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Labor Law: Authority of the Judiciary to Review Arbitration

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ting the insured on notice of the exclusion, the question of contract coverage would be answered, and the deterrent effect of punitive damages would increase since the insured would be aware of the personal repercussions of recklessness and wanton misconduct.[57]

Labor Law: Authority of the Judiciary To Review Arbitration

Plaintiff-union brought an action under section 301(a) of the Labor Management Relations Act[1] for specific performance of an arbitration clause in the collective bargaining agreement. The Supreme Court of Iowa held[2] that the union's right to compel the employer to arbitrate grievances was waived by the union's breach of a no-strike clause in the collective bargaining agreement.[3] The United States Supreme Court reversed, holding that the union's alleged breach of the no-strike clause did not relieve the employer of its duty under that agreement to arbitrate, and remanded to the Iowa Supreme Court for further

from a voluntary exclusion in the face of competition that made no such limitation upon coverage in its contract. *See* APPLEMAN § 4312, at 137. On the other hand, it might be argued that insurers would not worry that the inclusion of such a disclaimer would affect salability since they are aware of the fact that most customers probably do not choose a certain company by comparing provisions of standard policies but rather by comparing rates, reputation for service, and attractiveness and salesmanship of the agents.

57. While this statute would be the answer to the coverage question within that particular state, it would not solve the problem of punitive damages levied against an out-of-state driver whose insurance contract does not specifically exclude coverage of punitive damages because he is from a jurisdiction where such a statute is not in effect. In this situation, the public policy issue as articulated in the instant case would seem to override the problem of lack of notice to the driver. Although the statutory policy of placing the burden upon the tortfeasor might be considered a burden upon interstate commerce since the crossing of a state line would be a risky venture for the driver in terms of the possibility of having to shoulder a heavy punitive judgment in the event of an accident, the public safety policy of punishing and deterring recklessness swings the balance in favor of the state. *Cf.* Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520 (1959); Southern Pac. Co. v. Arizona, 325 U.S. 761 (1945); South Carolina State Highway Dep't v. Barnwell Bros. Inc., 303 U.S. 177 (1938).

1. 29 U.S.C. § 185(a) (1964).

2. Local 721, United Packinghouse Workers v. Needham Packing Co., 254 Iowa 882, 119 N.W.2d 141 (1963).

3. As interpreted, § 301(a) provides for state and federal courts as alternative forums in such an action, but requires federal law be applied. Dowd Box Co. v. Courtney, 368 U.S. 502 (1962).

proceedings.[4] In accordance with the remand order, an arbitration hearing was held. The arbitrator found for the union indicating that although the union had breached the no-strike clause of the collective bargaining agreement, the repudiation had been caused by the company's violation of the contract.[5] The company appealed the district court's judgment enforcing the award. The Iowa Supreme Court *held* that because the collective bargaining agreement did not provide for arbitration of a dispute over employees' rights to return to work, the arbitrator's award was "beyond his jurisdiction and the extent of his authority." *Local 721, United Packinghouse Workers v. Needham Packing Company*, 151 N.W.2d 540 (Iowa 1967), *cert. denied*, 389 U. S. 830 (1967).

At common law, agreements to arbitrate were not specifically enforceable.[6] Statutory inroads on this doctrine began in the 1920's when various state statutes were passed authorizing courts to order specific performance for breaches of certain types of arbitration agreements.[7] Although the Federal Arbitration Act[8] conveyed similar power to the federal courts in 1925, its application was severely limited by excluding "contracts of employment of . . . any . . . class of workers engaged in foreign or interstate commerce."[9] Finally, enactment in 1947 of section 301(a) of the Labor Management Relations Act enabled litigants to sue in any appropriate federal court for violation of a

4. Local 721, United Packinghouse Workers v. Needham Packing Co., 376 U.S. 247 (1964).

5. There were actually two disputes. The union steward shut down the production line over a minor grievance, and was subsequently fired. A strike by the other workers attempting to force the company to rehire him followed. After negotiations between the company and the union, which the arbitrator found resulted in an agreement to take the workers back with full seniority, the union voted to return to work. After the union vote, the company refused to accept any of the strikers back except on a new hire basis with no seniority. The union then attempted to arbitrate the discharge of the steward and the reinstatement of the strikers. The arbitrator denied the union's first grievance, but granted the second. See the arbitrator's opinion for a more complete exposition of the facts. 44 Lab. Arb. 1057 (1965).

6. *See* Red Cross Line v. Atlantic Fruit Co., 264 U.S. 109, 120-22 (1924).

7. Cox, *Current Problems in the Law of Grievance Arbitration*, 30 ROCKY MT. L. REV. 247, 250 (1958).

8. 43 Stat. 883 (1925), *as amended*, 9 U.S.C. §§ 1-14 (1964).

9. 9 U.S.C. § 1 (1964). The authorities are divided on whether this language included the collective bargaining agreement. *Compare* Amalgamated Ass'n v. Pennsylvania Greyhound Lines, 192 F.2d 310 (3d Cir. 1951), *with* Local 205, United Elec. Workers v. General Elec. Co., 233 F.2d 85 (1st Cir. 1956), *aff'd on other grounds*, 353 U.S. 547 (1957).

collective bargaining agreement. However, the federal courts were not clearly given independent statutory jurisdiction to compel specific performance of the arbitration clauses in collective bargaining contracts[10] until *Textile Workers Union v. Lincoln Mills.*[11]

In *Lincoln Mills* the Supreme Court held that section 301 (a) of the Labor Management Relations Act was both jurisdictional and substantive in nature. After examining the legislative history of the Act, the Court concluded that Congress had intended to stabilize industrial relations by making collective bargaining contracts equally binding and enforceable on both parties. From this conclusion the Court reasoned that the Act required a body of federal law to cope with the enforcement of collective bargaining agreements, including the essential power to order specific performance of agreements to arbitrate grievances.[12] Having established the authority of the courts to deal with the question of arbitration, the Supreme Court undertook to define the scope of that authority in a series of actions brought by the United Steelworkers.[13] In these cases the Supreme Court outlined a very limited role for the judiciary in suits either to determine arbitrability or to enforce or vacate an arbitrator's award.

In the initial case, *United Steelworkers v. American Manufacturing Company*,[14] the Court concluded that since the parties had bargained for the arbitrator's interpretation of the contract, the courts have no business examining the merits of a grievance to determine if there is sufficient evidence to support arbitra-

10. Prior to *Lincoln Mills* there had been two views on the effect of § 301(a). One group of courts viewed it as merely giving federal jurisdiction. *See* United Steelworkers v. Galland-Henning Mfg. Co., 241 F.2d 323, 325 (7th Cir. 1957); Mercury Oil Ref. Co. v. Oil Workers Union, 187 F.2d 980, 983 (10th Cir. 1951). The second group, leading the way for the Supreme Court, held § 301(a) to be both jurisdictional and substantive. *See* Textile Workers Union v. Arista Mills, 193 F.2d 529, 533 (4th Cir. 1951); Shirley-Herman Co. v. International Hod Carriers Union, 182 F.2d 806, 809 (2d Cir. 1950); Textile Workers Union v. American Thread Co., 113 F. Supp. 137 (D. Mass. 1953).

11. 353 U.S. 448 (1957).

12. *Id.* at 456-57.

13. United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960); United Steelworkers v. Warrior & Gulf Nav. Co., 363 U.S. 574 (1960); United Steelworkers v. American Mfg. Co., 363 U.S. 564 (1960); *see generally* Meltzer, *The Supreme Court, Arbitrability and Collective Bargaining*, 28 U. CHI. L. REV. 464 (1961); Smith & Jones, *The Supreme Court and Labor Arbitration: The Emerging Federal Law*, 63 MICH. L. REV. 751 (1965).

14. 363 U.S. 564 (1960).

tion of the claim.[15] In the second of the steelworkers cases, *United Steelworkers v. Warrior & Gulf Navigation Company*,[16] the Court took a positive approach by attempting to establish limitations beyond which the judiciary could not inquire in determining whether a particular grievance claim was arbitrable. The Court imposed the severe restraint that only if the arbitration agreement were not even "susceptible" of an interpretation which would cover the particular grievance could the courts refuse to grant the order to arbitrate.[17] Finally, in *United Steelworkers v. Enterprise Wheel & Car Corporation*,[18] the Court dealt with the scope of judicial review in actions to enforce or vacate the arbitrator's award. The Court reiterated its view, stated in both *American* and *Warrior*, that the judiciary should refrain from reviewing the merits of arbitration.[19] Since the collective bargaining agreement establishes the arbitrator's determination as the final step in the grievance procedure, the Court pointed out that judicial review of the merits of an arbitrator's award would, in effect, substitute a subsequent judicial determination. Such a substitution would directly contravene both the letter and the spirit of the contract and cannot be allowed.[20]

Although the general theme of *Enterprise Wheel* is autonomy for the arbitrator, the opinion places one restriction on his authority which the courts have used to justify review of arbitration awards.[21] The Court stated that the arbitrator must base his award on the language of the collective bargaining agreement; if he fails to do so the courts cannot enforce the award.[22] However, even this restriction is attenuated by the

15. *Id.* at 568.
16. 363 U.S. 574 (1960).
17. *Id.* at 582.
18. 363 U.S. 593 (1960).
19. *Id.* at 596. The main thrust of the policies stated in *American* and *Warrior* is the establishment of stable industrial self-government. Stabilization is sought in order to bring about the common goal of uninterrupted production. Furthermore, industrial relations is such a specialized area that only the professional arbitrator is capable of supplying the expertise necessary to handle the problems in the area. *See* United Steelworkers v. Warrior & Gulf Co., 363 U.S. 574, 580-84 (1960); United Steelworkers v. American Mfg. Co., 363 U.S. 564, 567 (1960).
20. United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 599 (1960).
21. *See, e.g.*, Torrington Co. v. Metal Prods. Workers, Local 1645, 362 F.2d 677 (2d Cir. 1966); Local 787, Elec. Workers v. Collins Radio Co., 317 F.2d 214 (5th Cir. 1963).
22. United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597-98 (1960).

Court's admonition that an ambiguity in the opinion accompanying the arbitrator's award which "permits the inference that the arbitrator may have exceeded his authority" is not sufficient grounds for refusal to enforce the award.[23]

The relationship between an arbitration agreement and a no-strike clause was specifically dealt with in *Drake Bakeries v. Local 50, American Bakery Workers*,[24] where the Supreme Court held that a breach of the no-strike clause by the union did not relieve the company of its duty to arbitrate.[25] The Court reasoned that unless specifically excluded, disputes concerning breaches of a no-strike clause came within the arbitration provision; hence, the company would be discharged from its duty to arbitrate only where it was clear that the union had totally and irrevocably breached the arbitration clause.[26]

In the original suit brought by the union against Needham to enforce its right to arbitrate, the Supreme Court cited *Drake Bakeries* as dispositive.[27] The Court stated that the union's claim of wrongful discharge was obviously within the scope of the arbitration clause and that nothing in the agreement excluded disputes which followed an alleged breach of the no-strike clause.[28]

In the instant case, the arbitrator found that a preliminary agreement had been reached between the union and the company concerning the return to work of the strikers. He also found that the company had breached the collective bargaining contract by repudiating this agreement after the strikers had voted to return to their jobs. In reviewing the arbitrator's decision, the Iowa Supreme Court deduced from the *United Steelworkers* cases that re-examination of the merits of the grievance is beyond the scope of its authority and that it must determine the question of arbitrability on the basis of the arbitrator's findings and conclusions. On that examination, the court concluded that the arbitrator's decision was based upon the negotiations and alleged agreement made subsequent to the strike, and therefore was beyond his jurisdiction and authority.

In support of this conclusion, the Iowa court argued that

23. *Id.* at 598.
24. 370 U.S. 254 (1962). *See* 17 SYRACUSE L. REV. 57 (1965).
25. *See* Atkinson v. Sinclair Ref. Co., 370 U.S. 238 (1962).
26. Drake Bakeries, Inc. v. Local 50, American Bakery Workers, 370 U.S. 254, 262-63 (1962).
27. Local 721, United Packinghouse Workers v. Needham Packing Co., 376 U.S. 247, 250 (1964).
28. *Id.* at 252.

the labor contract contained no provisions applicable to a dispute over the return to work after an illegal strike. The court stated that the primary reason the employer includes the arbitration clause in the contract is to obtain a no-strike clause insuring uninterrupted production. However, since the illegal strike makes this impossible, it cannot be implied that the arbitration clause was intended to include an agreement to arbitrate the return to work after an illegal strike.

A close reading of the court's opinion indicates that the extensive quotation from the *United Steelworkers* cases is nothing more than an attempt to satisfy the Supreme Court's mandate. The court correctly noted that the *United Steelworkers* cases forbid re-examination of the merits of the grievance, but nevertheless proceeded to a close and critical examination of the arbitrator's findings and conclusions. Since the findings and conclusions of the arbitrator cover all the relevant matters of the controversy, the court, in effect, re-examined the merits of the case. As a result, the court determined that the arbitrator's finding that the company had broken a post-strike agreement was not based on the collective bargaining contract.[29] It thereby used its own construction of the arbitrator's findings to conclude that he lacked authority, rather than accepting the arbitrator's construction of the contract and his findings as required by *Enterprise Wheel*.[30]

The court was correct in relying on the language in *Enterprise Wheel* that the arbitrator's decision must be based on the collective bargaining agreement.[31] However, it is arguable that the arbitrator's decision was based on the collective bargaining contract. The arbitrator reported that the company's actions were tantamount to discharging the entire bargaining unit through the improper means of a total deprivation of seniority in contravention of the collective bargaining contract.[32] Appar-

29. Local 721, United Packinghouse Workers v. Needham Packing Co., 151 N.W.2d 540, 549-50 (Iowa 1967).

30. United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 598 (1960).

31. See note 20 *supra* and accompanying text.

32. The arbitrator emphasized that the union's actions did not constitute a total repudiation of the original collective bargaining agreement and related the breach of the return to work agreement by the company to the original labor contract by finding that this reversal of position by the company constituted "a violation of contract because . . . [it was a] . . . blunt and manifestly improper use of total seniority right deprivation rather then [*sic*] disciplinary action as such." 44 Lab. Arb. 1057, 1093 (1965). This violation was based on paragraph 8 of the collective bargaining agreement which gave management the power

ently the Iowa court did not consider this conclusion sufficient to bring the union's claim within the arbitration clause, but it seems clear from *Enterprise Wheel* that disagreement over contract construction, where the arbitrator's construction is at least arguable, is an insufficient ground to refuse to enforce an award.[33]

In addition to finding that the award was not enforceable due to this defect, the court stated that the finding of arbitrability "is inconsistent with many of the other findings and the conclusions of the arbitrator."[34] Thus the court is equating a finding that the arbitrator exceeded his authority with the conclusion that the controversy was not arbitrable.[35] This transition from finding that the arbitrator lacked authority to make the particular award to a determination of nonarbitrability lacks any justification or authority in the opinion and appears to be merely an attempt to circumvent the prior decisions of the Supreme Court.

Finally, the court's policy argument that the arbitration clause was not intended to apply to a controversy concerning return to work should be seriously questioned. The court appears to have restated and refined the *quid pro quo*[36] reasoning of their original decision holding the controversy was not ar-

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to ". . . hire, suspend, or discharge for just cause. . . ," provided that these powers were not used "for the purpose of discrimination against any employee or to avoid any of the provisions of this agreement." Local 721, United Packinghouse Workers v. Needham Packing Co., 151 N.W.2d 540, 544 (Iowa 1967). *See* 44 Lab. Arb. 1057, 1091-100 (1965).

33. In United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960), the Supreme Court stated:

> As we . . . emphasized, the question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator's construction which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his.

Id. at 599.

34. 151 N.W.2d at 550 (Iowa 1967).

35. The dissent made the argument that the majority's reasoning is faulty and had been rejected by the Supreme Court although it did not point out that the contexts in which these arguments have been rejected are different from the present case. *Id.* at 550.

36. The *quid pro quo* reasoning briefly stated is that the no-strike clause and the arbitration clause are mutually dependent, so that the breach of one discharges the other. This argument finds some support in the language of Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 455 (1957), and United Steelworkers v. American Mfg. Co., 363 U.S. 564, 567 (1960). In the present case the court restates this reasoning in a more narrow form by arguing that the illegal strike relieves the company of the duty to arbitrate over the strike stressing that the policy behind the arbitration clause of uninterrupted production is not achievable once the strike occurs. 151 N.W.2d at 550 (Iowa 1967).

bitrable.[37] The basic *quid pro quo* reasoning was, however, specifically rejected by the Supreme Court in *Drake Bakeries*[38] and again in reversing the Iowa Court's original *Needham* decision.[39] Furthermore, the Supreme Court explicitly stated that the arbitration clause continued to exist after the breach of the no-strike clause and, therefore, the company was bound to arbitrate the union's claims.[40]

The broad question which this case thus poses is the scope of the power to review an arbitrator's award granted to the courts by the language in *Enterprise Wheel.* The Iowa court has apparently adopted the position that this language is to be broadly construed, permitting it to review the findings and conclusions of the arbitrator to insure that those conclusions and findings are consistent with the court's construction of the contract.

While the relevant language in *Enterprise Wheel* is unfortunately ambiguous and general, it would seem the interpretation of this language most consistent with the position of the Supreme Court would result in a much narrower scope of review. Since the Court's position is that the judiciary should not be allowed to review the merits of the arbitration claim, it is then inconsistent to interpret the grant of judicial authority as permitting the courts to achieve the same result through a review of the findings and conclusions of the arbitrator.

The scope of review consistent with both this language in *Enterprise Wheel* and with the Court's general position on arbitration would be to determine *only* if the arbitrator's words were consistent with his obligation to act within the terms of the contract. The crucial question in this test would not be whether his conclusions followed from the contract as interpreted by a court, but rather whether the arbitrator's findings and conclusions are connected by his logic to the contract.[41] While this

37. Local 721, United Packinghouse Workers v. Needham Packing Co., 254 Iowa 882, 885, 119 N.W.2d 141, 143 (1963).

38. 370 U.S. 254, 261 (1962).

39. Local 721, United Packinghouse Workers v. Needham Packing Co., 376 U.S. 247, 251 (1964).

40. *Id.* at 252.

41. This approach to judicial power of review would give arbitration approximately the finality it had under common law where the courts could not set aside an arbitrator's award except for fraud, corruption, or mistake so great as to amount to fraud. The arbitrator's decision was final on all questions of fact and law even though wrong. *See* Cox, *Current Problems in the Law of Grievance Arbitration,* 30 ROCKY MT. L. REV. 247 (1958).