Court review of labor arbitration awards

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COURT REVIEW OF LABOR ARBITRATION AWARDS

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I. INTRODUCTION

Judges may become involved in the arbitration process prior to arbitration hearings on the merits of cases and after the arbitrators' decisions are rendered. This article discusses the legal context in which the federal courts get involved in the arbitration process between representatives of employees and employers governed by the National Labor Relations Act, and then addresses the law concerning judicial review of arbitrators' decisions. The meaning and impact of the U.S. Supreme Court's recent decision in Paperworkers v. Misco Inc. is presented. And the post-Misco Inc. Court decisions are analyzed.

II. THE COURTS AND THE ARBITRATION PROCESS

The courts may become involved in the arbitration process at various stages of the process. It is the responsibility of a court to determine whether a union and employer have agreed to arbitration. Once it is determined that the parties are obligated to submit the subject matter of a dispute to arbitration, "procedural" questions which grow out of the dispute and bear on its final disposition—such as did the union follow the steps of the contractual grievance procedure—should be left to the arbitrator. Unions may go to court under Section 301 of the Labor Management Relations Act and compel performance of an arbitration

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provision in a collective bargaining contract; and employers may obtain
injunctive relief against a strike in violation of a no-strike clause in a col-
lective bargaining agreement when the underlying dispute is over an issue
that the parties are obligated to arbitrate. Reference to the doctrines
found in the famous Steelworkers Trilogy will commonly provide the
answers to disputes involving the courts and arbitration. In Steelworkers
v. American Manufacturing, the Court held that the function of the courts
is limited to ascertaining whether the party seeking arbitration is making
a claim that on its face is governed by the contract. In Steelworkers v.
Warrior Gulf, the Court announced a strong presumption in favor of ar-
bitrability as follows:

To be consistent with the congressional policy in favor of settlement
of disputes by the parties through the machinery of arbitration . . . (a)n
order to arbitrate the particular grievance should not be denied unless
it may be said with positive assurance that the arbitration clause is not
susceptible of an interpretation that covers the asserted dispute. Doubts
should be resolved in favor of coverage.

In Steelworkers v. Enterprise Wheel & Car Co. the Supreme Court set
forth the guiding principles regarding court review of arbitration deci-
sions. In Enterprise Wheel the Court held that the courts have no authority
to substitute their interpretations of contractual provisions for interpreta-
tions rendered by arbitrators where the authority to interpret has been
granted to arbitrators. The Court stated:

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 con-
struction of the contract, the courts have no business overruling him
because their interpretation of the contract is different from his.

5 United Steelworkers v. American Mfg. Co. 363 U.S. 561 (1960); United Steelworkers
v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); United Steelworkers v. Enterprise
7 363 U.S. 574 (1960).
8 Id. at 582. See also AT&T Technologies Inc. v. Communication Workers of America,
475 U.S. 643, 121 LRRM 3329 (1986), where the Supreme Court reaffirmed the American
Manufacturing and Warrior & Gulf decisions holding that it was for the court, not an ar-
bitrator, to decide in the first instance whether the underlying dispute was to be resolved
through arbitration.
9 363 U.S. 593 (1960).
10 Id. at 599.
III. JUDICIAL REVIEW OF ARBITRATION DECISIONS

Arbitration offers employers and unions a relatively fast and inexpensive method of resolving disputes that may arise under their collective bargaining agreements. Since the parties themselves select the arbitrator, who is usually an expert on the issue in dispute, there is usually prompt compliance with the arbitrator's award. Were the parties able to challenge the award through the courts on a wide range of theories, the advantages of low cost and the finality of the arbitration process would be lost. The courts have been keenly aware of this situation and allow challenges to arbitrators' decisions only on very narrow grounds. The three bases for setting aside an arbitrator's decisions are discussed below.

A. Ignoring the Plain Language of the Contract.

As set forth in the *Enterprise Wheel* decision of the *Steelworkers Trilogy*, the courts shall not overrule an arbitrator merely because their interpretation of the contract is different from that of the arbitrator. However, the arbitrator may not ignore the plain language of the contract. Should an arbitrator do so, the award may be successfully challenged in court. Thus, should a union and employer agree in their collective bargaining contract in clear and unambiguous language that possession of drugs on company property is grounds for immediate termination and an arbitrator later reinstates a person found to have possessed drugs on company property, the decision of the arbitrator may be vacated by the courts. It should be pointed out that it is a most infrequent occurrence for an arbitrator to ignore the clear and unambiguous language of the contract. Usually there is some ambiguity in the contract. Where the arbitrator is even arguably construing the contract but the court is convinced the arbitrator has made a serious error, the court may not overturn the arbitrator's decision.

B. Fraud and Dishonesty.

Decisions procured by the parties through fraud or through an arbitrator's dishonesty need not be enforced by the courts. Such cases are not common, however.

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11 It is common to find language in collective bargaining agreements setting forth the contractual authority of the arbitrator such as: "The parties agree that the decision of the arbitrator shall be final and binding on the parties and that the arbitrator shall have no authority to add to, subtract from, or modify this agreement.


13 S.D. Warren Co. (Warren II) v. UPIU, 845 F.2d 128 LRRM 2175 (1st Cir. 1988).
C. Contrary to Public Policy

In recent years, suits have been filed in the courts to vacate arbitrators' awards on the theory that to reinstate certain discharged employees would be "contrary to public policy."

In Paperworkers v. Misco, Inc., the Supreme Court held that the lower courts were in error in vacating an arbitrator's award on asserted public policy grounds. The Supreme Court pointed out that the Court of Appeals made no attempt to review existing laws and legal precedents in order to demonstrate that they had established a "well defined and dominant" public policy. Only under the narrow circumstances of the existence of a well defined public policy and a clear showing that the policy was violated may a court vacate an award. In Misco the Supreme Court permitted the enforcement of an arbitration award requiring a private employer to reinstate an individual charged with possession of marijuana, stating:

Two points follow from our decision in W.R. Grace. First a court may refuse to enforce a collective-bargaining agreement when the specific terms contained in that agreement violate public policy. Second, it is apparent that our decision in that case does not otherwise sanction a broad judicial power to set aside arbitration awards as against public policy. Although we discussed the effect of that award on two broad areas of public policy, our decision turned on our examination of whether the award created any explicit conflict with other "laws and legal precedents" rather than an assessment of "general considerations of supposed public interests." At the very least, an alleged public policy must be properly framed under the approach set out in W.R. Grace, and the violation of such a policy must be clearly shown if an award is not to be enforced.15

As a hypothetical example, were an arbitrator to foolishly reinstate an individual to a truck driver position when the individual's license to drive had been suspended for a two-year period, an employer could successfully seek to vacate that award in court. There is a well defined and dominant public policy set forth in the law that only those with valid licenses may drive trucks, and this policy would be violated were the arbitrator to reinstate the individual to the truck driver position.

IV. SELECTED POST-PAPERWORKERS v. MISCO, INC. COURT DECISIONS

Following its Misco, Inc. decision, the U.S. Supreme Court agreed to

15 Id. at 373, 374.
review an appeal by the U.S. Postal Service claiming that an arbitrator’s reinstatement of a letter carrier who failed to deliver more than 3,500 pieces of mail, (some letters containing checks) over a one-year period was contrary to public policy. The letter carrier received an 18-month probation sentence after pleading guilty to the charge of unlawful delay of the mail. The Postal Service discharged the employee; and the union filed a grievance and progressed the matter to arbitration. The arbitrator reinstated him without back pay provided he successfully complete a 60-day medical leave of absence to attend Gamblers’ Anonymous meetings for his compulsive gambling problem. The U.S. District Court vacated the arbitrator’s award as contrary to the public policy interest in an efficient and reliable postal service. The U.S. Court of Appeals for the District of Columbia reversed, holding that there was no basis for the district court to invoke the “extremely narrow” public policy exception in the case, since no legal proscription against the reinstatement of the letter carrier existed. On April 27, 1988 the Supreme Court issued an order dismissing the write of certiorari as improvidently granted, thus allowing the Court of Appeals decision to stand. In effect the Supreme Court declined an opportunity to further clarify its Misco, Inc. decision, consciously letting Misco, Inc. policy govern.

In Iowa Electric Light and Power Co. v. IBEW Local 204, the U.S. Court of Appeals for the Eighth Circuit, vacated an arbitration award that reinstated an employee who had violated detailed federal safety regulations at a nuclear power plant. The Court held that reinstatement of the employee would violate the well-defined and dominant national policy requiring strict adherence to nuclear safety rules.

In S.D. Warren Co. (Warren II) v. UPIU Local 1069 the Supreme Court remanded a “contrary to a public policy” refusal to enforce an arbitration award case to the First Circuit Court of Appeals for reconsideration in light of Misco, Inc. The Court of Appeals assumed that Misco, Inc. foreclosed its prior ruling that the reinstatement without back pay of the three paperworkers whom the arbitrator had found to have violated a mill rule against possession, use or sale of marijuana on company property, was an award that violated public policy. The Court instead held that the arbitrator had ignored the plain and unambiguous language of

17 834 F.2d 424, 127 LRRM 2049 (8th Cir. 1987). It is argued by opponents of the Court’s decision that it was contrary to Misco Inc., since no federal rule or regulation precluded his reinstatement.
18 845 F.2d 3, 128 LRRM 2175 (1st Cir. 1988).
19 See Warren I, 315 F.2d 178 (1st Cir. 1987).
the collective bargaining agreement which, according to the Court, contained the negotiated penalty for a proven violation of the drug rule, that penalty being discharge. And under this "ignoring the plain language of the contract" exception, the Court ruled that the arbitrator had exceeded her authority and it refused to enforce the award.\(^{20}\)

In *U.S. Postal Service v. Letter Carriers*\(^{21}\) the Third Circuit Court of Appeals determined that a federal district court should not have vacated an arbitration award reinstating a postal employee as contrary to the public policy against physical evidence towards supervisors, where the employee, who had an excellent record for 13 years, had fired a gun at his postmaster's unoccupied car causing damage to the windshield and dashboard. The Court held that *Misco, Inc.* specifically rejected the technique used by the district court in asserting a public policy without substantiating its existence within existing laws and legal precedents.\(^{22}\)

In *Delta Air Lines v. Air Line Pilots Association*\(^{23}\) the U.S. Court of Appeals for the Eleventh Circuit set aside an arbitration award reinstating a pilot who had been fired for operating an aircraft while intoxicated, where the pilot had successfully undergone rehabilitation for alcohol abuse after his discharge. The Court held that the award was contrary to the clearly-established public policy which condemns the operation of passenger airlines by pilots under the influence of alcohol.\(^{24}\) The Court stated that this public policy is well defined and dominant and ascertained by reference to laws and legal precedents.\(^{25}\)

**CONCLUSION**

A judge reviewing a decision of an arbitrator in the context of the breadth of cases before federal district courts or the United States courts of appeals may believe the arbitrator's award to be outrageous, and may desire to correct the perceived error.\(^{26}\) Under a loose and expansive view

\(^{20}\) In *Georgia-Pacific Corp. v. Paperworkers Local 27*, 864 F.2d 940, 130 LRRM 2208 (1st Cir. 1988).


\(^{22}\) *Id.* at 2595.

\(^{23}\) 861 F.2d 665, 130 LRRM 2014 (11th Cir. 1988).

\(^{24}\) *Id.* at 2018.

\(^{25}\) *Id.* at 2021.

\(^{26}\) *See* *Northwest Airlines v. ALPA* 808 F.2d 76, at 83 (D.C. Cir. 1987).

where the Court recognizes that there is something called "judicial chutzpah"; and the Court declined the employer's invitation to impose its own brand of justice in determining applicable public policy.
of *W.R. Grace v. Rubber Workers* some judges had refused to enforce arbitrators' awards which varied from the judges' notions of public policy. The Supreme Court's *Misco, Inc.* decision sought to restrict such judicial intervention, by reasserting the narrowness of the precedent cases, and holding that refusal to enforce an award for contravention of public policy is only justified when such a policy is well defined, dominant, and ascertained by reference to laws and legal precedents rather than general considerations of supposed public interests. The decision in *Misco, Inc.* was a proper one. Judicial deference to arbitration awards, but for the narrow exceptions set forth in Part III of this paper, is of critical importance to the institution of arbitration. The parties need the relatively inexpensive, relatively speedy, final and expert justice provided by arbitration. The erosion of the concept of finality and the expense of judicial appeals is contrary to the principles of the *Steelworkers Trilogy* and the national labor policy of the country. Where employers desire to restrict arbitrators' discretion in areas such as drug possession or intentional safety violations the proper approach to such is to narrow the arbitrators' authority by specific contract language in the collective bargaining agreement when negotiating new collective bargaining contracts.

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