## APPENDIX D

# REPORT OF THE RESEARCH AND EDUCATION COMMITTEE NATIONAL ACADEMY OF ARBITRATORS

## THE STEELWORKERS' TRILOGY AND THE ARBITRATOR

*INTRODUCTION:*

Many authorities have speculated and written upon the Supreme Court's decisions in the Steelworker Trilogy cases.[1] These authorities have dealt extensively with such issues as the relationship of these decisions to the nature of the labor agreement, arbitrability, and the arbitration process itself. When the present membership of the Research and Education Committee was appointed, however, there were no published studies dealing with the impact of the Court's decisions upon arbitrators. The members of the Committee decided that the intervening period following the "trilogy decisions" of May 1960 was of sufficient duration to permit a study of the impact of the subject decisions upon arbitrators.

A cursory examination of published arbitration awards following May 1960 revealed that there had been no decline in the frequency with which the issue of arbitrability had been raised. This examination also revealed that unions and employees were filing more claims seeking some form of unusual relief. Armed with this information, the Research and Education Committee of The National Academy of Arbitrators concluded that its study of the impact of the trilogy on arbitrators should be of a two-fold

1 *United Steelworkers* v. *American Manufacturing Co.*, 363 U.S. 564, 46 LRRM 2414, 40 LC 66, 628; *United Steelworkers* v. *Warrior and Gulf Navigation Co.*, 363 U.S. 574, 46 LRRM 2416, 40 LC 66, 629; *United Steelworkers* v. *Enterprise Wheel and Car Corp.*, 363 U.S. 593, 46 LRRM 2423, 40 LC 66, 630.

character: first, to demonstrate the extent to which arbitrators purported to rely upon the authority of the Supreme Court arbitration trilogy when confronted with cases involving the issue of arbitrability; and, secondly, to make the same determination in those cases involving the power of the arbitrator to grant some unusual form of relief.

*METHODOLOGY AND SCOPE:*

The members of the Committee decided that the appropriate methodology for this study would be to examine all arbitration opinions and awards published in The Bureau of National Affairs, Inc., *Labor Arbitration Reports,* and Commerce Clearing House, *Labor Arbitration Awards,* during the period May 1960 to the date of the study (August 1962). It was further agreed that the Committee Chairman would be responsible for the selection of the cases from the aforementioned sources, and that, following this selection, he would assign an equal number of cases to each Committee member for analysis and reporting.[2] Upon receipt of the individual reports the Committee Chairman would assume the responsibility for drafting the Committee report.

Preliminary screening revealed a total of 179 published cases in the two categories selected for study, and of these 114 were excluded as irrelevant to the study. Of the remaining 65 cases, 62 involved the question of arbitrability, and three involved claims of an unusual type. These 65 cases then became the base for the Committee study, and three cases were assigned to each member of the Committee.

*FINDINGS:*

As previously noted, 62 cases published by the two reporting agencies dealt with the issue of arbitrability. Analysis of these cases revealed only one instance in which the arbitrator purported to rely upon the authority of the Supreme Court arbitration trilogy. In this single instance, the arbitrator, in touching upon the issue of arbitrability, simply referred to the decision in *American Manufacturing* as dispositive of the arbitrability issue.[3]

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2 Some few members of the Committee failed to submit their reports, and when the deadline for their receipt was passed, the Chairman reviewed and analyzed the "delinquent" cases.

3 61-2 ARB 8558.

Only two additional cases were found in which the arbitrator advanced a legal justification for his award, and these two citations are revealing in their nature. In re. *Leland Airborne Products* [4] the arbitrator stated:

> "In the arbitrator's judgment, and with the benefit of some review of legal, arbitration, and scholarly authorities, this grievance must be arbitrable."

In *Trumbull* v. *I.B.T., 743* [5] the arbitrator lists *Steelworkers* v. *Enterprise Corporation* in a long list of citations, but not a word of further reference to or elaboration of that case follows. In commenting upon this latter case, Committee Member Yagoda makes the following observation which could be applied appropriately to all of the cases received:

> "But basically, the Award responds to a well-defined body of law, court decisions and arbitral thinking (as well as the commonest of sense) without having been especially jolted by the Supreme Court trilogy of cases."

A final case should be mentioned in which the arbitrator refused to apply the non-review provisions of the trilogy. In this case (*Hughes Tool Company* v. *Electronics and Space Technicians, 1553*) [6] the issue related to the arbitration of wage rates under a contract providing for reopening only for negotiating general wage changes. The arbitrator denied the arbitrability of the issue, indicating the lack of power of the arbitrator to change the agreement. Reference to the Supreme Court trilogy by the parties led the arbitrator to the observation that reliance on the Court's refusal to review the award places added responsibility on the arbitrator. The arbitrator stated that he could not accept an issue simply because the Court had claimed that it would not review the award.

The second phase of the study yielded completely negative results since none of the three cases involving damages and unusual claims contained any reference to the trilogy.

*CONCLUSIONS:*

To the extent that the reported cases are a representative sample

4 62-1 ARB 3712.
5 38 LA 1093, 62-2 ARB 8697.
6 36 LA 1125.

of all awards dealing with the subject issued, the Supreme Court trilogy has had little effect upon the parties and the arbitrator.[7] The principal impact of the trilogy is to be found in the academic and professional journals rather than in the hearing room.

Respectfully submitted,

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[7] Academy member Russell A. Smith is undertaking a similar study, but with a much wider scope. Instead of relying exclusively on published awards, he is collecting awards dealing with these issues directly from the arbitrators.