APPENDIX B

ARBITRATION AND RIGHTS UNDER COLLECTIVE AGREEMENTS

REPORT OF THE COMMITTEE ON LAW AND LEGISLATION *

With the famous *Lincoln Mills* [1] decision in 1957 the Supreme Court of the United States embarked on a project of fashioning a body of federal common law for the enforcement of collective bargaining agreements subject to section 301 of the Taft-Hartley Act. The implications of this for arbitration became clearer when the Court handed down the *Steelworkers* or *Warrior and Gulf* trilogy [2] in 1960. Six more decisions were handed down by the high Court during its term which ended in July 1962. One or more facets of the arbitration process was substantially involved in most of these decisions which have been discussed in prior reports of this Committee. This rate of development at the Supreme Court level was not continued during the current year. In fact, only a single brief *per curiam* opinion (*General Drivers, etc., Local Union No. 89* v. *Riss & Co.*) [3] was handed down during the calen-

* The members of the 1963-64 Law and Legislation Committee of the National Academy of Arbitrators were: Paul H. Sanders, Professor of Law, Vanderbilt University (Chairman); Harry Abrahams, Marion Beatty, Louis A. Crane, Alex Elson, Howard G. Gamser, Robert F. Koretz, Sylvester Garrett, Edgar A. Jones, Jr., Bernard P. Lampert, Berthold W. Levy, Whitley P. McCoy, Maurice H. Merrill, Richard Mittenthal, Meyer S. Ryder, Carl R. Schedler, Russell A. Smith, Clarence M. Updegraff, Carl A. Warns, Jr.

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

2 *United Steelworkers of America* v. *Warrior & Gulf Navigation Company*, 34 LA 561, 363 U.S. 574 (1960), 46 LRRM 2416; *United Steelworkers of America* v. *American Manufacturing Company*, 34 LA 559, 363 U.S. 564 (1960), 46 LRRM 2414; *United Steelworkers of America* v. *Enterprise Wheel and Car Corporation*, 34 LA 569, 363 U.S. 593 (1960), 46 LRRM 2423.

3 *General Drivers, etc., Local Union No. 89* v. *Riss & Co.*, 372 U.S. 517 (1963), 52 LRRM 2623.

dar year 1963. This decision makes it clear that any definitive method of settling grievances under contract is enforceable under Section 301, not just arbitration.

In December 1962 the high court had specifically laid the ghost of *Westinghouse* in *Smith* v. *Evening News Ass'n.*[4] In holding that an individual employee could maintain a section 301 type suit in a state court it was made clear that unions could enforce employee rights in such suits without distinction between rights which were uniquely personal to employees and rights in which the union itself was interested. It thus became possible to say that in the name of a desirable national uniformity all rights arising under collective agreements within the scope of Section 301 arise under the same body of federal law, no matter by whom asserted and no matter in which tribunal—state or federal—and no matter what type of relief is requested. It had already been made clear that under this developing body of federal common law there was a policy favoring the arbitration of labor disputes and an expansive approach to the interpretation of agreements to arbitrate with a corresponding restrictive approach to alleged exceptions or exclusions from the scope of the arbitration process. There has been no disposition to limit the private dispute-settling machinery set up by the parties because of the existence of a public machinery which deals with some of the same subject matter.

The *Smith* case held that the jurisdiction of state and federal courts to entertain suits to enforce rights under collective agreements was not defeated because the conduct involved was arguably protected or prohibited by the Labor Management Relations Act and, therefore, within the exclusive jurisdiction of the National Labor Relations Board. The majority opinion in *Smith*, after referring to prior instances of refusal to apply the pre-emption doctrine of the *Garmon* case in Section 301 cases, states:

> . . . . we likewise reject that doctrine here where the alleged conduct of the employer, not only arguably, but concededly, is an unfair labor practice within the jurisdiction of the NLRB. The authority of the Board to deal with an unfair labor practice which also violates a collective bargaining contract is not displaced by Section 301, but it is not exclusive and does not destroy the juris-

[4] *Association of Westinghouse Salaried Employees* v. *Westinghouse Elec. Corp.*, 348 U.S. 437 (1955), 35 LRRM 2643; *Smith* v. *Evening News Association*, 371 U.S. 195 (1962), 51 LRRM 2646.

> diction of the courts in suits under Section 301. If, as respondent strongly urges, there are situations in which serious problems will arise from both the courts and the Board having jurisdiction over acts which amount to an unfair labor practice, we shall face those cases when they arise. This is not one of them, in our view, and the National Labor Relations Board is in accord.

In two decisions handed down on January 6, 1964, the Supreme Court of the United States has made it even clearer that the jurisdiction of federal and state courts in adjudicating rights under collective agreements (including the right to arbitrate disputes between parties to such agreements) is not to be limited or restricted by reason of any claim of exclusive jurisdiction in the NLRB under the pre-emption doctrine. In *Humphrey* v. *Moore* [5] a group of employees sought to enjoin in a Kentucky state court the implementation of the decision of a joint employer-employee committee which had settled grievances by dovetailing the seniority lists of two merged companies. It was claimed by plaintiff employees that there had been a breach by the union involved of the duty of fair representation, as well as a violation of the terms of the applicable collective bargaining contract. The decision of the majority makes it clear that the action is one arising under Section 301 and that it is, therefore, controlled by federal law even though brought in state court. The court states:

> Although there are differing views on whether a violation of the duty of fair representation is an unfair labor practice under the Labor Management Relations Act, it is not necessary for us to resolve that difference here. Even if it is, or arguably may be an unfair labor practice, the complaint here alleged that Moore's [plaintiff] discharge did violate the contract and was, therefore, within the cognizance of federal and state courts . . . , subject, of course, to the applicable federal law.

Justices Goldberg and Brennan concur in the result, but disagree that the plaintiff had stated a cause of action arising under Section 301. In their view the employee's claim must be treated as an action for a union's breach of its duty of fair representation (a *"Syres-Steele"* type cause of action cognizable in federal court)—derived not from the collective bargaining contract, but from the National Labor Relations Act. "There are too many unforeseeable contingencies in a collective bargaining relationship to justify making the words of a contract the exclusive source of rights and

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[5] *Humphrey* v. *Moore,* 375 U.S. 335 (1964), 55 LRRM 2031.

duties." The concurring opinion of Justice Goldberg in its entirety will repay careful reading. Mr. Justice Harlan considered the preemption issue difficult and was unwilling to decide it without further argument.

In *Carey* v. *Westinghouse Electric Corporation*[6] (January 6, 1964), the Supreme Court held that neither Section 10 (k) nor Section 9(c) of the National Labor Relations Act deprives a state court of jurisdiction to compel arbitration of a grievance questioning the performance of bargaining unit work by employees in a unit represented by another labor organization. The opinion by Mr. Justice Douglas notes that the NLRB is given authority over jurisdictional disputes under Section 10(k) only where there is a strike or a threat of a strike. Even though only one of the two unions involved has moved the state court to compel arbitration, it is thought that the process may as a practical matter end the controversy. "Since § 10 (k) not only tolerates but actively encourages voluntary settlements of work assignment controversies between unions, we conclude that grievance procedures pursued to arbitration further the policies of the Act."

Considering the case as involving a question of representation rather than work assignment, the Court concludes that the same result is reached—namely that arbitration should be ordered—although the superior authority of the NLRB is recognized along with the possibility of direct conflict in orders. The opinion concludes:

> Should the Board disagree with the arbiter, by ruling, for example, that the employees involved in the controversy are members of one bargaining unit or another, the Board's ruling would, of course, take precedence; and if the employer's action had been in accord with that ruling, it would not be liable for damages under § 301. But that is not peculiar to the present type of controversy. Arbitral awards construing a seniority provision . . . or awards concerning unfair labor practices, may later end up in conflict with Board rulings. . . . Yet, as we held in Smith v. Evening News Assn., . . . the possibility of conflict is no barrier to resort to a tribunal other than the Board.
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> However the dispute be considered—whether one involving work assignment or one concerning representation—we see no barrier to use of the arbitration procedure. If it is a work assign-

[6] *Carey* v. *Westinghouse Electric Corporation*, 375 U.S. 261 (1964), 55 LRRM 2042.

> ment dispute, arbitration conveniently fills a gap and avoids the necessity of a strike to bring the matter to the Board. If it is a representational matter, resort to arbitration may have a pervasive, curative effect even though one union is not a party.
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> By allowing the dispute to go to arbitration its fragmentation is avoided to a substantial extent; and those conciliatory measures which Congress deemed vital to "industrial peace" . . . . , and which may be dispositive of the entire dispute, are encouraged. The superior authority of the Board may be invoked at any time. Meanwhile the therapy of arbitration is brought to bear in a complicated and troubled area. [Case citations omitted]

The dissenting opinion of Mr. Justice Black (joined by Mr. Justice Clark) stresses practical objections to the approach of the majority in terms of the position it puts the employer in and in terms of the inability of the arbitration process to achieve a final adjustment of such disputes for whose solution Congress has set up a public agency.

Mention should also be made of the decision of the Supreme Court in *Intl. Ass'n. of Machinists* v. *Central Airlines Inc.*,[7] holding that the awards of airline system boards of adjustment can be enforced by suits in federal district court in spite of the difference in statutory wording between portions of the Railway Labor Act dealing with railroad and airline dispute settlement procedures. In effect the Court analogized the Section 204 (Railway Labor Act) contract to the Section 301 LMRA contract. Both are federal contracts "governed and enforceable by federal law, in the federal courts." See also the opinion in *Brotherhood of Locomotive Engineers* v. *Louisville & Nashville R. Co.*,[8] holding that a railroad brotherhood could be enjoined from striking to enforce an award of the National Railroad Adjustment Board. Justices Goldberg, Black, and Douglas dissented.

The high tide of litigation involving rights under collective agreements and arguably subject to Section 301 of LMRA continued and apparently increased in 1963. Since this body of litigation furnishes the raw material for the development of the federal common law of Section 301, it overshadows the arbitration

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[7] *Intl. Ass'n. of Machinists* v. *Central Airlines Inc.*, 83 S. Ct. 956, 52 LRRM 2803.
[8] *Brotherhood of Locomotive Engineers* v. *Louisville & Nashville R. Co.*, 83 S. Ct. 1059 (April 29, 1963), 52 LRRM 2944.

process for good or ill in all parts of the nation. Approximately one hundred such cases falling in this category were reported in 1963 up to the middle of December.

Some of the principal developments in these reported decisions are summarized under the five headings:

I. Suits to Compel Arbitration
II. Motions to Stay Proceedings
III. Court versus NLRB Jurisdiction
IV. Specific Performance of Arbitration Awards
V. Arbitration and Courts Generally
VI. Miscellaneous

A. SUITS TO COMPEL ARBITRATION

In the suits to compel arbitration, numerous defenses questioning arbitrability were raised which are here categorically considered.

1. On the defense of failure to comply with the grievance-arbitration procedure, the courts almost unanimously held that this was a question to be decided by the arbitrator. There was no general disposition to distinguish between issues of procedural arbitrability suitable for the court as opposed to those requiring the technique of the arbitrator. Among the procedural failings (on the union's part) which the employer raised were: pursuing the grievance within the proper time; [9] and whether the grievance had to be signed.[10] However, in one case the court itself ruled that the

[9] *International Union of Electrical Workers* v. *Westinghouse Electric Corp.*, 218 F. Supp. 82 (S.D. N.Y. 1963), 53 LRRM 2923, 47 CCH Lab. Cas ¶18,357; *Local Union 46, Int'l. Union of United Brewery Workers* v. *Bevington & Basile Wholesalers, Inc.*, 213 F. Supp. 437 (W.D. Mo. 1963), 52 LRRM 2251, 46 CCH Lab. Cas. ¶18,129.

[10] *Local 696, Int'l. B'hd. of Electrical Workers* v. *Ohio Power Co.*, 53 LRRM 2026 (S.D. Ohio 1963), 47 CCH Lab. Cas. ¶18,273. See also *Livingston* v. *John Wiley & Sons, Inc.*, 313 F.2d 52 (2d Cir.), 52 LRRM 2223, 46 CCH Lab. Cas. ¶18,037, *cert. granted*, 83 S.Ct. 1300 (1963); *United Furniture Workers* v. *Mohawk Flush Door Corp.*, 212 F. Supp. 933 (M.D. Pa. 1963), 52 LRRM 2209, 46 CCH Lab. Cas. ¶18,043; *Local 748, Int'l. Union of Electrical Workers* v. *Jefferson City Cabinet Co.*, 314 F.2d 192 (6th Cir. 1963), 52 LRRM 2508, 46 CCH Lab. Cas. ¶18,100; *Carey* v. *General Electric Co.*, 315 F.2d 499 (2d Cir. 1963), 52 LRRM 2662, 47 CCH Lab. Cas. ¶18,151.

employer's defense of timeliness was not available where the employer himself had caused the delay by failure to entertain the grievance.[11]

2. The courts usually accorded a broad rather than restrictive approach to the construction of the contract clauses calling for arbitration of any difference concerning issues of wages, hours, or other conditions of employment. Grievances relating to the expansion of work of certain crews; [12] payments to be made into trust funds, the terms of which had not yet been decided upon; [13] contracting out of work; [14] union discipline of foremen for carrying out employer orders; [15] use of supervisors for bargaining unit work [16] —all were held arbitrable. However, where the contract provided for exclusion from arbitration of "pre-contract" grievances, a grievance couched in terms of a denial of seniority rights was held by the court to be actually a claim of unjustified refusal to rehire a striker permanently replaced prior to the inception of the new contract. The union was denied specific performance of the arbitration agreement.[17]

3. Where the question of the existence of a collective bargaining agreement was raised, the courts generally refused to order arbi-

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11 But see *Grocery & Food Products Warehouse Employees* v. *Thomson & Taylor Spice Co., Inc.*, 214 F. Supp. 92 (N.D. Ill. 1963), 52 LRRM 2474, 46 CCH Lab. Cas. ¶18,103 (court held that the question of timeliness was a question for the court to answer). See also *Big Apple Supermarkets, Inc.* v. *Amalgamated Meat Cutters*, 149 N.Y.L.J. 15 (N.Y. Sup. Ct. 1963), 52 LRRM 2631, 46 CCH Lab. Cas. ¶18,098.

12 *Local 5-475, Int'l. Woodworkers* v. *Georgia Pacific Corp.*, 52 LRRM 2030 (D. Ark. 1962), 46 CCH Lab. Cas. ¶18,042.

13 *Greater Kansas City Laborers District Council, Int'l. Hod Carriers* v. *Builders Ass'n.*, 213 F. Supp. 429 (W.D. Mo. 1963), 52 LRRM 2245, 46 CCH Lab. Cas. ¶18,095.

14 *Independent Petroleum Workers* v. *American Oil Co.*, 215 F. Supp. 1 (D. Ind. 1963), 52 LRRM 2678, 47 CCH Lab. Cas. ¶18,171; *International Union, United Automobile Workers* v. *Weatherhead Co.*, 316 F.2d 239 (6th Cir. 1963), 53 LRRM 2092, 47 CCH Lab. Cas. ¶18,256; *O'Malley* v. *Wilshire Oil Co.*, 30 Cal. Rptr. 452 (Cal. Sup. Ct. 1963), 53 LRRM 2159, 47 CCH Lab. Cas. ¶18,258.

15 *Publishers Ass'n.* v. *New York Mailers' Union No. 6*, 317 F.2d 624 (2d Cir.), 53 LRRM 2253, 47 CCH Lab. Cas. ¶18,275, *cert. granted*, 375 U.S. 901 (1963); *Pock* v. *New York Typographical Union*, 223 F. Supp. 181 (S.D. N.Y. 1963), 54 LRRM 2666, 48 CCH Lab. Cas. ¶18,588.

16 *Arkansas-Louisiana Gas Co.* v. *Oil, Chemical & Atomic Workers, Local 5-283*, 320 F.2d 62 (10th Cir. 1963), 53 LRRM 2837, 47 CCH Lab. Cas. ¶18,391. See also *Greater Kansas City Laborers District Council, supra*, note 13; *Piano and Musical Instrument Workers, Local 2549* v. *W. W. Kimball Co.*, 54 LRRM 2212 (N.D. Ill. 1963), 48 CCH Lab. Cas. ¶18,499 (movable plant).

17 *Local 787, Int'l. Union of Electrical Workers* v. *Collins Radio Co.*, 317 F.2d 214 (5th Cir. 1963), 53 LRRM 2140, 47 CCH Lab. Cas. ¶18,246.

tration.[18] Notwithstanding the fact that the NLRB had found that a contract existed for the purposes of the contract bar rule in a representation case—the court held that this was not res judicata in the § 301 suit, found the non-existence of a contract, and refused arbitration.[19] A contract cannot be considered to be extended for a period in which negotiations for a new contract are in progress, when effective action is taken to terminate and there is in existence no contract providing for such extension.[20] However, where an employer laid off employees and moved his plant to a new site during the effective period of the contract, and after its expiration date began hiring, his refusal to recognize seniority from the old plant presented an arbitrable issue.[21]

4. Where the defense of the absence of a no-strike agreement was raised, courts used different approaches. One court ruled that a no-strike agreement could be inferred from equivalent language and that even if entirely omitted, it was so important to the maintenance of industrial peace that courts might read such a clause into the contract.[22] Other courts held that the breach of a no-strike agreement did not amount to such a repudiation of the contract as to abrogate the arbitration provisions of the contract.[23] The underlying premise seems to proceed on the "quid pro quo" theory which was removed by the United States Supreme Court in *Drake Bakeries* although this has not always been recognized in subsequent decisions. The Iowa Supreme Court ruled that a union had waived its right to arbitration by a walkout, where only the union could invoke arbitration.[24]

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18 *Central Aviation & Marine Corp.* v. *Int'l. Union, United Automobile Workers,* 52 LRRM 2581, 47 CCH Lab. Cas. ¶18,164, *rev'd. and remanded,* 319 F.2d 589 (2d Cir. 1963), 53 LRRM 2622, 47 CCH Lab. Cas. ¶18,324; *M.K. & O. Transit Lines, Inc.* v. *Division 892, Amalgamated Ass'n. of Street Employees,* 319 F.2d 488 (10th Cir.), 53 LRRM 2662, 47 CCH Lab. Cas. ¶18,329, *cert. denied,* 54 LRRM 2715 (1963), 48 CCH Lab. Cas. ¶ 18,623.

19 *Central Aviation & Marine Corp., supra* note 18.

20 *M.K. & O. Transit Lines, Inc., supra* note 18.

21 *Piano Workers* v. *W. W. Kimball Co., supra* note 16. See also *Local Union 998 Int'l. Union, United Automobile Workers* v. *B. & T. Metals Co.,* 315 F.2d 432 (6th Cir. 1963), 52 LRRM 2787, 47 CCH Lab. Cas. ¶18,191.

22 *Local 5-475, Int'l. Woodworkers* v. *Georgia-Pacific Corp.,* 52 LRRM 2030 (D. Ark. 1962), 46 CCH Lab. Cas. ¶18,042.

23 *Local 748, Int'l. Union of Electrical Workers, supra* note 10; *United Textile Workers, Local 120* v. *Newberry Mills, Inc.,* 315 F.2d 217 (4th Cir.), 52 LRRM 2650, 47 CCH Lab. Cas. ¶18,157, *cert. denied,* 375 U.S. 818, 54 LRRM 2312, 48 CCH Lab. Cas. ¶18,528 (1963).

24 *Local 721, United Packinghouse Workers* v. *Needham Packing Co., Inc.,* 119 N.W.2d 141 (Iowa Sup. Ct.), 52 LRRM 2336, 46 CCH Lab. Cas. ¶18,041, *cert. granted,* 55 LRRM 2580, 83 Sup. Ct. 1867 (1963).

5. On the question of the definiteness which is required to exclude a grievance from arbitration, the Second Circuit Court of Appeals held that the merger of a smaller corporation into a larger corporation did not necessarily terminate the smaller corporation's collective agreement, and hence an arbitrable issue was presented.[25] The California Supreme Court held that, although contracting out had long been a company policy, and the union's proposal for its limitation had been rejected at the bargaining table, these were not sufficient in themselves to prevent arbitration of a contracting-out issue. The court held that the right to exclude a particular type of dispute from the arbitration provisions must be clearly specified by the parties.[26]

B. MOTIONS TO STAY PROCEEDINGS

1. The courts in several situations were faced with motions for the stay of the suit pending arbitration. Where a district court finds that the subject of the suit is an arbitrable matter (that is, one which the parties have agreed to arbitrate), the proper procedure is to stay the suit pending arbitration, not to dismiss the suit.[27] Where the contract called for arbitration of any and all disputes, an employer's suit for damages for breach of a no-strike agreement was properly stayed pending arbitration.[28] But under similar circumstances where the union delayed over one year in asserting its right to a stay pending arbitration and then failed to appeal from a denial of the stay, the district court properly refused to stay the damage suit pending arbitration. The court held that a motion to stay the damage suit under the Labor-Management Relations Act, pending arbitration, is analogous to an injunctive order in an action at law and is appealable under 28 USC § 1392 (a) (1).[29] However, where the subject of the stay order is predicated on the jurisdiction of the first arbitrator to hear multiple grievances (submitted by the employer as a separate grievance),

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25 *Livingston* v. *John Wiley & Sons, Inc., supra* note 10.
26 *O'Malley* v. *Wilshire Oil Co., supra* note 14.
27 *Swartz & Funston, Inc.* v. *Bricklayers, Int'l. Union, Local 7,* 319 F.2d 116 (3rd Cir. 1963), 53 LRRM 2651, 47 CCH Lab. Cas. ¶18,328.
28 *Evans-Amityville Dairy, Inc.* v. *Kelly,* 214 F. Supp. 951 (E.D. N.Y. 1963), 52 LRRM 2583, 46 CCH Lab. Cas. ¶18,096; *Gilmour* v. *Wood, Wire & Metal Lathers Int'l. Union, Local 74,* 54 LRRM 2457 (N.D. Ill. 1963), 48 CCH Lab. Cas. ¶18,572.
29 *E. T. Simonds Construction Co.* v. *Local 1330, Int'l. Hod Carriers,* 315 F.2d 291 (7th Cir. 1963), 52 LRRM 2645, 47 CCH Lab. Cas. ¶18,179.

the court refused to grant the stay.[30] Where the contract states that all "unsettled disputes" would be subject to arbitration, a claim that the "company or the union has violated some provision of this contract . . . is an arbitrable grievance." [31] However, a district court erred in a finding of no collective agreement and in denying a stay pending arbitration where its order was based on the parties' assertions and counter-assertions only. The case was remanded for the taking of testimony on the existence or non-existence of the contract.[32]

2. Where an employer moved for a stay of arbitration, on the grounds that the union failed to follow all the required preliminary steps, the court granted it. To allow the union to invoke arbitration without going through all the requisite preliminary efforts to solve the dispute would be in effect to write a new collective bargaining agreement for the parties. If the union had followed all the steps it would have been entitled to arbitration.[33]

C. COURT VERSUS NLRB JURISDICTION

1. In numerous cases the courts, both state and federal, recognized that there was concurrent jurisdiction between the NLRB and the court, *e.g.*,:

A state court has jurisdiction to entertain a union's action for a preliminary injunction to restrain an employer for breach of the exclusive hiring hall clause of a collective agreement. The court held that its power to act was not pre-empted by the fact that the charges which were pending before the NLRB alleged that the union had obtained the agreement by unfair labor practices.[34] Likewise, a state court held on the authority of *Lucas* and *Smith* cases that they had jurisdiction of a union's suit (for back wages) for breach of contract, even though this might also be an unfair

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30 *Traylor Engineering & Mfg. Div. of Fuller Co.* v. *United Steelworkers*, 54 LRRM 2106 (E.D. Pa. 1963), 48 CCH Lab. Cas. ¶18,509.

31 *Jefferson City Cabinet Co.* v. *Int'l. Union of Electrical Workers*, 313 F.2d 231 (6th Cir.), 52 LRRM 2508, 46 CCH Lab. Cas. ¶18,081, *cert. denied*, 53 LRRM 2312, 47 CCH Lab. Cas. ¶18,274 (1963).

32 *Central Aviation & Marine Corp.* v. *International Union, United Automobile Workers, supra* note 18.

33 *Big Apple Supermarkets, Inc.* v. *Amalgamated Meat Cutters*, 149 N.Y.L.J. 15 (N.Y. Sup. Ct. 1963), 52 LRRM 2631, 46 CCH Lab. Cas. ¶18,098.

34 *Benner* v. *Westman*, 53 LRRM 2551, 47 CCH Lab. Cas. ¶18,364 (Cal. Super. Ct. 1963). See also *International Union of Electrical Workers* v. *Westinghouse Electric Corp.*, 218 F. Supp. 82 (S.D. N.Y. 1963), 53 LRRM 2923, 47 CCH Lab. Cas. ¶18,357.

labor practice.[35] The Second Circuit Court of Appeals held that courts are not barred from decreeing arbitration by the fact that the actions giving rise to the disputes sought to be arbitrated may also constitute unfair labor practices.[36] To deny arbitration and hold such disputes may only be determined by the NLRB would greatly increase the agency's burden, require it to resolve controversies that may not have any national significance, and delay the settlement of the dispute.[37]

The Court of Appeals for the Fourth Circuit held that the exclusive jurisdiction of the NLRB in matters involving an unfair labor practice does not bar a federal district court from taking jurisdiction of the suit (to restore a local to good standing in the international), even though the basis of the complaint may have contained elements of an unfair labor practice. Matters directly concerning internal union activities, if regulated, have been left to the courts.[38] The Ninth Circuit reversed a judgment of the district court (ordering dismissal of non-union employee's suit against employer and union) and remanded to the district court for a determination of whether the alleged acts constituted a breach of the contract.[39] The Federal District Court for the Eastern District of New York recognized the fact of concurrent jurisdiction. However, where the facts of the complaint failed to state a cause of action under Section 301, but did so under Section 303, the complaint was dismissed with leave to amend, alleging jurisdiction under Section 303. Where a state court had dismissed a suit for injunction on grounds of no jurisdiction, this was not res judicata in a subsequent section 301 suit. The action in state court was in equity, whereas in the federal court the action was for legal relief.[40]

2. The courts had to consider in a few cases what effect a prior NLRB action should be given in a subsequent Section 301 case.

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35 *Carpenters & Millwrights Union, Local 2018* v. *Riggs-Distler & Co., Inc.*, 40 N.J. 97, 190 A.2d 844 (N.J. Sup. Ct. 1963), 53 LRRM 2293, 47 CCH Lab. Cas. ¶18,385. See also *Retail Clerks Union, Local 770* v. *Thriftimart, Inc.*, 30 Cal. Rptr. 12 (Cal. Sup. Ct. 1963), 52 LRRM 2935, 47 CCH Lab. Cas. ¶18,214.

36 *Carey* v. *General Electric Co.*, 315 F.2d 499 (2d Cir. 1963), 52 LRRM 2662, 47 CCH Lab. Cas. ¶18,151.

37 *Carey* v. *General Electric Co., supra* note 36.

38 *Parks* v. *Int'l. B'hd. of Electrical Workers, Local 24*, 52 LRRM 2281 (4th Cir. 1963), 46 CCH Lab. Cas. ¶18,073.

39 *Alexander* v. *Pacific Maritime Ass'n.*, 314 F.2d 690 (9th Cir. 1963), 52 LRRM 2602, 47 CCH Lab. Cas. ¶18,143.

40 *Kiphea Baking Co., Inc.* v. *Strauss*, 218 F. Supp. 696 (E.D. N.Y. 1963), 53 LRRM 2636, 47 CCH Lab. Cas. ¶18,405.

A finding by the NLRB that a contract existed, for the purpose of the contract bar rule, was not res judicata in a subsequent Section 301 case (suit to compel arbitration) where the fact of the existence of a contract was at issue.[41] The Connecticut federal district court held that the right to arbitration was not endangered by the fact that the NLRB, upon an employer's unfair labor practice petition, had entered a cease and desist order and a consent decree to enforce it. The NLRB had made no determination with respect to the subject matter of the dispute which the union sought to arbitrate.[42] However, when an employee has failed to present his claim in a prior unfair labor practice proceeding or before the court reviewing the Board's order, such an employee was estopped from later bringing action. The basis of the claim could have been disposed of in the board or court proceeding.[43] A union, which has been decertified by the NLRB (on employees petition), is not entitled to an injunction restraining the employer's withdrawal of recognition of the union. The right to recognition as a bargaining agent which the union had by virtue of their contract ceased and became inoperative on decertification.[44] Where the NLRB had refused to process employees' petition for lack of evidence rather than jurisdiction, a state court dismissed the employees' subsequent suit where the complaint alleged violations of NLRA. The *Garmon* pre-emption rule was applied.[45]

3. The courts in a number of situations held that various subjects were matters solely for the NLRB to decide. The Supreme Court of Tennessee affirmed the dismissal of an employee suit against the union and employer, holding in essence that plaintiff's claim (violation of seniority rights) was subject to an unfair labor practice charge.[46] Likewise, a state court dismissed an employee suit against his union (breach of inducement to join union) on the

41 *Central Aviation & Marine Corp.* v. *Int'l. Union, United Automobile Workers,* 214 F. Supp. 858, 52 LRRM 2581, 47 CCH Lab. Cas. ¶18,164, *rev'd and remanded,* 319 F.2d 589, 53 LRRM 2622, 47 CCH Lab. Cas. ¶18,324 (1963).
42 *International Union of Electrical Workers* v. *General Electric Co.,* 54 LRRM 2420 (D. Conn. 1963), 47 CCH Lab. Cas. ¶18,272.
43 *Santos* v. *Union de Trabajadoreo, etc.,* 52 LRRM 2539 (D. Puerto Rico 1963), 46 CCH Lab. Cas. ¶18,072.
44 *Retail Clerks Int'l. Ass'n.* v. *Montgomery Ward & Co.,* 316 F.2d 754 (7th Cir. 1963), 53 LRRM 2069, 47 CCH Lab. Cas. ¶18,232.
45 *Wilmot* v. *Frank,* 47 CCH Lab. Cas. ¶18,390 (N.Y. Sup. Ct. App. Div. 1963).
46 *Caton* v. *Pic-Walsh Freight Co.,* 364 S.W.2d 931 (Tenn. Sup. Ct. 1963), 52 LRRM 2398, 46 CCH Lab. Cas. ¶18,091.

grounds that this was clearly within the jurisdiction of the NLRB. (Plaintiff had originally petitioned the NLRB and lost.) [47]

Also, a state court dismissed a specific performance suit by an employee requesting a decree requiring defendant employer to process his grievance. The court reasoned that the rights arise from the collective agreement and the wrong alleged is the failure to ensure satisfaction of the agreement, which was arguably within the jurisdiction of the NLRB.[48] An employer suit for damages for unlawful work stoppage was dismissed for lack of jurisdiction where the claim involved violations of NLRA exclusive of collective bargaining or secondary boycott violations. The NLRB had exclusive jurisdiction over all violations of NLRA unless the activity violates some other federal statute in a matter not involving a labor dispute.[49] An employer may not raise as a defense (against suit to compel arbitration) that an award in favor of the union would require him to cease doing business with other persons in violation of section 8(e) of NLRA. The determination of whether or not such activity constitutes an unfair labor practice is without the jurisdiction of the federal court and is within the exclusive competence of the NLRB.[50] Nor can an employer defeat the jurisdiction of a federal district court to enforce an agreement to arbitrate by alleging (a) that although the employer had contracted with union for 15 years, the union was not the representative of the employee; (b) that by bargaining with the union it had violated NLRA subject to the exclusive jurisdiction of the NLRB, and (c) that no other action could be taken until a determination had been made by the NLRB. If the employer had doubts, he was still under a duty to continue to bargain in good faith, at least until the board had given some indication that his claim had merit.[51]

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[47] *Mikulan* v. *Continental Can Co., Inc.*, 52 LRRM 2382 (Pa. Ct. C.P. 1962), 46 CCH Lab. Cas. ¶18,137. See also *Cosmark* v. *Struthers Wells Corp.*, 194 A.2d 325 (Pa. Sup. Ct. 1963), 54 LRRM 2333, 48 CCH Lab. Cas. ¶18,546; *Smith* v. *Pittsburgh Gage & Supply Co.*, 54 LRRM 2291, 48 CCH Lab. Cas. ¶18,535 (Pa. Sup. Ct. 1963); *Markham* v. *American Motors Corp.*, 54 LRRM 2139, 48 CCH Lab. Cas. ¶18,506 (Wis. Cir. Ct. 1963).

[48] *McCaul* v. *Highway Truck Drivers and Helpers, Local 107*, 52 LRRM 2906 (Pa. Ct. C.P. 1963), 47 CCH Lab. Cas. ¶18,137.

[49] *Marydale Products Co., Inc.* v. *United Packinghouse Workers*, 311 F.2d 890 (5th Cir. 1963), 52 LRRM 2259, 48 CCH Lab. Cas. ¶18,445.

[50] *Westinghouse Salaried Employees Ass'n.* v. *Westinghouse Electric Corp.*, 217 F. Supp. 622 (W.D. Pa. 1963), 53 LRRM 2204, 47 CCH Lab. Cas. ¶18,296.

[51] *Greater Kansas City Laborers District Council, Int'l. Hod Carriers* v. *Builders Ass'n., supra* note 13.

In one other case, the defendant employer's counterclaim for breach of agreement to submit to final and binding arbitration was dismissed on the ground that it claimed a private contractual right to restrict the jurisdiction of the NLRB.[52]

D. SPECIFIC PERFORMANCE OF ARBITRATION AWARDS

In the suits brought for specific performance of the arbitrator's award, the courts were faced with numerous defenses interposed by the employer. The defenses specifically considered by the courts were as follows:

1. In a collective agreement which incorporated the rules of the American Arbitration Association, an award made in the employer's absence was entitled to enforcement. The employer had had due notice and failed to participate in the selection of the arbitrator or in the subsequent hearing.[53]

2. The United States Arbitration Act does not in itself provide jurisdiction for the enforcement of an award. However, when coupled with a proper claim under Section 301, the federal district courts have jurisdiction, and the Arbitration Act becomes an available remedy for the enforcement of an award.[54]

3. When the award made is by a grievance committee, which award is final and binding upon the parties, the courts have jurisdiction under Section 301 to enforce it. The omission of the term "arbitration" does not foreclose Section 301 enforcement.[55]

4. Where the enforcement suit involved the rights of a separate corporate entity which was not a party to the collective agreement and which did not consent to having the issue decided by arbitration, such corporation is an indispensable party whose rights

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[52] *Lodge 743, Int'l. Ass'n. of Machinists* v. *United Aircraft Corp.*, 53 LRRM 2904 (D. Conn. 1963), 47 CCH Lab. Cas. ¶18,417.

[53] *United Steelworkers* v. *Danville Foundry Corp.*, 52 LRRM 2584 (M.D. Pa. 1963), 46 CCH Lab. Cas. ¶18,119 (M.D. Pa. 1963).

[54] *Royal Industrial Union, Local 937* v. *Royal McBee Corp.*, 217 F. Supp. 277 (D.C. Conn. 1963), 53 LRRM 2169, 48 CCH Lab. Cas. ¶18,425. See also *American Machine & Foundry Co.* v. *United Automobile Workers, Local 116*, 54 LRRM 2184 (S.D. N.Y. 1963), 48 CCH Lab. Cas. ¶18,452.

[55] *General Drivers and Helpers, Local 89* v. *Riss & Co., Inc.*, 372 U.S. 517 (1963), 52 LRRM 2623, 47 CCH Lab. Cas. ¶18,148.

could not be determined at the insistence of the contracting parties. It would be a violation of due process to enforce the award.[56]

5. By the selection of the arbitrator, an employer does not waive his right to attack the jurisdiction of the arbitrator on the grounds that the subject matter of the dispute is not arbitrable under the terms of the contract.[57]

6. Where both parties' motions for summary judgment raised issues of fact, the court denied both motions in an enforcement suit.[58]

7. The absence of a no-strike agreement in a collective bargaining agreement was sufficient grounds for denial of enforcement of an award in a factual situation very similar to *Warrior and Gulf*.[59] The court considered the "quid pro quo" argument persuasive.

8. While the courts were fairly unanimous in giving lip service to the rule that a court has no business weighing the merits of an arbitrator's award, several courts did examine in some detail the reasoning of the arbitrator's decision.[60] An award was enforced which held that an employer had not discharged employee for "just cause" when he fired the employee for taking bets on company time and property.[61] Similarly, the fact that the contract did not contain an express provision concerning the use of supervisory personnel for production work and the management clause reserved to the employer the control of the work force did not prohibit arbitration.[62] The courts looked long and hard at the

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56 *Retail Clerks Union, Local 770* v. *Thriftimart, Inc.*, 30 Cal. Rptr. 12 (Cal. Sup. Ct. 1963), 52 LRRM 2935, 47 CCH Lab. Cas. ¶18,214.

57 *Local 155, United Stone Workers* v. *Marble Products Co. of Georgia*, 53 LRRM 2076 (N.D. Ga. 1963), 47 CCH Lab. Cas. ¶18,362.

58 *Local 149, Boot Workers* v. *Faith Shoe Co.*, 47 CCH Lab. Cas. ¶18,260 (M.D. Pa. 1963). See also *United Steelworkers* v. *Northwest Steel Rolling Mills, Inc.*, 54 LRRM 2552 (9th Cir. 1963), 48 CCH Lab. Cas. ¶18,585.

59 *Westinghouse Salaried Employees Ass'n.* v. *Westinghouse Electric Corp., supra* note 50.

60 See, e.g., *United Cement Workers, Local 84* v. *Penn-Dixie Cement Corp.*, 216 F. Supp. 667 (E.D. Pa. 1963), 53 LRRM 2074, 47 CCH Lab. Cas. ¶18,228.

61 *Local 453, Int'l. Union of Electrical Workers* v. *Otis Elevator Co.*, 314 F.2d 25 (2d Cir. 1963), 52 LRRM 2543, 46 CCH Lab. Cas. ¶18,111.

62 *Hudson Wire Co.* v. *Winstead Brass Workers Union, Local 1603*, 191 A.2d 557 (Conn. Sup. Ct. of Errors, 1963), 53 LRRM 2402, 47 CCH Lab. Cas. ¶18,315.

reasons given in the arbitration awards involving plant removal and vacation benefits before ordering enforcement.[63]

9. The power of the arbitrator to grant an interim award (union right to inspection of employer's books) was upheld where the use of the books was deemed necessary for the union to frame its request for relief.[64]

10. However, a union's claim for counsel fees, expended in an enforcement suit, was denied because they were not provided for in LMRA.[65]

11. In an employee's suit against his employer for damages because of an arbitrated discharge, the arbitrator was upheld. He had not exceeded his discretion by taking into consideration a discharged employee's past record of absences from work.[66]

12. A federal district court has jurisdiction in a Section 301 suit to enforce an arbitrator's award holding that one of two certified unions had violated a no-raiding agreement by attempting to secure for its members disputed maintenance and repair work.[67]

13. Where the contract designated the arbitrator as "permanent," the arbitrator did not have to obtain a court order to proceed with arbitration when the employer failed to appear at the hearings.[68]

E. ARBITRATION AND COURTS GENERALLY

1. *Finality and extent of awards:*

An employer having agreed to arbitration of differences with

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[63] *H. K. Porter Co., Inc.* v. *United Saw, File & Steel Workers,* 217 F. Supp. 161 (E.D. Pa. 1963), 53 LRRM 2190, 47 CCH Lab. Cas. ¶18,294; *Winnebago Lodge 1947, Int'l. Ass'n. of Machinists* v. *Kiekhaefer Corp.,* 52 LRRM 2777 (E.D. Wis. 1963), 47 CCH Lab. Cas. ¶18,406; Cf. *United Steelworkers* v. *Timken Roller Bearing Co.,* 54 LRRM 2701 (6th Cir. 1963), 48 CCH Lab. Cas. ¶18,638.

[64] *Sportswear, Ski-Suits and Waterproof Garment Workers, Local 246* v. *Evans Mfg. Co.,* 318 F.2d 528 (3rd Cir. 1963), 53 LRRM 2455, 47 CCH Lab. Cas. ¶18,305.

[65] See *supra* note 60.

[66] *Rogers* v. *Allied Aviation Service Co. of New Jersey, Inc.,* 315 F.2d 518 (2d Cir. 1963), 52 LRRM 2715, 47 CCH Lab. Cas. ¶18,174.

[67] *International Ass'n. of Machinists* v. *International B'hd. of Firemen,* 54 LRRM 2516 (N.D. Ga. 1963), 48 CCH Lab. Cas. ¶18,619.

[68] *Ulene* v. *La Vida Sportswear Co.,* 54 LRRM 2582 (Cal. D. Ct. App. 1963), 48 CCH Lab. Cas. ¶18,614.

the contracting union was not allowed to set aside this award on the grounds of newly-discovered evidence.[69]

Union members dissatisfied with the arbitration award were not entitled to relitigation of the same issues in a subsequent damage suit against the employer who had complied with the award.[70]

An employer's offer of back pay satisfied the requirement of the arbitrator's award. This did not, however, purchase a permit for the employer to continue to violate the contract in the same manner. However, since the union was seeking a mandatory injunction ordering the employer to give the union the contracted-out work, this was a question of contract interpretation for the arbitrator to decide.[71]

2. *Remedies:*

An employer's suit for a declaratory judgment declaring that an employee's grievance was not arbitrable under the terms of the contract was a type of action countenanced by Section 301. The history of Section 301 does not show it was to be restricted to suits for damages or specific performance. The court granted a declaratory judgment and an order restraining the taking of any legal action to compel arbitration.[72]

Without first exhausting his contractual remedies, an employee subject to a union contract containing grievance procedure culminating in arbitration could not invoke diversity jurisdiction in a damage suit against employer. The right of an individual employee to bring suit under Section 301 is subject to the exhaustion of internal remedies provided in the contract and remains subordinate to the national policy favoring arbitration of labor disputes.[73]

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69 *Bridgeport Rolling Mills Co.* v. *Brown*, 314 F.2d 885 (2d Cir.), 53 LRRM 2589, 47 CCH Lab. Cas. ¶18,170, *cert. denied*, 375 U.S. 821 (1963), 54 LRRM 2312, 48 CCH Lab. Cas. ¶18,528.

70 *Panza* v. *Armco Steel Corp.*, 316 F.2d 69 (3rd Cir.), 52 LRRM 2749, 47 CCH Lab. Cas. ¶18,188, *cert. denied*, 375 U.S. 897 (1963), 54 LRRM 2393, 48 CCH Lab. Cas. ¶18,547.

71 *Local Lodge 1790, IAM* v. *Westinghouse Electric Corp.*, 53 LRRM 3008 (D. Mass. 1963), 48 CCH Lab. Cas. ¶18,485.

72 *Black-Clawson Co., Inc.* v. *Int'l. Ass'n. of Machinists, Lodge 355, Dist. 137*, 313 F.2d 179 (2d Cir. 1963), 52 LRRM 2038, 46 CCH Lab. Cas. ¶17,996.

73 *Belk* v. *Allied Aviation Service Co. of New Jersey, Inc.*, 315 F.2d 513 (2d Cir. 1963), 52 LRRM 2706, 47 CCH Lab. Cas. ¶18,175.

F. MISCELLANEOUS

In two cases in the federal district courts in New York, the court refused to grant employer's motions for remand of their Section 301 suits to state courts (in order to obtain injunctive relief) since such a remand would circumvent the restrictions of the Norris-LaGuardia Act.[74]

In 1963 there were a number of cases dealing with welfare funds and employee rights. The federal district court in Pennsylvania held that an individual employee had standing to sue for a declaration of rights that only sugar workers, not all longshoremen, were entitled to payments out of a welfare fund.[75] Where the union's suit was to get the plan initiated rather than to compel payment into an established fund, the union had a genuine and substantial interest in the matter and was probably the only party who could specifically enforce the employer's obligations.[76] Where the union's suit was to obtain disbursement of a fund, and the employees were divided into four groups, only an action between the employer and the union (representing the four classifications) could properly litigate all phases of the suit.[77] Where disputed payments into a pension plan were not thought to involve either an interpretation of the collective agreement or the possibility of a labor dispute (the agreement had terminated and the union had been dissolved) it was held that the peculiarly individual rights of the beneficiaries of the plan were to be decided according to New York statutes and not in a Section 301 suit.[78]

There were two cases in 1963 involving the seniority rights of employees and changes in plant location. In a case where the court of appeals had previously decided that employees' seniority rights had become vested, the district court in New York adhered to the holding that such rights were not terminated by removal of the employer's plant. The employer was not entitled to a dismissal of

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74 *Crestwood Dairy, Inc.* v. *Kelley*, 54 LRRM 2162 (E.D. N.Y. 1963), 47 CCH Lab. Cas. ¶18,413; *Tri-Boro Bagel Co., Inc.* v. *Bakery Drivers Union, Local 802*, 54 LRRM 2317 (E.D. N.Y. 1963), 48 CCH Lab. Cas. ¶18,441.

75 *Bey* v. *Muldoon*, 223 F. Supp. 489 (E.D. Pa. 1963), 54 LRRM 2642, 47 CCH Lab. Cas. ¶18,359.

76 *Local 641, Amalgamated Butcher Workmen* v. *Capitol Packing Co.*, 47 CCH Lab. Cas. ¶18,163 (D. Colo. 1963).

77 *International Union, UAW* v. *Textron, Inc.*, 312 F.2d 688 (6th Cir. 1963), 52 LRRM 2351, 46 CCH Lab. Cas. ¶18,066.

78 *O'Rourke* v. *Breakstone Brothers, Inc.*, 218 F. Supp. 648 (S.D. N.Y. 1963), 53 LRRM 2938, 47 CCH Lab. Cas. ¶18,389.

subsequent employee suits, even though at these later suits the employer proved that it had not been within the contemplation of the parties (employer and union) that seniority rights would survive the moving of the plant.[79] However, where the collective agreement provided that seniority rights would survive only if the plant were moved within a 60-mile radius, and the plant had been moved from Ohio to Kentucky, the court held that the seniority rights did not survive. The court reasoned that even if the seniority rights had survived the expiration of the contract, the employees were not entitled to damages for the employer's refusal to recognize these rights at the new site.[80]

Under somewhat similar circumstances the Court of Appeals for the Sixth Circuit held that an employer's termination of operations (during the term of the collective agreement) did not give rise to an employees' cause of action for breach of an obligation to provide continued employment until the contract expired. The court reasoned that "The rights of employees under a collective bargaining agreement pre-suppose an employer-employee relationship. A collective bargaining agreement, in ordinary usage and terminology, does not create an employer-employee relationship nor does it guarantee the continuance of one." Employees' rights under such a contract do not survive a discontinuance of business and termination of operations.[81]

The courts took a liberal view of the discretion to be afforded a union in dealing with the rights of its members in a series of cases. Where seniority provisions of the collective agreement were unclear and did not disclose the nature of the employees' seniority rights, the Sixth Circuit Court of Appeals held that it was not improper for the union to interpret the contract to provide for plant-wide seniority and refuse to assist the employees in attempting to establish company-wide seniority.[82] Where the collective bargaining agreement did not prohibit expulsion from the union, it was apparent on the face of the complaint that there was no

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79 *Zdanok* v. *Glidden Co.*, 216 F. Supp. 476 (S.D. N.Y. 1963), 52 LRRM 2764, 47 CCH Lab. Cas. ¶18,211.

80 *Slenczka* v. *Hoover Ball & Bearing Co.*, 215 F. Supp. 761 (N.D. Ohio 1963), 52 LRRM 2771, 47 CCH Lab. Cas. ¶18,304.

81 *Fraser* v. *Magic Chef-Food Giant Markets, Inc.*, 324 F.2d 853 (6th Cir. 1963), 54 LRRM 2758, 48 CCH Lab. Cas. ¶18,627 (6th Cir. 1963).

82 *Pekar* v. *Local 181, Int'l. Union of United Brewery and Beverage Workers*, 311 F.2d 628 (6th Cir. 1962), 52 LRRM 2123, 46 CCH Lab. Cas. ¶17,991.

violation of the contract cognizable under Section 301, for the union to expel certain members.[83] Likewise, where an employer and the union concurred in the employee's discharge, and the plaintiff employee failed to allege fraud, bad faith, or collusion, his suit was properly dismissed.[84]

Where the parties (employer and union) had agreed in general terms to accept all of the terms and conditions of a contract negotiated for a multi-employer bargaining unit (in which the particular employer was not included), the Colorado federal district court held that the agreement was not void and unenforceable for vagueness or lack of mutuality.[85]

In construing the Nevada Service of Process Statute, the federal district court in that state held that the statute providing for substituted service was inapplicable to foreign or non-resident unincorporated associations.[86]

Under a lease arrangement whereby an employer was responsible for upkeep of the property, the Sixth Circuit Court of Appeals held that he was a bailee of the leased property and had standing to sue the union for breach of a wage agreement and malicious interference with the employees' contractual relations which had resulted in the damage to the property.[87]

The question of whether a grievance is frivolous or not is a question for the arbitrator to decide.[88] An employer's attempted evasion of arbitration by refusal to stipulate to the grievance, as was called for by the contract, was held to be no defense to the union's suit to compel arbitration.[89] One decision held that the federal labor policy favoring arbitration does not require the bank-

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83 *Burris* v. *International B'hd. of Teamsters,* 224 F. Supp. 277 (S.D. N.C. 1963), 48 CCH Lab. Cas. ¶18,431.
84 *Hildreth* v. *Union News Co.,* 315 F.2d 548 (6th Cir.), 52 LRRM 2827, 47 CCH Lab. Cas. ¶18,198, *cert. denied,* 375 U.S. 826 (1963), 54 LRRM 2312, 48 CCH Lab. Cas. ¶18,528.
85 *Line Drivers, Local 961* v. *W. J. Digby, Inc.,* 218 F. Supp. 519 (D. Colo. 1963), 53 LRRM 2505, 47 CCH Lab. Cas. ¶18,395.
86 *Owens Insulation Co.* v. *International Ass'n. of Asbestos Workers,* 213 F. Supp. 927 (D. Nev. 1963), 52 LRRM 2899, 47 CCH Lab. Cas. ¶18,224.
87 *Mitchell Coal Co., Inc.* v. *United Mine Workers,* 313 F.2d 78 (6th Cir. 1963), 52 LRRM 2477, 46 CCH Lab. Cas. ¶18,083.
88 *United Furniture Workers* v. *Fort Smith Couch & Bedding Co.,* 214 F. Supp. 164 (W.D. Ark. 1963), 52 LRRM 2560, 46 CCH Lab. Cas. ¶18,104.
89 *Independent Soap Workers* v. *Proctor & Gamble Mfg. Co.,* 314 F.2d 38 (9th Cir.), 52 LRRM 2528, 46 CCH Lab. Cas. ¶18,105, *cert. denied,* 53 LRRM 2468 (1963), 47 CCH Lab. Cas. ¶18,299.

ruptcy court to surrender its jurisdiction to the arbitration process, since labor peace is not an issue when the employee-employer relationship had ended.[90] A union's suit for declaration of rights to the effect that the employer did not have the right to draft employees for overtime work was dismissed. The contract was silent on the point and the grievance procedure needed both parties' assent to compel arbitration. By instituting the suit, the court held, the union was attempting to have the court arbitrate the dispute and achieve by indirection that which it could not do directly under the contract.[91]

Aaron, "The Labor Injunction Reappraised," 10 U.C.L.A. L. Rev. 292 (1963) and 14 Lab. L. J. 41 (1963).

Aaron, "Strikes in Breach of Collective Agreements: Some Unanswered Questions," 63 Colum. L. Rev. 1027 (1963).

Benewitz, "Grievance Arbitration Experience as a Guide to Compulsory Arbitration," 14 Lab. L. Jour. 790 (1963).

Benewitz and Rosenberg, "The Arbitration Reporters as a Reflection of Arbitration Issues," 18 Arbitration J. 162, No. 3 (1963).

Cornfield, "Developing Standards for Determining Arbitrability," 14 Lab. L. Jour. 564 (1963).

Daykin, "Arbitration of Work Rules Disputes," 18 Arb. J. 36 (1963).

Daykin, "Subcontracting in Industry," 14 Lab. L.J. (1963).

Dunau, "Procedural Arbitrability—A Question for Court or Arbitrator?", 14 Labor L.J. 1010 (1963).

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Fairweather, "Implied Restrictions on Work Movements," 38 Notre Dame Lawyer 518 (1963).

Feinberg, "The Arbitrator's Responsibility under the Taft-Hartley Act," 18 Arb. J. 77 (1963).

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90 *Muskegon Motor Specialties Co.* v. *Davis*, 313 F.2d 841 (6th Cir. 1963), 52 LRRM 2541, 46 CCH Lab. Cas. ¶18,108.

91 *Allied Oil Workers* v. *Ethyl Corp.*, 54 LRRM 2198 (E.D. La. 1963), 48 CCH Lab. Cas. ¶18,481.

Fleming, "Arbitrators and Arbitrability," 1963 Wash. U. L. Quar. 200 (1963).

Fleming, "Reflections on the Nature of Labor Arbitration," 61 Mich. L. Rev. 1245 (1963).

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Handsaker, "Arbitration and Discipline for Wildcat Strikes," 14 Lab. L. Jour. 395 (1963).

Kovarsky, "Unfair Labor Practices, Individual Rights and Section 301," 16 Vand. L. Rev. 595 (1963).

Krislov and Schmulowitz, "Grievance Arbitration in State and Local Government Units," 18 Arbitration J. 171 (1963).

Kronstein, "Arbitration Is Power," 38 N.Y.U. L. Rev. 661 (1963).

Maddux, "Labor Law Implications in the Sale, Transfer or Discontinuance of All or Part of a Business Operation," 18 Bus. Law 819 (1963).

Nally, "The Grievance Procedure and the Supreme Court: A Theory of Collective Bargaining," 8 Villanova L. Rev. 177 (1963).

Northrup and Rowan, "Arbitration and Collective Bargaining," 14 Lab. L. J. 178 (1963).

Pfister, "Arbitration and the Supreme Court 1962 Spring Term," 4 Ariz. L. Rev. 200 (1963).

Ryder, "Private Adjudication of Bargaining Unit Work," 14 Lab. L. J. 834 (1963).

Sirefman, "Rights Without Remedies in Labor Arbitration," 18 Arb. J. 17 (1963).

Sovern, "Section 301 and the Primary Jurisdiction of the NLRB," 76 Harv. L. Rev. 529 (1963).

Stein, "Loyalty and Security Cases," 17 Ind. & Lab. Rel. Rev. 96 (1963).

Summers, "Collective Power and Individual Rights in the Collective Agreement—A Comparison of Swedish and American Law," 72 Yale L.J. 421 (1963).

Van de Water, "Involuntary Arbitration and National Defense," 18 Arb. J. 96 (1963).

Weiss, "Labor Arbitration and the 1961-62 Supreme Court," 51 Geo. L.J. 284 (1963).

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Wollett, "The Agreement and the National Labor Relations Act," 14 Lab. L. Jour. 1041 (1963).

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