CHAPTER 6

ARBITRATION AND THE COURTS

PART I. EROSION OF THE ARBITRATION PROCESS BY THE COURTS: CAN THE AWARD AND OPINION BE IMMUNIZED?

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A millennium ago by letter dated November 4, 1991, Program Chair Marvin Hill assigned my topic. Then came the subtle inducement designed to whet my appetite for yet another pro bono performance in a career already severely tarnished by far too many such experiences: "Mark Kahn has assured the Academy that your presentation will be especially interesting!"

There is a certain irony at work here. I believe that Kahn presided over just one arbitration in which I was a participant. But it was a memorable award. The result was painful in the extreme; it still lingers on. In the tradition of a true "David Fellerite," however, I knew that my only recourse was to accept my medicine and pay homage to the *Trilogy*.[1] Regrettably, this commitment to abstinence is no longer in vogue.

Here is what I did to reacquaint myself with the big picture: I confined myself to post-*Misco* decisions issued over the past four years which do not implicate the "public policy" exception to the finality of arbitration awards. I chose this course first because so much attention has been directed at the public policy exception that I had little to add to all the hype and, more important, because I wanted to get a first-hand flavor of how receptive courts have been to initiatives to set aside awards that disposed of more traditional, run-of-the-mill contract disputes. After read-

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[1] *Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 46 LRRM 1214 (1960); *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 46 LRRM 2416 (1960); *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 46 LRRM 2423 (1960).

ing and analyzing two dozen circuit courts of appeals rulings[2] (at least one from each of the 12 circuits), I want to begin by sharing with you—much like a resident "psychiatrist"—some general observations.

The picture that emerges is not likely to amuse this group. Yes, my friends, you do not have to be paranoid to feel that the courts are looking over your shoulders, breathing down your necks, poised to pounce at the slightest provocation to vacate an award—perhaps any award—where the result does not meet with their approval. And this observation holds true whether the underlying dispute concerns procedural issues, such as a claim that the grievance is untimely,[3] or substantive issues, such as whether a discharge is for just cause[4] or whether an employee violated a "last chance agreement" the union negotiated with management.[5]

Fifteen years ago, Feller and St. Antoine regaled you with respectfully diverging views concerning whether the profession was entering or leaving the "golden age of arbitration."[6] In the interim, many other distinguished Academy members joined in that debate. Today, there is little room for doubting that respect for the "finality" doctrine has reached a new low. That conclusion should be especially hard for you to swallow. Indeed, it may seem inexplicable to you, given the pointed message that the Supreme Court conveyed in *Paperworkers v. Misco*,[7] that courts are to play an extremely limited role in reviewing the arbitrator's work product. Given that in *Misco* Feller and Murphy filed an *amicus* brief for the Academy, this institution rightfully should have savored the actual wording of the opinion Justice White

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[2]The cases listed in the Addendum to this article are by no means a statistically representative sample of circuit court decisions relating to arbitration awards. Most were chosen because they seemed particularly revealing of the stance appellate courts have adopted toward the finality of arbitration awards since *Paperworkers v. Misco, Inc.*, 484 U.S. 29, 126 LRRM 3113 (1987), was decided.

[3]*Berklee College of Music v. American Fed'n of Teachers Local 4412, Berklee Chapter, Mass.*, 858 F.2d 31, 129 LRRM 2465 (1st Cir. 1988), *cert. denied*, 493 U.S. 810, 132 LRRM 2623 (1989) (*see also* Addendum 4).

[4]*Delta Queen Steamboat Co. v. Marine Eng'rs. Dist. 2*, 889 F.2d 599, 133 LRRM 2077 (5th Cir. 1989), *reh'g denied*, 897 F.2d 746, 134 LRRM 2080 (5th Cir.) (en banc), *cert. denied*, 111 S.Ct. 148, 135 LRRM 2464 (1990) (*see also* Addendum 14).

[5]*Coca-Cola Bottling Co. v. Teamsters Local 688*, 959 F.2d 1438, 139 LRRM 2899 (8th Cir. 1992) (*see also* Addendum 20).

[6]Feller, *The Coming End of Arbitration's Golden Age*, in Arbitration—1976, Proceedings of the 29th Annual Meeting, National Academy of Arbitrators, eds. Dennis & Somers (BNA Books, 1976), 97; St. Antoine, *Judicial Review of Labor Arbitration Awards: A Second Look at* Enterprise Wheel *and Its Progeny*, 75 Mich. L. Rev. 1137 (1977).

[7]*Supra* note 1.

authored for the entire Court (except for Justices Blackmun and Brennan, who concurred jointly). Lest you forget, here is a smattering of the key holdings:

> Collective-bargaining agreements commonly provide grievance procedures to settle disputes between union and employer with respect to the interpretation and application of the agreement and require binding arbitration for unsettled grievances. In such cases, and this is such a case, the Court made clear almost 30 years ago that the courts play only a limited role when asked to review the decision of an arbitrator. The courts are not authorized to reconsider the merits of an award even though the parties may allege that the award rests on errors of fact or on misinterpretation of the contract.
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> Because the parties have contracted to have disputes settled by an arbitrator chosen by them rather than by a judge, it is the arbitrator's view of the facts and of the meaning of the contract that they have agreed to accept.
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> The arbitrator may not ignore the plain language of the contract; but the parties having authorized the arbitrator to give meaning to the language of the agreement, a court should not reject an award on the ground that the arbitrator misread the contract.
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> Furthermore, it must be remembered that grievance and arbitration procedures are part and parcel of the ongoing process of collective bargaining. It is through these processes that the supplementary rules of the plant are established. As the Court has said, the arbitrator's award settling a dispute with respect to the interpretation or application of a labor agreement must draw its essence from the contract and cannot simply reflect the arbitrator's own notions of industrial justice. *But as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision.*[8] (Emphasis added.)

Were I a dues-paying member of the Academy, *Misco* would have represented a reaffirmation of all my basic values—an opinion that comes as close to perfection as I could have hoped. As Judge Boggs wryly observed in his dissent in *Lattimer-Stevens*

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[8]*Id.* at 36–38.

Co. v. United Steelworkers, "Prior to *Misco*, the rule seemed to be 'the arbitrator is always right.' After *Misco*, the rule would seem to be 'even when the arbitrator is wrong, he's still right.'"[9] Given the clarity with which the Court expressed itself, we would not have expected the subject of my speech to appear again—let alone just four and a half years later!

So what has happened in the interim? The trend is quite clear. One court of appeals after another has issued opinions which dutifully begin by paying lip service to the above-quoted *Misco* rationale, but then dramatically shift gears and manifest in varying degrees a disdain for the "gestalt," the most basic principle, of *Misco*—namely, that the proper approach for a court is to remain aloof from the merits of an opinion and award.

Aloof they have not been! On the contrary, in many cases the court just cannot seem to resist treating the underlying merits of the arbitration in much the same fashion that it would handle a breach of contract action on its own docket. To be charitable, some decisions are perhaps explainable on "*Parkinson's Law*" grounds—the merits of much litigation today are so complex and beyond the ken of the average mind that judges understandably relish those rare instances when they can truly recognize what a particular case is all about. An example is *Georgia-Pacific v. Local 27*,[10] *United Paperworkers*, where the First Circuit could not resist setting aside an arbitration decision upholding the position of an employee who had "given the Company nine good years of service" and who maintained that he was not discharged for just cause even though he called in sick one day and immediately proceeded to a pro-am golf tournament where he played 18 holes in four hours, notwithstanding his alleged sickness.

But there are a host of other decisions that cannot be excused as simply "knee jerk" reactions from the bench. They manifest a number of judicial proclivities that seem quite at odds with the Court's recent reaffirmation of the *Trilogy*.

First, a number of decisions have interpreted general contractual provisions reserving particular powers to management to create relatively stringent limitations on arbitral authority. The constructions some courts have given to provisions reserving to management the "right to discipline and discharge for proper

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[9]913 F.2d 1166, 135 LRRM 2573 (6th Cir. 1990) (*see also* Addendum 16).
[10]864 F.2d 940, 130 LRRM 2208 (1st Cir. 1988) (*see also* Addendum 5).

cause," for example, have whittled away at arbitral authority so that all that remains of the arbitrator's traditional authority to examine both the existence of misconduct and the fitness of punishment is the "proper cause" determination.[11] Although it is certainly the law of the *Trilogy* and *Misco* that parties can limit by contract the authority of the arbitrator, in light of the great deference *Enterprise Wheel* tells us is to be accorded the arbitral process, the more judicious approach would be for a court not to place such limits absent express restrictions on the arbitrator's power to assess and modify penalties.[12] Nonetheless, a number of post-*Misco* decisions have gone in the other direction.[13]

Second, a number of recent opinions setting aside awards have relied on contractual provisions stating that the arbitrator may not change, add to, or subtract from any of the provisions of the agreement.[14] This calls to mind St. Antoine's observation:

> Any time a court is incensed enough with an arbitrator's reading of the contract and such supplementary data as past practice, bargaining history, and the "common law of the shop," it is simplicity itself to conclude that the arbitrator must have "added to or altered" the collective bargaining agreement.[15]

Suffice it to say that courts appear more willing than in the past to conclude that arbitrators have exceeded their authority by violating the no "add to" directive.

Third, courts are becoming more comfortable assuming the role of discriminating critics of your opinions. If an arbitrator's opinion is ambiguous and the court believes that under one possible interpretation of the opinion the award would be

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[11]*See Delta Queen Steamboat Co. v. Marine Eng'rs Dist. 2, supra* note 4, and Judge Jerre Williams' dissent, *On Suggestion for Rehearing en Banc, Delta Queen Steamboat Co. v. Marine Eng'rs Dist. 2*, 897 F.2d 746, 134 LRRM 2080 (5th Cir. 1990) (en banc).

[12]*See, e.g.*, the contract provision denying the arbitrator authority to consider discipline in *Container Prods. v. Steelworkers*, 873 F.2d 818, 131 LRRM 2623 (5th Cir. 1989) (*see also* Addendum 13).

[13]*Delta Queen Steamboat Co. v. Marine Eng'rs Dist. 2, supra* note 4; *S.D. Warren Co. v. Paperworkers Local 1069* (I), 845 F.2d 3, 128 LRRM 2175 (1st Cir.), *cert. denied*, 488 U.S. 992, 129 LRRM 3072 (1988) (*see also* Addendum 2); *S.D. Warren Co. v. Paperworkers Local 1069* (II), 846 F.2d 827, 128 LRRM 2432 (1st Cir.), *cert. denied*, 488 U.S. 992, 129 LRRM 3072 (1988) (*see also* Addendum 3); *Georgia-Pacific Corp. v. Paperworkers Local 27, supra* note 10; *see also* the dissenting opinions in *Litvak Packing Co. v. Food & Commercial Workers Local 7*, 886 F.2d 275, 132 LRRM 2383 (10th Cir. 1989) (*see also* Addendum 22); *Florida Power Corp. v. Electrical Workers (IBEW)*, 847 F.2d 680, 128 LRRM 2762 (11th Cir. 1988) (*see also* Addendum 23).

[14]*Harry Hoffman Printing v. Graphic Communications Local 261*, 950 F.2d 95, 138 LRRM 2921 (2d Cir. 1991) (*see also* Addendum 8); *Pennsylvania Power Co. v. Electrical Workers (IBEW) Local 272*, 886 F.2d 46, 132 LRRM 2388 (3d Cir. 1989) (*see also* Addendum 9).

[15]St. Antoine, *supra* note 6, at 1153.

vacated, the court may remand the grievance to the arbitrator with instructions to resolve the ambiguities.[16] So, too, if an arbitrator implies duties without explaining how they derive from the contract, the court may conclude that the arbitrator has drawn upon "a concept upon which it was not entitled to rely" even though there are provisions in the contract "that provide at least some support" for the duty implied.[17] Or, if the arbitrator fails to address contractual provisions which the reviewing court, based on its independent analysis, deems to be probative, the court may conclude that the award does not derive from the contract.[18] This degree of scrutiny of arbitral opinions runs afoul of the spirit of the *Trilogy* and *Misco*. As Judge Posner of the Seventh Circuit recently noted, "since arbitrators' interpretations must be accepted even when erroneous, it cannot be correct that arbitrators are required to write good opinions.[19] Again, the drift unfortunately appears to be in the other direction—toward more probing review.[20]

Even in those cases where a court ultimately let the award stand, I was struck by the lengths to which many courts went to inject themselves into the merits of the contract dispute. Especially given the judiciary's oft-stated concern about the escalating workload throughout the federal court system, I would have expected judges to greet *Misco* with delight. More specifically, I would have expected that courts would be content to take whatever peek at the arbitrator's opinion is necessary to assure themselves that the minimal requirements of *Misco* had been met, and then to close that file and quickly move on to the cases on their lengthy docket that demand full-scale review.

In practical terms, the cumulative effect of these recent developments is that court decisions vacating arbitration awards beget

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[16]*Cannelton Indus. v. Mine Workers Dist. 17*, 951 F.2d 591, 139 LRRM 2001 (4th Cir. 1991) (*see also* Addendum 12).

[17]*Harry Hoffman Printing v. Graphic Communications Local 261, supra* note 14.

[18]*Geo. A. Hormel & Co. v. Food & Commercial Workers Local 9*, 879 F.2d 347, 131 LRRM 3018 (8th Cir. 1989) (*see also* Addendum 19).

[19]*Typographical Union No. 16 (Chicago) v. Chicago Sun-Times*, 935 F.2d 1501, 1506, 137 LRRM 2731 (7th Cir. 1991) (*see also* Addendum 18).

[20]Notwithstanding this trend, a number of circuit court judges have authored opinions that reflect a dedication to the judge's limited reviewing role with regard to arbitration awards. *See, e.g.*, Judge Posner's opinions in *Typographical Union No. 16 (Chicago) v. Chicago Sun-Times, supra* note 19, and *Jones Dairy Farm v. Food & Commercial Workers Local P-1236*, 760 F.2d 173, 119 LRRM 2185 (7th Cir.), *cert. denied*, 474 U.S. 845, 120 LRRM 2632 (1985); Judge Williams' dissent, *On Suggestion for Rehearing en banc, Delta Queen Steamboat Co. v. Marine Eng'rs Dist. 2*, 897 F.2d 746, 134 LRRM 2080 (5th Cir. 1990) (en banc), and his opinion in *Food & Commercial Workers v. National Tea*, 899 F.2d 386, 134 LRRM 2193 (5th Cir. 1990). I commend these decisions to you—do not despair!

more lawsuits seeking to set aside awards—and so on. The research of Feuille and LeRoy reveals that the number of cases in which courts were called on to vacate awards "increased sharply during the 1980s."[21] They observe: "It is noteworthy that the number of circuit court enforcement decisions was greater during the recent 10-year period [from 1982-1991] (240 decisions) than during the earlier thirty-year [*sic*] period [from 1960 to 1981] (187 decisions)."[22] Their suggestion that there may be a connection between the trend among the appellate courts away from accepting the finality of arbitration awards and the increase in postarbitration award litigation seems valid. Furthermore, two other considerations bear upon this trend: Employers are more likely to cause postarbitration litigation (either by refusing to comply with an arbitrator's award or by appealing an adverse award)[23] and awards favorable to unions have proven more likely to be overturned by courts than awards favorable to employers.[24]

This leads me to comment that another anomaly is present here. The past two administrations frequently have claimed that their judicial appointees are conservatives who share one particularly admirable trait, namely dedication to a "strict constructionist" judicial philosophy. How is it then, pray tell, that in the subject area at hand we observe instead a prodigious case of judicial activism, all the more suspect given that the Supreme Court's governing standards cry out for "judicial restraint"? I have no answer to this puzzle. But it provides another appropriate lead-in—this time to the question whether there are affirmative steps that arbitrators should take or contemplate to guard against courts' vacating their awards.

Generally speaking, "Doctor Cohen" would prescribe that you take two aspirin, relax, conduct your professional activities on a "business as usual" basis, and let nature take its course. For, let's face it, there is precious little that any arbitrator can do to insulate an award where the basis for the decision vacating that

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[21]LeRoy & Feuille, *The* Steelworkers Trilogy *and Grievance Arbitration Appeals: How the Federal Courts Respond*, 13 Indus. Rel. L. J. 78, 98–99 (1991).

[22]*Id.* at 102.

[23]Feuille & LeRoy, *Grievance Arbitration Appeals in the Federal Courts: Facts and Figures*, 45 Arb. J. 35, 43 (1990).

[24]Feuille, LeRoy, & Chandler, *What Happens When Arbitration Is Not the End of the Road*, in Proceedings of the 43rd Annual Meeting, Industrial Relations Research Association (IRRA, 1991), 410.

award boils down to "intense disagreement" with your merits resolution.[25]

But for those Academy members who are more itchy and are unwilling just to sit around and wait to see whether or when the next court-ordered shoe will drop, I have put together this handy-dandy checklist of do's and don'ts for your reading pleasure. Rest assured that this list of preventive measures derives, not from fantasy, but from actual court cases expounding on the fatal flaws of various awards. (Oh, yes, the arbitrators' names have been excised both to protect the innocent and to preclude Academy membership identification!) We begin this chronicle on a light note.

First, where the issue submitted is whether an employee has been discharged for just cause, be careful not to make findings that an employee's pattern of aggressive, hostile conduct toward the supervisor warrants a discharge but then declare that in your judgment the employee's personality shortcomings could be overcome by a "Dale Carnegie Course" and issue an award holding that upon successful completion of that course, the employee must be reinstated.[26] That award gives new meaning to the phrase "an arbitrator imposing his own brand of industrial justice" after having gone bonkers. As Judge Posner aptly observed, albeit in more restrained terms: "[t]he zanier the award, the less plausible it becomes to ascribe it to a mere error in interpretation rather than to a willful disregard of the contract."[27]

Second, where a contract expressly vests the employer with the sole authority to establish and maintain reasonable rules concerning its operations, you can conclude that a rule is unreasonable and set aside for lack of just cause a discharge for violating that rule. But mark this well! Don't take the further step of creating a new rule to replace the one you struck down and/or direct the employer to implement your new concoction. No matter how satisfying this frolic might be to the ego, please understand that doing so—even in the name of providing a remedy—trods on the employer's exclusive authority under the

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[25]*Delta Queen Steamboat Co. v. Marine Eng'rs Dist. 2*, 889 F.2d 599, 133 LRRM 2077 (5th Cir. 1989), *reh'g denied*, 897 F.2d 746, 134 LRRM 2080 (5th Cir.) (en banc), *cert. denied*, 111 S.Ct. 148, 135 LRRM 2464 (1990) (*see also* Addendum 14).

[26]*Butterkrust Bakeries v. Bakery, Confectionery & Tobacco Workers Local 361*, 726 F.2d 698, 115 LRRM 3172 (11th Cir. 1984).

[27]*Typographical Union No. 16 (Chicago) v. Chicago Sun-Times*, *supra* note 19, at 1506.

contract to set workplace rules, and thereby exceeds the express limits of the arbitrator's authority.[28]

Third, in a similar vein be mindful of situations where the parties have placed in the agreement other explicit limits on the arbitrator's authority. Some contracts, for example, contain a provision stating that, with respect to a grievance concerning a no-strike clause, the arbitrator shall be limited to determining whether the grievant engaged in conduct violating that provision and, if the arbitrator finds such a violation, the particular discipline imposed by the employer shall not be subject to arbitration. Once again, no matter how unreasonable that discipline may appear to you, the parties have effectively tied your hands; stay away![29]

Let me turn next to several suggestions that could, at the very least, cause a reviewing court to "pause" before plunging ahead to vacate your award. Be mindful of the fact that most decisions vacating awards rely essentially upon two theories: (1) the alleged failure of the arbitrator's award "to draw its essence from the collective bargaining agreement" or (2) the assertion that the arbitrator's decision cannot be reconciled with "the plain language of the contract." With respect to the former, it may serve us well to return to basics. Once again, we borrow from Judge Posner: "The arbitrator is not free to think or to say, 'The contract says X, but my view of sound policy leads me to decree Y.'"[30] Thus, an arbitrator should focus attention to the greatest degree possible on the contract as the source of the decision. If the opinion does this, a court will be hard pressed to conclude that the arbitrator was out of bounds in fashioning the award.

With respect to the "plain language" rule, rest assured that you are not foreclosed from rejecting a literal reading of a contract provision. Indeed, you may do so on a variety of valid bases—for example, because a literal application would not comport with the parties' intent as reflected in the bargaining history, or because it would produce a result that cannot be harmonized with another provision of the agreement, or because the employer has a track record of applying that language in another fashion. But what you should do—indeed, in

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[28]*Bruno's, Inc. v. Food & Commercial Workers Local 1657*, 858 F.2d 1529, 129 LRRM 2815 (11th Cir. 1988) (*see also* Addendum 24).

[29]*Electrical Workers (IBEW) Local 429 v. Toshiba Am.*, 879 F.2d 208, 131 LRRM 2921 (6th Cir. 1989) (*see also* Addendum 15).

[30]*Typographical Union No. 16 (Chicago) v. Chicago Sun-Times*, *supra* note 19, at 1505.

my judgment, must do—is to explain your thought process with clarity. In doing so, you will not only demonstrate that you did not commit the heinous offense of "ignoring" the plain language of a contract provision but also highlight that at the very least you are "arguably construing or applying the contract"—the cornerstone for establishing nonreviewability of the award. In the same vein, you must keep in mind the courts who have construed—wrongly to be sure—the "drawing its essence from the contract" criterion to mean that an award can be set aside if the arbitrator fails to address the applicability of a contract provision cited by one of the parties as authority in support of its construction of the agreement.[31] That potential pitfall can be avoided, of course, by addressing each of the cited provisions, even those you view as totally inapplicable.

Finally, let me close on this upbeat note: I would be remiss if I did not mention that the arbitrator retains the time-honored right to avoid the entire spectrum of these problems by opting not to write an opinion. That alternative undoubtedly will not strike a responsive chord from this distinguished audience.

Addendum

Circuit Court rulings on arbitration awards:

District of Columbia Circuit

1. *Hotel Ass'n of Washington, D.C. v. Hotel Employees Local 25*, 140 LRRM 2185 (D.C. Cir. 1992).

First Circuit

2. *S.D. Warren Co. v. Paperworkers Local 1069* (I), 845 F.2d 3, 128 LRRM 2175 (1st Cir.), *cert. denied*, 488 U.S. 992, 129 LRRM 3072 (1988).

3. *S.D. Warren Co. v. Paperworkers Local 1069* (II), 846 F.2d 827, 128 LRRM 2432 (1st Cir.), *cert. denied*, 488 U.S. 992, 129 LRRM 3072 (1988).

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[31] *George A. Hormel & Co. v. Food & Commercial Workers Local 9*, *supra* note 18, at 351; *Coca-Cola Bottling Co. v. Teamsters Local 688*, 959 F.2d 1438, 139 LRRM 2899 (8th Cir. 1992) (*see also* Addendum 20).

4. *Berklee College of Music v. American Fed'n of Teachers Local 4412, Berklee Chapter, Mass.*, 858 F.2d 31, 129 LRRM 2465 (1st Cir. 1988), *cert. denied*, 493 U.S. 810, 132 LRRM 2623 (1989).

5. *Georgia-Pacific Corp. v. Paperworkers Local 27*, 864 F.2d 940, 130 LRRM 2208 (1st Cir. 1988).

Second Circuit

6. *Leed Architectual Prods. v. Steelworkers Local 6674*, 916 F.2d 63, 135 LRRM 2766 (2d Cir. 1990).

7. *Hygrade Operators v. Longshoremen (ILA) Local 333*, 945 F.2d 18, 138 LRRM 2517 (2d Cir. 1991).

8. *Harry Hoffman Printing v. Graphic Communication's Local 261*, 950 F.2d 95, 138 LRRM 2921 (2d Cir. 1991).

Third Circuit

9. *Pennsylvania Power Co. v. Electrical Workers (IBEW) Local 272*, 886 F.2d 46, 132 LRRM 2388 (3d Cir. 1989).

10. *Tanoma Mining Co. v. Mine Workers Local 1269*, 896 F.2d 745, 133 LRRM 2574 (3d Cir. 1990).

Fourth Circuit

11. *Walker v. Consolidated Freightways*, 930 F.2d 376, 137 LRRM 2059 (4th Cir. 1991), *cert. denied*, 112 S.Ct. 636, 138 LRRM 2976 *and* 112 S.Ct. 637, 138 LRRM 2976 (1992).

12. *Cannelton Indus. v. Mine Workers Dist. 17*, 951 F.2d 591, 139 LRRM 2001 (4th Cir. 1991).

Fifth Circuit

13. *Container Prods. v. Steelworkers*, 873 F.2d 818, 131 LRRM 2623 (5th Cir. 1989).

14. *Delta Queen Steamboat Co. v. Marine Eng'rs Dist. 2*, 889 F.2d 599, 133 LRRM 2077 (5th Cir. 1989), *reh'g denied*, 897 F.2d 746, 134 LRRM 2080 (5th Cir.) (en banc), *cert. denied*, 111 S.Ct. 148, 135 LRRM 2464 (1990).

Sixth Circuit

15. *Electrical Workers (IBEW) Local 429 v. Toshiba Am.*, 879 F.2d 208, 131 LRRM 2921 (6th Cir. 1989).

16. *Lattimer-Stevens Co. v. Steelworkers Dist. 27, Sub-District 5*, 913 F.2d 1166, 135 LRRM 2573 (6th Cir. 1990).

17. *Machinists Dist. 154, Local 2770 v. Lourdes Hosp.*, 958 F.2d 154, 139 LRRM 2803 (6th Cir. 1992).

Seventh Circuit

18. *Typographical Union No. 16 (Chicago) v. Chicago Sun-Times*, 935 F.2d 1501, 137 LRRM 2731 (7th Cir. 1991).

Eighth Circuit

19. *George A. Hormel & Co. v. Food & Commercial Workers Local 9*, 879 F.2d 347, 131 LRRM 3018 (8th Cir. 1989).

20. *Coca-Cola Bottling Co. v. Teamsters Local 688*, 959 F.2d 1438, 139 LRRM 2899 (8th Cir. 1992).

Ninth Circuit

21. *Federated Dep't Stores v. Food & Commercial Workers Local 1442*, 901 F.2d 1494, 134 LRRM 2162 (9th Cir. 1990).

Tenth Circuit

22. *Litvak Packing Co. v. Food & Commercial Workers Local 7*, 886 F.2d 275, 132 LRRM 2383 (10th Cir. 1989).

Eleventh Circuit

23. *Florida Power Corp., v. Electrical Workers (IBEW)*, 847 F.2d 680, 128 LRRM 2762 (11th Cir. 1988).

24. *Bruno's, Inc. v. Food & Commercial Workers Local 1657*, 858 F.2d 1529, 129 LRRM 2815 (11th Cir. 1988).