

Stop Harassment

A Guide for CUPE Locals



EQUALITY BRANCH

Contents

Preface	1
Introduction	3
What is Harassment?	5
Sexual Harassment.....	8
Co-Worker Harassment	10
The Union's Responsibilities	12
Model Contract Language	15
The Steward's Responsibilities.....	17
What To Do If You Are Harassed	20
What Should The Alleged Harasser Do?	22
Conclusion.....	23
Additional Resources.....	24
Appendix I.....	25

Preface

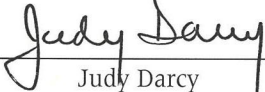
Equality Statement

Union solidarity is based on the principle that union members are equal and deserve mutual respect at all levels. Any behaviour that creates conflict prevents us from working together to strengthen our union.

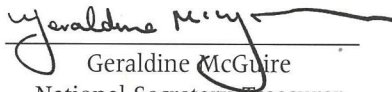
As unionists, mutual respect, cooperation and understanding are our goals. We should neither condone nor tolerate behaviour that undermines the dignity or self-esteem of any individual or creates an intimidating, hostile or offensive environment.

Harassment means using real or perceived power to abuse or humiliate. Harassment should not be treated as a joke. The uneasiness and discomfort that it creates are not feelings that help us grow as a union. Harassment focuses on the things that make us different instead of the things that bring us together, like shared concerns about our families, decent wages, safe working conditions, fairness at work and justice in society.

CUPE's policies and practices must reflect our commitment to equality. We urge members and staff to participate fully in CUPE activities, mindful that all sisters and brothers deserve dignity, equality and respect.



Judy Darcy
National President



Geraldine McGuire
National Secretary-Treasurer

Introduction

Every CUPE member has the right to be treated with dignity and respect. Every member should be able to work in a harassment-free workplace. And every member should be able to participate in a welcoming union environment.

Harassment creates a stressful and hostile environment which threatens our members' health and safety. It can also affect employment and promotion prospects and job security. Sexual harassment in particular undermines the struggle for equality for women workers.

CUPE members have a responsibility to confront and deal with harassment, wherever it occurs. We need to stress that the union does not approve of harassment and that we will take all the necessary steps to deal with it.

This guide provides information to enable local unions and members to deal more effectively with harassment. It is a tool for locals to use in educating members, negotiating with employers, and assisting members affected by harassment.

What is Harassment?

What do we mean when we talk about harassment? Harassment is any improper and unwelcome conduct or comment by a person which offends, humiliates, or degrades another person.

There are two elements involved in harassment, one involves behaviour that is "improper" or "abusive", the other with behaviour that is "unwelcome" or "unwanted".

"Unwelcome" in this context means any actions which a reasonable person knows or ought reasonably to know are not desired by the subject of harassment. The behaviour is considered unwelcome if it is perceived as such by the person being harassed. The law views harassment in terms of the effect on the victim, not the intent of the harasser.

Harassment is a form of discrimination and is illegal. All jurisdictions in Canada have human rights laws prohibiting discrimination on grounds, such as ancestry; race; ethnic or national origin; nationality; political belief, association or activity; religion or creed; marital or family status; sex, including pregnancy; age; physical or mental disability; and sexual orientation.

The Supreme Court of Canada has ruled that sexual harassment is discrimination on the basis of sex and therefore is prohibited, even without specific references in human rights laws. That means a person can file a complaint of sexual harassment with a human rights commission even if the human rights legislation does not contain a specific reference to sexual harassment.

Many collective agreements prohibit discrimination and many have clauses which deal specifically with various types of harassment. Grievances dealing with harassment normally allege a breach of the collective agreement and also a contravention of the applicable human rights legislation. Arbitrators can apply human rights law. The law says employers are responsible for ensuring that their workplaces are free from harassment.

Grievances and other workplace complaint mechanisms are the most accessible ways for union members to deal with workplace harassment. However, the arbitration process is somewhat limited. For example, arbitrators generally cannot include remedies such as monetary damages for loss of dignity and humiliation. Human rights tribunals can and do award such damages. The union must take care to ensure that it advises the subject of harassment of all the possible avenues of redress.

Harassment can take many forms:

Racial harassment may include unwelcome remarks, jokes, innuendoes, or taunting about a person's racial or ethnic background, colour, place of birth, citizenship or ancestry; displaying racist pictures, graffiti or material; refusing to talk to, or work with a person because of his/her ethnic or racial background; insulting gestures or practical jokes based on racial or ethnic grounds which cause embarrassment or awkwardness; physical assault.

CUPE'S Rainbow Survey

THE MOST PREVALENT FORM OF HARASSMENT REPORTED BY RACIAL MINORITY MEMBERS IN CUPE IS RACIST JOKES AND SLURS TOLD BY CO-WORKERS.



Harassment on the basis of sexual orientation may include unwelcome remarks, innuendoes or anti-gay jokes; taunting about a person's sexual orientation or life as a lesbian or gay man; displaying offensive pictures, graffiti or material; refusing to talk to or work with a person because she is a lesbian or he is a gay man; insulting gestures or practical jokes which are homophobic, and which cause embarrassment or awkwardness; physical assault.

"A 1997 REPORT OF THE FEDERAL DEPARTMENT OF JUSTICE SHOWS LESBIANS AND GAY MEN FACE ALARMING ODDS OF BEING THREATENED OR PHYSICALLY ASSAULTED".

Globe & Mail, June 1997



Personal harassment, which is not related to grounds covered by human rights legislation such as race or sex, may be defined as abusive, unwelcome, and objectionable conduct or comment made by a person who knows or should reasonably know that such conduct or comment will interfere with a person's work performance and/or create an intimidating or hostile work environment.

Personal harassment can have the same effect as other types of harassment in terms of creating an unsafe and unhealthy work environment for the person being harassed. Harassment in any form subjects employees to abuse, intimidation, and indignities which are intolerable and must be stopped.

Harassment usually consists of several incidents over a period of time. However, a single incident can be considered harassment if it has a severe impact on the victim.

The harasser may be a supervisor, a co-worker or a member of the public, such as a client, patient or student. Harassment can also occur at functions related to the workplace, such as conferences, training sessions, social gatherings, business travel, etc.

Harassment causes serious consequences. It can create a poisoned or hostile work environment which can interfere with a person's job performance and result in being refused a job, a promotion or a training opportunity.

Harassment in any form undermines workers' health and safety on the job and endangers their rights. We as a union have the responsibility to protect the interests of our members by ensuring that our workplaces and our local unions are free from harassment.

Sexual Harassment

Sexual harassment involves conduct of a sexual nature which affects mainly women. Men also may be sexually harassed but the vast majority of cases are women. Why? Because sexual harassment is an expression of power or control through sex, and women as a group have little power at the workplace. Also, sexual harassment is rooted in a number of myths and stereotypes about women. For example, the myth that women are always sexually available or the belief that women always welcome sexual attention.

Sexual harassment is any improper and unwelcome comment or conduct of a sexual nature which offends, humiliates, or degrades another person. It is not about sex or sexual desire.

Sexual harassment has nothing to do with affection, flirtations, romances or love affairs. In those situations, both parties consent freely to the relationship. It is about power and the abuse of power. Sexually directed behaviours are used by a harasser to exert power and control over someone else.

Examples of sexual harassment can include: unwelcome remarks, jokes, innuendoes or taunts about a person's body, clothing

or sex; insulting gestures and practical jokes of a sexual nature which cause awkwardness or embarrassment; displaying pornographic, pin-up pictures, graffiti or other sexually offensive material; leering or suggestive staring; unwelcome invitations or requests, whether direct or indirect; verbal abuse or threats; stalking; unnecessary physical contact such as touching, patting, pinching, punching; physical assault, including sexual assault.

As with other forms of harassment, the behaviour is viewed as sexual harassment if the recipient of the behaviour views it as offensive and therefore unwelcome. The law says if it is behaviour that a "reasonable"

person knows, or ought to know, is unwelcome, then there is no excuse or defence.

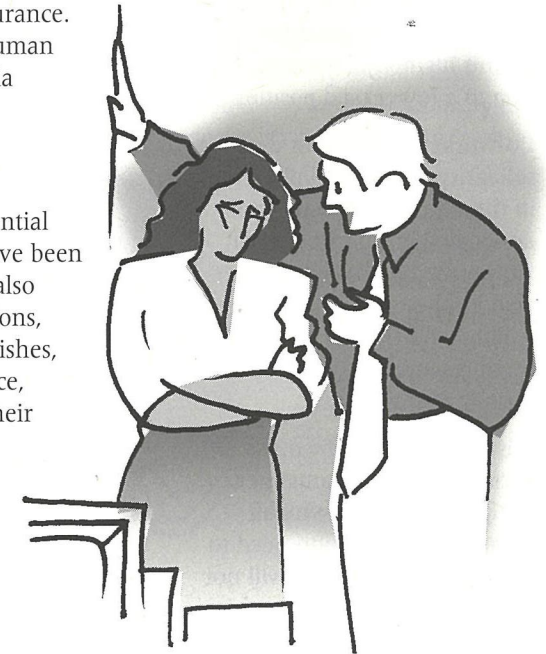
Sexual harassment causes the worker to feel humiliated and degraded. It can interfere with her job performance and undermine job security. It can create a threatening or intimidating workplace, poisoning the work environment.

The most serious and widespread effect of sexual harassment is the threat of job loss. This not only means the loss of wages, but also of any seniority and benefits. A person who quits a job because of harassment is not automatically eligible for employment insurance. If s/he lays a claim, a Human Resources Centre Canada employee determines eligibility.

Being fired or forced to quit is not the only potential threat. Women who have been sexually harassed have also suffered missed promotions, transfers against their wishes, isolation at the workplace, adverse comments on their

personnel files, demotions, changes in work assignments, increased workloads, and other workplace reprisals.

In addition, sexual harassment often affects their physical and mental health. Women may suffer physical ailments such as stomach aches, headaches, nausea, muscle spasms, insomnia, hypertension and heart problems as a result of the continuing tension, fear, depression, despair and anger they experience. In some cases women have been hospitalized as a result of the physical or psychological effects of sexual harassment.



Co-worker Harassment

Harassment by supervisors, bosses or others in positions of power is dangerous to an employee's livelihood. Harassment by co-workers is also dangerous to an employee's well-being and, ultimately, to his/her livelihood.

Although co-workers don't have the power to deny workplace benefits, they do have the power to make the workplace intolerable for women, racial and ethnic minorities, Aboriginal people, lesbians, gay men and disabled workers. Sometimes this results in a person having to quit his/her job or transferring to a lower paid position.

Co-worker harassment destroys solidarity in the workplace and in the union. If members of designated groups know that workplace harassment is tolerated by the union, they will not willingly participate in union activities and may actually turn against the union.

It is difficult for individuals to decide to make a harassment complaint. That is why all members of the union need to know that harassment will not be tolerated and that the union

is committed to assisting those who are subjected to harassment, regardless of who is doing the harassing.

A harassed person has been denied his or her right to work in a harassment-free workplace. This is a fundamental right and the union must represent the person being harassed to remedy the situation.

Unions have a legal duty to represent fairly everyone in the bargaining unit. This obligation relates both to the administration of collective agreements (i.e., processing of grievances) and to collective bargaining. Therefore, in a case of co-worker harassment, the union must represent the complainant, but it may also be asked to represent the alleged harasser to ensure procedural fairness during the investigative process.

Both parties have the right to request that a union representative be present with them at any time during the complaint process. If disciplined, the harasser has the right to file a grievance and request union representation.

In some cases involving co-workers it may be possible, depending on the type of harassment, for the union to informally resolve the problem. However, when dealing with more serious complaints of harassment, the employer is usually involved.

The Supreme Court of Canada in the Robichaud decision made it clear that employers are liable for acts of sexual harassment committed by their employees in the course of employment.

The law says it is the employer's responsibility to provide a workplace which is free from harassment and it is the employer who has the capacity to ensure this.

In a case of co-worker harassment, a grievance may be filed on behalf of the complainant alleging that the employer has failed to provide a harassment-free workplace.

Harassed persons have the right to request as part of the remedy "to be made whole again". In many cases this means some form of compensation, for example, costs for counselling or reinstatement of sick leave credits used. A union trying to resolve a situation of harassment between two co-workers without going to the employer would not have the capacity to deal with compensation issues such as this.

The interests of the member who has been harassed should not be compromised in any type of internal or informal resolution of harassment complaints.



The Union's Responsibilities

Ending harassment is everyone's job. Executive members and stewards can take a leadership role by taking down the pin-ups, speaking out when sexist, racist or homophobic "jokes" are told and confronting harassers about their behaviour.

Writing articles for the local newsletter, negotiating strong contract language, developing joint policies and procedures with the employer - these actions will send the message that harassment will not be tolerated.

Every worker has the right to dignity and respect. This is a cornerstone of union solidarity. Harassment is a threat to that solidarity and to the strength and unity of the union. An injury to one is indeed an injury to all. So the union plays a key role in showing that harassment is wrong.

The employer's responsibility is to provide a workplace which is free from harassment. Workers also have a responsibility to behave in a respectful manner towards each other in the workplace. And the union is responsible for taking action in a number of areas.

Negotiation

Unions can negotiate anti-harassment contract language which includes:

- *no-discrimination clauses and language specifically dealing with harassment;*
- *the right to refuse unsafe work which would allow those subjected to harassment to refuse to work until the employer has taken steps to stop the harassment (CUPE Local 1 and Toronto Hydro have a joint policy on this);*
- *the provision of workplace anti-harassment and human rights training;*
- *a special harassment resolution process to resolve complaints quickly;*
- *grievance procedure language allowing arbitrators to provide effective remedies for harassment complaints, such as transferring the harasser instead of the harassed person, or requiring the harasser to attend counselling sessions.*

(See Model Contract Language following this section and Local examples in Appendix I.)

Negotiate a policy with the employer

- *Work with employers to develop joint policies dealing with harassment in the workplace, which allow employer and union to publicly state their commitment to a harassment-free workplace (see policy model).*

WORKPLACE HARASSMENT POLICY

A policy on workplace harassment should include:

- *a definition of harassment and reference to the collective agreement language and applicable human rights legislation;*
- *a statement that every employee is entitled to a harassment-free work environment;*
- *a commitment by the employer to make every reasonable effort to ensure that no employee is subject to harassment;*
- *a commitment to deal expeditiously with complaints;*
- *a commitment to ensure protection from retaliation;*
- *an outline of the complaints process;*
- *a commitment to confidentiality;*
- *a commitment to train all employees on harassment;*
- *a reference to an employee's right to file a grievance and/or pursue a human rights complaint.*

Education

Unions can:

- *develop and distribute information and education material;*
- *include articles on harassment in the newsletter;*
- *encourage discussion at executive, stewards and membership meetings;*
- *support local community groups involved in women's issues and anti-racism campaigns, e.g., proposing donations at a local meeting can initiate a discussion about the issues;*
- *conduct a survey of harassment in the workplace (an example of a survey is available);*
- *send members to union seminars and courses on the topic;*
- *include the topic at all courses and conferences, especially stewards training;*
- *hold meetings in the workplace and invite community activists from equality seeking organizations to talk to the membership about their issues and discuss how to work together;*
- *invite members to talk about their experiences of discrimination at meetings or educationals. Provide a supportive atmosphere.*

Internal anti-harassment policies

Unions can:

- develop policies to deal with harassment within the union and include items such as: a definition of harassment, an outline of complaint procedures to deal with harassment at union events;
- amend local bylaws to include anti-discrimination and anti-harassment language;
- publish the union's policy so all members know about it;
- appoint someone on the executive to deal with harassment issues;
- train people within the local on how to deal with harassment.

Other ideas

Unions can:

- be pro-active, watch for signs of harassment and act on them (examples: rumours about supervisors; high turnover of women or minority workers in a department; pin-ups or graffiti; sudden changes in an employee's work performance);
- provide support to members who challenge harassment through human rights legislation or in the courts;
- support local groups and women's shelters who are working to end violence and harassment;
- lobby for stronger legislative protection and responsibility for safety at work.



Model Contract Language

Model no-discrimination clause

This is the model no-discrimination clause from the CUPE standard agreement:

"The Employer agrees that there shall be no discrimination, interference, restriction or coercion exercised or practiced with respect to any employee in the matter of hiring, wage rates, training, upgrading, promotion, transfer, layoff, recall, discipline, classification, discharge or otherwise by reason of age, race, creed, colour, ancestry, national origin, political or religious affiliation, sex or marital or parental status, sexual orientation, family relationship, place of residence, handicap nor by reason of his/her membership or activity in the union, or any other reason."

Model sexual harassment clause

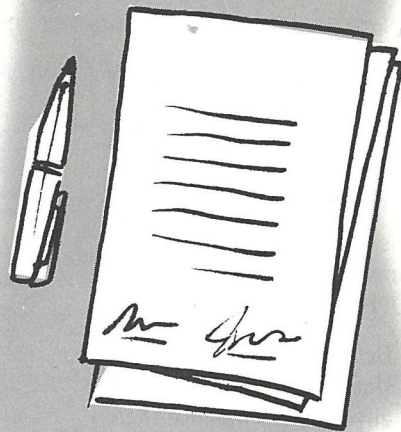
This is the model sexual harassment clause from the CUPE standard agreement:

1. Definition: Sexual harassment shall be defined as any sexually oriented practice that undermines an employee's health, job performance, or workplace relationships or endangers an employee's employment status or potential.

Sexual harassment shall include, but not be limited to:

- unnecessary touching or patting;
- suggestive remarks or other verbal abuse;
- leering at a person's body;
- compromising invitations;
- demands for sexual favours;
- physical assault.

2. The employer agrees to develop, jointly with the Union, a policy against sexual harassment and make all management personnel and employees aware that violations of the policy shall be subject to disciplinary action. The employer also agrees to include the subject of sexual harassment in staff or management training sessions.
3. Cases of sexual harassment shall be considered as discrimination and shall be eligible to be processed as grievances.
4. Where the alleged harasser is the person who would normally deal with the first step of such grievances, the grievance will automatically be sent forward to the next step.
5. No information relating to the grievor's personal background, lifestyle or mode of dress will be admissible during the grievance or arbitration process.
6. The employer recognizes the principle that it is his responsibility to maintain a discrimination-free workplace. Therefore, where sexual harassment has been proven, an Arbitration Board will have the additional power to levy a penalty on the employer.



The Steward's Responsibilities

The steward may be the one who first deals with a member who is concerned about harassment. Here are some guidelines:

Listen

Leadership can become aware of a problem before a formal complaint arises by listening to co-workers. Check out what you hear. If you receive a complaint, listen to what the worker tells you. Be open and supportive. Let your co-worker tell you the whole story and then check it out. Try to identify what type of harassment it is (e.g., sexual, personal). Determine why the behaviour is harassment.

Reassure the worker

Let the worker know he or she is not alone. Don't be judgmental. Listen to what you are told. Assure the person that you take the complaint seriously. Let him or her know that you understand how difficult it is to come forward with a complaint.

Discuss Options

Discuss strategies and options. Find out what the worker wants. Explain the steps you are going to take. Keep the worker informed about what is happening. Try to find other union members or community counsellors who can provide support if needed. In some cases, the worker may need to take sick time or file a worker's compensation claim. The individual may request a temporary work reassignment.

Build a case

As with any grievance, investigate, take notes. Find out what happened, where, when and who was involved. Find witnesses. Did others have similar experiences? Is there a pattern in the department? Document your discussions. CUPE has prepared an "Investigation File" to assist you in your investigation. Ask your representative or CUPE's Equality Branch for a copy.



Internal resolution

In some cases of co-worker harassment it may be possible, depending on the severity of the complaint, to try to resolve the problem without going to the employer. If the harassed person agrees, you should talk to the alleged harasser and let him or her know what the concern is, then arrange a meeting between the two workers to resolve the problem. When more than one member of the bargaining unit is involved, it may require two stewards - one to represent the complainant and one the alleged harasser. The president or another executive member should be advised when the complaint involves co-worker harassment in case additional resources are required.

Remember: *This option should be pursued only if the person being harassed agrees.*

Maintain confidentiality

Many workers who experience harassment are afraid of repercussions. This fear is real. The harassed worker and witnesses may be open to retaliation from the alleged harasser. Maintain confidentiality to the greatest extent possible. Harassment is a sensitive issue. All parts of a harassment investigation must be treated carefully and privately. Don't talk to people about the case unless they have to be involved.

File a grievance or complaint

If informal resolution is not possible, or advisable, you may have to consider filing a grievance on behalf of the complainant or lodging a complaint under the employer's policy. Employers are legally responsible to maintain a workplace free from discrimination and harassment. If applicable, use the "no-discrimination" clause in your collective agreement and/or anti-harassment clause, and also refer to the applicable human rights legislation. Make

sure the steps in the grievance procedure are followed as quickly as possible.

File a human rights complaint

In addition to filing a grievance, the union and the complainant may also wish to file a human rights complaint. The decision to file rests with the complainant but the union may wish to assist. Find out what the options are and how long a complaint will take. Sometimes human rights tribunals can provide awards - like monetary redress for pain and humiliation - that no other process can legally grant.

Educate yourself and others in your workplace

Workplace harassment is a serious threat to the well-being of the members you represent and to the union's strength. Attend educational sessions on the topic. Ensure that your local provides you with the necessary tools and resources to effectively represent your members. Talk with others about this issue at every opportunity.



What To Do If You Are Harassed

Everyone has the right to work in a harassment-free environment, so take action if you think you are being harassed. Harassment is not your fault.

Talk to someone

If you are harassed, talk to a friend, co-worker or union steward. This will help you sort out how you feel, what your options are and what you want to do. Often if one person is being harassed, so are others. Even if no one else has been, other workers can provide you with support. If others have been harassed, is there a pattern and have other members taken action? Will they help you take action now?

Do not ignore it

If possible, tell the harasser to stop the behaviour you do not like. Make it clear that the actions are unwelcome. If you want, a union steward should be able to help you with this.

Document

Write down what happened (dates, times, places, witnesses). Include details of any health problems which result from the harassment, e.g., tension headaches, back aches, stomach

upset and so on. Keep a record of doctor's appointments and doctor's advice.

Avoid being alone with the harasser

If possible, develop strategies that will help you feel safer. Co-workers can help.

Talk to your union, file a grievance

The union is your first line of defence. Many locals have bargained contract language to deal with workplace harassment. Some locals have specially trained committee people to deal with harassment.

Even if your union does not have specific language, harassment is illegal and your union can help you. It can file a grievance on your behalf and/or assist you in filing a complaint under the employer's policy, if there is one.

In addition, you may wish to file a human rights complaint and could ask the union to

assist you. Human rights legislation in all provinces prohibits discrimination and harassment. The process takes time, but filing the complaint may force the employer to take action.

File a workers' compensation claim

You may be able to file a workers' compensation claim, as lost time due to stress is compensable. The Ontario Compensation Board recognized this for the first time in 1990 when it awarded a claim to a woman who experienced sexual and racial harassment at work. Again, talk to your union.

Talk to a lawyer about suing the harasser

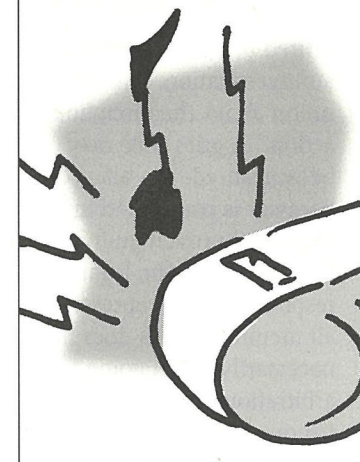
You may have a right under civil law to receive compensation for physical and psychological injury. This process also takes time and money. You may be able to get advice from a legal aid clinic.

Talk to the police about laying a charge of assault

Threats, touching, sexual and physical harassment are not part of the job. The assault and threats are criminal offenses. If you have experienced this kind of harassment, call the police.

ORGANIZING TO DEAL WITH HARASSMENT

Jean was being harassed by her boss in the school board office. She spoke to her union steward about the problem. They talked to other women about it and discovered that several women had been harassed by the same man. The steward filed a grievance. Management stalled. The women took the matter into their own hands. The next time the boss harassed the woman, she blew a loud whistle, drawing other women with their whistles. They created quite a stir. Before they knew it, management was meeting with them to address the problem.



What Should the Alleged Harasser Do?

Here are some guidelines that you can refer to if you are accused of harassment:

- Obtain details of the alleged harassment from the employer as quickly as possible.
- If you have done something wrong or offensive, stop it and apologize. If you need help understanding what behaviour is unacceptable, ask your union for advice.
- Contact the union to find out what rights exist in this situation. Cooperate fully with the people conducting the investigation so that the facts can be determined. Document the incidents.
- If fired or suspended before an investigation, talk to the union about the disciplinary action. A grievance may be warranted. An alleged harasser is considered innocent until proven guilty. The union has the legal responsibility to represent all members. This does not necessarily mean going to arbitration in every case. Unions have to look carefully at each case and use the same process as for other decisions about whether to proceed to arbitration.
- If moved to another work location pending an investigation, accept the employer's action until the report of the investigation is completed.
- Even if proven guilty, a harasser's discipline, as meted out by the employer, could, in some cases, be considered too severe and a grievance initiated.
- Forms of discipline should address the facts of the case, including issues such as the nature of the harassment, the consequences for the harassed and the number of incidents involved. Discharge, transfer, suspension, written warning, requirement to take human rights training, requirement to enter counselling, an apology are potential forms of discipline.
- Harassment is illegal. Unions cannot protect harassers from the consequences of their actions if they are, in fact, guilty. In such circumstances, unions can only ensure that the correct disciplinary procedures are followed.

Conclusion

All workers have a right to be treated with dignity and respect and to work in an environment free from harassment. CUPE members have a right to help from their union to fight harassment and support if they file a complaint.

CUPE will continue to be in the forefront of the struggle to eliminate harassment in our workplaces and in our union. CUPE will continue to push for strong measures to end this assault on workers' dignity and health.

Additional Resources

- Local union membership survey on harassment
- Sample by-law language for local unions
- Employer/union policies on harassment
- Internal union policies
- Investigation file regarding harassment
- Bibliography - List of articles, pamphlets, books, films, videos relating to harassment

* Available from your representative or the CUPE Equality Branch.

Appendix I

LOCAL COLLECTIVE AGREEMENT LANGUAGE EXAMPLES

CUPE Local 500 & The City of Winnipeg

Article 3 - Respectful Workplace/No Harassment/ No Discrimination

3.1 The City and the Union jointly affirm that every employee in the civic service shall be entitled to a respectful workplace. The environment must be free of discrimination and harassment.

The principle of fair treatment is a fundamental one and both the City and the Union do not and will not condone any improper behaviour on the part of any person which would jeopardize an employee's dignity and well-being and/or undermine work relationships and productivity.

3.2 Through this collective agreement, the parties agree that there shall be no discrimination based on:

- ancestry
- race
- ethnic or national origin
- age
- nationality

- political belief, association or activity
- religion or creed
- family status
- sex, including pregnancy
- marital status
- source of income
- physical or mental disability
- place of residence
- membership or activity in a union.

3.3 Harassment is a form of discrimination and includes personal harassment. Harassment means any improper behaviour by a person that is directed at and/or is offensive to any employee and which that person knew or ought reasonably to have known would be inappropriate or unwelcome. It comprises objectionable conduct, comment or display made on either a one-time or continuous basis that demeans, belittles or causes personal humiliation or embarrassment to an employee.

3.4 The definition of discrimination and harassment contained within the

Manitoba Human Rights Code shall also apply.*

3.5 The procedures for dealing with harassment are contained in a Letter of Understanding between the two parties.

* includes sexual orientation

Letter of Understanding Re: No Harassment/ Respect in the Workplace

The City of Winnipeg and the Canadian Union of Public Employees, Local 500 jointly affirm that every employee in the civic service shall be entitled to a respectful workplace. The environment must be free of discrimination and harassment.

The principle of fair treatment is a fundamental one and both the City and the Union do not and will not condone any improper behaviour on the part of any person which would jeopardize an employee's dignity and well-being and/or undermine work relationships and productivity.

Some examples of harassment are:

- verbal abuse or threats;
- unwelcome remarks, jokes, innuendoes or taunting about a person's body, attire, age, marital status, ethnic or national origin, religion, sexuality, etc.;

- displaying of pornographic, racist or other offensive or derogatory pictures, cartoons or printed matter;
- practical jokes which cause awkwardness or embarrassment;
- unwelcome invitations or requests, whether indirect, explicit or intimidating;
- leering or other gestures;
- unnecessary physical contact such as touching, patting, pinching or punching; and
- physical assault.

What To Do

If an employee believes that they have been harassed, an employee should:

- tell the alleged harasser to stop;
- document the event(s) complete with the time, date, location, names of witnesses and details for each event.

If harassment does not stop at this point, or if the harassed employee does not feel able to approach the alleged harasser directly, that employee should:

- immediately report verbally or in writing the harassment to the appropriate supervisor and/or union representative, to the City Employment Equity Coordinator or an Industrial Relations Officer.

Upon receipt of any verbal or written complaint the supervisor shall attempt to resolve it through any means deemed appropriate in the particular circumstances of the complaint. The supervisor must maintain written notes of their actions.

Managers

Managers must inform the Employment Equity Coordinator of the harassment complaint. Management in consultation with appropriate Corporate Services personnel will conduct an investigation outlined in the investigative process.

Investigation Process

The complainant's allegation(s) must be explored in detail. All relevant facts, dates, locations, conversation, gestures, written or printed materials and names of potential witnesses should be documented. A formal written statement should be taken from the complainant and the alleged harasser.

The complainant and the alleged harasser, and any witnesses or co-workers interviewed, should be advised of the following:

- a) They have the right to have a representative present at all meetings, i.e. union representative.

- b) There is a need to maintain a safe, harassment-free work environment while the investigation takes place.

In cases of harassment, the individual has the right to request, through the Department Head, to discontinue contact with the alleged harasser without any penalty, pending determination of the investigation under this Letter. Such request shall not be unreasonably withheld. In cases where harassment may result in the transfer of an individual, where possible, it shall be the alleged harasser who is transferred. The individual who is harassed will not be transferred against his/her will.

- c) If the allegations are substantiated, appropriate disciplinary action in accordance with Article 14 may be taken.
- d) The investigation of the complaint is to be treated in a confidential manner.
- e) Various counselling services are available to them through the Employee Assistance Program.
- f) Both the complainant and alleged harasser should be advised that the harassment complaint may be recorded in the harasser's file if the

complaint is substantiated. The record will include remedial action taken. There will be no record on the complainant's file unless the complaint was determined to be malicious or vexatious and resulted in disciplinary action (to the complainant).

- g) Both the complainant and the alleged harasser should be advised that these procedures do not preclude exercising their rights under the collective agreement and/or the Manitoba Human Rights Code.

The alleged harasser has the right to be advised of the substances of the complaint and given an opportunity to respond.

Where reasonable, any witness(es) identified by the complainant and the alleged harasser may be interviewed and formal written statements should be taken. Co-workers may also be interviewed.

The investigator/manager should establish whether or not there is a past history of harassing conduct by the alleged harasser towards either the complainant or other employees.

Both the complainant and the alleged harasser should be kept informed throughout the process.

Where reasonable, the investigator should re-interview any or all of the employees as new facts or questions surface. Any written statements should be added to their original statement.

The Investigator shall prepare a written report to management which should contain:

- the findings on the allegation of harassment;
- recommended disciplinary action, if any;
- any other recommendations designed to ensure harassment does not recur in the workplace.

The report may also include some or all of the following:

- background in chronological order (past to present);
- facts from interviews with the alleged harasser and witnesses; corroborative evidence for the complainant and the alleged harasser;
- previous disciplinary record of harassment of the alleged harasser (if any);
- all relevant statements and documents.

Management shall meet with the complainant and the alleged harasser after the investigation in order to:

- explain the disposition of the complaint;
- advise the complainant that no record of the complaint will be made in their file;
- explain what steps are being taken to ensure a harassment-free environment;
- identify any ongoing concerns the complainant or alleged harasser may have.

A report on the outcome of the investigation will be forwarded to the Union.

CUPE Local 1281 & University of Toronto

Article 4 -

No Discrimination/Harassment

4.01 The employer agrees that there shall be no discrimination, interference, restriction, harassment, or coercion exercised or practiced with respect to any employee or applicant for employment by reason of age; race; creed; colour; place of origin; ethnic origin; citizenship; ancestry; native language; political or religious affiliations, beliefs or activities; gender; sexual preference or orientation; marital status; family status; parental status; number of dependents; place of residence; record of offenses except where it relates to a bona fide qualification because of the nature of employment; Acquired Immune Deficiency Syndrome (AIDS), AIDS-related complex (ARC); positive Human Immune Deficiency virus (HIV) test; handicap or disability which does not prevent the performance of the duties of a position; union membership or activity; nor by reason of the exercise of any of the rights contained in this agreement.

No employee or applicant shall be required to submit to a blood test, lie-detector test, or any other test for illness or drug dependency.

4.02 The employer agrees that there shall be no form of sexual, gender, racial and/or ethnic harassment exercised or practiced with respect to any employee or any applicant seeking to become an employee.

Sexual harassment shall be defined as:

- i) unwanted attention of a sexually oriented nature; or
- ii) implied or expressed promise of reward for complying with a sexually oriented request; or

iii) implied or expressed threat of reprisal, actual reprisal or the denial of opportunity for the refusal to comply with a sexually oriented request; or

iv) sexually oriented remarks or behaviour which may reasonably be perceived to create a negative working environment.

Gender harassment shall be defined as offensive comments and/or actions, and/or exclusion from that to which a person(s) would otherwise have a right or privilege, which demean and belittle an individual(s) and/or cause personal humiliation, on the basis of sexual preference or gender, but which may not be sexually motivated.