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77 Cal.App.4th 327, 91 Cal.Rptr.2d 500, 163 L.R.R.M. (BNA) 2080, 00 Cal. Daily Op. Serv. 28, 1999 Daily Journal D.A.R. 33
(Cite as: 77 Cal.App.4th 327)

CITY OF PALO ALTO, Plaintiff and Appellant,
v.
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 715 et al., Defendants and Respondents.
No. H019017.

Court of Appeal, Sixth District, California.
Dec. 29, 1999.

SUMMARY

On a city's petition to vacate an arbitration award in favor of the city's former employee, the trial court entered an order confirming the award and denying the city's petition. The employee had been terminated from the city's utilities department for threatening to shoot a coworker and the coworker's family, and the arbitrator ordered that the employee be reinstated to his former position. (Superior Court of Santa Clara County, No. CV773215, Leonard B. Sprinkles, Judge.)

The Court of Appeal reversed the order confirming the arbitration award and denying the petition to vacate and remanded the matter to the trial court for further proceedings. The court held that the arbitration award was not invalid as violating the public policy requiring employers to provide employees with a safe workplace. Although statutes provide that employers must provide a safe workplace and include injunctive remedies against violent employees, the city made no showing that the reinstatement of the employee was necessarily incompatible with the public policy requiring employers to provide a safe workplace. However, the court held that the award was invalid as violating the public policy requiring obedience to court orders. An injunction, issued pursuant to Code Civ. Proc., § 527.8, required the employee to stay away from the coworker, the coworker's residence, and the utilities department. Since the arbitrator's award could not have been put into operation without the employee disobeying the injunction, the award of unconditional reinstatement was irreconcilable with the public policy requiring obedience to court orders. (Opinion by Elia, J., with Cottle, P. J., and Premo, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Arbitration and Award § 24--Judicial Action on Award--Scope of Judicial Review.
The scope of judicial review of arbitration awards is extremely narrow. Courts may not review either the merits of the controversy or the sufficiency of the evidence supporting the award. Furthermore, with limited exceptions, an arbitrator's decision is not generally reviewable for errors of fact or law, whether or not such error appears on the face of the award and causes substantial injustice to the parties. Judicial review of private arbitration awards is ordinarily limited to the statutory grounds for vacating an award (Code Civ. Proc., § 1286.2) and correcting an award (Code Civ. Proc., § 1286.6). Those statutory provisions permit a court to vacate or correct an award that exceeds the arbitrator's powers. The normal rule of limited judicial review cannot be avoided except in those rare cases where according finality to the arbitrator's decision would be incompatible with the protection of a statutory right or where the award contravenes an explicit legislative expression of public policy. Absent a clear expression of illegality or public policy undermining this strong presumption in favor of private arbitration, an arbitral award should ordinarily stand immune from judicial scrutiny.
[See 6 Witkin, Cal. Procedure (4th ed. 1997) Proceedings Without Trial, §§ 521, 522; Knight et al., Cal. Practice Guide: Alternative Dispute Resolution (The Rutter Group 1998) ¶ 5:444 et seq.]
(2a, 2b) Arbitration and Award § 20--Award--Validity--Employer to Reinstate Employee Terminated for Threatening Coworker-

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-Violation of Public Policy--Safety in Employment.
An arbitration award that ordered a city to reinstate its former employee, who had been terminated from the city's utilities department for threatening to shoot a coworker and the coworker's family, was not invalid as violating the public policy requiring employers to provide employees with a safe workplace. Although statutes provide that employers must provide a safe workplace and include injunctive remedies against violent employees, this public policy does not obligate them to automatically terminate any employee who makes a threat of violence, does not require a city to ignore grievance procedures secured by collective bargaining and set forth in a memorandum of understanding between a union and a city, and does not preclude the reinstatement of a terminated employee if it is found that a threat was not genuine. In this case, the arbitrator found that the employee's threat, while it was violative of the city's workplace violence policy, reflected the type of aggressive language commonly used and tolerated in the utilities department. The arbitrator implicitly concluded that the employee did not intend to carry out his threat against the coworker and that the threat was just tough speech. The city made no showing that the reinstatement of the employee was necessarily incompatible with the public policy requiring employers to provide a safe workplace.

(3) Administrative Law § 10--Administrative Agencies--Construction and Interpretation of Laws.
An administrative agency's interpretation of the meaning and legal effect of a statute, which is reflected in something other than quasi-legislative regulations promulgated pursuant to express statutory authority, is entitled to consideration and respect by the courts if merited. However, the courts have the final responsibility for interpreting any statute.

(4a, 4b) Arbitration and Award § 20--Award--Validity--Employer to Reinstate Employee Terminated for Threatening Coworker--Violation of Previous Court Injunction.
An arbitration award that ordered a city to reinstate its former employee, who had been terminated from the city's utilities department for threatening to shoot a coworker and the coworker's family, was invalid as violating the public policy requiring obedience to court orders in that it conflicted with a previous court injunction against the employee that had been issued pursuant to Code Civ. Proc., § 527.8 (unlawful violence or threat of violence at workplace). The injunction required the employee to stay away from the coworker, the coworker's residence, and the utilities department. Although the arbitrator's award was directed at the city, not the employee, the employee could not have returned to his former position without violating the injunction. Any alternative action, such as placing the employee on administrative leave or in a position in a different department, was inconsistent with the arbitrator's order that the employee be returned to his former position in the utilities department. Since the arbitrator's award could not have been put into operation without the employee disobeying the injunction, the award of unconditional reinstatement was irreconcilable with the public policy requiring obedience to court orders, especially an injunction issued pursuant to § 527.8. This was particularly true, since the injunction was based upon a judicial finding by clear and convincing evidence that the employee had made a credible threat of violence against the coworker.

(5) Injunctions § 1--Public Policy.
Obedience to judicial orders is an important public policy. An injunction issued by a court acting within its jurisdiction must be obeyed until the injunction is vacated or withdrawn.

COUNSEL

Ariel Pierre Calonne, City Attorney, William B. Mayfield and Susan W. Case, Assistant City Attorneys; Whitmore, Johnson & Bolanos, Richard S. Whitmore, Jack W. Hughes and Eileen S. Dizon for Plaintiff and Appellant.

Van Bourg, Weinberg, Roger & Rosenfeld and W.

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Daniel Boone for Defendant and Respondent Service Employees International Union, Local 715.

Carroll, Burdick & McDonough and Christopher D. Burdick for Defendant and Respondent Danton Camm.

ELIA, J.

The City of Palo Alto (City) appeals from an order confirming an arbitration award in favor of Danton Camm, a former city employee, and denying the City's petition to vacate the award. Camm was fired from the City's utilities department for threatening to shoot another employee, Brian Bingham, and the members of his family. The arbitrator ordered that Camm be reinstated to his former position.

On appeal, the City argues that the trial court erred by failing to vacate the arbitration award because (1) California has a paramount public policy requiring employers to provide a safe workplace by terminating employees who make threats to the lives of coworkers and reinstatement violates that policy, and (2) the award conflicts with a court-ordered injunction against Camm, which was issued pursuant to Code of Civil Procedure section 527.8. Camm and the union representing him, Service Employees International Union, Local 715, both argue that the arbitration award does not contravene any public policy. Camm also asserts that the arbitration award does not require the City to violate any term of the injunction since it can assign him other tasks at other locations not specified in the injunction or put him on paid administrative leave.

We find that the arbitration award violated the public policy requiring obedience to court orders and reverse the trial court's order confirming the award.

A. *Background*

The evidence adduced at the arbitration hearing showed the following. Camm began working for the City in 1983 and eventually became a lead ***331** worker, who supervised a work crew, in the water, gas, and wastewater operations section of the City's utilities department. Camm is an avid hunter and previously had gone hunting with Bingham. Camm admitted that he once unintentionally brought a pistol, which he used for hunting, in his car to work.

Camm commonly threatened those working with him with physical violence if they did not perform but it seemed to be considered just talk. Camm acknowledged that he told people in the department, who knew that he was a single man, that the job was all he had and he had nothing to lose. Camm had threatened to shoot Bingham and others before the February incident and the threats were considered jokes and were not taken seriously. Camm had told people at work, including Bingham, that he could kill a man at 600 yards. Camm's personalized license plate says "Shooot." In February 1997, he owned 18 rifles and pistols and had scopes on almost all of his rifles. [FN1]

> FN1 Camm stated at the arbitration hearing that he had given all his guns to the Palo Alto Police Department but had asked for them to be returned.

Prior to making the February threat leading to his termination, Camm had been reprimanded for threatening a supervisor who had bumped a side mirror of Camm's parked car. He had also been disciplined by two days' suspension without pay and six months' removal from standby for his offensive reaction to another driver while driving a City vehicle.

About a month before the incident leading to his termination, Camm had requested that Bingham, who had been a member of his crew for years, be transferred off his crew because of poor performance.

About February 19, 1997, Bingham informed Camm that he had complained to a supervisor about Camm. During the ensuing exchange, Camm threatened to shoot Bingham, his wife and their

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new baby if he lost his job. Bingham later tape-recorded a conversation with Camm during which he attempted to get Camm to repeat the threat.

According to Camm, the police arrested him for making a terrorist threat (Pen. Code, § 422) and he spent March 20 through March 28 in jail, but he later entered a plea to disturbing the peace and the criminal charge was dropped.

On April 11, 1997, the City, on behalf of Bingham, obtained an injunction against Camm pursuant to Code of Civil Procedure section 527.8 and the arbitrator was aware of this order. The injunction provided, among other ***332** things, that Camm must not make any contact with Bingham and that Camm must stay at least 100 yards away from Bingham, Bingham's residence, Bingham's place of work, Bingham's children's school or place of child care, and the City's "Utility Department-Water/Wastewater/Gas Division work crew sites." The order was made effective until April 11, 2000. Intentional violation of an injunction granted under Civil Procedure section 527.8 is a crime. (Code Civ. Proc., § 527.8, subd. (j); Pen. Code, § 273.6.)

The City terminated Camm effective April 25, 1997. Camm appealed from that disciplinary action. The parties submitted the issue to binding arbitration pursuant to the memorandum of understanding between Service Employees International Union, Local 715 and the City.

In his statement of decision, the arbitrator recognized the danger of workplace violence and the reality that the City had already experienced a fatal incident of workplace violence in 1988. He acknowledged that these problems required employers to "take all reasonable means to protect their employees and the public" from workplace violence.

Nevertheless, the arbitrator concluded: "[T]he expeditious action on the part of the City to separate the grievant from his work environment resulted in violating his right to appropriate notice, his right to union representation and his right to a full and fair investigation. The action of removing Camm from his livelihood without his right to the basic appeal process provided for City employees covered by the Memorandum of Understanding between the City and Union justifies, on its face, that the appeal of Danton Camm be granted."

In addition, the arbitrator found the City's termination unsupportable on the merits. The arbitrator questioned Bingham's motivation in attempting to goad Camm into making incriminating statements while covertly taping him and in seeking more severe disciplinary action against Camm since Camm had reported his dissatisfaction with Bingham's work to a supervisor and asked Bingham to be taken off his crew. More importantly, it was the arbitrator's opinion that the threats were "taken out of context of what was common workplace language at the work site." He stated: "The caustic and offensive language demonstrated to be part of the department's vernacular everyday 'boy talk' has long since passed as acceptable communication. It has clearly been demonstrated that what may not be understood as threats between two employees at the work site, may well be perceived as real and alarming by those who are outside that environment."

The arbitrator recognized that the City's workplace violence policy was to provide a " 'safe work environment that is free of violence and the threat of ***333** violence.' " He observed that, according to the City's workplace violence policy, "an employee of the City who threatens violent behavior is subject to criminal prosecution and/or disciplinary action, including termination." However, he stated that the City's workplace violence policy had to be uniformly enforced and impliedly found that the City had not evenhandedly enforced its policy.

By decision dated March 12, 1998, the arbitrator reduced the termination to a written warning, ordered Camm reinstated to his former position as "leadman," and awarded backpay.

The City petitioned to vacate the arbitration de-

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cision on the grounds that it violated "the express legislated public policy of the State of California requiring employer intervention against threats of violence and it commands an illegal act." The Union cross-petitioned to confirm the arbitration decision.

The trial court found that (1) there was no express public policy requiring employer intervention against threats of violence by an employee, and (2) the arbitration award "neither supplants nor modifies [the injunction obtained by the City against Camm] nor would the City's compliance with the Award necessarily require the City to violate any terms or condition[s] of the preliminary injunction." However, the court stated: "This Court does not make any judgment on how or whether the City can comply with the injunction and reinstate Danton Camm to his job."

B. *Review of Private Arbitration Awards*

(1) "It is well settled that the scope of judicial review of arbitration awards is extremely narrow. (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1 ...; *Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362 ....) Courts may not review either the merits of the controversy or the sufficiency of the evidence supporting the award. (*Southern Cal. Rapid Transit Dist. v. United Transportation Union* (1992) 5 Cal.App.4th 416, 422-423 ....) Furthermore, with limited exceptions, '... an arbitrator's decision is not generally reviewable for errors of fact or law, whether or not such error appears on the face of the award and causes substantial injustice to the parties.' (*Moncharsh*, *supra*, 3 Cal.4th at p. 6; see also pp. 25-28.)" (*California Faculty Assn. v. Superior Court* (1998) 63 Cal.App.4th 935, 943-944 [75 Cal.Rptr.2d 1].)

Judicial review of private arbitration awards is ordinarily limited to the statutory grounds for vacating an award (Code Civ. Proc., § 1286.2) and ***334** correcting an award (Code Civ. Proc., § 1286.6.) (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 28, 33 [10 Cal.Rptr.2d 183, 832 P.2d 899].) Those statutory provisions permit a court to vacate or correct an award that exceeds the arbitrator's powers. (Code Civ. Proc., §§ 1286.2, subd. (d), 1286.6, subd. (b).)

The normal rule of limited judicial review cannot be avoided except in those rare cases where "according finality to the arbitrator's decision would be incompatible with the protection of a statutory right" or where the award contravenes "an explicit legislative expression of public policy." (*Moncharsh v. Heily & Blase*, *supra*, 3 Cal.4th at pp. 32-33; cf. *Board of Education v. Round Valley Teachers Assn.* (1996) 13 Cal.4th 269 [52 Cal.Rptr.2d 115, 914 P.2d 193]; cf. also *Evans Products Co. v. Millmen's Union No. 550* (1984) 159 Cal.App.3d 815, 820 [205 Cal.Rptr. 731] [arbitrator's award compelling employer to contravene child labor provisions of Fair Labor Standards Act was not enforceable on ground of illegality].) "Absent a clear expression of illegality or public policy undermining this strong presumption in favor of private arbitration, an arbitral award should ordinarily stand immune from judicial scrutiny." (*Moncharsh v. Heily & Blase*, *supra*, 3 Cal.4th at p. 32.)

C. *Public Policy*

1. *Workplace Safety*

(2a) The City argues that the arbitration award in this case violated the clear public policy requiring employers to provide employees with a safe workplace. The City asserts that it "would not fulfill its obligation to provide a safe workplace if it speculated about whether Camm really meant to carry out his threat and failed to fire him in the hope that he would not really do it." It further maintains that "[s]ince public policy required the City to terminate Camm when it learned of his threat, the same policy prohibited the arbitrator from reinstating him."

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The City asserts that the statutory provisions contained in Labor Code section 6400 et seq., which concerns the responsibilities and duties of employers regarding safety in employment, establish the public policy. The City also points to Code of Civil Procedure section 527.8, which provides employers with a remedy to address unlawful violence or credible threats of violence by an employee against a coworker in the workplace.

Labor Code section 6400 provides: "Every employer shall furnish employment and a place of employment which are safe and healthful for the employees therein." Labor Code section 6401 states: "Every employer shall ***335** furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees." Labor Code section 6402 provides: "No employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful." [FN2] Labor Code section 6401.7 requires in part: "(a) Every employer shall establish, implement, and maintain an effective injury prevention program. The program ... shall include, but not be limited to, the following elements: [¶] ... [¶] (3) The employer's methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner. [¶] ... [¶] (6) The employer's system for ensuring that employees comply with safe and healthy work practices, which may include disciplinary action." [FN3] (See Cal. Code Regs., tit. 8, § 3203 [injury and illness prevention program].)

> FN2 Although not cited by the City, Labor Code sections 6403 and 6404 also relate to employee safety. Labor Code section 6403 states: "No employer shall fail or neglect to do any of the following: [¶] (a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe. [¶] (b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe. [¶] (c) To do every other thing reasonably necessary to protect the life, safety, and health of employees." Labor Code 6404 declares: "No employer shall occupy or maintain any place of employment that is not safe and healthful."
>
> FN3 The City also cites California Code of Regulations, title 8, section 3203, which requires employers to implement injury and illness prevention programs. This regulation is aimed at eliminating unsafe conditions and work practices and workplace hazards through a systemic program of training, education, communication, investigation, inspection, and compliance oversight. No specific mention is made of workplace violence or threats of violence in the regulations.

While Labor Code section 6400 et seq. focuses on occupational injury and illness and makes no specific mention of workplace violence or threats of violence, those provisions clearly make it an employer's legal responsibility to provide a safe place of employment for their employees. CalOSHA (California Occupational Safety and Health Act) considers risks of workplace violence to be a workplace safety issue, which must be addressed in an employee's injury prevention program. (See Cal. Dept. of Industrial Relations, Division of Occupational Safety and Health, CalOSHA Guidelines for Workplace Security (Mar. 30, 1995) pp. 12-14; Cal. Dept. of Industrial Relations, Division of Occupational Safety and Health, Model Injury & Illness Prevention Program for Workplace Security (Mar. 1995).) [FN4] It ***336** appears that one component of such program must be a compliance system, including disciplinary actions, to ensure safe and healthy work practices. (Cal. Code Regs., tit. 8, § 3203, subd. (a)(1); see Lab. Code, § 6401.7, subd. (a)(6);

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see Cal. Dept. of Industrial Relations, Div. of Occupational Safety and Health, Model Injury & Illness Prevention Program for Workplace Security, *supra*, at p. 7.)

> FN4 Copies of the CalOSHA Guidelines for Workplace Security, as revised March 30, 1995, and March 1995 Model Injury & Illness Prevention Program for Workplace Security were filed in support of the City's petition to vacate the arbitration award. The Model Injury & Illness Prevention Program for Workplace Security was again revised in August 1995. This court takes judicial notice of these publications. (Evid. Code, §§ 452, subd. (c), 459.)

Code of Civil Procedure section 527.8, which was added by the "Workplace Violence Safety Act" (Stats. 1994, 1st Ex. Sess. 1993-1994, ch. 29, § 1, No. 8 West's Adv. Legis. Service, p. 3015), specifically addresses potential workplace violence. That section was "intended to provide optional remedies which supplement rather than replace existing remedies against workplace violence, and does not obligate an employer to seek those optional remedies." (*Ibid.*)

Code of Civil Procedure section 527.8 empowers an employer on behalf of an affected employee to obtain a temporary restraining order and an injunction against any individual, including another current employee, who engaged in unlawful violence or made a credible threat of violence at the workplace. [FN5] Where the person engaging in the alleged workplace violence or credible threats of violence is a current employee, the judge must receive evidence concerning the employer's decision to retain, terminate, or otherwise discipline the person. (Code Civ. Proc., § 527.8, subd. (f).) "If the judge finds by clear and convincing evidence that the defendant engaged in unlawful violence or made a credible threat of violence, an injunction shall issue prohibiting further unlawful violence or threats of violence" by that individual. (*Ibid.*) The injunction may be made effective for a period of up to three years and is renewable. (*Ibid.*) Intentional disobedience of any temporary restraining order or injunction issued pursuant to this section is punishable as a crime. (Code Civ. Proc., § 527.8, subd. (j); Pen. Code, § 273.6.)

> FN5 A "credible threat of violence" is now defined as "a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no [immediate] legitimate purpose." (Code Civ. Proc., § 527.8, subd. (b)(2).) At the time the injunction against Camm was obtained, a "credible threat of violence" was a threat intended to cause, and actually causing, a person to believe that he or she was under threat of death or serious bodily injury as well. (Stats. 1994, 1st Ex. Sess. 1993-1994, ch. 29, § 2.)

We agree that these provisions taken together express an explicit public policy requiring employers to take reasonable steps to provide a safe and *337 secure workplace. (3)**(See fn. 6)**Such responsibility appears to include the duty to adequately address potential workplace violence. [FN6] (2b) However, the City has not established that the public policy entails the obligation to automatically fire any employee who makes a threat of violence regardless of the employee's intent in uttering it and the actual risk to workplace safety and regardless of the procedural guarantees secured by collective bargaining and set forth in a memorandum of understanding between a union and a city. While a city might be required to summarily place an employee on administrative leave to fulfill its duty of providing a safe workplace where the city has reasonable proof that an employee has made a credible threat of violence against a coworker, nothing permits a city to entirely ignore the grievance procedures to which it agreed when following them does not compromise workplace safety. Likewise, reinstatement of an employee, who had no intention of carrying out his

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or her threats of violence, is not necessarily precluded because there is no absolute public policy against employment of persons who make threats of violence, which operates regardless whether there is an actual risk of violence.

> FN6 An agency's interpretation of the meaning and legal effect of a statute, which is reflected in something other than quasi-legislative regulations promulgated pursuant to express statutory authority, is entitled to consideration and respect by the courts if merited. (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7 [78 Cal.Rptr.2d 1, 960 P.2d 1031].) However, the courts have the final responsibility for interpreting any statute. (*Id.* at pp. 7, 12.)

Here, the arbitrator found that Camm's threat, while it was violative of the City's workplace violence policy, reflected the type of aggressive language commonly used and tolerated in the utilities department. [FN7] The arbitrator implicitly concluded that Camm did not intend to carry out his threat against Bingham and his family and the threat was just tough talk.

> FN7 At the hearing on the parties' petitions, the trial court stated: "[O]bviously the arbitrator, it seems to me, did find that these statements or threats were not, did not carry the import that they seem to on the face.... I gather from my reviewing of the case that I'm bound by his determination in that regard. That is certainly troubling, but I feel I'm compelled to accept his determination of the facts."

Nevertheless, the City appears to suggest that an arbitrator can never lawfully reinstate any employee who makes such a threat of violence. To the extent that the City's argument may be that Camm's threats were genuine, this was a disputed issue of fact involving conflicting evidence, which we cannot judicially revisit. A different result might well obtain if the arbitrator had found, or there was uncontroverted evidence, that Camm's threats were ***338** genuine [FN8] or if the arbitrator failed to reach that substantive question. There is an argument to be made that reinstatement of an employee-who made threats of violence, on purely procedural grounds, violates the public policy requiring an employer to provide a safe working environment. (Cf., e.g. *Exxon Shipping Co. v. Exxon Seamen's Union* (3d Cir. 1993) 993 F.2d 357, 364 [arbitrator's reinstatement of oil tanker seaman who tested positive for drugs after ship ran aground violated public policy against the operation of a vessel while under the influence]; *Stroehmann Bakeries v. Local 776* (3d Cir. 1992) 969 F.2d 1436, 1438, 1442 [arbitrator's reinstatement of employee without determining merits of sexual harassment allegation violated public policy against sexual harassment in the workplace]; *Newsday v. Long Island Typographical Union* (2d Cir. 1990) 915 F.2d 840, 845 [arbitrator's reinstatement of employee on procedural grounds although found to have committed sexual harassment violated public policy against sexual harassment in the workplace]; *Delta Air Lines v. Air Line Pilots Ass'n, Intern.* (11th Cir. 1988) 861 F.2d 665, 671-675 [arbitrator's reinstatement of commercial airline pilot who flew passenger plane while drunk violated public policy against operating civil aircraft while under the influence of alcohol].)

> FN8 We need not here decide whether and under what circumstances a court could conclude, contrary to an arbitrator's finding, that reinstatement would pose a significant risk of violence and contravene the public policy requiring an employer to provide a safe workplace.

However, the City has not shown that reinstatement of Camm is necessarily incompatible with the public policy requiring employers to provide a safe workplace. We are gravely aware of the risks of workplace violence and the need for employers to take adequate action. We, therefore, emphasize that

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nothing in our decision is intended to prevent the City from closely monitoring and quickly responding to belligerent, intimidating, or threatening behavior, which might indicate a propensity to resort to physical violence, strictly enforcing its workplace violence policy across the board, and taking corrective measures to prevent the incident from recurring or escalating.

2. *Obedience to Court Order*

(4a) Although this court has determined that reinstatement did not violate the public policy requiring employers to provide a safe workplace by adequately addressing threats of violence, a different public policy conflict is presented by the injunction against Camm issued pursuant to Code of Civil Procedure section 527.8. (5) As the United States Supreme Court has observed, "[i]t is beyond question that obedience to judicial orders is an important public policy. An injunction issued by a court acting within its jurisdiction must be obeyed until the injunction is vacated or withdrawn. ***339** [Citations.]" (*W. R. Grace & Co. v. Rubber Workers* (1983) 461 U.S. 757, 766 [103 S.Ct. 2177, 2184-2184, 76 L.Ed.2d 298].)

Under California's general contempt law, "[d]isobedience of any lawful judgment, order, or process of the court" is punishable as a civil contempt. (Code Civ. Proc., § 1209, subd. (a)5.) A civil contempt may be punished by a fine or imprisonment or both (Code Civ. Proc., § 1218) or, under appropriate circumstances, performance may be compelled by indefinite imprisonment (Code Civ. Proc., § 1219). "Willful disobedience of any process or order lawfully issued by any court" also constitutes a criminal contempt, which is punishable as a misdemeanor. (Pen. Code, § 166, subd. (a)(4); see Pen. Code, § 19.) Enforcement of certain protective-type orders issued by the courts, including an order issued pursuant to Code of Civil Procedure section 527.8, is considered even more important, as witnessed by the more stringent punishment available for a criminal contempt of such orders. (See Pen. Code, § 273.6; see also Pen. Code, § 166, subd. (c).)

(4b) Although the arbitrator's award of reinstatement was directed at the City, not Camm, and, therefore, does not literally compel Camm to violate the injunction against him, Camm certainly could not have returned to his former position without violating the April 11, 1997, injunction. That order prohibited Camm from going to Bingham's place of work, which was Camm's place of work, and from going to all work crew sites of the water/wastewater/gas division of the Palo Alto Utilities Department. Camm's suggestions that the City might put him on paid administrative leave or place him in a different position not entailing any responsibilities that would require him to violate the injunction, even if feasible, are inconsistent with the arbitrator's order, which requires the City to reinstate Camm to his former position as "leadman" of a work crew in the utilities department.

It is and has been the City's position that the award cannot be enforced without violating the court's order. In explaining its decision to confirm the award, the trial court stated: "[M]y determination on this issue in no way, shape or form is intended to in any way imply what Judge Johnson or any other judge hearing the injunction or the restraining order should decide in that case ... and that I'm not making any determination as to whether that's appropriate to continue an injunction in effect."

We see no way that the arbitrator's award reinstating Camm could have been put into operation without Camm disobeying the April 11, 1997, injunction. Thus, the arbitration award of unconditional reinstatement was ***340** irreconcilable with the public policy requiring obedience to court orders, especially an injunction issued pursuant to Code of Civil Procedure section 527.8. [FN9] The conflict was all the more profound since the injunction was based upon a judicial finding by clear and convincing evidence that Camm had made a credible threat of violence against Bingham. (Code Civ. Proc., § 527.8, subd. (f).)

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> FN9 We have taken judicial notice that on June 21, 1999, over two years after the original injunction issued and over one year after the arbitration award, the trial court modified the injunctive order by deleting Bingham's place of work and the work crew sites of the water/wastewater/gas division of the Palo Alto Utilities Department from its stay-away order (Evid. Code, §§ 452, 459). Upon remand, the trial court may consider the legal effect, if any, of the subsequent modification of the April 11, 1997, injunction against Camm.

The order confirming the arbitration award and denying the petition to vacate the award is reversed and the matter is remanded to the trial court for further proceedings consistent with this opinion. The respondents are to bear costs on appeal.

Cottle, P. J., and Premo, J., concurred. ***341**

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City of Palo Alto v. Service Employees Internat. Union
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C

Court of Appeal, First District, Division 3, California.
USS-POSCO INDUSTRIES, Plaintiff and Respondent,
v.
Ezell EDWARDS, Defendant and Appellant.
No. A098484.

Aug. 18, 2003.

Background: Employer sought injunction against former employee based on his generalized threats of workplace violence. The Superior Court, Contra Costa County, No. C0101137,Steven K. Austin, J., issued injunction prohibiting contact with manager, and denied employee's motion to modify injunction. Employee appealed.

Holdings: The Court of Appeal, Parrilli, J., held that:
(1) Code of Civil Procedure provision governing injunctions prohibiting further threats of workplace violence did not require a particularized threat against manager who was protected by injunction;
(2) ample evidence supported manager's fear for her safety;
(3) clear and convincing evidence established a credible threat of future violence directed at manager;
(4) employee failed to establish employer's petition for injunction was retaliatory; and
(5) employee's threats to "come in gunning" at workplace were not protected by the First Amendment.

Affirmed.

West Headnotes

[1] Protection of Endangered Persons 315P 47

315P Protection of Endangered Persons
315PII Security or Order for Peace or Protection
315PII(B) Grounds in General
315Pk47 k. Workplace and employment. Most Cited Cases
(Formerly 62k17 Breach of the Peace)
Code of Civil Procedure provision governing injunctions prohibiting further unlawful workplace violence or threats of such violence did not require a particularized threat against employee protected by injunction. West's Ann.Cal.C.C.P. § 527.8(a).

[2] Protection of Endangered Persons 315P 47

315P Protection of Endangered Persons
315PII Security or Order for Peace or Protection
315PII(B) Grounds in General
315Pk47 k. Workplace and employment. Most Cited Cases
(Formerly 62k18 Breach of the Peace)

Protection of Endangered Persons 315P 54

315P Protection of Endangered Persons
315PII Security or Order for Peace or Protection
315PII(C) Proceedings
315Pk51 Plenary Proceedings in General
315Pk54 k. Parties, right of action, and standing. Most Cited Cases
(Formerly 62k18 Breach of the Peace)
An employer may seek relief under the Code of Civil Procedure provision governing injunctions prohibiting further unlawful workplace violence or threats of such violence on behalf of any employee who is credibly threatened with unlawful violence, whether or not that employee is identified by the defendant. West's Ann.Cal.C.C.P. § 527.8(a).

[3] Appeal and Error 30 920(3)

30 Appeal and Error
30XVI Review
30XVI(G) Presumptions
30k920 Interlocutory Orders and Proceedings

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30k920(3) k. Injunction. Most Cited Cases
In reviewing challenges to the sufficiency of the evidence to support an injunction, the Court of Appeal would apply the substantial evidence test, resolving all factual conflicts and questions of credibility in favor of the prevailing party, and drawing all reasonable inferences in support of the trial court's findings.

[4] Protection of Endangered Persons 315P 47

315P Protection of Endangered Persons
315PII Security or Order for Peace or Protection
315PII(B) Grounds in General
315Pk47 k. Workplace and employment. Most Cited Cases
(Formerly 62k17 Breach of the Peace)
Evidence that manager discovered statements reported by co-workers in which former employee repeatedly threatened to bring a gun into the workplace and shoot employees against whom he harbored a grudge, that manager knew employee reacted to a request that he wear his safety glasses by issuing a thinly veiled challenge to fight in the parking lot, and that manager instigated disciplinary action that led to employee's suspension and termination supported manager's fear for her safety, for purposes of issuing injunction prohibiting former employee's contact with manager based on his generalized threats of workplace violence, even though manager was not among the named targets. West's Ann.Cal.C.C.P. § 527.8(a).
See 6 Witkin, Cal. Procedure (4th ed. 1997) Provisional Remedies, § 327.

[5] Protection of Endangered Persons 315P 47

315P Protection of Endangered Persons
315PII Security or Order for Peace or Protection
315PII(B) Grounds in General
315Pk47 k. Workplace and employment. Most Cited Cases
(Formerly 62k20 Breach of the Peace)
Former employee's lunch room threats, incident which resulted in employee's suspension, and reasonable concern that employee would possibly retaliate for his suspension and termination provided clear and convincing evidence of a credible threat of future violence directed at manager, in action seeking injunction against former employee based on his generalized threats of workplace violence. West's Ann.Cal.C.C.P. § 527.8(a).

[6] Civil Rights 78 1717

78 Civil Rights
78V State and Local Remedies
78k1717 k. Civil actions in general. Most Cited Cases

Protection of Endangered Persons 315P 47

315P Protection of Endangered Persons
315PII Security or Order for Peace or Protection
315PII(B) Grounds in General
315Pk47 k. Workplace and employment. Most Cited Cases
(Formerly 62k20 Breach of the Peace)
Trial court had no duty to take up on its own initiative whether employer's petition for injunction against threatened workplace violence was motivated by a desire to retaliate against former employee for his prior complaints about racial discrimination in the workplace. West's Ann.Cal.C.C.P. § 527.8(a).

[7] Protection of Endangered Persons 315P 47

315P Protection of Endangered Persons
315PII Security or Order for Peace or Protection
315PII(B) Grounds in General
315Pk47 k. Workplace and employment. Most Cited Cases
(Formerly 62k20 Breach of the Peace)
Evidence that former employee repeatedly complained about racial discrimination by employer was not direct evidence of a retaliatory motive on employer's part, and, given the serious nature of threats discovered by management that former em-

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ployee would "come in gunning" at workplace, there could have been no justification for denying injunctive relief to employer based on an inferred retaliatory motive. West's Ann.Cal.C.C.P. § 527.8 (a).

[8] Constitutional Law 92 ⚿1905

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(O) Labor and Employment in General
92k1905 k. In general. Most Cited Cases
(Formerly 92k90.1(1))

Protection of Endangered Persons 315P ⚿47

315P Protection of Endangered Persons
315PII Security or Order for Peace or Protection
315PII(B) Grounds in General
315Pk47 k. Workplace and employment. Most Cited Cases
(Formerly 62k16 Breach of the Peace)

Protection of Endangered Persons 315P ⚿78

315P Protection of Endangered Persons
315PII Security or Order for Peace or Protection
315PII(D) Protection Orders in General
315Pk72 Nature and Scope of Relief
315Pk78 k. Other particular orders or relief. Most Cited Cases
(Formerly 62k16 Breach of the Peace)

Former employee's threats to "come in gunning" at workplace did not further the values of dialogue protected by the First Amendment, such that injunction prohibiting him from making further threats of violence against manager did not violate his right to free speech. U.S.C.A. Const.Amend. 1.

[9] Constitutional Law 92 ⚿1830

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(I) Harassment and Threats
92k1829 Threats
92k1830 k. In general. Most Cited Cases
(Formerly 92k90.1(1))

The state may penalize threats, even those consisting of pure speech, provided the relevant statute singles out for punishment threats falling outside the scope of First Amendment protection; in this context, the goal of the First Amendment is to protect expression that engages in some fashion in public dialogue, that is, communication in which the participants seek to persuade, or are persuaded. U.S.C.A. Const.Amend. 1.

[10] Constitutional Law 92 ⚿1830

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(I) Harassment and Threats
92k1829 Threats
92k1830 k. In general. Most Cited Cases
(Formerly 92k90.1(1))

As speech strays further from the values of persuasion, dialogue, and free exchange of ideas, and moves toward willful threats to perform illegal acts, the state has greater latitude to regulate expression. U.S.C.A. Const.Amend. 1.

[11] Constitutional Law 92 ⚿1554

92 Constitutional Law
92XVIII Freedom of Speech, Expression, and Press
92XVIII(A) In General
92XVIII(A)3 Particular Issues and Applications in General
92k1554 k. Injunctions and restraining orders. Most Cited Cases
(Formerly 92k90.1(1))

Once a court has found that a specific pattern of speech is unlawful, an injunctive order prohibiting the repetition, perpetuation, or continuation of that practice is not a prohibited 'prior restraint' of speech. U.S.C.A. Const.Amend. 1.

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with Giacobazzi and told her he had only been joking. Giacobazzi told him three people had taken him seriously. She suspended him for 5 days for violating UPI's policy against using threatening language toward a fellow employee.

Craig Pineda, a coworker of Edwards, became concerned when he heard about the incident with Rowell. He approached Machado at 9:30 on the morning of March 20 and said he had heard Edwards say some things that might be related to the threats against Rowell. At Machado's request, Pineda wrote down the following statements Edwards had made in the lunch room:

***440** "The day I tell you to report off, you better, because I'm going to come in gunning. I'll shut the door of the office and let them fly."

"The day you see me with a lunchbox, because I don't use one, get the fuck out of the way because there's going to be a motherfucking gun inside."

"One of these days some motherfucker is going to piss me off and they're going to have to change the company's name from USS-POSCO to USS-Columbine."

"Don't let me get in trouble outside of this place cause I sure pay a visit to POSCO to take care of some motherfuckers before I go to jail."

Pineda testified that all these statements were made around March 2001.

Machado then asked another employee, Manuel Nino, if he had heard any disturbing****58** comments from Edwards. He said he had, and wrote down that he had heard Edwards say "that if he was ever going to do something that he would let us know about it first and not to come to work the next day." Nino testified that Edwards said this in late February 2001. Nino had become concerned about Edwards because his temper had recently been getting shorter and shorter. Nino had heard statements from Edwards similar to those recorded by Pineda. Edwards had told Nino that he had a gun, and carried it in his car.

Machado gave the written statements from Pineda and Nino to Giacobazzi on March 22. Giacobazzi was shocked and concerned about her own safety and that of her coworkers. She thought Edwards might be upset about his recent reprimand and suspension, and feared he might try to retaliate against her or other UPI managers or employees. Giacobazzi passed the statements along to Michael Connally, the Labor Relations Manager at UPI. On March 23, Connally signed a petition seeking protective orders under section 527.8, requesting that Edwards be required to stay away from Giacobazzi and the UPI premises. The court granted a temporary restraining order.

Connally continued investigating, confirming the reports from Pineda and Nino. He also learned that an employee named Joe Lee had heard Edwards make comments about turning USS Posco into USS Columbine. An employee named Darin Smith reported that about two months prior to the Rowell incident, he heard Edwards say, "I carry a gun. I keep it in my car. I park my car outside of the [main employee] parking lot." Smith also overheard Edwards saying in the lunch room, in reference to UPI employees, "Sbranti, Connally, Dahlman, Golik, Rowell, I'll kill all the motherfuckers." When Smith sarcastically said "yeah, right," Edwards responded "I've got something for you, too."

***441** UPI pursued termination proceedings and Edwards was fired.

Edwards filed no written response prior to the hearing on UPI's request for injunctive relief. (See § 527.8, subd. (f).) At the hearing on the injunction, Edwards denied making any statements like those reported by Pineda and Nino. He said he did not own a gun and never told anyone that he owned a gun. He claimed he had not meant anything by his comments in the office, had not directed them to anyone in particular, and had only been joking.

Giacobazzi testified that she was still concerned

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about retaliation from Edwards, particularly since he might blame Giacobazzi for firing him. Rowell testified that he was even more concerned about the threats from Edwards than he had been when they were made, in light of the other statements that came to light in the ensuing investigation. Pineda testified that he couldn't be sure whether Edwards was joking when he made his threatening statements, which is why they were so troubling. Smith testified that he was concerned about Edwards retaliating, "[s]o every time I leave I check the parking lot."

At the end of the hearing, the court asked for briefing on whether the statute authorized an injunction in the absence of a specific threat directed at a particular employee. In his brief, however, Edwards focused on whether his statements presented a credible threat, rather than whether section 527.8 authorized relief against generalized threats. UPI contended the statute was clearly aimed at preventing workplace violence, and it would be absurd to construe it not to apply to an employee who threatens the entire workplace.

****59** On October 4, 2001, the court issued the three-year injunction authorized by section 527.8, subdivision (f), finding clear and convincing evidence of credible threats of violence by Edwards. The court said: "Now, the order is in the name only of the employee that it was [sought for] originally [Giacobazzi.] I know there has not been a direct threat naming her and I know there hasn't been any testimony of that; however, I believe that given the generalized threats, the threats about turning this into USS-Columbine, the other threats that had been talked about.... I believe that the order should be issued to her as his direct supervisor being the person that actually initiated disciplinary action in this case."

On December 20, 2001, Edwards moved to modify the injunction. He submitted declarations testifying that he had no history of violent conduct, and claimed that while he was well known as a "trash talker" he never took action and should not be taken seriously. He argued that such talk was common in the UPI workplace, and without any history of violent conduct he could not properly be restrained under section 527.8. The court denied the motion. This appeal followed.

*442 DISCUSSION

1. *Section 527.8 Does Not Require a Particularized Threat*

[1] Edwards argues that because he made no threat directed specifically at Giacobazzi, section 527.8 did not authorize the issuance of an injunction protecting her. He emphasizes the statutory language providing that "[a]ny employer, whose *employee has suffered unlawful violence or a credible threat* of violence may seek... an injunction *on behalf of the employee....*" (§ 527.8, subd. (a), italics added.) We do not read the statute so narrowly.

"The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. [Citations.] In order to determine this intent, we begin by examining the language of the statute. [Citations.] But '[i]t is a settled principle of statutory interpretation that language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend.' [Citations.] Thus, '[t]he intent prevails over the letter, and the letter will, if possible, be so read so as to conform to the spirit of the act.' [Citation.] Finally, we do not construe statutes in isolation, but rather read every statute 'with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.' [Citation.]" (*People v. Pieters* (1991) 52 Cal.3d 894, 898-899, 276 Cal.Rptr. 918, 802 P.2d 420; accord, *People v. Ledesma* (1997) 16 Cal.4th 90, 95, 65 Cal.Rptr.2d 610, 939 P.2d 1310; *Scripps Health v. Marin* (1999) 72 Cal.App.4th 324, 332, 85 Cal.Rptr.2d 86 (*Scripps*).)

In *Scripps,* the court was concerned with the fol-

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lowing sentence in section 527.8, subdivision (f): "If the judge finds by clear and convincing evidence that the defendant engaged in unlawful violence or made a credible threat of violence, an injunction shall issue prohibiting further unlawful violence or threats of violence." The respondent contended this provision entitles a plaintiff to an injunction if the court finds the defendant engaged in an act of unlawful violence, even if there is no showing of future harm. The court rejected this construction, though the express language of the statute appeared to support it. "[A] closer look at the subdivision within the context of the entire statute, its underlying legislative intent and the nature of injunctive relief, persuades us such a literal interpretation cannot be given to **60 the disputed statutory language." (*Scripps, supra,* 72 Cal.App.4th at p. 332, 85 Cal.Rptr.2d 86.)

"At the time section 527.8 was enacted, section 527.6 prevented harassment when there has been a knowing and willful course of conduct directed at a specific person which annoys or harasses the person and serves no legitimate purpose. The reasonable construction of this harassment provision *443 required the applicant to establish a course of conduct giving rise to a threat of future harm necessitating injunctive relief." (*Scripps, supra,* 72 Cal.App.4th at p. 333, 85 Cal.Rptr.2d 86.)

" Section 527.8 was enacted in 1994 to establish parallel provisions to section 527.6. It authorized any employer to pursue a TRO and an injunction on behalf of its employees to prevent threats or acts of violence by either another employee or [a] third person. Given that section 527.6 only allowed injunctive relief for natural persons (see *Diamond View Limited v. Herz* (1986) 180 Cal.App.3d 612, 618-619 [225 Cal.Rptr. 651]), section 527.8 was enacted to allow a corporate employer to bring such an action on behalf of an employee. Section 527.8 was thus intended to enable employers to seek the same remedy for its employees as section 527.6 provides for natural persons. The express intent of the author of the legislation was to address the growing phenomenon in California of workplace violence by providing employers with injunctive relief so as to *prevent* such acts of workplace violence. (Sen. Rules Com., 3d reading analysis of Assem. Bill No. 68 (1993-1994 First Ex.Sess.) Aug. 31, 1994; Assem. Bill No. 68, Concurrence in Sen. Amends. (1993-1994 First Ex.Sess.) Aug. 31, 1994; Sen. Com. on Judiciary, Analysis of Assem. Bill No. 68 (1993-1994 First Ex.Sess.) as amended June 30, 1994.)" (*Scripps, supra,* 72 Cal.App.4th at pp. 333-334, 85 Cal.Rptr.2d 86, italics in original, fn. omitted.)

Noting that section 527.8, subdivision (e) requires a showing of great or irreparable harm to obtain a temporary restraining order, the *Scripps* court concluded the same showing is required to obtain an injunction. It noted there was "no evidence of a legislative intent to alter the traditional nature of prohibitory injunctive relief" and a clear legislative intent to "provide employers with the remedy of injunctive relief to protect their employees by preventing unlawful violence where it is reasonably likely [to] occur in the future." (*Scripps, supra,* 72 Cal.App.4th at p. 335, 85 Cal.Rptr.2d 86.)

[2] Here, the terms of section 527.8, subdivision (a) provide less support for Edwards's position than the terms of subdivision (f) provided for the *Scripps* respondent. By authorizing an employer "whose employee has suffered unlawful violence or a credible threat of violence" to seek "an injunction on behalf of the employee," the Legislature did not specify that the threat of violence must be directed at a particular employee. Given the legislative intent to prevent workplace violence, it would indeed be absurd to read the statute in a way that would provide no protection against a threat to indiscriminately shoot employees on the premises. An employer may seek relief under section 527.8 on behalf of any employee who is credibly threatened with unlawful violence, whether or not that employee is identified by the defendant.

*444 2. *The Evidence of Threats Was Sufficient*

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lowing sentence in section 527.8, subdivision (f): "If the judge finds by clear and convincing evidence that the defendant engaged in unlawful violence or made a credible threat of violence, an injunction shall issue prohibiting further unlawful violence or threats of violence." The respondent contended this provision entitles a plaintiff to an injunction if the court finds the defendant engaged in an act of unlawful violence, even if there is no showing of future harm. The court rejected this construction, though the express language of the statute appeared to support it. "[A] closer look at the subdivision within the context of the entire statute, its underlying legislative intent and the nature of injunctive relief, persuades us such a literal interpretation cannot be given to ****60** the disputed statutory language." (*Scripps, supra,* 72 Cal.App.4th at p. 332, 85 Cal.Rptr.2d 86.)

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[2] Here, the terms of section 527.8, subdivision (a) provide less support for Edwards's position than the terms of subdivision (f) provided for the *Scripps* respondent. By authorizing an employer "whose employee has suffered unlawful violence or a credible threat of violence" to seek "an injunction on behalf of the employee," the Legislature did not specify that the threat of violence must be directed at a particular employee. Given the legislative intent to prevent workplace violence, it would indeed be absurd to read the statute in a way that would provide no protection against a threat to indiscriminately shoot employees on the premises. An employer may seek relief under section 527.8 on behalf of any employee who is credibly threatened with unlawful violence, whether or not that employee is identified by the defendant.

***444** 2. *The Evidence of Threats Was Sufficient*

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[3] Edwards raises a series of challenges to the sufficiency of the evidence to support the injunction. None are meritorious. We apply the substantial evidence test, resolving all factual conflicts and **61 questions of credibility in favor of UPI as the prevailing party, and drawing all reasonable inferences in support of the trial court's findings. (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762, 283 Cal.Rptr. 533.)

[4] First, Edwards claims Giacobazzi's affidavit and testimony established only a subjective fear of violence, not an objective, credible threat. However, this evidence included Giacobazzi's discovery of the statements reported by Pineda and Nino, in which Edwards repeatedly threatened to bring a gun into the workplace and shoot UPI employees against whom he harbored a grudge. It included the Rowell incident, in which Edwards reacted to a request that he wear his safety glasses by issuing a thinly veiled challenge to fight in the parking lot. Other evidence developed during Connally's investigation confirmed the threats, confirmed earlier reports that Edwards spoke of carrying a gun in his car,[FN2] and included an additional statement in which Edwards threatened to kill specific UPI managers. While Giacobazzi was not among the named targets, she certainly had objective reason to fear for her safety, as it was she who instigated the disciplinary action that led to Edwards' suspension and termination, and also to UPI's section 527.8 petition. Edwards' threats were consistently retaliatory in nature. There was ample evidence to support Giacobazzi's fear for her safety.

> FN2. In his reply brief, Edwards claims there was no evidence to support the court's comment that the injunction was based partly on "[t]he fact that he said that he had a weapon and had brought it on before." However, more than one witness testified that Edwards said he had a gun and carried it in his car, which he drove to work.

Next, Edwards contends his comments to Rowell were too vague and conditional to justify injunctive relief under section 527.8. He claims his statements were not "fighting words," and did not amount to a credible threat of violence in the mill environment, where boasting and threats were common. These arguments fail to account for the other, more serious threats reported by Edwards's coworkers. UPI did not seek an injunction based merely on Edwards's confrontation with Rowell.

[5] Edwards also argues that his lunchroom statements were "stale" and did not provide the clear and convincing evidence of a credible threat of future violence required under section 527.8, subdivision (f) and *Scripps, supra,* 72 Cal.App.4th at page 335, 85 Cal.Rptr.2d 86. He says no one who heard the remarks took them seriously. The record does not support these claims. The statements were made within a month or two of the Rowell incident and UPI's initiation of *445 section 527.8 proceedings. After hearing about Edwards confronting Rowell, Pineda was concerned enough that he came forward on his own to disclose the lunch room threats. Pineda was troubled because he could not tell whether Edwards was joking or not. Nino had become increasingly concerned about Edwards's inability to control his temper. Pineda and Nino were not personally threatened, because they were not targets of the threats and Edwards told them he would warn them before he did anything. But Darin Smith was concerned for his safety. The lunch room threats, the Rowell incident, and the reasonable concern that Edwards might retaliate for his suspension and termination provided clear and convincing evidence of a credible threat of future violence directed at Giacobazzi.

3. *Edwards Failed to Establish a Retaliatory Motive on UPI's Part*

[6][7] On appeal, Edwards faults the trial court for failing to consider whether **62 UPI's section 527.8 petition was motivated by a desire to retaliate against Edwards for his prior complaints about racial discrimination in the UPI workplace. However,

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Edwards never presented this argument to the trial court. He cites no authority requiring the court to take up the issue on its own initiative. In any event, while Edwards did present evidence that he had repeatedly complained about discrimination by UPI, there was no direct evidence of a retaliatory motive on UPI's part. Given the serious nature of the threats discovered by UPI management after the Rowell incident, there could have been no justification for denying injunctive relief based on an inferred retaliatory motive.

4. *The First Amendment Does Not Protect Edwards's Threats*

[8] The injunction prohibits Edwards from making further threats of violence against Giacobazzi. He contends this restriction deprives him of his right to free speech under the federal and state constitutions. Again, Edwards failed to raise this claim below, and it is meritless in any case.

[9][10][11] "[T]he state may penalize threats, even those consisting of pure speech, provided the relevant statute singles out for punishment threats falling outside the scope of First Amendment protection. [Citations.] In this context, the goal of the First Amendment is to protect expression that engages in some fashion in public dialogue, that is, ' "communication in which the participants seek to persuade, or are persuaded; communication which is about changing or maintaining beliefs, or taking or refusing to take action on the basis of one's beliefs...." ' [Citations.] As speech strays further from the values of persuasion, dialogue and free exchange of ideas, and moves toward willful threats to perform illegal acts, the state has greater latitude to regulate expression. [Citation.]" (***446***In re M.S.* (1995) 10 Cal.4th 698, 710, 42 Cal.Rptr.2d 355, 896 P.2d 1365; accord, *Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 134, 87 Cal.Rptr.2d 132, 980 P.2d 846.) "[O]nce a court has found that a specific pattern of speech is unlawful, an injunctive order prohibiting the repetition, perpetuation, or continuation of that practice is not a prohibited 'prior restraint' of speech. [Citation.]" (*Aguilar v. Avis Rent A Car System, Inc., supra,* 21 Cal.4th at p. 140, 87 Cal.Rptr.2d 132, 980 P.2d 846.) The same analysis applies under the California Constitution. (*Id.* at pp. 144-145, 87 Cal.Rptr.2d 132, 980 P.2d 846.)

Edwards cannot seriously maintain that his threats to "come in gunning" at UPI furthered the values of dialogue protected by the First Amendment.

DISPOSITION

The order denying modification is affirmed.

We concur: McGUINESS, P.J., and POLLAK, J.
Cal.App. 1 Dist.,2003.
USS-Posco Industries v. Edwards
111 Cal.App.4th 436, 4 Cal.Rptr.3d 54, 20 IER Cases 449, 03 Cal. Daily Op. Serv. 7474, 2003 Daily Journal D.A.R. 9325

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