Duquesne Law Review

Volume 22 | Number 4 Article 12

1984

Labor Law - EEOC Conciliation Agreement - Arbitration - Judicial Review

John V. Pecori

LABOR LAW—EEOC CONCILIATION AGREEMENT—ARBITRATION—JUDICIAL REVIEW—The Supreme Court of the United States has held that an employer who breaches its collective bargaining agreement because of compliance with an Equal Employment Opportunity Commission conciliation agreement will not be shielded from liability by that agreement.

W.R. Grace & Co. v. Local 759, International Union of Rubber Workers, 103 S. Ct. 2177 (1983).

A collective bargaining agreement existed between W.R. Grace and Company, (Company), and Local Union 759, International Union of the United Rubber, Cork, Linoleum and Plastic Workers of America (Union), which expired in March of 1974; this agreement contained seniority provisions relating to layoffs and shift preferences and a clause requiring the parties to arbitrate grievances.[1] Because of failed negotiations, the Union called a strike which began in March of 1974 and ended in May of 1974 with the approval of a new agreement containing the same seniority and arbitration provisions that had been in the prior agreement.[2] During the strike, the Company employed strike replacements who were retained after the settlement of the strike and worked in conjunction with the regular employees.[3]

In October of 1973, prior to the March 1974 expiration of the first collective bargaining agreement, the Equal Employment Opportunity Commission (EEOC) invited the Company to conciliate alleged discrimination by the Company in hiring of blacks and women. Thus, the seniority provisions of the collective bargaining agreement, which allegedly perpetuated the discrimination, were at issue.[4] The Company accepted the EEOC's invitation to concili-

---

1. W.R. Grace & Co. v. Local 759, Int'l Union of Rubber Workers, 103 S. Ct. 2177, 2180 (1983).

2. *Id.*

3. *Id.*

4. *Id.* Conciliation, as practiced by the EEOC, means that the offending company, the EEOC, and the union involved (if any) negotiate to reach a mutually satisfactory conclusion wherein the EEOC standards are met with the least possible cost and inconvenience to the company and the union. Civil Rights Act of 1964, Title VII, Pub. L. No. 88-352, 42 U.S.C. § 2000e-2000f (1976) (the Civil Rights Act was enacted to assure equality of employment opportunities by eliminating those practices and devices that discriminate on the basis of race, color, religion, sex or national origin).

ate.[5] The Union was also invited to participate in the conciliation process but declined to do so.[6]

After settlement of the strike in May of 1974, pursuant to its negotiations with the EEOC, the Company allowed some women strike replacements to retain positions ahead of regular male employees with more seniority.[7] The Company also denied regular male employees the right to exercise shift preference seniority over the new female employees.[8] The men affected by these actions filed grievances under the collective bargaining agreement requesting arbitration.[9] The Company refused to arbitrate and sought an injunction in the United States District Court for the Northern District of Mississippi to prohibit arbitration of the employee grievances while it was negotiating an agreement with the EEOC.[10] The Union counterclaimed to compel arbitration.[11]

Prior to a ruling by the district court, the Company and the EEOC signed a conciliation agreement on December 11, 1974 which ratified and mandated the Company's treatment of the women employees regarding seniority provisions and job placement.[12] The Company then amended its complaint in the district court action, adding the EEOC as a defendant and emphasizing that the arbitration sought by the Union would violate the terms of the conciliation agreement.[13] The EEOC cross-claimed against the Union and counterclaimed against the Company, seeking a declaratory judgment that the conciliation agreement prevailed over the collective bargaining agreement provisions or, in the alternative, that the seniority provisions were not a bona fide seniority system protected by section 703(h) of the Civil Rights Act.[14]

While the dispute was still pending in district court, the Company laid off employees pursuant to the conciliation agreement, some of whom would have been protected by the seniority provision of the collective bargaining agreement; these employees filed

---

5. 103 S. Ct. at 2180.
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id. See also* the decision of the district court W.R. Grace & Co. v. Local 759, Int'l Union of Rubber Workers, 403 F. Supp. 1183 (N.D. Miss. 1975).
11. 103 S. Ct. at 2180.
12. *Id. See* text accompanying notes 7-8.
13. 103 S. Ct. at 2180.
14. *Id. See* Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(h) (1976).

grievances.[15] In November of 1975, the district court granted summary judgment for the EEOC and the Company.[16]

Upon appeal by the Union, the decision was reversed by the United States Court of Appeals for the Fifth Circuit and the Company was compelled to arbitrate.[17] While the appeal was pending, the Company laid off more male employees pursuant to the conciliation agreement. Those male employees then filed grievances.[18]

As a result of the decision by the court of appeals, the Company reinstated the laid off employees to the positions to which the collective bargaining agreement entitled them.[19] The employee grievances seeking back pay proceeded to arbitration.[20] In August of 1978, the first of these grievances, that of a male employee who was demoted while the district court order was in effect, was brought before Arbitrator Anthony J. Sabella, who denied the grievance.[21]

The next employee grievances to reach arbitration were those of three male employees who had been laid off, two after and one before the district court order.[22] Arbitrator Gerald A. Barrett held for the employees, finding that the collective bargaining agreement made no exceptions for good faith violations of the seniority provisions and the district court's order did not relieve the Company of liability for its breach.[23]

The Company then filed an action in federal district court to reverse Barrett's arbitration award.[24] The district court granted

---

15. 103 S. Ct. at 2181.

16. *Id.* The district court held that the seniority provisions could be modified under Title VII to correct past discrimination and that the conciliation agreement was binding upon all parties. *Id.*

17. *Id.* The court of appeals held that because the seniority provisions of the collective bargaining agreement were not enacted for a discriminatory purpose, they were lawful and, therefore, could not be changed without the Union's consent. *Id. See* W.R. Grace & Co. v. Local 759, Int'l Union of Rubber Workers, 565 F.2d 913 (5th Cir. 1978).

18. 103 S. Ct. at 2181.

19. *Id.*

20. *Id.*

21. *Id.* Although Sabella felt that the employee was entitled to prevail under the collective bargaining agreement, he felt it unfair to penalize the Company for conduct conforming to a court order. *Id.*

22. *Id.*

23. *Id.* at 2181-82. Barrett concluded that the collective bargaining agreement did not require him to follow the Sabella arbitration decision as the agreement specifically limits the arbitrator's authority to considering if the express terms of the contract have been violated and Sabella had exceeded the scope of his authority in considering the fairness of enforcing the agreement. *Id.*

24. 103 S. Ct. at 2182.

summary judgment for the Company stating that public policy prevented enforcement of the collective bargaining agreement during the period prior to the court of appeals' reversal.[25] The United States Court of Appeals for the Fifth Circuit reversed[26] and the United States Supreme Court granted certiorari.[27]

Justice Blackmun, writing for a unanimous Court, stated that the only issue to be decided was the validity of upholding the Barrett arbitration award.[28] Justice Blackmun noted that a court may not review the merits of an arbitration award unless the arbitrator went beyond the scope of the authority given him by the collective bargaining agreement.[29] If the arbitrator's decision "draws its essence from the collective bargaining agreement" it must be enforced, even if the arbitrator's basis for decision seems ambiguous.[30] Therefore, the enforcement of the Barrett award by the court of appeals was correct.[31]

Barrett's decision that he was not bound to follow Sabella was based upon his own interpretation of the collective bargaining agreement, which clearly gave Barrett the right to such interpretation.[32] On the merits, Barrett had found that the collective bargaining agreement gave him no authority to excuse a breach of the seniority provisions based upon a good faith defense.[33] Therefore, Justice Blackmun emphasized that since Barrett's exercise of power was proper under the contract, the court must uphold the

---

25. W.R. Grace & Co. v. Local 759, Int'l Union of Rubber Workers, 403 F. Supp. 1183 (N.D. Miss. 1975). The public policy recognized by the district court is the enforcement of Title VII of the Civil Rights Act. *Id.* at 1188.

26. W.R. Grace & Co. v. Local 759, Int'l Union of Rubber Workers, 652 F.2d 1248 (5th Cir. 1981).

27. W.R. Grace & Co. v. Local 759, Int'l Union of Rubber Workers, 102 S. Ct. 3481 (1982).

28. 103 S. Ct. at 2182.

29. *Id.* Thus, the court's opinion of the arbitrator's reasoning is not at issue. *See* Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 596 (1960).

30. 103 S. Ct. at 2182.

31. *Id.*

32. *Id.* at 2183. The 1974 and 1977 collective bargaining agreements both defined the parameters of the arbitrator's jurisdiction as follows:

> The jurisdiction and authority of the Arbitrator of the grievance and his opinion and award shall be confined exclusively to the interpretation and application of the express provision or provisions of this Agreement at issue between the Union and the Company. He shall have no authority to add to, adjust, change, or modify any provisions of this Agreement. Art. IV, § 3; App. 19, 31. The decisions of the Arbitrator on the merits of any grievance adjudicated within his jurisdiction and authority as specified in this Agreement shall be final and binding on the aggrieved employee or employees, the Union and the Company. Art. IV, § 4; App. 20, 32.

33. *Id. See supra* note 23 and accompanying text and note 32 and accompanying text.

award unless it was contrary to some explicit, well-defined public policy.[34] Barrett's interpretation of his own authority under the collective bargaining agreement precluded his consideration of public policy but, in any event, the court is the proper forum in which to resolve policy considerations.[35]

While observing that obedience to judicial orders is an important public policy,[36] Justice Blackmun explained that enforcement of the collective bargaining agreement as interpreted by Barrett would not violate that policy.[37] Barrett's award did not order the Company to place the affected male workers in their original positions, thus preventing the Company from complying with the EEOC agreement; it simply ordered the Company to pay damages for its breach of the collective bargaining agreement.[38] Justice Blackmun emphasized that since the Company voluntarily committed itself to two conflicting contracts, the Company, not the workers, should bear the loss of those conflicting obligations.[39] Justice Blackmun declared that economic loss from discrimination against blacks and women was bound to fall upon some party and because the Company perpetrated the discrimination, it should not be permitted to shift the loss to the employees.[40]

The Court then addressed the question of whether the important public policy of encouraging voluntary compliance with Title VII would be adversely affected by enforcing the Barrett order, concluding that it would not.[41] The conciliation agreement was signed by the Company and the EEOC but not by the Union; therefore, the agreement could not alter the collective bargaining

---

34. 103 S. Ct. at 2183. *See* Hurd v. Hodge, 334 U.S. 24, 34-35 (1948). *See infra* note 89.

35. 103 S. Ct. at 2183. *See* International Bhd. of Teamsters v. Washington Employers, Inc., 557 F.2d 1345, 1350 (9th Cir. 1977); Local 453 v. Otis Elevator Co., 314 F.2d 25, 29 (2d Cir. 1963) (in each case the court reiterated the position that courts are the proper forum in which to resolve questions of public policy). Justice Blackmun noted that, to be valid, a public policy must be clear, well-defined and ascertainable from law and legal precedents, rather than inferred from general considerations of public interest. 103 S. Ct. at 2183.

36. 103 S. Ct. at 2184. When a court acting within its jurisdiction issues an injunction, it must be obeyed until the injunction is vacated or withdrawn. *See* Walker v. City of Birmingham, 388 U.S. 307, 313-14 (1967).

37. 103 S. Ct. at 2184.

38. *Id.* at 2184-85.

39. *Id.* Impossibility caused by a judicial order prohibiting performance will excuse a party's performance only if the fault of the party owing performance did not contribute to the order. Lowenschuss v. Kane, 520 F.2d 255, 265 (2d Cir. 1975).

40. 103 S. Ct. at 2186.

41. *Id. See* Alexander v. Gardner-Denver Co., 415 U.S. 36, 44 (1974) (the Court stated that voluntary compliance is the preferred means of enforcing Title VII where a black employee claimed his discharge resulted from racial discrimination).

agreement, as the Union was not a party to it.[42] The Court hypothesized that if such an alteration of a collective bargaining agreement were upheld, chaos would ensue in federal labor policy as companies and unions could never be sure that their agreements had not been altered without their consent.[43] The Court concluded that upholding the Barrett order would actually serve to promote the public policy of voluntary compliance with Title VII as the Union might offer to sign the conciliation agreement in exchange for other concessions by the Company; thus, all parties involved, the Company, the Union and the EEOC, would be working together to achieve compliance with Title VII.[44] The judgment of the court of appeals was therefore affirmed.[45]

The nature of arbitration itself imposes a limit on the extent to which it may be reviewed by the courts.[46] Arbitration is a voluntary proceeding in which an impartial judge determines the outcome of a dispute. The judge, who has been selected by both parties, makes a decision that will be accepted as final and binding in accordance with the parties' advance agreement.[47] Arbitration is one of the oldest methods of settling disputes, dating back to Roman law, and the debate regarding judicial review of arbitral awards is as old as arbitration itself.[48] Because of the wide use of arbitration today, especially in labor agreements, it is important to examine the parameters of the courts' power in reviewing arbitrators' awards.[49]

In *Textile Workers Union of America v. Lincoln Mills of Ala-*

---

42. 103 S. Ct. at 2184.

43. *Id.* at 2186. *See* Charles Dowd Box Co. v. Courtney, 368 U.S. 502, 509 (1962) (an employer refused to honor an agreement reached by its representatives and the Union, claiming its representatives lacked authority to make such an agreement and that the Union had knowledge of this lack of authority).

44. 103 S. Ct. at 2186.

45. *Id.*

46. Jalet, *Judicial Review of Arbitration: The Judicial Attitude*, 45 CORNELL L.Q. 519, 521 (1960). If courts were given unlimited powers of review over arbitration decisions, the arbitration process would lose its finality thereby losing its expediency and economy. *Id.*

47. ELKOURI, HOW ARBITRATION WORKS 2 (1952).

48. *Id.* at 519.

49. Kaden, *Judges and Arbitrators: Observations on the Scope of Judicial Review*, 80 COLUM. L. REV. 267, 275 (1980). In certain areas such as labor agreements, arbitration is much more effective at resolving disputes than the courts. Besides the obvious advantages of cost and time, arbitration provides the parties to a dispute with other advantages unavailable in court. The parties define the rules by which disputes will be settled in their contracts and name the arbitrator who will settle the dispute. In selecting the arbitrator, the parties may choose someone with knowledge of customs, practices and conditions of the industry, knowledge that a judge would certainly lack. *Id.*

bama,[50] the Supreme Court first announced that an agreement to arbitrate would be specifically enforced by federal courts.[51] That landmark decision was followed by three cases involving the United Steelworkers of America, all decided on June 20, 1960, which did much to define the proper role of the courts regarding arbitration decisions.[52]

In *United Steelworkers v. American Manufacturing Co.*,[53] the Court emphasized that when a collective bargaining agreement exists between the parties which provides for settlement of disputes by arbitration, courts have no right to review the merits of a grievance.[54] The agreement in *American Manufacturing Co.* provided that the arbitrator resolve all disputes between the parties "as to the meaning, interpretation and application of the provisions of the agreement."[55] Thus, it was the arbitrator's construction that was bargained for, not that of the court, so the court had no right to overrule the arbitrator's interpretation of the agreement.[56]

In *United Steelworkers v. Warrior & Gulf Navigation Co.*,[57] the majority stated that if courts had the final word on the merits of arbitration awards, the federal policy of promoting industrial stabilization through collective bargaining agreements would be undermined.[58] It was noted that if courts are permitted to review the

---

50. 353 U.S. 448 (1957). An employer and a union had a collective bargaining agreement which provided that there would be no strikes or work stoppages and that grievances would be handled by arbitration. A grievance arose and the company refused to arbitrate. *Id.* at 449.

51. *Id.* at 451. In *Lincoln Mills*, the Court held that a court must apply federal substantive law derived from the policy of national labor laws. *Id.* at 456.

52. United Steelworkers v. American Mfg. Co., 363 U.S. 564 (1960) (union brought a suit under section 301(a) of the Labor Management Relations Act to compel arbitration of an employee's grievance based on seniority provisions of the contract); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960) (union brought a suit under section 301 of the Labor Management Relations Act to compel arbitration of a grievance based upon employer's practice of contracting out work while laying off employees who could have performed such work); United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960) (employees were discharged during the term of a collective bargaining agreement containing a provision for arbitration of disputes, but arbitration proceeding itself occurred after the agreement had expired).

53. 363 U.S. 564 (1960).

54. *Id.* at 568. The Court stated: "When the judiciary undertakes to determine the merits of a grievance under the guise of interpreting the grievance procedure of collective bargaining agreements, it usurps a function which under that regime is entrusted to the arbitration tribunal." *Id.* at 569.

55. *Id.* at 565.

56. *Id.* at 568.

57. 363 U.S. 574 (1960). *See supra* note 52.

58. *Id.* at 578.

merits of an arbitrator's decision, they usurp the power of the arbitrator, who is an indispensible agency in a continuous collective bargaining process. The majority further stated that an arbitrator may settle disputes at the plant level using the knowledge of customs and practices of a particular industry, which a judge may not possess.[59] Therefore, an order to arbitrate a grievance should be made unless it may be said with positive assurance that the arbitration clause is not susceptible in an interpretation that embraces the asserted dispute. Thus, only the most definite evidence of a purpose to exclude the claim from arbitration can prevail.[60]

In *United Steelworkers v. Enterprise Wheel & Car Corp.*,[61] an arbitrator found that a group of employees had been improperly discharged and ordered the company to reinstate them with back pay.[62] Before the arbitrator's decision, however, the collective bargaining agreement had expired. The arbitrator claimed that the expiration of the agreement did not affect the validity of his award, but the company disagreed.[63] The Court of Appeals for the Fourth Circuit agreed with the Company and reversed the arbitrator's award.[64] The Supreme Court reversed, upholding the arbitrator's award, finding that the lower court merely disagreed with the arbitrator's interpretation of the agreement.[65] The Court made its determination on the parameters of an arbitrator's decision, stating:

> . . . an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. [Only] when the arbitrator's words manifest an infidelity to this obligation [do] courts have no choice but to refuse enforce-

---

59. *Id.* at 582. The Court observed: "The ablest judge cannot be expected to bring the same experience and competence to bear upon the determination of a grievance, because he cannot be similarly informed." *Id.* at 582.

60. *Id.* at 582-85.

61. 363 U.S. 593 (1960). A group of employees was fired for a work stoppage protesting the firing of another employee. The collective bargaining agreement provided that the arbitrator decide "the meaning and application of the agreement" with his decision final and binding on the parties. *Id.* at 594-95.

62. *Id.* at 595. The arbitrator awarded the employees full back pay except for a period of ten days suspension, which he felt was sufficient punishment for their improper conduct. *Id.*

63. *Id.*

64. United Steelworkers v. Enterprise Wheel & Car Corp., 269 F.2d 327 (4th Cir. 1959) (the circuit court held for the company stating that the terms of the collective bargaining agreement did not control because the agreement had expired).

65. 363 U.S. 593, 598 (1960).

ment of the award.[66]

Relying on these parameters, the Supreme Court upheld the arbitrator's decision even though it was somewhat ambiguous, stating that "[a] mere ambiguity in the opinion accompanying an award, which permits the inference that the arbitrator may have exceeded his authority, is not a reason for refusing to enforce the award."[67] Thus, only a definite showing that the arbitrator's decision does not "draw its essence from the collective bargaining agreement" was found to justify a court's overruling it.

The general rule, articulated by the Court in the Steelworkers' cases, that courts may not review the merits of an arbitrator's award, is theoretically unquestioned today.[68] In practice, however, some lower courts have ignored the rule and indeed reviewed the merits of certain cases.[69] In *Mistletoe Express Service v. Motor Expressmen's Union*,[70] the Court of Appeals for the Tenth Circuit refused to enforce an award mandating discipline but not discharge of a party who committed an infraction specified in the agreement as one warranting discharge.[71] The court reviewed the merits of the case, concluding that the agreement was unambiguous and the arbitrator went beyond his authority in basing his decision on the employer's past uneven enforcement and failure to use progressive discipline.[72] Similarly, in *Textile Workers Union v. American Thread Co.*,[73] the Court of Appeals for the Fourth Circuit refused to enforce an arbitrator's decision that a grievant be disciplined and not discharged.[74] The court observed that the collective bargaining agreement gave the employer the right to discipline or discharge an employee for "just cause" and that the arbitrator had exceeded his authority in differentiating between "just cause" needed for discharge and "just cause" needed for discipline.[75]

It has been noted that the importance of these and other exam-

66. *Id.* at 597.
67. *Id.* at 598.
68. Kaden, *supra* note 49, at 270.
69. *Id.* at 270-72. *See infra* notes 70-74 and accompanying text.
70. 566 F.2d 692 (10th Cir. 1977).
71. *Id.* at 695.
72. *Id.*
73. 291 F.2d 894 (4th Cir. 1961).
74. *Id.* at 899-901.
75. *Id. See also* Truck Drivers Local 784 v. Ulry-Talbert Co., 330 F.2d 562 (8th Cir. 1964) (the court concluded that the arbitrator lacked authority to measure the degree of discipline warranted by an infraction).

ples of judicial intervention into the merits of an arbitrator's decision lies not so much in the judicial instinct to intervene and correct a latent injustice, as in the judicial instinct to distrust the finality of a collective bargaining agreement.[76] Labor agreements are seen as having such a profound social and economic effect on our country that some judges fear placing their interpretation in the hands of laymen. In addition, the generality of the standard for upholding an arbitrator's decision—whether the award draws its essence from the agreement—gives a judge great latitude in interpreting an award as outside of the essence of the agreement if he disagrees with the award.[77]

A particularly troublesome concern of judges in reviewing arbitration awards is how public law should affect the awards. In *Alexander v. Gardner-Denver Co.*,[78] the Supreme Court held that an arbitration award does not act to foreclose an employee from bringing a discrimination claim before the EEOC or the courts.[79] The court found that the Civil Rights Act embodies too important a national policy to force a party to choose between a statutory remedy and a contractual remedy.[80]

Sometimes parties to a collective bargaining agreement will direct the arbitrator to consider law which is pertinent to the agreement; in such circumstances, the arbitrator clearly has the authority to consider law. In *International Brotherhood of Teamsters, Local 117 v. Washington Employers, Inc.*,[81] the court found no merit in the employer's argument that the arbitrator had exceeded his authority by looking beyond the scope of the agreement to state law when the parties had requested and stipulated that he do so.[82]

When the parties give the arbitrator no power to look to the law

---

76. Kaden, *supra* note 49, at 274.

77. *Id.* at 276.

78. 415 U.S. 36 (1974) (a black employee claimed that his discharge resulted from racial discrimination).

79. *Id.* at 60.

80. *Id.* at 44-60. The Court stated:

> We think, therefore, that the federal policy favoring arbitration of labor disputes and the federal policy against discriminatory employment practices can best be accommodated by permitting an employee to pursue fully both his remedy under the grievance-arbitration clause of a collective-bargaining agreement and his cause of action under Title VII.

Id. at 59-60.

81. 557 F.2d 1345 (9th Cir. 1977).

82. *Id.* at 1350.

in resolving disputes, the arbitrator is in a precarious position.[83] If he applies the law to the dispute, he risks a judicial determination that he acted beyond the scope of his authority; however, if he ignores the law, staying within the bounds of his authority, the arbitrator risks being reversed by the Court.[84] Some legal scholars, including Lewis B. Kaden,[85] advise that in the absence of manifest illegality, the arbitrator should decide grievances based solely on the contract, leaving legal issues to be resolved by the courts.[86]

Moreover, as the *W.R. Grace & Co.* Court stated, legal issues such as the public policy regarding an arbitration award are to be evaluated by the courts, not by an arbitrator.[87] To be judicially valid, a public policy must be definite.[88] If a valid public policy does exist, a *court* is compelled to consider it before enforcing an arbitration award.[89]

In *Alexander v. Gardner-Denver Co.*,[90] the Court concluded that Congress intended cooperation and voluntary compliance to be the preferred means of enforcing Title VII.[91] The *Alexander* Court found that this preferred means of enforcement constituted a valid public policy consideration as expressed in legal precedent.[92] Further, *Charles Dowd Box Co. v. Courtney*,[93] the Court recognized the validity of the Federal labor policy of industrial and economic

---

83. Kaden, *supra* note 49, at 287.

84. *Id. See* Telephone Workers Local 827 v. New Jersey Bell Tel. Co., 584 F.2d 31 (3d Cir. 1978) (arbitrator's award was overruled because it conflicted with the law, yet the arbitrator was commended for staying within the bounds of his authority).

85. Louis B. Kaden is a Professor of Law at Columbia University; B.A. 1963, LL. B. 1967, Harvard University.

86. Kaden, *supra* note 49, at 289.

87. Local 453, Int'l Union of Elec. Workers v. Otis Elevator Co., 314 F.2d 25, 29 (2d Cir.), *cert. denied*, 373 U.S. 943 (1963); International Bhd. of Teamsters v. Washington Employers, Inc., 557 F.2d 1345, 1350 (9th Cir. 1977). *See supra* note 35 and accompanying text.

88. *See* Muschany v. United States, 324 U.S. 49 (1945). In *Muschany*, the Court stated: "Public policy is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests." *Id.* at 66.

89. *See* Hurd v. Hodge, 334 U.S. 24 (1948). The Court observed:

> The power of the federal courts to enforce the terms of private agreements is at all times exercised subject to the restrictions and limitations of the public policy of the United States as manifested in the Constitution, treaties, federal statutes, and applicable legal precedents. Where the enforcement of private agreements would be violative of that policy, it is the obligation of courts to refrain from such exertions of judicial power.

Id. at 34-35.

90. 415 U.S. 36 (1973).

91. *Id.* at 44. The court relied on congressional intent as explicated in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 800 (1973).

92. 415 U.S. at 44.

93. 368 U.S. 502 (1962).

stability, and reiterated the position that this policy should be observed when a court reviews an arbitration award.[94]

Within this historical framework, it is evident that Justice Blackmun in *W.R. Grace & Co. v. Local 759, International Union of Rubber Workers*[95] followed both the substantive law and judicial policy in determining that the Barrett award should be enforced. The cases examined above[96] assert a rule of law that is respected by courts today: courts have no right to review the merits of a grievance where a collective bargaining agreement exists between the parties which mandates arbitration.[97]

As legal, social, and economic problems become more complex in society in general, and in the area of labor relations specifically, the laws and policies governing arbitration itself and judicial review of arbitration must be crystalized if arbitration is to provide the expediency, finality and economy for which it was designed. A delicate balance must be reached wherein the arbitrator, who has industrial expertise and mutual consent of the parties, is respected in his decisions as long as they are based upon the agreement, and the judge, who has legal expertise and authority, is respected in his decisions regarding public policy issues involved in the arbitration award.

Through an awareness of the proper parameters of the roles of judges and arbitrators, courts may reach that elusive balance of authority which is important for the future effectiveness of arbitration. Arbitration, properly conceived and implemented, has the capacity to become a keystone in a new streamlined foundation of labor relations based upon stability, efficiency and cooperation, that is so necessary to economic revitalization in the 1980's.

John V. Pecori

---

94. *Id.* at 509. The Court stated that parties to a collective bargaining agreement must have reasonable certainty that the provisions of their contracts will be honored or nationwide industrial anarchy might result. *Id.*

95. 103 S. Ct. 2177 (1983).

96. *See* United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); United Steelworkers v. American Mfg. Co., 363 U.S. 564 (1960).

97. *See supra* note 96.