APPENDIX C

REPORT OF NAA COMMITTEE ON LAW AND LEGISLATION *

* Members of the 1961-1962 Law and Legislation Committee were:

Benjamin Aaron, *Chairman*	Maurice H. Merrill
Harry Abrahams	Richard Mittenthal
Marion Beatty	Meyer S. Ryder
Louis A. Crane	Paul H. Sanders
Alex Elson	Carl A. Schedler
Sylvester Garrett	Russell A. Smith
Robert F. Koretz	Clarence M. Updegraff
Jerome J. Lande	Carl A. Warns, Jr.

January 1962

During the year 1961 the Committee devoted itself to two projects: (1) a review of new state legislation affecting arbitration, and (2) a survey of the impact on federal and state courts of the Supreme Court decisions in the *American Manufacturing, Warrior & Gulf,* and *Enterprise Wheel* cases [hereinafter referred to as the trilogy].[1] The most interesting new arbitration statute was adopted by California, and its principal provisions are summarized in Section I of the Report. The survey of reported cases is set forth in Section II. It is by no means complete; yet it is sufficiently broad to justify the following summary.

The fact which emerges most clearly is that the federal courts, with few exceptions, have followed the law of the trilogy in appropriate cases coming before them since June, 1960. Briefly stated, that law is as follows:

> *On arbitrability:* The courts are limited to finding whether there is a collective bargaining agreement in existence; whether there is an arbitration clause; and whether there is an allegation that a provision of the agreement has been violated. If the arbitra-

[1] *United Steelworkers* v. *American Mfg.,* 34 LA 559, 363 U.S. 564 (1960); *United Steelworkers* v. *Enterprise Wheel & Car Corp.,* 34 LA 569, 363 U.S. 593 (1960); *United Steelworkers* v. *Warrior & Gulf Navigation Co.,* 34 LA 561, 363 U.S. 574 (1960). These cases have been the subject of extensive commentary, including the following articles: Davey, "The Supreme Court and Arbitration: The Musings of an Arbitrator," 31 *Notre Dame Law.* 138 (1961); Gould, "The Supreme Court and Labor Arbitration," 12 *Lab. L.J.* 331 (1961); Hays, "The Supreme Court and Labor Law, October Term, 1959," 60 *Colum. L. Rev.* 901 (1960); Kagel, "Recent Supreme Court Decisions and the Arbitration Process," in *Arbitration and Public Policy* (Washington: BNA Incorporated, 1961), p. 1; Meltzer, "The Supreme Court, Arbitrability and Collective Bargaining," 28 *U. Chi. L. Rev.* 464 (1961); Petro, "Labor Relations Law," in *1960 Annual Survey of American Law* 131 (1961); Snyder, "What Has the Supreme Court Done to Arbitration?" 12 *Lab. L.J.* 93 (1961); Wallen, "Recent Supreme Court Decisions on Arbitration: An Arbitrator's View," 63 *W. Va. L. Rev.* 295 (1961).

> tion clause is broad enough to include the alleged "dispute," then arbitration must be ordered.
>
> *On enforceability of awards:* If the arbitrator stays within the submission and makes his award on his construction of the contract, then the award must be enforced.
>
> In either arbitrability or enforcement cases the courts are not to get into the merits of the case; they are not to substitute their judgment for that of the arbitrator; they shall not refuse to act because they believe a claim is frivolous or baseless.[2]

Moreover, the federal courts have usually not confined themselves to the narrow holdings of the three landmark decisions, but have sought to apply, though not very enthusiastically and sometimes incorrectly, the philosophy underlying those holdings, as expressed in the Court's majority opinions.

The exceptions to the foregoing generalization are so few that they can be specifically noted. In the first *Procter & Gamble* case (see pp. 257-258) the distinction which the court drew between the two grievances under consideration was not very persuasive; according to the law of the trilogy, arbitration of both grievances should probably have been ordered.

In the *American Thread* case (see p. 261) the majority's decision, as the dissenting judge pointed out, failed "to heed the unequivocal teaching of the Supreme Court" in the trilogy. The issue was clearly arbitrable, and the arbitrator based his decision on the evidence properly submitted, as well as on the provisions of the agreement. Whether this decision was right or wrong, under the law of the trilogy it should have been enforced.

In the *Webster Electric* case (see p. 268) the court obviously misunderstood the Supreme Court's holding in the *Warrior & Gulf* case, upon which it relied, and which it incorrectly cited for the proposition "that in the absence of a contract provision permitting it, an employer does not have a unilateral right to contract out work within the classifications covered by the contract."

In the *Standard Oil* case (see p. 269) the court failed in its attempt to distinguish the fact situation from the one presented in the *Warrior & Gulf* case. Its decision, therefore, appears to have been wrong.

Similarly, in the *Gladding, McBean* case (see p. 270) the court's assertion that the decision squared with the law of the trilogy was not persuasive.

State courts have also generally followed the law of the trilogy, either in fashioning state law, as in the *Grunwald-Marx* case (see pp. 271-272), or in applying federal law, as in the *Volunteer Electric Cooperative* case (see pp. 277-278). In a few instances, however, the court misinterpreted the rulings of the Supreme Court, arriving at the

[2] Kagel, "Recent Supreme Court Decisions and the Arbitration Process," in *Arbitration and Public Policy, ibid.* at pp. 1, 3-4.

right decision for the wrong reasons. See particularly the *Mueller* case (see pp. 275-276) and the *Morton Karten* case (see p. 276).

The reported decisions also establish the following principles (though here there is somewhat more diversity than in cases applying the procedural law of the trilogy):

(1) Courts will not stay or dismiss actions for damages based on alleged violation of a no-strike clause, even when the complaint could arguably be presented to an arbitrator under the grievance procedure; but they will require the arbitration of grievances protesting the discharge of employees for allegedly violating a no-strike commitment.

(2) Courts will enforce an arbitrator's award based on a violation of a collective agreement, even if the violation also constitutes an unfair labor practice under the National Labor Relations Act.

(3) State courts have concurrent jurisdiction with the federal courts over suits arising out of Section 301 of the Labor Management Relations (Taft-Hartley) Act. This issue is now before the Supreme Court in the *Dowd Box* case (see pp. 274-275).

(4) Federal courts have jurisdiction to grant declaratory relief under Section 301 of the LMRA and under the Federal Declaratory Judgments Act.

(5) The principle laid down by the Supreme Court in the *Westinghouse* case (see pp. 276-277), that a union has no standing under Section 301 of the LMRA to seek enforcement of "uniquely personal rights" of employees, seems to be moribund, if not already dead.

The greatest diversity in the reported decisions is over the issue of the authority of federal courts to enjoin strikes in violation of no-strike clauses. That issue was involved in the *Sinclair Refining* case (see p. 267), but it will probably be resolved by the Supreme Court in *Teamsters Local 795* v. *Yellow Transit Freight Lines*, 282 F.2d 345 (10th Cir. 1960), *cert. granted*, 364 U.S. 931 (1961) (No. 13).

The *Central Airlines* case (see pp. 263-264), involving enforcement of an award by a system board of adjustment under the Railway Labor Act, reveals an anomaly in the administration of our national labor policy; apparently, federal courts will not assume jurisdiction of such cases arising under the RLA, but will do so in substantially the same types of cases arising under the LMRA.

The cases summarized in Section II are listed by geographical area. In order to provide a useful cross-reference, we have listed the same cases under topical headings in a Topical Index to this Report.

I. NEW LEGISLATION

Only two state arbitration acts enacted during 1961 have come to the Committee's attention. These new laws were adopted in Illinois and in California.

A. ILLINOIS

The Illinois Uniform Arbitration Act, approved on August 24, 1961, supplants in part the Arbitration and Awards Act of 1917, and closely follows the Uniform Arbitration Act.[3] The principal amendment is an additional subsection [Sec. 12(e)], which reads as follows:

> "Nothing in this Section or any other Section of this Act shall apply to the vacating, modifying or correcting of any award entered as a result of an arbitration agreement, which is a part of or pursuant to a collective bargaining agreement; and the grounds for vacating, modifying, or correcting such an award shall be those which existed prior to the enactment of this Act."

No decisions construing the new statute have been reported.

B. CALIFORNIA

The California arbitration statute, approved on May 22, 1961, supplants the act of 1927. It has a number of new features, some of which merely codify existing case law, while others represent innovations.

1. *Definitions*

The definitions section [Sec. 1280] defines "agreement" to include collective bargaining agreements; the former statute provided that its terms "shall not apply to contracts pertaining to labor," but this had been construed as excluding only contracts of hire.

Similarly, the definition of the term "controversy" codifies existing law by specifically stating that the term applies equally to questions of law and fact.

"Written agreement" is defined to include a written agreement which has been extended or renewed by an oral or implied agreement. This is an innovation.

2. *Enforcement of Arbitration Agreements*

The new law requires [Sec. 1281.2] that "the court shall order the [parties] to arbitrate" unless there has been (a) waiver of the right to compel arbitration, or (b) a revocation of the agreement. To invoke the court's jurisdiction it is necessary only to allege (a) a written agreement, and (b) refusal by one party to arbitrate. This having been done, the court no longer has authority (as it did under the 1927 statute) to dismiss the proceeding if the defendant is not actually in default under the arbitration agreement. It must decide whether or not arbitration may be enforced and must issue the appropriate order.

Section 1281.2 also includes the following provision: "If the court determines that a written agreement to arbitrate exists, an order to arbitrate such controversy may not be refused on the ground that the

---

[3] The Uniform Act was drafted, approved, and recommended for enactment by the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association in 1956. See Persig, "Some Comments on Arbitration Legislation and the Uniform Act," 10 *Vand. L. Rev.* 685 (1957).

petitioner's contentions lack substantive merit." Thus, the new law codifies the substance of the United States Supreme Court decisions in the *Warrior & Gulf Navigation* and *American Manufacturing* cases, as well as the California Supreme Court's decision in *Posner* v. *Grunwald-Marx*, discussed below.

Another innovation in the new law is the provision [Sec. 1281.6] for selection of a neutral arbitrator when the parties are unable to agree on a choice and invoke the assistance of the court. The procedure calls for the court to "nominate five persons from lists of persons supplied jointly by the parties to the arbitration or obtained from a governmental agency. . . or private disinterested association concerned with arbitration." If the parties are then unable within five days to select an arbitrator from the list, the court will make the appointment from that list.

3. *Conduct of Arbitration Proceedings*

The principal feature of the new law relating to this subject is the special status given to the "neutral arbitrator," defined [Sec. 1280(d)] as one jointly selected by the parties or their partisan arbitrators, or appointed by the court. The new law provides [Sec. 1282] that, absent an express agreement by the parties to the contrary, the arbitration shall be by a single, neutral arbitrator. Such neutral arbitrator is specifically given a number of "powers and duties" (unless the parties agree to other arrangements) relating to the conduct of the hearing.

A somewhat unusual power given the neutral arbitrator is the authority, on his own motion or on the application of a party to the arbitration, to make a third person a party to the arbitration. [Sec. 1280(e)(3)]

A further innovation is the following provision [Sec. 1282.2(g)]: "If a neutral arbitrator intends to base an award upon information not obtained at the hearing, he shall disclose such information to all parties to the arbitration and give the parties an opportunity to meet it."

In respect to the problem created by the failure of a designated arbitrator to participate in the arbitration, the new law provides [Sec. 1282.2(b)] that, absent a contrary agreement between the parties, the arbitration may continue, but only the neutral arbitrator may make the award.

The new law requires [Sec. 1283.6] that a signed copy of the arbitration award must be delivered to each party, either personally or by registered or certified mail, or as provided in the agreement. Time limits are those either agreed to by the parties or fixed by the court; but a party to the arbitration "waives the objection that an award was not made within the time required unless he gives the arbitrators written notice of his objection prior to the service of a signed copy of the award on him." [Sec. 1282.8]

Another interesting feature of the new law is the provision [Sec. 1284] empowering the arbitrators to correct the award for the same

reasons as those upon which a court may grant similar relief. [Sec. 1284.2]

Contrary to the corresponding provision (Sec. 10) of the Uniform Arbitration Act, which provides that the sharing of fees, unless otherwise provided for, shall be determined by the arbitrator, the new California law provides [Sec. 1284.2] that in such a situation each party to the arbitration shall pay his pro rata share of expenses and of the fees of the neutral arbitrator.

4. *Enforcement of the Award*

The new law provides [Sec. 1285] that "any party to an arbitration" may petition the court to confirm, correct, or vacate the award. Thus, it is possible that the grievant himself, having been made a "party" by the neutral arbitrator on his own motion, may be in position to attack or to seek confirmation of an award against the wishes of both the employer and the union.

Grounds for vacating the award [Sec. 1286.2] are the following: (a) if the award was procured by corruption, fraud, or other undue means; (b) if there was corruption in any of the arbitrators; (c) if the rights of the petitioning party were substantially prejudiced by the neutral arbitrator's misconduct; (d) if the arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision; or (e) if the rights of the petitioning party were substantially prejudiced by the arbitrators' refusal to postpone the hearing for good cause shown, or by their refusal to hear material evidence, or by any other conduct of the arbitrators contrary to the provisions of the statute.

The new law allows the unusually long period of four years after service of the award in which to file a petition to confirm. [Sec. 1288] Petitions to vacate or correct the award must be served and filed not later than 100 days after date of service of the award.

No decisions construing the new statute have been reported.

II. COURT DECISIONS

A. FEDERAL COURTS

1. *First Circuit*

Weyerhaeuser Co. v. *International Bhd. of Pulp Workers,* 190 F.Supp. 196 (S.D. Me. 1960). The union having appealed to arbitration a grievance which the employer claimed was not arbitrable, the employer brought an action under Section 301 of the Labor Management Relations (Taft-Hartley) Act [hereinafter referred to as LMRA] for a declaratory judgment that a decision by any arbitrator on the grievance would be null and void, and for an order enjoining the union from proceeding further in any such arbitration. The union moved to dismiss the dispute for lack of jurisdiction. Limiting its decision to the sole issue of whether it had jurisdiction of the subject matter, the court denied the defendant union's motion to dismiss. The court reasoned

that it had authority to grant declaratory relief "by virtue of the combined authority of Section 301(a), conferring jurisdiction, and the Federal Declaratory Judgments Act. . . authorizing the procedure." It found the existence of an "actual controversy" within the meaning of the latter statute because the issue presented was the same as the one that would have been presented had the employer refused to arbitrate and the union sued for specific performance of the agreement to arbitrate. Said the court: "The fact that the plaintiff, instead of defendants, chose to litigate the question should not negative jurisdiction."

Local 201, IUE v. *General Electric Co.*, 283 F.2d 147 (1st Cir. 1960). A local union brought an action under Section 301 of the LMRA to compel arbitration of a grievance arising out of the employer's alleged violation of a "local understanding." The collective agreement provided that local understandings would not be subject to arbitration unless reduced to writing and signed by both parties. The understanding allegedly violated by the company had been reduced to writing and signed by the company, but not by the union. The trial judge dismissed the action and the plaintiff local appealed, relying on the law of the arbitration trilogy. The court of appeals affirmed the judgment below, holding that the appellant's argument had no application in this case, and citing the statement in the *Warrior & Gulf* case that ". . . arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit."

Freight Drivers Local 557, IBT v. *Quinn Freight Lines*, 195 F.Supp. 180 (D. Mass. 1961). Local 557 brought an action under Section 301 of the LMRA for specific performance of the arbitration clause in its collective agreement with Quinn, the defendant employer. Quinn had established a new run from Massachusetts to Baltimore, which he manned with members of Local 653, IBT. Claiming that Quinn should have negotiated with it instead of with Local 653, Local 557 filed a grievance, which Quinn refused to process. The applicable arbitration provision was very broad and Quinn conceded that the dispute was arbitrable. He moved to dismiss the suit, however, on the ground that it involved a work assignment dispute within the meaning of Sections 8(b)(4)(D) and 10(k) of the National Labor Relations Act, as amended [hereinafter referred to as NLRA], and therefore came within the exclusive jurisdiction of the NLRB. The court dismissed Quinn's motion and granted the plaintiff local's motion for summary judgment. Relying on the decision in *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448 (1957) it declared that it had power under Section 301 not only to decree specific performance of agreements to arbitrate, but also to exercise that power "broadly and liberally." Therefore, it concluded, "because the Board's jurisdiction is limited to the effectuation of the purposes of the Act, and is not concerned with policing and enforcing labor contracts, the power to decree arbitration has been held

to exist even where the act complained of constitutes both an unfair labor practice and a violation of the agreement."

Howard v. *United States Rubber Co.*, 190 F.Supp. 663 (D. Mass. 1961). Plaintiff, discharged by the employer for alleged violation of the no-strike provision in the collective agreement between the employer and the union, filed a grievance which was appealed by the union to arbitration. The impartial umpire under the agreement sustained the discharge, and plaintiff brought suit to reverse that decision and secure his reinstatement. The court dismissed the complaint, saying: "The Supreme Court [in the trilogy] . . . has made it abundantly clear that the national labor policy is to highly favor the resolution of labor disputes by utilization of the arbitration process, and . . . has left no doubt that a court should not review *de novo* the decision of an arbitrator under a collective bargaining agreement."

UAW v. *Waltham Screw Co.*, 42 CCH Lab. Cas. par. 16,769, 47 LRRM 2196 (D. Mass. 1960). The union brought this action under Section 301 of the LMRA for enforcement of an arbitration award covering two grievances, which the employer had contended were not arbitrable. It appears that the arbitration was conducted under the auspices of the American Arbitration Association [hereinafter referred to as AAA], in accordance with the provisions of the collective agreement, without the participation of the employer. The court, on the authority of the arbitration trilogy, granted the plaintiff union's motion for summary judgment, holding that the grievances were arbitrable and that the arbitrator did not exceed his authority in deciding both for the union. It denied plaintiff's motion for damages.

Valencia Baxt Express, Inc. v. *Seafarers Int'l Union*, 43 CCH Lab. Cas. par. 17,300, 49 LRRM 2126 (D.P.R. 1961). In this action the employers sought to vacate an arbitration award characterized by the court as "prospective and quasi-legislative," but not otherwise described. The action was dismissed, the court holding that it lacked jurisdiction under either Section 301 of the LMRA or under the U.S. Arbitration Act. Relying on *Boston Printing Pressmen's Union* v. *Potter Press*, 241 F.2d 787 (1st Cir. 1957), *cert. denied*, 355 U.S. 817 (1958), the court ruled that since it could not have enforced the award at the union's request, it could not vacate the award at the employers' request.

General Tire & Rubber Co. v. *Local 512, United Rubber Workers*, 191 F. Supp. 911 (D. R.I. 1961), *aff'd per curiam*, 43 CCH Lab. Cas. par 17,238, 49 LRRM 2004 (1st Cir. 1961). The employer brought an action under Section 301 of the LMRA to enjoin the defendant union and individual former employees from proceeding further with their demands to arbitrate claims for vacation pay. The grievances were filed after the collective agreement had expired, but were based upon service performed during the period when the agreement was in effect. The court granted the motion to dismiss and ordered the plaintiff to

arbitrate the grievances. It found that the issue was arbitrable under the arbitration provision of the lapsed agreement, and observed: "rights to which an employee may be entitled . . . may not actually fructify to enjoyment until after the expiration of a particular contract period with reference to which they may be regarded as having been earned. Vacation pay is an example. . . . [It] is in the nature of deferred compensation, in lieu of wages earned each week the employee works and payable at some later time."

2. *Second Circuit*

Drake Bakeries v. *Local 50, American Bakery and Confectionery Workers*, 287 F.2d 155, 294 F.2d 399 (2d Cir. 1961), *cert. granted*, 30 U.S. Law Week 3232 (U.S. Jan. 23, 1962) (No. 598). The employer filed an action under Section 301 of the LMRA to recover damages for an alleged breach of the no-strike provision in its collective agreement with the defendant union. The union moved under the U.S. Arbitration Act for a stay pending arbitration under the agreement, and the district judge granted the stay. On appeal, the judgment of the lower court was reversed. The appellate tribunal noted that the no-strike and arbitration provisions of the agreement were very broad, and concluded:

> "Where the no-strike clause is as specific as in the case at bar, it seems clear that the parties intended the grievance-arbitration procedure to supplant strikes as a means of resolving industrial disputes, but did not intend to subject alleged breaches of the no-strike clause to arbitration when a strike was resorted to before making any attempt to utilize the grievance-arbitration procedure."

However, on rehearing before the six active judges of the court, sitting in banc, three judges voted to affirm the order of the district court, on the authority of the trilogy; the other three judges voted to sustain the opinion of the appellate court's panel. The full court, two judges dissenting, also concluded that, under the circumstances, the order of the district court was affirmed.

Procter & Gamble Independent Union v. *Procter & Gamble*, 195 F.Supp. 64 (E.D.N.Y. 1961). The union brought an action to compel arbitration of two grievances. The first alleged "Violation of past practices and agreements and discrimination against a union official," in that the employer failed to pay the minimum wage required by the agreement for a job on which the grievant had bid. The second alleged violation of a prohibition against foremen working at non-supervisory tasks. The court granted summary judgment in favor of the union in respect to the second grievance, but denied similar relief as to the first. It conceded, citing the trilogy, that arbitrators may "consider past practices at the plant as well as in the industry generally and also 'bring to bear considerations which are not expressed in the contract as criteria for judgment.'" It declared, however, that

the issue in the first grievance, as submitted, "is ambiguous and is elastic enough to include past practices and agreements wholly unrelated to the interpretation or application of the provisions of the existing agreement." The court saw its problem as not "the resolution of a doubtful case in favor of arbitration but the extension of arbitrability to agreements and practices not within the scope of the present Agreement."

Procter & Gamble Independent Union v. *Procter & Gamble,* 195 F.Supp 134 (E.D.N.Y. 1961). The union brought an action to compel arbitration of six classification grievances. The employer denied violation of the applicable provision of the collective agreement. The court ordered arbitration of all six, pointing out that the employer's denial of violation was irrelevant in this context, since the decision on the merits was for the arbitrator. The court relied specifically on the authority of the trilogy.

Office Employees Int'l Union, Local 153 v. *Ward-Garcia Corp.,* 190 F.Supp. 448 (S.D.N.Y. 1961). The union petitioned to compel arbitration of an issue that admittedly was arbitrable under the union's collective agreement with the respondent's corporate predecessor. The court held that under the U.S. Arbitration Act the issue whether the respondent was subject to the terms of the agreement was for the court to decide. In subsequent proceedings it held that the respondent had not assumed the liability of the predecessor corporation, and denied the motion to compel arbitration. 42 CCH Lab. Cas. par. 16,766, 47 LRRM 2781 (S.D.N.Y. 1961).

Locals 234 and 243, ILGWU v. *Beauty Bilt Lingerie, Inc.,* 43 CCH Lab. Cas. par. 17,126, 48 LRRM 2995 (S.D.N.Y 1961). The two local unions brought an action under Section 301 of the LMRA to obtain confirmation and enforcement of an arbitration award. The court granted summary judgment in their favor, notwithstanding the employer's contention that compliance with part of the award would require the employer to violate the "hot cargo" provision, Section 8(e), of the NLRA. The court found no merit in the employer's contention, but said that even if there were, the claim should be addressed to the NLRB.

3. *Third Circuit*

Radio Corp. of America v. *Association of Professional Eng'r Personnel,* 291 F.2d 105 (3d Cir. 1961), *cert. denied,* 82 S.Ct. 174 (1961). The union filed a grievance under its collective agreement with the employer (RCA), alleging a violation of the procedure for granting merit increases. RCA denied that the grievance was arbitrable, and claimed that, in any event, the grievance was not timely. The union then submitted the matter to the AAA, which instituted arbitration proceedings. RCA then filed a complaint, seeking under Section 301 of the LMRA and under the Federal Declaratory Judgments Act an authoritative judgment that the grievance was not arbitrable. The

union filed a counterclaim for compulsory arbitration. The district court granted judgment for RCA, which was reversed on appeal. Relying on the law of the trilogy, the appellate court said: "So long as the complaining party bases its grievance on an alleged failure to perform an obligation of a contract, a standard arbitration clause making disputes 'involving the interpretation or application of any provision' of the contract arbitrable should be enforced by a judgment requiring arbitration." The court refused to consider RCA's claims that the subject matter of the grievance was excluded from arbitration by another provision of the agreement, and that the grievance was untimely, saying that these issues were for the arbitrator.

International Tel. & Tel. Corp. v. *Local 400, Professional Div., IUE*, 290 F.2d 581 (3d Cir. 1961). The employer requested four employees to apply for voluntary retirement. When they refused to do so, it discharged them and began making pension payments to them. The union filed a grievance alleging that the discharges violated the collective agreement. The employer maintained that the grievance was not arbitrable, and obtained a declaratory judgment to that effect from the district court. On appeal, the decision was reversed, on the authority of the trilogy. "It is indubitably clear," said the court, "that the dispute between the parties is subject to arbitration."

Yale & Towne Mfg. Co. v. *Local Lodge 1717, IAM*, 194 F.Supp. 285 (E.D. Pa. 1961). The employer brought an action under Section 301 of the LMRA for damages for alleged breach of a no-strike provision in its collective agreement with the union. The union filed a motion to stay until the employer's claim was processed through the grievance and arbitration provisions of the agreement. The court denied the motion to stay, holding that the law of the trilogy was not applicable because none of those cases had involved the alleged violation of a no-strike clause. Having found that the parties had agreed on binding arbitration as the exclusive remedy for the settlement of grievances, the court concluded: "Within this framework, a violation of the no-strike provision is not a grievance."

Industrial Union of Marine & Shipbuilding Workers v. *American Dredging Co.*, 43 CCH Lab. Cas. par. 17,240, 49 LRRM 2130 (E.D. Pa. 1961). The union brought an action under Section 301 of the LMRA to enforce several arbitration awards. In one the arbitrator, who had power under the collective agreement "to interpret the language of any clause herein," had ordered the reinstatement of six employees who had been discharged by the employer for violation of the no-strike clause. The arbitrator ruled that the employer had waived its right to discharge by agreeing to take the grievants back, although that issue had not been raised in the formal submission. The court held that the propriety of the discharges was arbitrable and that the issue of waiver was within the scope of the broader question submitted. Accordingly, summary judgment was granted in the union's favor.

IBEW v. *Westinghouse Electric Corp.*, 43 CCH Lab. Cas. par. 17,265, 49 LRRM 2059 (E.D. Pa. 1961). The union brought an action under Section 301 of the LMRA for determination of a seniority grievance which the employer had refused to arbitrate. The union moved for summary judgment and urged the court to "adjudicate the merits of the grievance, or in the alternative, direct the defendant to submit the grievance to arbitration." In addition, the union asked for "incidental damages" of $25,000. The employer also urged the court to resolve the dispute on the merits, but asserted the defenses of nonarbitrability and laches on the part of the union. The court ordered the grievance to be arbitrated, saying: "In the present state of the authorities . . . the plaintiff's right to arbitration is clear; and . . . even more clearly this matter is not one for determination by the Court." The court also found that the union had failed to show justification for the award of punitive damages or for damages for the expenses of the litigation.

District Lodge 1, IAM v. *Crown Cork and Seal Co.*, 42 CCH Lab. Cas. par. 16,763, 47 LRRM 2615 (E.D. Pa. 1961). The union brought an action under Section 301 of the LMRA to enforce an arbitration award and, in the alternative, to assert a breach of contract in that the employer refused to arbitrate an issue of damages in violation of the collective agreement between the parties. The employer had allowed outside workmen to perform work claimed by the union for its members. The union grieved and the arbitrator "sustained the Union's grievance position on the issue in dispute"; but his award was silent as to whether the grievants were entitled to pay for the work they had lost. The union demanded a further ruling on this point and the employer refused. The court ordered the question of damages to be arbitrated. From its reading of the arbitrator's decision it concluded that damages had not yet been awarded, but that since the arbitrator had not said damages should not be awarded, the issue remained open and was properly one for him to decide. The court denied that it was assuming jurisdiction to enforce "rights that are uniquely personal to individual grievants and protecting union members in their job classifications against 'outsiders.' " It concluded: "All we are doing is enforcing the arbitration provision of the collective bargaining agreement."

Retail, Wholesale & Dep't Store Union, Local 1085 v. *Vaughan's Sanitary Bakery, Inc.*, 43 CCH Lab. Cas. par. 17,160, 49 LRRM 2963 (M.D. Pa. 1961). The union brought an action to compel arbitration of grievances involving certain discharges. The employer, asserting that between the first and the subsequent discharges the union's members had violated the no-strike clause of the collective agreement, moved for judgment on the pleadings. The court denied the employer's motion, pointing out that whether or not the employer had a valid claim for damages or other relief against the union and its members for

the alleged violation of the no-strike clause, it was still obliged to arbitrate the discharge grievances.

4. *Fourth Circuit*

Textile Workers Union v. *American Thread Co.*, 291 F.2d 894 (4th Cir. 1961). This case arose out of an arbitration involving the discharge of an employee for improper performance of his job. The stipulation for arbitration provided:

> "Under the terms of the contract and within the limits of those terms, including the restrictions on the power of the arbitrator, does [the grievance] allege, and has the union proved, a violation of the contract? If so, and within the same limitations, what should be the remedy?"

The collective agreement included a broad management rights clause, reserving to the employer "all rights heretofore exercised by or inherent in management, and not expressly contracted away," and an arbitration clause which provided in part that the arbitrator "shall make no award affecting a change, modification or addition to this Agreement and shall confine himself strictly to the facts submitted . . . and the terms of the contract. . . ." The arbitrator found that the grievant was guilty of the offense for which he had been discharged, but held that the offense did not amount to just cause for discharge. Accordingly, he converted the discharge to a one-week suspension without pay. The employer refused to abide by the award and the union brought suit in federal district court to enforce it. The district court dismissed the suit for lack of jurisdiction, but the court of appeals reversed and remanded. Again the district court declined to order enforcement of the award, and the union appealed for the second time. By a divided vote, the court of appeals affirmed the judgment below. The majority agreed that the district court had jurisdiction of the case, but found that the arbitrator had exceeded his authority. Referring to the trilogy, the majority said: "We are not persuaded that the Supreme Court . . . intended that the courts should permit an arbitrator to render decisions which do such violence to the clear, plain, exact and unambiguous terms of the submission and the contract. . . ." The dissenting judge argued that the arbitrator had neither exceeded his authority nor gone outside the record, as the majority asserted.

Textile Workers Union v. *Cone Mills Corp.*, 188 F.Supp. 728 (M.D. S.C. 1960), *aff'd per curiam*, 290 F.2d 921 (4th Cir. 1961). The union brought an action for enforcement of an arbitration award requiring the employer to reimburse its employees for loss of unemployment compensation. Such compensation had been denied the grievants during a two-week layoff which the employer had unilaterally characterized as "vacation without pay." The employer took the position that the grievances were not arbitrable, and refused to comply with the award. Although the court found the employer's argument "persuasive," it ordered enforcement of the award. Referring to the

trilogy, the court said: "these cases . . . teach that courts should refuse to review the merits of an arbitration award, and that ambiguity in the opinion of an arbitrator is no reason for refusing to enforce the award. Additionally . . . courts have no business overruling the arbitrator because they place a different construction [than his] on the contract. . . ."

Henderson v. *Eastern Gas & Fuel Associates*, 290 F.2d 677 (4th Cir. 1961). The plaintiffs claimed to have been paid at a rate lower than that specified in the collective agreement while in the employ of the defendant company. Grievance proceedings had been instituted, and at a stage prior to arbitration, it was determined that the wages paid were correct. The plaintiffs then brought suit to recover the wages allegedly due them. The lower court dismissed the action and this judgment was affirmed on appeal. The court of appeals agreed with the district judge that the claims were arbitrable and that the individual employees, like the union and the employer, could not bypass that procedure. [Cf. *Hilton* v. *Norfolk & W. Ry.*, 194 F.Supp. 915 (S.D.W.Va. 1961)]

American Brake Shoe Co. v. *Local 149, Int'l Union, UAW*, 285 F.2d 869 (4th Cir. 1961). The union brought an action under Section 301 of the LMRA for enforcement of an arbitration award reclassifying certain employees with retroactive pay. The employer based its refusal to comply with the award on the claim that the arbitrator had exceeded his authority under the collective agreement. Judgment for the union was affirmed on appeal. The court of appeals, citing the trilogy, declared that "the issues submitted to the arbitrator were clearly within his jurisdiction and . . . his award was well within the bounds of his authority. . . ." The court also rejected the employer's claim that Section 301 does not give to federal courts jurisdiction to enforce "uniquely personal rights" of individual employees [see *Association of Westinghouse Employees* v. *Westinghouse Electric Corp.*, 348 U.S. 437 (1955)].

Local 28, IBEW v. *Maryland Chapter Nat'l Electric Contractors Ass'n*, 194 F.Supp. 494 (D. Md. 1961). The union brought suit for a declaratory judgment that it had effectively terminated its collective agreement with the defendant contractors association. The collective agreement, renewable from year to year, provided that any "changes" in the agreement would, in the event of dispute, be submitted to a council composed of representatives of both parties for final resolution. Decisions of the council were required to be unanimous. After some years, the union announced that it would no longer be bound by the agreement unless certain changes were made. The court held that the union's termination was effective, observing that "Congress has not yet adopted a policy of compulsory arbitration." Nevertheless, the court ordered the parties to continue to bargain collectively, presumably over the terms of a new agreement.

5. *Fifth Circuit*

Lodge 12, IAM v. *Cameron Iron Works,* 292 F.2d 112 (5th Cir. 1961), *cert. denied,* 82 S.Ct. 361 (1961). The union brought an action under Section 301 of the LMRA to compel arbitration of a dispute over the discharge of 15 employees for alleged misconduct during a strike. The district court initially dismissed the action on the ground that the grievances were not arbitrable under the collective agreement. The court of appeals reversed, having come to the opposite conclusion. On the remand, the district court directed arbitration, but directed that the scope of the arbitration could not include the issue of back pay. Once more the union appealed, and again the court of appeals reversed, this time relying heavily on the trilogy. It rejected the district court's view that the arbitrator had no authority to award back pay, absent "particular language" granting that power in the collective agreement, and declared that the court below had undertaken the functions of the arbitrator. From its reading of the collective agreement the appellant court concluded that the arbitrator had full authority to fashion an appropriate remedy in this case, including the award of back pay.

IAM, Lodge 2003 v. *Hayes Corp.,* 43 CCH Lab. Cas. par. 17,301, 49 LRRM 2210 (5th Cir. 1961). The union brought an action to compel the arbitration of the discharge of two employees because of "carelessness and for incompetence." The discharges were initiated by the Government, pursuant to its contract with the employer providing that the Government could require dismissal of any employee deemed to be incompetent or whose retention would be contrary to the public interest. The union claimed that the discharges violated its collective agreement with the employer, but the employer steadfastly refused to recognize the complaint as a "grievance" within the meaning of that agreement. When the union went to court to compel arbitration, the employer defended on the grounds that there was no arbitrable grievance and that the union had not met the procedural requirements for arbitration. A decision by the district court for the employer on both points was reversed on appeal. Relying on the law of the trilogy, the court of appeals held that the union's grievance was arbitrable under the collective agreement, since it represented a dispute as to the "interpretation or application" of that agreement. In respect to the procedural requirements, with which the union had admittedly not complied in full, the court observed that since the employer had contended at every stage that the dispute was not even covered by the grievance procedure, it "ought not to be able to insist on useless, formal, literal compliance, as a condition to the judicial determination of the serious question. . . ."

IAM v. *Central Airlines, Inc.,* 295 F.2d 209 (5th Cir. 1961). The union brought an action in federal district court to enforce an award of a system board of adjustment. The complaint urged that the court had jurisdiction under 28 U.S.C. Sec. 1331, on the theory that this

was a matter arising under the laws of the United States, specifically, the Railway Labor Act [hereinafter referred to as RLA]. The district court dismissed the action for want of jurisdiction, and the court of appeals affirmed by a divided vote. The appellate court reasoned that the RLA does not establish system boards of adjustment; it merely authorizes their establishment through collective bargaining. The union's contention that the RLA is like the LMRA, in that it implies a congressional mandate to federal courts to fashion federal law governing the substance of collective agreements in the airlines industry was rejected. The court pointed out that, unlike the RLA, the LMRA provides for federal court jurisdiction over suits involving collective agreements, and that the instant case was necessarily based on a violation of a contract and not of the statute; hence the proper forum was the state court. The dissenting judge attacked the logic of the view that "Congress must have looked to the varying attitudes of 48 states for the enforcement of industrial arbitral decisions thought necessary to secure continuity to interstate air commerce," especially when the state courts must apply federal law.

Stewart v. *Day & Zimmerman, Inc.*, 43 CCH Lab. Cas. par. 17,167, 48 LRRM 2989 (5th Cir. 1961). Four laid-off employees filed an action against their employer and the union, asking for damages, reinstatement, and back pay. They had been laid off when other guards, previously in supervisory positions, were demoted back into the bargaining unit. The collective agreement specifically provided that "employees promoted to supervisory positions shall continue to accrue seniority." The plaintiffs claimed to have been laid off out of seniority, contrary to the terms of the collective agreement, and as a result of a conspiracy between the employer and the union. A decision for the defendants by the district court was affirmed on appeal. Citing the Supreme Court's opinion in *Ford Motor Co.* v. *Huffman*, 345 U.S. 330 (1953), the court stated: "We agree with the conclusions of the trial judge and feel . . . that union officials should be given a wide latitude in deciding intra-union disputes and that courts should be slow to intervene in them, but should . . . invest their decisions and actions with a presumption of honesty and fairness."

[*Cf. Clark* v. *Hein-Werner Corp.*, 8 Wis.2d 264, 99 N.W.2d 132 (1959).]

Southwestern Electric Power Co. v. *Local 738, IBEW*, 43 CCH Lab. Cas. par. 17,149, 48 LRRM 2960 (5th Cir. 1961). The union brought an action in federal district court to compel arbitration of a seniority grievance. The employer had promoted an apprentice serviceman to the position of serviceman, in preference to four journeymen linemen who had also bid for the job. When the union filed a grievance, the employer took the position that the matter was not arbitrable under the collective agreement. The district court directed arbitration and the employer appealed, relying in part on the defense that the union had not complied with the procedural requirements for arbitration.

The court of appeals affirmed, holding that the grievance was clearly arbitrable under the law of the trilogy. In respect to the alleged failure of the union to satisfy the procedural requirements of the agreement, the court said: "The repudiation [by the employer] of arbitration as a means of determining the dispute was unequivocal. The Company is estopped to assert now that arbitration cannot be had because the specified conditions precedent had not been performed."

International Chem. Workers, Local 19 v. *Jefferson Sulphur Co.*, 197 F.Supp. 155 (S.D. Tex. 1961). The union brought an action under Section 301 of the LMRA to compel arbitration of a grievance involving the involuntary retirement of an employee. The employer's contention was that its policy of compulsory retirement was outside the scope of the arbitration provision in the collective agreement. The court granted summary judgment for the union, however, since the arbitration clause covered "any alleged violation of the terms of this agreement." In addition, the court stated that the employer's claim that the grievance was not timely was also an issue for the arbitrator.

Texas Gas Transmission Corp. v. *International Chem. Workers Local 187*, 48 LRRM 2617 (W.D. La. 1961). The employer brought suit for a declaratory judgment under Section 301 of the LMRA and Section 2201 of the Federal Declaratory Judgments Act, seeking to have vacated part of an arbitration award. The employer had unilaterally advised its employees that it would observe Memorial Day and Independence Day, both of which fell on a Saturday, on the preceding Friday. The union subsequently filed a grievance, and the arbitrator ruled that the employer had violated the collective agreement. He ordered the employer to pay the employees holiday pay for the two Saturdays in question, in addition to the holiday pay for the two Fridays which the employer had substituted. It was the latter part of this award which the employer protested. The court granted the requested relief. It construed the contested portion of the award as a penalty, which it said the arbitrator lacked the authority to impose. It declared that the law of the trilogy was not applicable in this instance, and that the aggrieved employees would have to seek their relief in the state court. Having granted a rehearing on its own motion, the court reversed the above decision and granted judgment for the defendant union, on the authority of the *Cameron Iron Works* case (p. 263). 44 CCH Lab. Cas. par. 17,381, 49 LRRM 2409 (W.D. La. 1962).

6. *Sixth Circuit*

Vulcan-Cincinnati, Inc. v. *United Steelworkers*, 289 F.2d 103 (6th Cir. 1961). The employer brought an action under Section 301 of the LMRA to recover damages allegedly sustained as a result of a strike by the union. The union moved for a stay in the proceedings, pending arbitration of the employer's complaint. The collective agreement between the parties contained a broad no-strike clause and an equally broad arbitration provision covering "differences" between the parties

"as to the meaning or application of the provisions" of the agreement. The district court denied the union's motion for a stay, and this judgment was affirmed on appeal. The court of appeals, following its earlier decision in *International Union, UAW* v. *Benton Harbor Malleable Industries*, 242 F. 2d 536 (6th Cir. 1957), held that the right to strike was not an arbitrable issue. Moreover, the court construed the grievance procedure as applying only to the employees and the union, and as not giving the employer the right to file a grievance. The trilogy was distinguished on the ground that none of the three cases involved the issue of breach of a no-strike clause.

Local 791, IUE v. *Magnavox Co.*, 286 F.2d 465 (6th Cir. 1961), *rehearing denied*, 286 F.2d 466. The union brought an action for a declaratory judgment under Section 2201 of the Federal Declaratory Judgments Act to obtain enforcement of an arbitration award. In the case before the arbitrator the union had alleged speedup of the assembly line in violation of the collective agreement. The arbitrator dismissed the grievance but directed the parties to "enter into negotiations concerning whatever engineering surveys and studies may be made by the Company . . . concerning the production speed of the speaker line, during which the pre-March 1st rate is to be maintained." The district court held this portion of the award void, and its judgment was affirmed on appeal. The court of appeals cited the arbitration clause in the collective agreement, which provided in part that "No decision shall decide issues not directly involved in this case," as proof that the arbitrator had exceeded his authority. In denying the union's petition for rehearing, based on the trilogy, the court expressed the view that "the controlling facts in the instant case distinguish it from the . . . adjudications of the Supreme Court, and disclose no inconsistency or contradiction."

General Drivers, Local 89, IBT v. *American Radiator & Standard Corp.*, 196 F.Supp. 942 (W.D. Ky. 1961). The union brought suit to compel arbitration of a grievance involving the elimination of incentive pay on a particular job. The employer claimed that the grievance was not subject to the grievance and arbitration procedure. The district court dismissed the union's complaint on the authority of an earlier unreported case involving the same issue and the same employer, but a different union. In that case the court had found that the Wage Plan Agreement expressly reserved the question of incentive pay for the determination of management, and the decision "evidently was accepted by the able counsel representing the plaintiff union . . . as no appeal was prosecuted."

Marec v. *United States Steel Corp.*, 195 F.Supp. 137 (N.D. Ohio 1961). A number of employees were retired against their will pursuant to the employer's compulsory retirement policy. They sued for damages, claiming that they had been wrongfully discharged. The court dismissed the complaint on the ground that the plaintiffs' claims

were arbitrable under the collective agreement between their union and the employer, and that this remedy was exclusive.

Wright v. *Ford Motor Co.*, 43 CCH Lab. Cas. par. 17,163, 48 LRRM 2920 (E.D. Mich. 1961). The plaintiff brought an action to determine his seniority rights under the Selective Training and Service Act. The issue had previously been submitted to arbitration under the collective agreement between the plaintiff's union and the employer, and the arbitrator's award, handed down in 1955, had been adverse to the plaintiff's claim. The district court dismissed the action, holding that the plaintiff had waived his cause of action by submitting his claim to arbitration. Referring to the trilogy, the court said that "once a controversy is submitted to arbitration, it has become the policy of the United States that the decision will be final."

7. *Seventh Circuit*

Sinclair Refining Co. v. *Atkinson*, 290 F.2d 312 (7th Cir. 1961), *cert. granted*, 30 U.S. Law Week 3192 (U.S. Dec. 11, 1961) (Nos. 430, 434). The employer, alleging violation of a no-strike clause, sued the union and a number of its individual officers for damages, a declaratory judgment, and injunctive relief under Section 301 of the LMRA. The defendants filed motions to dismiss and to stay the proceedings. The district judge denied both motions with respect to the action for damages against the union, but dismissed the action for damages against the individual defendants and against all defendants for declaratory and injunctive relief. The court of appeals reversed the judgment dismissing the action for damages against the individual defendants, but affirmed as to the rest. The collective agreement between the parties included broad no-strike and arbitration clauses. The court concluded that, "giving the language of the arbitration clause . . . its broadest scope it is not susceptible of an interpretation that covers the asserted dispute." Declaratory relief was denied on the ground that the complaint failed to allege a controversy as to the validity or enforceability of either the no-strike or the arbitration clause. An injunction was denied on the ground that such relief was prohibited by the Norris–La Guardia Act.

Both parties successfully petitioned for certiorari, so there will eventually be an authoritative ruling on several of the issues, including the question whether the Norris–La Guardia Act precludes injunctive relief against a strike over an arbitrable issue in violation of a no-strike clause. The same issue is involved in *Teamsters Local 795* v. *Yellow Transit Freight Lines*, 282 F.2d 345 (10th Cir. 1960), *cert. granted*, 364 U.S. 931 (1961) (No. 13).

Nepco Unit of Local 95, Office Employees Int'l Union v. *Nekoosa-Edwards Paper Co.*, 287 F.2d 452 (7th Cir. 1961). The union brought an action under Section 301 of the LMRA to compel arbitration of a seniority grievance. The district court dismissed the complaint on the ground that the issue was reserved under the collective agreement for the employer's exclusive determination. The court of appeals re-

versed. It found that there was a conflict between various applicable provisions of the agreement and that this "patent ambiguity" could be resolved only by interpretation of the agreement as a whole. This, the court said, was a proper issue to be decided by the arbitrator.

Hammond Newspaper Guild v. *Hammond Publishing Co.*, 43 CCH Lab. Cas. par. 17,159, 48 LRRM 2577 (N.D. Ind. 1961). The union brought an action under Section 301 of the LMRA to compel arbitration of a dispute over the right of certain executives to perform work over which the union claimed jurisdiction. The arbitration clause in the collective agreement covered (with one immaterial exception) "any matter arising from the application of this agreement or affecting the relations of the employees and the Publisher." Despite evidence of bargaining history suggesting a past practice negating the union's claim, the court ordered arbitration on the authority of the trilogy.

International Union, UAW v. *Webster Electric Co.*, 193 F.Supp. 836 (E.D. Wis. 1961). The union brought an action under Section 301 of the LMRA to enjoin the employer from entering into any contract or arrangement whereby janitors in the bargaining unit would be laid off and their work subcontracted to outsiders. The collective agreement did not include either a management rights clause or a clause expressly permitting the employer to subcontract work. On these facts the court granted the injunction, relying on the *Warrior & Gulf* case.

United Steelworkers v. *Philip Zweig & Sons*, 42 CCH Lab. Cas. par. 16,934, 47 LRRM 2966 (N.D. Ind. 1961). The union brought an action to compel arbitration of a dispute involving the discharge of an employee. The employer claimed the dispute was not arbitrable because the grievant was a part-time employee and thus not protected by the collective agreement, and because the grievance was not timely. Citing the law of the trilogy, the court ordered arbitration.

8. *Eighth Circuit*

Central Metal Products, Inc. v. *International Union, UAW*, 195 F. Supp. 70 (E.D. Ark. 1961). The employer brought an action in a state court to vacate an arbitration award, on the ground that the arbitrator had exceeded his authority. The union removed the action to the federal district court on the theory that it presented a violation of a contract between an employer and a labor organization representing employees in an industry affecting commerce within the meaning of Section 301 of the LMRA. The employer then moved to remand to the state court, but its motion was denied. The court's opinion said in part:

> "Here plaintiff's [employer's] complaint does not disclose whether he relies upon state or federal law, but even assuming that plaintiff intended reliance only upon non-federal ground, still if his complaint, fairly construed, reveals that his cause of action raises a question of violation of a contract with a labor

organization representing employees in an industry affecting commerce . . . where the plaintiff is, himself, an employer in such industry, then the action is removable although some of the particulars required for federal jurisdiction must be made plain in the petition for removal."

Couch v. *Prescolite Mfg. Co.*, 191 F.2d 737 (W.D. Ark. 1961). The union brought an action in state court to compel arbitration of terms of a new collective agreement. The employer removed the action to federal district court under Section 301 of the LMRA. The collective agreement included standard no-strike and arbitration clauses. The federal court dismissed the complaint. It found that neither clause was broad enough to require arbitration of new contract terms; that the agreement provided for arbitration of such issues only by mutual consent; and that the fact that the parties had arbitrated terms of the agreement once before had no bearing in the instant case.

Local 175, Int'l Union of Operating Eng'rs v. *Standard Oil Co.*, 186 F.Supp. 895 (D.N.D. 1960). The union brought an action under Section 301 of the LMRA to compel arbitration of grievances involving the contracting out of work. The court dismissed the action on two principal grounds. First, it found that the subject matter of the grievance was specifically excluded from arbitration by a clause in the collective agreement that "proposals to add to or to change this Agreement shall not be arbitrable and . . . no proposal to modify, amend or terminate this Agreement, as well as any matter or subject arising out of or in connection with such proposal, may be referred for arbitration under this Section." Second, it found that the history of past bargaining revealed that both parties understood that contracting out of work was a policy of the employer; that the agreement permitted the employer to pursue this policy; and that the employer had successfully resisted the union's attempt to alter the policy by amending the collective agreement.

9. *Ninth Circuit*

Operating Engineers, Local 3 v. *Crooks Bros. Tractor Co.*, 43 CCH Lab. Cas. par. 17,169, 48 LRRM 2988 (9th Cir. 1961). The union brought an action to compel arbitration of a discharge for alleged insubordination. The collective agreement provided that no employee "shall suffer discharge without just cause"; that "the Employer shall be the sole judge of the qualification of his employees"; and that "in the event of a dispute, the existence or non-existence of just cause shall be determined as provided in [the arbitration] Section . . . of this Agreement." The district judge interpreted these provisions as vesting sole authority in the employer, and dismissed the complaint. The court of appeals reversed, on the authority of the trilogy.

Portland Web Pressmen's Union v. *Oregonian Publishing Co.*, 286 F.2d 4 (9th Cir. 1960). The union brought an action under Section 301 of the LMRA to compel arbitration of its dispute with the employer, involving the union's demand that the employer negotiate an agree-

ment to replace the one that had expired. The union's members had been on strike at the time the collective agreement had expired and had since been replaced. The judgment of the district court dismissing the action was affirmed on appeal. The only right being asserted by the union, the court said, was one exclusively within the jurisdiction of the NLRB, it being admitted that the employer had not violated any provision of the expired collective agreement.

Gunther v. *San Diego & A. E. Ry.*, 198 F.Supp. 402 (S.D. Cal. 1961). This was an action to enforce an award of the National Railroad Adjustment Board granting reinstatement with back pay to a worker who had been discharged as physically unfit to perform the duties of railroad engineer. The collective agreement was silent on the question of compulsory retirement, and the court concluded, on the basis of a "residual rights" theory, that the employer had retained as its prerogative the authority to dismiss employees deemed by it to be physically unfit. Accordingly, it denied enforcement of the Board's order. The court took note of the trilogy, but held those cases inapplicable because, "under the Railway Labor Act the District Court is required, in a suit for enforcement of an award, to review the merits of every construction of the contract."

United Brick & Clay Workers v. *Gladding, McBean & Co.*, 192 F.Supp. 64 (S.D. Cal. 1961). The union brought an action under Section 301 of the LMRA to compel arbitration of grievances arising under its collective agreement with the employer. The employer's refusal to arbitrate was based on the admitted failure of the union to appeal the grievances in writing from the second to the third steps of the grievance procedure within the time limits prescribed by the agreement. Treating the issue as a question whether there was any agreement to arbitrate, the court granted judgment for the employer, saying: "Here the Company had agreed to further process the grievance *only* if timely demand therefor in writing was made. None having been made, there is no obligation to process further or to arbitrate and nothing to arbitrate." The court also referred to previous bargaining history, noting that oral appeals of grievances had on occasion been accepted. It pointed out, however, that the instant grievances were the first to arise under a new collective agreement in which the procedural rules had been tightened on the insistence of the employer. Thus, the court concluded that far from being lulled by past practice into a sense of security, the union had been expressly warned that the new rules would be strictly enforced.

Retail Shoe Salesmen's Union, Local 410 v. *Sears, Roebuck & Co.*, 185 F.Supp. 558 (N.D. Cal. 1960). The union brought an action under Section 301 of the LMRA to compel arbitration of a controversy arising out of the replacement by the employer of union members who had refused to cross a picket line established by another labor organization. Arbitration was directed by the court, despite the employer's contention that since the union had filed an unfair labor practice

charge with the NLRB, the court should defer action. Rejecting this view, the court declared that even though a contract violation may also constitute an unfair labor practice, jurisdiction to decide the contractual dispute remains with the arbitrator and the court has jurisdiction over the award.

10. *Tenth Circuit*

Central Packing Co. v. *United Packinghouse Workers, Local 36,* 195 F. Supp. 186 (D. Kan. 1961). The employer brought an action under Section 301 of the LMRA to vacate an arbitration award, alleging a violation of the collective agreement between the parties. The union moved to dismiss the complaint. The disputed award reinstated with a reduced penalty and some back pay an employee discharged for violation of a company rule. In his opinion the arbitrator had indicated that he had gone outside the record for evidence upon which he relied, and that he had given considerable weight to a previous case involving the same issue which the parties had expressly agreed should not be a precedent in future cases. The court denied the union's motion to dismiss on the ground that the arbitrator had violated the collective agreement. It also rejected the union's contention that the employer was not entitled to sue under Section 301(a), but had to await suit by the union and there raise the issue of the alleged invalidity of the arbitration award. That contention, said the court, "is not supported by the better reasoned authorities."

11. *District of Columbia Circuit*

No relevant cases have been reported.

B. STATE COURTS

1. *Alabama*

Byars v. *National Dairy Products Corp., Sealtest Foods Div.,* 42 CCH Lab. Cas. par. 16,858 (Ala. Circ. 1961). The employer sought unilaterally to change the status of its milk route driver-salesmen from employees to independent contractors. The union demanded arbitration, but the employer contended that the issue was not arbitrable. The union then sought to enjoin the employer from carrying out the proposed change. Declaring that the union's remedy was governed by state law, which forbade the enforcement of agreements to arbitrate, the court nevertheless concluded that it had the power to restrain the employer from violating the contract until the issue was resolved in a judicial proceeding or until the parties voluntarily submitted the matter to arbitration. Accordingly, it granted the injunction.

2. *California*

Posner v. *Grunwald-Marx, Inc.,* 363 P.2d 313 (Cal. 1961). The union brought an action to compel the employer to arbitrate questions of vacation and holiday pay for the year 1957, under a collective agreement which did not expire by its terms until 1959. To be eligible for vacation pay employees had to be on the payroll for nine months prior

to the commencement of the vacation period, as well as at the time it began; any employee who quit or was discharged for cause prior to the vacation period lost his rights to vacation pay. To be eligible for holiday pay, employees were required to work the last working day before the holiday and the first working day afterward. The arbitration provision in the collective agreement applied to all complaints, grievances, or disputes arising between the parties "relating directly or indirectly" to the provisions of the agreement. On or about May 29, 1957, the employer moved its plant from Los Angeles, California, to Phoenix, Arizona, and "terminated" its employees. The collective agreement did not cover this contingency. Thereafter, the employer refused to pay his former employees vacation pay for 1957 or for the Decoration Day holiday (May 30), and refused to arbitrate, after having first agreed to do so. The trial court dismissed the proceedings brought by the union under the California law, holding that the wording of the collective agreement was "without ambiguity as to vacation pay and holiday pay." On appeal, the California Supreme Court reversed. It pointed out that the federal rule was not binding in this case because the union had failed to allege that the employer was engaged in interstate commerce, and the trial court had found that the employer was in fact not so engaged. Nevertheless, the court adopted the federal rule "to the effect that in such cases all disputes as to the meaning, interpretation and application of any clause of the . . . agreement, even those that prima facie appear to be without merit, are the subject of arbitration." At the same time, the court refused to adopt "all of the implications of the federal cases," especially those that could be interpreted as indicating "a complete judicial retreat from the field of arbitration in collective bargaining cases." Finally, the court declared that even under the *"Cutler-Hammer* doctrine," applied by the trial court, the issues were arbitrable.

Broadway-Hale Stores, Inc. v. *Retail Clerks Union, Local 428*, 43 CCH Lab. Cas. par. 50,345, 48 LRRM 2967 (Cal. Dist. Ct. App. 1961). A collective agreement between the parties provided for an interim reopening for the negotiation of wages only. The agreement also included a no-strike clause and an arbitration clause covering "all complaints and disputes arising under the terms of this Agreement." The union reopened at the proper time, but the parties were unable to come to terms; so the union requested arbitration. When the employer refused, the union obtained an order to arbitrate in superior court. The employer, claiming lack of jurisdiction, did not appear and the arbitrator awarded an increase. Thereafter, the union obtained an order and judgment confirming and enforcing the award, which was affirmed on appeal, on the authority of the *Posner* case. The court found that the question was arbitrable; that the arbitrator had not exceeded his powers; that the award was mutual, final, and definite; and that the state court had jurisdiction. In respect to the last point the court rejected the emplover's contention that under Section 301 of the LMRA exclusive jurisdiction is vested in the federal courts. In

response, the court cited the opinion of the California Supreme Court in *McCarroll* v. *Los Angeles County District Council of Carpenters*, 49 Cal.2d 45, 315 P.2d 322 (1957), wherein it was stated that state courts have concurrent jurisdiction over actions brought under Section 301, even if they must apply federal law.

Oil Workers, Local 1-128 v. *Texaco, Inc.*, 42 CCH Lab. Cas. par. 17,008 (Cal. Super. Ct. 1961). The union applied for an order vacating an arbitration award, upholding the discharge of employees for stealing. The arbitration was conducted under AAA rules, which provided in part: "The arbitrator shall be the judge of the relevancy and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary." The union admitted the guilt of the discharged employees, but sought to have the arbitrators reduce the penalty. After permitting oral and written arguments on their powers so to do, the arbitrators made an interim ruling that they were without authority to mitigate the penalty imposed by the employer if the facts alleged were true. Thereafter, the arbitrators refused to admit evidence in mitigation of the offenses. The union argued that the refusal to receive this evidence was misconduct on the part of the arbitrators, but the court disagreed and denied the motion to vacate, noting that it "is settled that an arbitrator's decision concerning the construction of a contract such as this, is final and that the Courts do not have power to overrule the arbitrator because it [sic] interprets the contract differently."

3. *Connecticut*

IUE v. *General Electric Co.*, 43 CCH Lab. Cas. par. 50,376 (Conn. Sup. Ct. Err. 1961). The collective agreement between the employer and the union provided that its interpretation and application "shall in all respects" be governed by New York law. It also provided, in respect to arbitration, that if either party claimed an issue was not arbitrable, there could be no arbitration until the grievance had been held to be arbitrable in a final judgment in a court. A dispute having arisen in the employer's Bridgeport plant over the subcontracting of work, the union filed a grievance which the employer claimed was not arbitrable. The union then sought an order from the Connecticut superior court to compel arbitration. The employer's demurrer was sustained and the union appealed. The Connecticut Supreme Court of Errors reversed the judgment below, holding, on the authority of the trilogy, that "Unless and until the United States Supreme Court holds otherwise, the rule promulgated by it, both on principle and on authority, must be held to be the law of the land in suits such as this, whether brought in federal courts or in state courts." Thus, the law of New York "was changed by the new rule promulgated by the . . . Supreme Court."

Connecticut Union of Tel. Workers, Inc. v. *Southern New England Tel. Co.*, 148 Conn. 192, 169 A.2d 646 (1961). The union brought an action to compel arbitration of a job evaluation dispute. The job evalu-

ation procedure in the collective agreement consisted of three stages, the last of which was a joint discussion by union and company committees of "all phases of the case"; the joint committee was given the obligation "to reach a mutually satisfactory conclusion, and that decision will be final." No agreement having been reached at the third stage, the union sought arbitration and the employer refused. The arbitration provision was limited to "any dispute or controversy concerning the true intent or meaning of a provision of this Contract, or a question as to the performance of any obligation hereunder, or any grievance as defined in Article XI. . . ." It was conceded that the disputed issue was not a "grievance" as defined in Article XI. The court's denial of the union's application was affirmed on appeal. The appellate court rejected the union's contention that the lower court erred in holding that the question of arbitrability was for the court to determine. Its own construction of the agreement led it to the conclusion that the parties had never contracted to arbitrate job evaluation disputes.

4. *Kansas*

Lodge 774, IAM v. *Cessna Aircraft Co.*, 186 Kan. 569, 352 P.2d 420 (1960). The union brought suit for a mandatory injunction to compel the employer to arbitrate a number of grievances involving the payment of premium pay for Saturday work. Some of the grievances were filed by individual employees; but one was filed by the union on its own behalf. The trial court refused to order arbitration of the union's grievance, but held that the union could maintain the suit to compel arbitration of the individual employee grievances. Both sides appealed, and the Kansas Supreme Court reversed that part of the trial court's order refusing to compel arbitration of the union's grievance. The court's opinion, which antedated the trilogy, stated that "neither Cessna nor this court may pass upon the question of the merits of the grievance and thereby prevent it from being . . . submitted to . . . arbitration. . . ." It added that the question of arbitrability may be considered by the court "if there be a question whether the . . . agreement covers a certain type of dispute or if the grievance be found to be frivolous." Finally, the court distinguished the *Westinghouse* case, and held that the right the union sought to assert was not "uniquely personal" to the employees involved.

5. *Massachusetts*

Courtney v. *Dowd Box Co.*, 169 N.E.2d 825 (Mass. 1960), *cert. granted*, 365 U.S. 809 (1961). The union and the employer agreed upon a wage increase, but the employer reneged. The union then brought a bill in equity to enforce the agreement. The employer filed a demurrer to the bill and a motion to dismiss for want of jurisdiction, and appealed from interlocutory decrees overruling the demurrer and denying the motion to dismiss. The case was referred to a master; the final decree declared the agreement to be valid, and ordered the payments of specific amounts to members of the class for whom the

suit was brought. The employer appealed, arguing that the action was within the purview of Section 301(a) of the LMRA, and that the state court had no jurisdiction of the subject matter. This contention was rejected by the Supreme Judicial Court of Massachusetts, which affirmed the judgment below and held that "there is concurrent jurisdiction in Federal and State courts over suits for enforcement of a collective bargaining agreement."

6. *Michigan*

Frazier v. *Ford Motor Co.*, 43 CCH Lab. Cas. par. 50,406 (Mich. 1961). The plaintiff, who had been employed by the employer for 36 years, was discharged for stealing, and the discharge was upheld in an arbitration proceeding under the collective agreement. Several years later the plaintiff applied for retirement benefits under the agreement, but he was held ineligible because of his previous discharge. He then sued for damages, claiming that he was innocent of the alleged theft for which he had been discharged, and that the umpire's award was void because of fraud, bad faith, and arbitrary action by the umpire. The trial court's decision dismissing the complaint, on the ground that plaintiff's allegations were either conclusionary in form or otherwise legally insufficient as allegations of fraud, bad faith, or arbitrary action, was affirmed by the Michigan Supreme Court by a divided vote. The majority reaffirmed the policy established in earlier cases that only in the face of "clear and strong" allegations of fraud discovered subsequent to the arbitration hearing would it consider an appeal from the arbitrator's decision.

7. *New Jersey*

United States Pipe & Foundry Co. v. *United Steelworkers, Local 2066*, 67 N.J. Super. 384, 170 A.2d 505 (1961). The collective agreement between the union and the employer expired on August 20, 1959, and a strike thereupon took place. A new agreement was finally executed on May 25, 1960, and predated to August 21, 1959. On December 2, 1959, the employer announced that it had discharged an employee for misconduct during the strike. The union made this discharge an issue in the strike settlement, but according to the employer, finally dropped the demand for arbitration or reinstatement. After the new agreement became effective, however, the union demanded arbitration, and the employer obtained a temporary restraining order against the prosecution of the demand for arbitration. On appeal, the lower court's judgment was reversed and the temporary restraining order dissolved. The agreement specifically provided for the arbitration of discharge cases, and the grievant was not expressly excluded from its coverage. Citing the trilogy, the court said the employer's reasons for discharging the grievant were irrelevant to the consideration of arbitrability.

Mueller Co. v. *Bakery & Confectionery Workers, Local 262*, 67 N.J. Super. 259, 170 A.2d 514 (1961). The employer brought an action

under state law for a declaratory judgment. The dispute involved a grievance appealed by the union to arbitration. The employer claimed the demand for arbitration was untimely, and obtained a temporary restraining order against arbitration, pending a determination of the issue of arbitrability. The court found that the interpretation of the arbitration clause "is a matter for the Court and not for an arbitrator," and that the plain meaning of the language used in the arbitration clause was that the grievance was arbitrable, "since no time limitation is prescribed for the submission of the grievance to arbitration, and the period which elapsed was not such an unreasonable time as to bar defendant [union] from submitting [it]. . . ."

8. *New York*

Fownes Bros. & Co. v. *Amalgamated Clothing Workers, Local 1714*, 43 CCH Lab. Cas. par. 17,133 (N.Y. App. Div., 3d Dep't 1961). The employer operated two plants in New York: one in Gloversville, the other in Amsterdam. Employees at the former plant were covered by a collective agreement with the Clothing Workers; those in the latter plant were covered by an agreement with the Textile Workers. The employer decided to close down the Gloversville plant. He dismissed the employees at that plant and informed them that they could apply for work at the Amsterdam plant. A few employees did so and joined the Textile Workers. Subsequently, the Clothing Workers sought to arbitrate a number of charges alleging violation by the employer of the collective agreement at the Gloversville plant. He moved to stay the arbitration proceeding, and his application was granted on the ground that there was no "bona fide dispute between the parties . . . which should be the subject of arbitration." On appeal, this judgment was reversed and the employer's motion denied. The court said the grievances were within the scope of the arbitration provision of the collective agreement, and their intrinsic merits were not to be weighed by the court.

Morton Karten, Inc. v. *Garment Workers Union, Local 105*, 42 CCH Lab. Cas. par. 50,268 (N.Y. Sup. Ct. 1961). The employer moved to stay arbitration of grievances involving the contracting out of work, and raised a number of objections, including procedural irregularities and lack of jurisdiction in the arbitrator. All of these were brushed aside by the court, and the employer's motion was denied. In respect to the subcontracting issue the court cited the trilogy and said: "The Supreme Court of the United States has unequivocally held that arbitration of claims that work is being farmed out by an employer to the detriment of employees is enforceable and that such form of determination of the controversy is highly desirable."

Carey v. *Westinghouse Electric Corp.*, 43 CCH Lab. Cas. par. 50,396, 49 LRRM 2225 (N.Y. App. Div., 1st Dep't 1961). The union instituted a proceeding to compel arbitration of four grievances. The lower court directed arbitration of three, and dismissed the petition as to the fourth. The parties, after acquiescing in the disposition of one

of the three ordered to be arbitrated, filed cross appeals as to the others. The first grievance considered by the Appellate Division involved an incentive standard. The collective agreement provided that the arbitrator should not have power to "Establish or modify any wage or salary rate . . . or any time value under the incentive system." The court construed this provision as excluding the grievance from arbitration. It rejected the view of the judge below that "prior to the award the court should not concern itself with what the arbitrator may decide but that this should be made to await an application to confirm the award," and held that the demand for arbitration must be denied. Whether court action should precede or succeed the arbitrator's award, said the court, should depend upon "the nature of the objection and the scheme of the agreement providing for arbitration." Here the agreement provided that if arbitrability were challenged, the arbitration could not proceed until the issue had been finally determined by a court.

The second grievance involved the alleged discharge of an employee during a protracted illness. The employer argued that the union was not objecting to the discharge, but to the refusal to rehire, and also that the union had delayed unduly and to the employer's detriment in presenting the grievance. Finding these objections mutually contradictory and without merit, the Appellate Division affirmed the order to arbitrate the grievance.

The third grievance involved the employer's refusal to apply the terms and conditions of the agreement covering production and maintenance employees in the unit represented by the union to employees transferred from that unit into a laboratory covered by an agreement for salaried employees represented by another labor organization. The lower court had denied arbitration on the ground that the issues raised were exclusively for the NLRB. The Appellate Division affirmed by a divided vote. The majority started with the proposition that a breach of contract does not become incapable of arbitration because it is also an unfair labor practice. Conversely, it declared that where the NLRB has assumed jurisdiction, the matter should not be submitted to another forum even though a breach of contract may be involved. "The dividing line between these extremes," said the majority, "would seem to be best fixed at that point where the peculiar expertise of the NLRB has found expression." From the facts of the instant case, the majority concluded that the demand for arbitration encroached upon an area in which the NLRB had such "peculiar expertise," and should therefore be denied. The dissenting judge argued that "the union should not be forced to abandon its rights under the contract simply because the Board may also have jurisdiction of a portion of this dispute."

9. *Tennessee*

Volunteer Electric Cooperative v. *Gann*, 41 CCH Lab. Cas. par. 16,537, 46 LRRM 3049 (Tenn. Ct. App. 1960), *rehearing denied*, 41

CCH Lab. Cas. par. 16,615, 47 LRRM 2251 (1960). A dispute arose between the employer and the union over the layoff of some employees and the subcontracting of work. When the union demanded arbitration, the employer sought and obtained a declaratory judgment that the grievances were not arbitrable. On appeal, that decision was reversed. Assuming that the employer was in interstate commerce, the Tennessee Court of Appeals treated the case as arising under Section 301 of the LMRA. It declared that the state courts have concurrent jurisdiction over such cases but that federal law must be applied. Accordingly, it held that the Tennessee common law rule that executory agreements to arbitrate are not judicially enforceable was not applicable here, and that the issues must be governed by the law of the trilogy.

10. *Washington*

International Guards Union, Local 21 v. *General Electric Co.*, 358 P.2d 307 (Wash. 1961). The employer discharged a guard with an admittedly poor attendance record as an "undesirable," and refused the union's request for arbitration, on the ground that the collective agreement did not cover the matter of disciplinary discharges. The union sought an injunction to compel arbitration, but its action was dismissed. On appeal to the Washington Supreme Court, the decision below was reversed and arbitration ordered. The court expressed the view that "in determining whether a dispute is arbitrable under a labor contract, the courts should exercise caution and restraint to avoid usurping the role of the arbitrator by going beyond the question of arbitrability and becoming involved in the merits of a dispute." At the same time, the court declared: "clearly, a proposed interpretation is not to be judicially recognized if it is frivolous or patently baseless." In the instant case the court concluded that the union's claim reasonably involved the "interpretation or application" of a provision of the collective agreement and was thus arbitrable under its terms.

The most interesting thing about the court's opinion is that it fails to take note of the trilogy, although it cites a number of federal cases, including the decision of the Court of Appeals for the Sixth Circuit in the *American Mfg.* case. The conclusion appears to be sound, but the reference to "frivolous or patently baseless" grievances is reminiscent of the now generally discredited *Cutler-Hammer* doctrine.

III. OTHER SIGNIFICANT DEVELOPMENTS

The year 1961 marked an increasing interest in the problem of developing qualified and acceptable new arbitrators. The subject was dealt with in a report of the Committee on Labor Arbitration of the American Bar Association's Section of Labor Relations Law, and will appear in the published proceedings of that Section. It was also discussed at some length at the 1962 meeting of the Academy in Pittsburgh. [Reprinted, also, as Appendix B of these *Proceedings.*]

TOPICAL INDEX TO APPENDIX C, SECTION II

Page

BREACH OF NO-STRIKE PROVISION: ARBITRATION GRANTED
Drake Bakeries v. *Local 50, American Bakery & Confectionery Workers* ... 257
Retail, Wholesale & Dep't Store Union, Local 1085 v. *Vaughan's Sanitary Bakery, Inc.* ... 260

CONFLICT WITH NATIONAL LABOR RELATIONS ACT: NON-BAR TO ENFORCEMENT OF ARBITRATION AWARD
Locals 234 and 243, ILGWU v. *Beauty Bilt Lingerie, Inc.* ... 258

DAMAGES AWARDED FOR BREACH OF NO-STRIKE AGREEMENT: ARBITRATION REFUSED
Yale & Towne Mfg. Co. v. *Local Lodge 1717, IAM* ... 259
Vulcan-Cincinnati, Inc. v. *United Steelworkers* ... 265
Sinclair Refining Co. v. *Atkinson* ... 267

DECLARATORY JUDGMENT: DETERMINATION OF ARBITRABILITY
Weyerhaeuser Co. v. *International Bd of Pulp Workers* ... 254
Radio Corp. of America v. *Association of Professional Eng'r Personnel* ... 258
Sinclair Refining Co. v. *Atkinson* (by implication) ... 267

DECLARATORY JUDGMENT: ENFORCEMENT OF ARBITRATION AWARD
Local 791, IUE v. *Magnavox Co.* (denied) ... 266
Texas Gas Transmission Corp. v. *International Chem. Workers, Local 187* (granted) ... 265

ENFORCEMENT OF ARBITRATION AWARD
Howard v. *United States Rubber Co.* ... 256
Locals 234 and 243, ILGWU v. *Beauty Bilt Lingerie, Inc.* ... 258
Industrial Union of Marine & Shipbuilding Workers v. *American Dredging Co.* ... 259
Textile Workers Union v. *Cone Mills Corp.* ... 261
American Brake Shoe Co. v. *Local 149, Int'l Union, UAW* ... 262
Broadway-Hale Stores, Inc. v. *Retail Clerks Union, Local 428* ... 272
Oil Workers, Local 1-128 v. *Texaco, Inc.* ... 273

EXPIRATION OF COLLECTIVE BARGAINING AGREEMENT: NON-BAR TO ARBITRATION
General Tire & Rubber Co. v. *Local 512, United Rubber Workers* ... 256

Page

INJUNCTIVE RELIEF UNDER 301 PROHIBITED BY NORRIS–LA GUARDIA

Sinclair Refining Co. v. *Atkinson* 267
Teamsters, Local 795 v. *Yellow Transit Freight Lines* 267

REMOVAL OF CASES UNDER 301: STATE TO FEDERAL COURTS

Central Metal Products, Inc. v. *International Union, UAW* .. 268
Couch v. *Prescolite Mfg. Co.* 269

SPECIFIC PERFORMANCE OF ARBITRATION AGREEMENT

UAW v. *Waltham Screw Co.* 256
Drake Bakeries v. *Local 50, American Bakery & Confectionery Workers* 257
Procter & Gamble Independent Union v. *Procter & Gamble* 257
Radio Corp. of America v. *Association of Professional Eng'r Personnel* 258
International Tel. & Tel. Corp. v. *Local 400, Professional Div., IUE* 259
District Lodge 1, IAM v. *Crown Cork and Seal Co.* 260
Retail, Wholesale & Dep't Store Union, Local 1085 v. *Vaughan's Sanitary Bakery, Inc.* 260
Lodge 12, IAM v. *Cameron Iron Works* 263
IAM Lodge 2003 v. *Hayer Corp.* 263
Southwestern Electric Power Co. v. *Local 738, IBEW* 264
International Chem. Workers, Local 19 v. *Jefferson Sulphur Co.* 265
Nepco Unit of Local 95, Office Employees Int'l Union v. *Nekoosa-Edwards Paper Co.* 267
Hammond Newspaper Guild v. *Hammond Publishing Co.* 268
United Steelworkers v. *Philip Zweig & Sons* 268
Operating Engineers, Local 3 v. *Crooks Bros. Tractor Co.* .. 269
Retail Shoe Salesmen's Union, Local 410 v. *Sears, Roebuck & Co.* 270
Posner v. *Grunwald-Marx, Inc.* 271
Lodge 774, IAM v. *Cessna Aircraft Co.* 274
United States Pipe & Foundry Co. v. *United Steelworkers, Local 2066* 275
Fownes Bros. & Co. v. *Amalgamated Clothing Workers, Local 1714* 276
Morton Karten, Inc. v. *Garment Workers Union, Local 105* 276
Carey v. *Westinghouse Electric Corp.* 276
International Guards Union, Local 21 v. *General Electric Co.* 278

Page

STATE COURTS: CONCURRENT JURISDICTION TO ENFORCE ARBITRATION AWARD
Broadway-Hale Stores, Inc. v. *Retail Clerks Union, Local 428* ... 272
Oil Workers, Local 1-128 v. *Texaco, Inc.* (by implication) ... 273
Courtney v. *Dowd Box Co.* ... 274
Volunteer Electric Cooperative v. *Gann* ... 277

TRIAL DE NOVO: IMPROPER JUDICIAL ACTION ON ARBITRATION AWARD
Howard v. *United States Rubber Co.* ... 256

LIABILITY OF SUCCESSOR EMPLOYER TO ARBITRATE
Office Employees Int'l Union, Local 153 v. *Ward-Garcia Corp.* 258

MISCELLANEOUS
(1) Lack of Jurisdiction to Enforce an Award Precludes Vacation of the Award
Valencia Baxt Express, Inc. v. *Seafarers Int'l Union* 256
(2) Individual Employees Cannot By-Pass Arbitration Procedure
Henderson v. *Eastern Gas & Fuel Associates* ... 262
Marec v. *United States Steel Corp.* ... 266
Frazier v. *Ford Motor Co.* ... 275
(3) Unilateral Termination of Agreement Without Necessity of Arbitration: Collective Bargaining Required
Local 28, IBEW v. *Maryland Chapter Nat'l Electric Contractors Ass'n* ... 262
(4) Failure to Comply Literally With Procedure Does Not Preclude Arbitration
IAM, Lodge 2003 v. *Hayes Corp.* ... 263
Southwestern Electric Power Co. v. *Local 738, IBEW* ... 264
(5) Federal Courts Lack Jurisdiction Under the Railway Labor Act to Enforce an Award of the System Board of Adjustment
IAM v. *Central Airlines, Inc.* ... 263
(6) Courts Grant Union Broad Latitude in Resolving Intra-Union Disputes
Stewart v. *Day & Zimmerman, Inc.* ... 264
(7) Arbitration Award Binding on Individual Employee to Preclude Him From Subsequent Judicial Action
Wright v. *Ford Motor Co.* ... 267
(8) Without Express Authority Employer May Not Unilaterally Contract Out Work Covered by the Agreement
International Union, UAW v. *Webster Electric Co.* 268
(9) Enforcement of Award of the National Railway Adjustment Board Requires Judicial Review of the Merits
Gunther v. *San Diego & A. E. Ry.* ... 270

Page

(10) Failure to Comply With Procedures Precludes Arbitration
United Brick & Clay Workers v. *Gladding, McBean & Co.* 270
(11) Employer Under 301 Has Standing to Sue to Vacate an Arbitration Award
Central Packing Co. v. *United Packinghouse Workers, Local 36* 271
(12) Enforcement of Agreement to Arbitrate Prohibited Under State Law: Injunctive Relief Available
Byars v. *National Dairy Products Corp., Sealtest Foods Div.* 271
(13) Modification of State Law by Federal Law: Specific Performance of Arbitration
IUE v. *General Electric Co.* 273
(14) Proper Judicial Function Includes Interpretation of Arbitration Agreement
Mueller Co. v. *Bakery & Confectionery Workers, Local 262* 275

NLRB JURISDICTION: BAR TO ARBITRATION
Carey v. *Westinghouse Electric Corp.* 276

NLRB JURISDICTION: NON-BAR TO ARBITRATION
Freight Drivers Local 557, IBT v. *Quinn Freight Lines* ... 255
Retail Shoe Salesmen's Union, Local 410 v. *Sears, Roebuck & Co.* 270

NON-ARBITRABLE MATTERS
(1) Matters Specifically Excluded Under the Agreement
Local 201, IUE v. *General Electric Co.* 255
Local 175, Int'l Union of Operating Eng'rs v. *Standard Oil Co.* 269
Connecticut Union of Tel. Workers, Inc. v. *Southern New England Tel. Co.* 273
Carey v. *Westinghouse Electric Corp.* 276
(2) Matters Unrelated to Existing Provisions
Procter & Gamble Independent Union v. *Procter & Gamble* 257
(3) Matters Previously Settled by Action of the Parties
General Drivers, Local 89, IBT v. *American Radiator & Standard Corp.* 266
Local 175, Int'l Union of Operating Eng'rs v. *Standard Oil Co.* 269
(4) Matters Relating to the Terms of a New Collective Bargaining Agreement
Couch v. *Prescolite Mfg. Co.* 269
Portland Web Pressmen's Union v. *Oregonian Publishing Co.* 269

Page

UNENFORCEABLE ARBITRATION AWARD: EXCESS OF AUTHORITY

Textile Workers Union v. *American Thread Co.* 261
Local 791, IUE v. *Magnavox Co.* 266
Central Packing Co. v. *United Packinghouse Workers, Local 36* 271

UNION ENFORCEMENT OF PERSONAL RIGHTS OF EMPLOYEES THROUGH ARBITRATION

American Brake Shoe Co. v. *Local 149, Int'l Union, UAW* ... 262