Federal Labor Laws

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Revised, April 2004

XXXIV. Judicial Involvement in the Enforcement of Collective Bargaining Agreements

A. Common Law Treatment of Voluntary Remedies

1. Traditionally, in the United States, the courts have looked with disfavor at efforts of private citizens to use voluntary methods to resolve contractual disputes.

2. Many state courts have seen arbitration of disputes as an undesirable alternative to litigation. Arbitration was often viewed as an effort to supplant the jurisdiction of the courts.

3. Under the common law, arbitration agreements were regarded as purely executory. In other words, an agreement to arbitrate a dispute could be unilaterally revoked at any time prior to the issuance of a final award.

4. Moreover, if the award of an arbitrator was deficient in any way, the court could set aside the entire order.

5. Many states have enacted arbitration statutes, applicable either to commercial disputes, labor disputes or both, but courts have still remained reluctant to enforce agreements to arbitrate future disputes.

6. The general judicial disdain for arbitration no longer applies to labor disputes that are subject to the jurisdiction of federal law. In a series of cases beginning in the 1950's the Supreme Court has developed a body of federal labor law with a strong preference for arbitration as the method of enforcing collective bargaining agreements.

B. Federal Law and the Preferred Status of Arbitration – *Lincoln Mills* [1]

1. In 1953, the Textile Workers Union and Lincoln Mills entered into a collective bargaining agreement which contained a no-strike clause and binding arbitration of contractual disputes.

   a. A number of work load and work assignment grievances were processed by the union through the negotiated grievance procedure.

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[1] Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 40 LRRM 2113 (1957).

b. Pursuant to the grievance procedure, the union requested arbitration of the outstanding grievances.

c. The employer refused to arbitrate, relying on the state court rulings allowing unilateral rejection of an agreement to arbitrate.

2. The union sued to compel arbitration in federal district court. The union won and the employer appealed the order compelling arbitration. At the court of appeals, the employer won[2] and the union appealed to the Supreme Court.

3. At the Supreme Court, a number of important points were established through the Court's interpretation of § 301 of the Taft-Hartley Act. The critical issue at the Supreme Court was whether the federal courts should enforce an agreement to arbitrate which would not be enforced in state court. In answering in the affirmative, the Supreme Court ruled that:

a. Section 301, which gives federal courts jurisdiction to enforce collective bargaining agreements should be regarded as the source of a body of substantive federal law concerning collective bargaining agreements, rather than as a procedural source of federal court jurisdiction.[3]

1) The policy of Taft-Hartley argues for a consistent national policy concerning labor relations.

2) Federal law also advances the policy of peaceful resolution of labor disputes, which can be advanced by a substantive judicial policy on the enforcement of labor agreements.

b. A no-strike clause in a collective bargaining agreement is a *quid pro quo* for an agreement to arbitrate. The union gives up the right to strike in exchange for an alternative method for enforcing its rights under the collective bargaining agreement.[4]

c. Federal policy favors industrial peace, and therefore it favors agreements which include no-strike and arbitration clauses. Agreements to arbitrate should be specifically enforced as a matter of federal law.

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[2] Textile Workers Union v. Lincoln Mills, 230 F2d 81, 37 LRRM 2462 (5th Cir. 1956).

[3] Note 1, supra, at 2114.

[4] Ibid., at 2115.

C. The *Steelworkers Trilogy* – Judicial Standards for the Enforcement of an Agreement to Arbitrate

1. In three cases decided on the same day, the Supreme Court clarified substantially the federal policy of encouragement of voluntary arbitration as a means of resolving contractual disputes. Because the three cases all involved the United Steelworkers of America, they are known as the *Steelworkers Trilogy*.

    a. The first two cases involved questions of enforcing agreements to arbitrate and are discussed in this section.

    b. The third case addressed the issue of enforcement of the award of an arbitrator, and is discussed in the following section.

2. In the first case, *American Manufacturing Co.*,[5] the Steelworkers had a collective bargaining agreement which permitted arbitration of any dispute as to the "meaning, interpretation, or application of the agreement," but management reserved the right to discipline any worker "for cause."

    a. A worker was injured, left work and settled a workers' compensation case with the employer for permanent partial disability.

    b. The union filed a grievance under the seniority clause of the contract in an attempt to restore the worker to his previous job.

    c. The employer refused to arbitrate and the union sued to compel arbitration.

3. The lower court ruled in favor of the employer on the grounds that the union's position was clearly wrong, that the seniority clause was inapplicable to the dispute.[6]

4. The Supreme Court ruled that under a general arbitration clause, the role of the court is extremely limited. If the party seeking arbitration has made a claim which is arguably subject to the arbitration clause, the court should compel arbitration.[7]

    a. Since it was necessary for the lower court to interpret the seniority and other clauses to determine that whether the dispute was arbitrable, the court should have ordered arbitration.

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[5] United Steelworkers v. American Mfg. Co., 363 U.S. 564, 46 LRRM 2414 (1960).

[6] United Steelworkers v. American Mfg. Co., 264 F.2d 624, 43 LRRM 2757 (6th Cir. 1959).

[7] Note 5, *supra*, at 2415-16.

b. The fact that the court believes that a grievance is totally lacking in merit or is frivolous should be of no concern to the court.

5. In the second case, *Warrior & Gulf Navigation*,[8] the employer contracted out certain maintenance work which resulted in the lay-off of several bargaining unit members. The union grieved in protest of the subcontracting and resulting lay-offs.

   a. The contract included an arbitration clause, but the grievance procedure and arbitration clause excluded "decisions which are strictly a function of management."

   b. The employer refused to arbitrate on the basis of the exclusion from the scope of the grievance procedure, and the union sued to compel arbitration.

   c. The lower court dismissed the union's suit, ruling that the subcontracting decision was a management function which meant that the dispute was not subject to arbitration.[9]

6. The Supreme Court reversed, stating that the lower court could not have reached its decision without some interpretation of the management rights and arbitration clauses.

   a. It is the court's role to determine whether a party resisting arbitration has agreed to arbitrate. Although there can be no order compelling arbitration in the absence of an agreement, all doubt should be resolved in favor of arbitration.

   b. An order to arbitrate should be denied only if it can be said with positive assurance that the arbitration clause does not cover the specific dispute.

   c. In this case, the management functions exclusion was too vague to justify a denial of an order compelling arbitration.

D. The *Steelworkers Trilogy* – Judicial Standards for the Enforcement of an Arbitration Award

1. In the third case of the *Steelworkers Trilogy*, *Enterprise Wheel*,[10] the issue concerned the role of the courts in the enforcement of the award of an arbitrator.

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[8] United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 46 LRRM 2416 (1960).

[9] United Steelworkers v. Warrior & Gulf Navigation Co., 269 F2d 633, 44 LRRM 2567 (5th Cir. 1959).

[10] United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 46 LRRM 2423 (1960).

2. In *Enterprise Wheel*, a group of union members struck in support of a discharged coworker. The strikers were also fired, after they attempted to return to work at the union's request.

   a. The union grieved on behalf of the discharged strikers and sued to compel arbitration when the employer refused to submit the grievance to arbitration.

   b. After a district court order compelling arbitration, the case was decided by an arbitrator who ruled that dismissal was too severe for the improprieties of the strikers. The arbitrator ordered the strikers reinstated and reduced the discipline to a ten day suspension.

   c. The employer refused to comply with the award of the arbitrator, and the union sued for enforcement of the award. The appellate court reversed the district court compliance order.[11] The rationale of the appellate court was that the arbitrator was too imprecise in specifying the computation of back pay and that the arbitrator had no authority to order payment of back pay after the expiration of the collective bargaining agreement.

3. The Supreme Court reversed the appellate court, ruling again that the role of the courts in arbitration cases is very limited.

   a. In reviewing an arbitrator's award, the courts should not review the merits of the case.

   b. Technical omissions of an award can be made without vacating the entire award.

   c. As long as the award "draws its essence" from the collective bargaining agreement, the courts should enforce the award.

E. Clarification of the Judicial Standards of Arbitration

1. In a series of cases decided after the *Steelworkers Trilogy*, the standards used by the federal courts in arbitration cases have been further clarified. Some of the major decisions are discussed in this section.

2. Section 301 assures federal court jurisdiction over labor disputes, but it does not divest state courts of their parallel jurisdiction.[12] However, state courts deciding cases which fall under § 301 must be decided using the principles of federal law.[13]

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[11] United Steelworkers v. Enterprise Wheel & Car Corp., 269 F2d 327, 44 LRRM 2349 (4th Cir. 1959).

[12] Charles Dowd Box Co. v. Courtney, 368 U.S. 502, 49 LRRM 2619 (1962).

[13] Teamsters Local 174 v. Lucas Flour Co., 369 U.S. 95, 49 LRRM 2717 (1962).

3. Collective bargaining agreements must explicitly provide for a final, binding, and exclusive method of dispute resolution before a dispute is barred from judicial action under § 301. A reservation of the right to strike or lockout without exclusive language does not constitute a bar on judicial jurisdiction.[14]

4. Even though a court may be required to determine whether the subject matter of a grievance is subject to arbitration under the *Steelworkers Trilogy*, procedural issues concerning arbitrability should be left to the arbitrator to resolve.[15]

5. The courts may imply a no-strike agreement from the existence of an agreement to arbitrate.[16] An employer may obtain an injunction against a strike in violation of a no-strike agreement if the employer is willing to arbitrate the underlying grievance.[17]

   a. The courts will not infer an agreement to arbitrate from the presence of a no-strike clause. For a court to order arbitration there must be an agreement to arbitrate.

   b. Occasionally, reverse *Boys' Market* injunctions have been issued which order an employer to maintain the status quo pending arbitration. The principle argument in these cases is that the union's agreement to arbitrate a dispute without striking should also require the employer to maintain the status quo pending the outcome of arbitration.

6. Union violation of a no-strike clause is not a sufficient repudiation of the collective bargaining agreement to allow the employer to avoid a duty to arbitrate.

7. An employer's suit under Section 301 for damages resulting from an illegal strike must be stayed pending arbitration if the arbitration clause is sufficiently broad to cover employer claims for violation of the no-strike clause.[18] However, if the arbitration clause is limited to employee or union grievances, a damage suit of the employer may proceed.[19]

8. An employee must attempt to exhaust the contractual grievance procedure prior to initiating a Section 301 suit to enforce the

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[14] Groves v. Ring Screw Works, Ferndale Fastener Division, 111 S.Ct. 498, 135 LRRM 3121 (1990).

[15] John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543, 55 LRRM 2769 (1964).

[16] Lucas Flour, *supra* at note 13.

[17] Boys Market, Inc. v. Retail Clerks Local 770, 398 U.S. 235, 74 LRRM 2257 (1970).

[18] Drake Bakeries, Inc. v. Bakery Workers Local 50, 370 U.S. 254, 50 LRRM 2440 (1962).

[19] Atkinson v. Sinclair Refining Co., 370 U.S. 238, 50 LRRM 2433 (1962).

collective bargaining agreement.[20] However, the union has no obligation to take every grievance to arbitration at the insistence of the employee. The union is given broad discretion in the handling of grievances, as long as it acts in a manner consistent with its duty of fair representation.[21]

9. The judicial deference to arbitration is not limited to the traditional form of arbitration. If it results in a final and binding order, the decision of a joint labor-management committee may also be enforced in a Section 301 suit.[22]

10. The duty to arbitrate expires with the collective bargaining agreement. However, the duty to arbitrate is tied to the underlying grievance, so that a grievance which occurs while a collective bargaining agreement is in effect is arbitrable, even if the collective bargaining agreement expires before the case is actually submitted to arbitration.[23] Similarly, disputes arising between collective bargaining agreements, are not arbitrable unless the new contract expressly allows.[24]

11. A collective bargaining agreement's broad arbitration clause can be used to compel arbitration of a post-expiration dispute if there is an obligation created by the agreement. This obligation can arise in three ways.

    a. The dispute stems from facts or occurrences that happened prior to the expiration of the agreement.

    b. The dispute stems from an infringement of a right which, under normal principles of contract interpretation, was intended to survive the expiration of the agreement.

    c. The dispute stems from post-expiration actions by the employer that infringe on rights which accrued before expiration.[25]

12. In suits to enforce arbitration awards, the courts should not accept even serious error of fact or contract interpretation as grounds for vacating an award. As long as the arbitrator is even arguably

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[20] Republic Steel Corp. v. Maddox, 379 U.S. 650, 58 LRRM 2193 (1965).

[21] Vaca v. Sipes, 386 U.S. 171, 64 LRRM 2369 (1967).

[22] Teamsters Local 89 v. Riss & Co., 372 U.S. 517, 52 LRRM 2623 (1963).

[23] Nolde Brothers, Inc. v. Bakery Workers Local 358, 430 U.S. 243, 94 LRRM 2753 (1977).

[24] Peerless Importers v. Distillery Workers Local 1, 903 F2d, 134 LRRM 2380 (2nd Cir. 1990).

[25] Litton Financial Printing v. NLRB, 111 S.Ct. 2215, 137 LRRM 2441 (1991).

acting within the scope of the contractual authority, the award should be enforced.[26]

13. An award may be vacated if it contradicts or violates public policy. However, the alleged violation of policy must be very specific, not based on general arguments of policy.[27]

[26] Paperworkers v. Misco, Inc., 484 U.S. 29, 126 LRRM 3113 (1987).

[27] W.R. Grace & Co. v. Rubberworkers, 461 U.S. 757, 113 LRRM 2641 (1983), Paperworkers v. Misco, Inc., *supra* at note 26.