

How Is The #MeToo Movement Affecting Organized Labor?

By **Braden Campbell**

Law360 (April 25, 2019, 7:44 PM EDT) -- The Harvard Graduate Students Union recently staked out ground at the vanguard of the labor movement when it put #MeToo-inspired demands front-and-center in its negotiations with the university. And though other unions have also made changes in response to #MeToo, many have been slower to react.

The United Auto Workers-represented HGSU has asked that the school let members pursue sex-based claims before a neutral arbitrator, joining national unions that have revamped their codes of conduct in the movement's wake and locals that have persuaded employers to probe for gender-based inequities or made mistreatment of women a rallying point in organizing. Meanwhile, it's been more or less business as usual in some other unionized workplaces, especially in male-dominated fields less attuned to #MeToo.

"A lot of the unions still need to be brought on board," Ana Avendaño, a former AFL-CIO official who is now the vice president of labor engagement for the United Way, told Law360. "But you can't ignore that there is energy and innovation."

Avendaño recently detailed labor's sex-related innovations and stumbles in an essay for CUNY School of Labor and Urban Studies' the New Labor Forum journal. The essay, titled "#MeToo Inside the Labor Movement," spotlights pre-movement efforts by UNITE HERE and the United Service Workers to push back at abuses in the hospitality and janitorial service industries, respectively.

She notes the AFL-CIO, Screen Actors Guild-American Federation of Television and Radio Artists, and others have adopted new codes of conduct in MeToo's wake, and that some have ousted leaders accused of sexual harassment.

The essay also charts labor's checkered history with women, particularly in mostly male industries including mining, construction and auto manufacturing. These industries have so far been the slowest to react to the movement, she said.

"We don't see much change in construction, all we've seen are promises of more training from the auto workers," Avendaño said. "Those industries have a long way to go."

But some, like HGSU-UAW, are prioritizing women's issues. The union, which is negotiating its first contract with Harvard, wants language letting members bring sexual harassment, retaliation and discrimination claims in arbitration, rather than leaving them to Harvard investigators whom they say have shielded the school. Harvard is willing to let them arbitrate retaliation claims, but not harassment and discrimination claims, the student-workers say.

"Harvard has the fox guarding the hen house," virology grad student and HGSU-UAW bargaining committee member Maddy Jennewein said in a statement. "Any system that allows Harvard to police itself is a non-starter."

The student-workers' desired contract would lay out remedies for sex-related claims, and empower an arbitrator to enforce them through a grievance process, which is a mechanism unions can use to resolve disputes related to their CBAs with employers. They point to a clause in Harvard's collective

bargaining agreement with a clerical worker's union letting members invoke mediation to decide disputes based in the contract, which includes a bar on sex discrimination.

Harvard notes that the unions' proposal is not "a mediation process or anything like it," but arbitration that may force accusers to face cross-examination or their alleged harassers. It argues the current process aligns with standards under Title IX of the Civil Rights Act, which protects students from sexual harassment and sexual violence. It has also pledged to let student-workers appeal investigators' findings to an "impartial and unbiased panel," it said.

HGSU-UAW's bid to grieve sex-based claims puts it in a group with other graduate student unions, including New York University and Brandeis University, that have recently won such mechanisms in their contracts, said William A. Herbert, a professor in Hunter College's Public Policy Institute who studies collective bargaining in higher education.

The contracts differ slightly in that some require an investigation before student-workers can grieve claims, but "there is certainly precedent for arbitrating these issues of discrimination," Herbert said. It's "very common" for unions to negotiate harassment clauses in their contracts, he added.

But the mechanism the HGSU seeks is not one many employers would accept, said Steven Suflas, a labor attorney at management-side firm Ballard Spahr LLP. While the exact language the union wants included in its contract is not publicly available, the HGSU says on its website it wants an "expedited, neutral and procedurally fair, third-party grievance procedure for discrimination, harassment, and other complaints" that does not waive students' right to press claims in other forums.

A process for grieving sex harassment and discrimination claims that also preserves workers' rights to sue is a hard sell, Suflas said.

"I can't speak to Harvard, but I'd be surprised that any employer would be interested in a vehicle like this one," Suflas said. He has not noticed unions bringing up #MeToo issues at the bargaining table, he added.

Kyllan Kershaw, a labor attorney at management-side firm Seyfarth Shaw LLP, said she's heard of unions leaning on #MeToo in collective bargaining but hasn't seen it herself. However, she has seen the movement drive organizing.

Kershaw said a union tried to organize a higher education client by claiming management hadn't done enough to stop workplace sexual harassment, pointing to a "particularly bad manager." The union didn't win the election, but organizers "got a lot more mileage and interest out of that than they would have," Kershaw said.

"It wasn't a group that, to me, was likely to otherwise organize," Kershaw added.

Avendaño, the former AFL-CIO official, said unions have lately incorporated the #MeToo movement into their work in other ways. She pointed to a contract the Writers Guild of America, East struck with media site Onion Inc. that requires the company to hire a third-party to assess its workplace culture.

And the AFL-CIO recently rolled out a toolkit recommending ways unions can combat sexual harassment and highlighting new protections unions have won. There's a dearth of examples in the toolkit, but it's a start, Avendaño said.

"It's spreading, especially in workplaces where women are sort of challenging the norms," she said. "I hope that's going to happen for construction and manufacturing, but we'll see."

--Editing by Emily Kokoll and Kelly Duncan.