dismissal of the offender from the workplace may give the victim relief and revenge, but it does not restore the loss of dignity and respect. Money damages can offer compensation to a victim for transgressions endured by a bully, but money does not return respect and dignity to the victim.

"Respect" is all about perception: a person gains respect when the person is shown respect. Can an employer make a bully sincerely show respect to the victim? A study by Fox and Stallworth found that an apology has the "potential" for resolving workplace harassment disputes involving bullying.[60]

Is something as simple as an "apology" an effective way to resolve a workplace dispute? Plaintiff's lawyers will cringe at the idea. Tort reformers may triumph the notion. But apart from the personal agendas of outsiders, in situations where a victim is given a sincere public apology by the transgressor, such action would be perceived by the entire workforce as a show of respect.

Granted, fake apologies are more common than sincere apologies.[61] But the fact that a sincere apology is so rare makes it a significant offering. A public apology given in front of the rest of the workforce is a difficult pill for a bully to swallow. A bully wants power, domination and control; not subservience and subordination. A public show of such subservience can be a lethal blow to a bully's character.

In those instances where the bully is a boss, an apology can not only help the victim recover dignity and respect, but it can also show the workforce that upper management employs lower-level bosses who are willing to admit when they are wrong. Although we all acknowledge "nobody's perfect," there is always resistance

from acknowledging that a manager acted less than perfectly in any particular instance. But when the acknowledgement arrives, the management leadership earns the respect of the workforce, and morale takes a positive turn.

More importantly, uncivil behavior in the workplace is unnecessary and unacceptable. Where this problem exists, the goal is to create a civil atmosphere and starting with a sincere apology is great beginning.

Some people are incapable of a “sincere apology.” Many can muster a fake apology. But imagine the bully, standing before the rest of the workforce and giving a heart-filled apology to the victim. The bully’s show of respect not only helps the victim recover dignity, but no bully can resort to such conduct without being humbled. A workplace bully must be controlling and dominant in his or her personal relationships and a show of respect to a victim is not in his or her repertoire.

A bully, by nature, is not apologetic. Thus a sincere apology can only be given by a former bully. If the bully gives a fake apology, then the employer should discharge the bully without hesitation.

To a lawyer, an apology may seem to be a fair and equitable remedy for “Desk Rage,” or the single incident of hostile treatment at the workplace. But should it suffice for the humiliation and injuries caused by bullying? After all, bullies can inflict serious physical and mental health harm upon victims, who then must incur costs for treating such ailments.

There is no doubt that depending on the factual situation and severity of the bullying, a victim may wish to press legal claims against the bully and the employer (especially where the bully is a boss). There have been successful suits against bullies and employers, based upon allegations of tortuous infliction of emotional distress, intentional interference with the employment relationship, defamation, and even assault and battery.

And if a victim wants compensatory and punitive damages as revenge against a bully, there are sympathetic lawyers prepared to assist victims by finding sympathetic juries. But where the victim wins a verdict (and cashes the check), are we to believe the victim will return to work and become a valuable and productive employee?

Even if the bully has been removed from the workplace, it is questionable whether a bullied employee (without restoration of respect and dignity) can return to work among those who witnessed the employee’s degrading humiliation. If the money

damages received are not sufficient to relieve the employee from having to remain in the workforce, the employee may have to resign and find new employment rather than face the co-workers who distanced themselves during the time the bullying occurred.

Although an apology may seem insubstantial from a lawyer's perspective, it can be the vehicle for establishing the psychological foundation that a victim of bullying needs to re-integrate successfully into the workforce. And in the quest for "workplace justice," an adequate remedy may include an element that the legal system cannot generate.

## **IX. THE PUBLIC SECTOR AND THE PRIVATE SECTOR**

Workplace bullying in the public sector has received only limited analysis.[62] But there are inherent differences between the public and private sectors that give bullies in the public sector a greater chance to operate without interference.

The public sector has long had a reputation for nepotism in its workforce.[63] The basis for this practice may well be grounded in the historical existence of political party patronage hiring, where employees are not chosen for their competence or ability but rather their loyalty to support the incumbent politician in whose government department the employee works.

In many places, public sector patronage is a thing of the past. However, there are still places that apply party patronage hiring ideals to create a loyal-voting workforce and to strengthen the political party. While the systems may not be as overt as in the Gilded Age of Tammany Hall in New York, the process continues despite the public's efforts to end this practice.

If a bully has the backing of his or her boss (by way of political party loyalties), the bully will be free to operate without hesitation. A victim of bullying who is employed in a public sector institution where patronage continues to flourish is going to find it difficult to get anyone to take an interest in confronting the bully and stopping the offender from causing further damage.

While the same could be said of the "private sector bully" whose uncle could be the CEO, the public sector traditionally has far more political connections inside its employment relationships. Private sector employees may be right that their success at the workplace is dependent more on their duty-related achievements in comparison to politically-connected public service employees who are more concerned with their off-duty performance at party headquarters.

Operating in the favor of victims of bullying in the public sector, however, is the more widespread presence of unions. While unions may be hesitant to get involved in resolving complaints about bullying among their own members, unions will quickly defend their members who are bullied by bosses. Unions will be the first to point out to management that bullies can be a political liability if the problems attract media attention. Nevertheless, if the bully doubles as a successful precinct captain who can get out the vote, the victims may find no sympathetic ear.

## X. CONCLUSION

The problem of bullying in the workplace will never vanish, but employers pay a heavy price for fostering or even ignoring an uncivil work environment. If employers truly seek to maximize productivity out of their personnel, ensuring a civil work atmosphere would seem to be at the forefront of this goal. One bad apple, of course, can spoil the barrel. It is the progressive and successful employer who can steer the conduct of its workers and managers to efficiently generate the production that will ensure a thriving, prosperous and strong business.

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[1] From 1999 to 2010, more than 120 bills were enacted by state legislatures from across the country to either introduce or amend statutes that address bullying in schools. VICTORIA STUART-CASSEL, ARIANA BELL & J. FRED SPRINGER, ANALYSIS OF STATE BULLYING LAWS AND POLICIES xi (U.S. Dept. of Educ., Office of Planning, Evaluation & Pol’y Studies Serv. 2011), *available at* <http://www2.ed.gov/rschstat/eval/bullying/state-bullying-laws/state-bullying-laws.pdf>.

[2] *See* STEPHEN V. DUNCAN, A GUIDE TO SCREENWRITING SUCCESS: WRITING FOR FILM AND TELEVISION (2006).

[3] *See* MAUREEN DUFFY & LEN SPERRY, MOBING: CAUSES, CONSEQUENCES, AND SOLUTIONS (2012); ANDREA W. NEEDHAM, WORKPLACE BULLYING: THE COSTLY BUSINESS SECRET (2003).

[4] *See* Martha Waggoner, *Study: Workplace Incivility Rising*, ASSOCIATE PRESS, May 29, 1998, *available at* <http://workplacebullying.org/press/incivil.html>.

[5] *See* H. Steensma et al., *Ripple Effects of Bullying in the Workplace on Bystanders and Family Members of the Target of Bullying*, 39 INT’L J. PSYCH. 393 (2004); Lyn Quine, *Workplace Bullying, Psychological Distress, and Job*

*Satisfaction in Junior Doctors*, 12 CAMBRIDGE QUARTERLY OF HEALTHCARE ETHICS 91 (2003).

[6] See David C. Yamada, Responding to Workplace Bullying: The Role of the Ombudsman, Keynote Address at the Annual Conference of the International Ombudsman Association, Houston, Texas (April 16, 2012), available at [http://www.academia.edu/1512865/Responding\\_to\\_Workplace\\_Bullying\\_The\\_Role\\_of\\_the\\_Ombudsman](http://www.academia.edu/1512865/Responding_to_Workplace_Bullying_The_Role_of_the_Ombudsman).

[7] See [www.bullyingbosses.com](http://www.bullyingbosses.com); WORKPLACE BULLYING INSTITUTE, [www.workplacebullying.org](http://www.workplacebullying.org).

[8] GARY NAMIE & RUTH NAMIE, THE BULLY AT WORK: WHAT YOU CAN DO TO STOP THE HURT AND RECLAIM YOUR DIGNITY ON THE JOB 3-4 (2d ed. 2009).

[9] CARLO CAPONECCHIA & ANNE WYATT, PREVENTING WORKPLACE BULLYING: AN EVIDENCE-BASED GUIDE FOR MANAGERS AND EMPLOYEES 3 (2011).

[10] *Id.* See also MAUREEN DUFFY & LEN SPERRY, OVERCOMING MOBBING: A RECOVERY GUIDE FOR WORKPLACE AGGRESSION AND BULLYING 20 (2014).

[11] See DUFFY & SPERRY, *supra* note 10, at 8.

[12] *Id.* at 8-9.

[13] RANDY HODSON, DIGNITY AT WORK 49 (2001).

[14] *Id.* at 113.

[15] *Social Harm*, WORKPLACE BULLYING INSTITUTE, <http://www.workplacebullying.org/individuals/impact/social-harm/>.

[16] See, e.g., *Impact of Workplace Bullying on Coworkers*, WORKPLACE BULLYING INSTITUTE, <http://www.workplacebullying.org/individuals/impact/coworkers/>; *Social Harm*, Workplace Bullying Institute, <http://workplacebullying.org/individuals/social-harm/>; *Mental Health Harm*, WORKPLACE BULLYING INSTITUTE, <http://www.workplacebullying.org/individuals/mental-health-harm/>.

[17] See *Bullying vs. Violence*, BULLYING STATISTICS, <http://www.bullyingstatistics.org/content/bullying-vs-violence.html>.

[18] See Latricia Wilson, *Bullying at Work*, OVERCOMING BULLYING, <http://www.overcomebullying.org/bullying-at-work.html>.

[19] NAMIE & NAMIE, *supra* note 8, at 16.

[20] Naomi Shavin, *What Workplace Bullying Looks Like in 2014 – And How to Intervene*, FORBES (June 25, 2014, 1:48 PM), <http://www.forbes.com/sites/naomishavin/2014/06/25/what-work-place-bullying-looks-like-in-2014-and-how-to-intervene/>(finding only 4% of workplace bullying involved physical intimidation of assault).

[21] Gary Namie, *U.S. Workplace Bullying Survey: September, 2007*, THE WORKPLACE BULLYING INSTITUTE & ZOGBY INTERNATIONAL (Sept. 2007), <http://www.workplacebullying.org/multi/pdf/WBIsurvey2007.pdf>.

[22] NAMIE & NAMIE, *supra* note 8, at 26.

[23] DUFFY & SPERRY, *supra* note 10, at 9.

[24] *Id.* at 9-11.

[25] *Who Gets Targeted*, WORKPLACE BULLYING INSTITUTE, <http://www.workplacebullying.org/individuals/problem/who-gets-targeted/>.

[26] *Id.* (observing that bullies often target individuals that they perceive as threats to their ambitions).

[27] Nancy Collamer, *Can Boomers Stop the Bullying at Work?*, FORBES (Aug. 25, 2014, 5:04 PM), <http://www.forbes.com/sites/nextavenue/2014/08/25/can-boomers-stop-the-bullying-at-work/>.

[28] *Id.*

[29] Shavin, *supra* note 20.

[30] AARON JAMES, *ASSHOLES: A THEORY* 43 (2012).

[31] GARY NAMIE & RUTH NAMIE, *THE BULLY AT WORK: WHAT YOU CAN DO TO STOP THE HURT AND RECLAIM YOUR DIGNITY ON THE JOB* p59 (2d ed. 2009).

[32] *Who Gets Targeted*, WORKPLACE BULLYING INSTITUTE, <http://www.workplacebullying.org/individuals/problem/who-gets-targeted/>.

[33] DUFFY & SPERRY, *supra* note 10, at 14.

[34] CAPONECCHIA & WYATT, *supra* note 9, at 52-53 (citations omitted).

[35] *Id.* at 51.

[36] DUFFY & SPERRY, *supra* note 10, at 14-15.

[37] NAMIE & NAMIE, *supra* note 8, at 27.

[38] Pamela Lutgen-Sandvik, Sarah J. Tracy & Jess K. Alberts, *Burned by Bullying in the American Workplace: Prevalence, Perception, Degree and Impact* 44 J. MGMT. STUD. 837, 854 (2007).

[39] *Results of the 2010 WBI U.S. Workplace Bullying Survey*, WORKPLACE BULLYING INSTITUTE, <http://www.workplacebullying.org/wbiresearch/2010-wbi-national-survey/>.

[40] CAPONECCHIA & WYATT, *supra* note 9, at 34-37.

[41] Amy Wrzesniewski, et al. *Jobs, Careers, and Callings: People's Relations to their Work*, 31 J. RES. PERSONALITY, 21 (1997).

[42] *See id.* at 22.

[43] DUFFY & SPERRY, *supra* note 10, at 91.

[44] *Id.* at 79.

[45] *Id.* at 76.

[46] CAPONECCHIA & WYATT, *supra* note 9, at 41-42.

[47] DUFFY & SPERRY, *supra* note 10, at 71.

[48] *Id.* at 71-72.

[49] Heinz Leymann, *Mobbing and Psychological Terror at Workplaces*, 5 VIOLENCE AND VICTIMS 119, 119 (1990), available at <http://www.mobbingportal.com/LeymannV%26V1990%283%29.pdf>.

[50] DUFFY & SPERRY, *supra* note 10, at 112.

[51] *Id.* at 112.

[52] CAPONECCHIA & WYATT, *supra* note 9 at 39.

[53] *Id.* at 40.

[54] NAMIE & NAMIE, *supra* note 8, at 23.

[55] JAMES, *supra* note 30, at 174.

[56] Allyce Bess, *Whipping the Work Force Out of Shape*, S.F. BUS. TIMES, Jul. 18 1999, available at <http://www.bizjournals.com/sanfrancisco/stories/1999/07/19/story8.html?page=all>.

[57] DUFFY & SPERRY, *supra* note 10, at 35-36.

[58] Suzy Fox & Lamont E. Stallworth, *Workplace Bullying: Another Need for Workplace Justice and the Potential Utility of Fact-Finding, Mediation, Arbitration, and Employer-Sponsored Integrated Conflict Management Systems*, PROCEEDINGS, 60TH ANNUAL MTG. OF THE NATIONAL ACADEMY OF ARBITRATORS 161 (2008), available at <http://naarb.org/proceedings/pdfs/2007-161.PDF>.

[59] See Hodson, *supra* note 13.

[60] “Suzy Fox & Lamont E. Stallworth, *How Effective Is an Apology in Resolving Workplace Bullying Disputes? An Empirical Research Note*, DISPUTE RESOL. J. May/July 2006, at 54.

[61] For example, the well-worn phrase ‘*I want to apologize*’ is a common plea, even though it is a deceptive offering. It’s like saying ‘I want to lose weight’: you say you want to, but you may never do anything toward trying to actually accomplish it. And yet the phrase has become a favorite part of American double-speak, used by disgraced politicians, defrocked priests and the indicted sports hero, as if it were a sincere muttering that we are forced to accept as an honest plea for forgiveness.

[62] See Helen LaVan, Marsha Katz & Michael Jay Jedel, *The Public Sector Manager as a Bully: Analysis of Litigated Cases*, 17 PROCEEDINGS OF ASBBS ANNUAL CONFERENCE 739 (2010), available at [http://asbbs.org/files/2010/ASBBS2010\\_v1/PDF/L/LaVan.pdf](http://asbbs.org/files/2010/ASBBS2010_v1/PDF/L/LaVan.pdf); Michael Poole, Roger Mansfield & Julian Gould-Williams, *Public and Private Sector Managers of 20 Years: A Test of the “Convergence Thesis,”* 84 PUB. ADMIN. 1051 (2006).

[63] See Liosa Kaiser, *Charges of Nepotism and Favoritism at Milwaukee DHS Office: Employees question bonuses and promotions under Act 10*, EXPRESS MILWAUKEE.COM, June 11, 2013, <http://expressmilwaukee.com/article-permalink-21263.html>.

## RECENT DEVELOPMENTS

By, **STUDENT EDITORIAL BOARD:**

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AND KARLA RODRIGUEZ**

Recent Developments is a regular feature of the Illinois Public Employee Relations Report. It highlights recent legal developments of interest to the public employment relations community. This issue focuses on developments under the public employee collective bargaining statutes.

### I. IELRA DEVELOPMENTS

#### A. *Subjects of Bargaining*

In *Mundelein Education Association, IEA-NEA and Mundelein Consolidated High School District 120* Case No. 2012-CA-0088-C (IELRB 2014), the IELRB found that Mundelein Consolidated High School District 120 had violated sections 14(a)(5) and (1) of the IELRA when it refused to bargain over changes to job descriptions of the District's certified educational employees.

The IELRB examined the nature of the changes to job descriptions. Specifically the IELRB found that the addition of certain travel requirements, physical requirements and technology requirements constituted changes to the status quo. Further, the IELRB reasoned that these changes were a mandatory subject of bargaining because they "intimately and directly" affected the work and welfare of the employees in that the requirements could play a role in future job security. Moreover, the IERLB found that the burden on the School District to bargain these issues was outweighed by the substantial benefits of engaging in collective bargaining regarding changes to job descriptions. Accordingly, the IELRB found that the District violated the IERLA by not bargaining on issues of job qualifications because the job qualifications were a mandatory subject of bargaining and the Mundelein Education Association had not waived its rights to bargain the issue.

### II. IPLRA DEVELOPMENTS

#### A. *Managerial Employees*

In *AFSCME Council 31 v. ILRB, State Panel*, 2014 IL App (1st) 123426, 17 N.E.3d 698, the First District Appellate Court upheld the State Panel's finding that administrative law judges at the Illinois Commerce Commission were managerial

employees under the IELRA. Previously, the ILRB had certified AFSCME as the exclusive bargaining representative for the ICC ALJs but the Fourth District Appellate Court reversed, holding that the ILORB had acted improperly in finding that the ALJs were not managers without conducting an evidentiary hearing. The court remanded for the conduct of a hearing. *Illinois Dept. of Central Management Servs. v. ILRB, State Panel*, 406 Ill. App. 3d 766, 943 N.E.2d 1136 (4th Dist. 2010). On remand, the ILRB found, as a matter of fact, that the ALJs were managers.

The record showed that the ALJs' recommended orders were subject to review the members of the ICC but that of 82 proposed ALJ orders between 2009 and 2011, the Commissioners changed three and overturned one. The court agreed with the State Panel that the record demonstrated that the ALJs had the authority to effectively recommend the effectuation of policy and, consequently were managerial employees as a matter of fact.

In *Count. of Will and Will County State's Attorney and AFSCME, Council 31*, Case No. S-UC-14-013, 31 PERI ¶ 39 (ILRB State Panel 2014), the State Panel, relying on *Office of the Cook County State's Attorney v. ILLRB.*, 166 Ill. 2d 296, 652 N.E.2d 301 (1995), held that Will County Assistant State's Attorneys are managerial employees under the IELRA.

In the case at hand, the employees had previously been certified into a collective bargaining unit but the County of Will and the Will County State's Attorney filed a unit clarification petition, arguing that the position of Assistant State's Attorney is managerial as a matter of law, pursuant to *Office of the Cook County State's Attorney*. In response, AFSCME, the employees' exclusive representative, argued that the petition was both procedurally and substantively inappropriate because among other reasons, (1) it did not meet the standards of the Board's Rule 1210.170(a); [ . . . ]; (4) the positions are not managerial as a matter of law; and (5) nor as a matter of fact.

The board held that the petition was appropriately filed under its Rule 1210.170(a) because the Illinois Supreme Court's decision in *Office of the Cook County State's Attorney* represents a "significant change...in...case law that affects the bargaining right" of the at-issue employees. The Board reasoned that *Office of the Cook County State's Attorney* works to make the petition a procedurally appropriate one because it affects the employees' bargaining rights, namely by eliminating the rights altogether.

According to the State Panel, *Office of the Cook County State's Attorney* also made the unit clarification petition in this case a substantively appropriate one because the two cases were identical in all material respects. In that case, the court formulated the “managerial as a matter of law” test, when the board certified the union as the employee’s exclusive representative. Additionally, the court did not resort to the board’s previous fact-intensive managerial analysis, and instead relied on statutory provisions and case law to make its determination. The court found that the Assistant State’s Attorneys were “clothed” are “surrogates” to the States Attorney, with all the same powers and privileges, so the statutory provisions sufficiently demonstrated the managerial authority of the employees. Applying this precedent, the Board in the instant case held that the Will County Assistant State’s Attorneys are managerial as a matter of law, not fact.