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# Major League Baseball Players Ass'n v. Garvey Narrows the Judicial Strike Zone of Arbitration Awards

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*MAJOR LEAGUE BASEBALL PLAYERS ASS'N V.  
GARVEY*<sup>1</sup> NARROWS THE JUDICIAL STRIKE  
ZONE OF ARBITRATION AWARDS

“Discourage litigation. Persuade your neighbors to compromise whenever you can . . . the nominal winner is often a real loser in fees, in expenses, and waste of time.”<sup>2</sup>

I. INTRODUCTION

As the cost to litigate a claim has risen and the amount of time required for final adjudication of a claim has become longer, parties who enter contractual relationships have begun to engage in alternative methods of dispute resolution.<sup>3</sup> One of the most commonly chosen techniques of alternative dispute resolution<sup>4</sup> is arbitration.<sup>5</sup>

Arbitration is most commonly utilized in the labor employment

1. Major League Baseball Players Ass'n v. Garvey, 532 U.S. 504 (2001).

2. Abraham Lincoln, Notes for a Law Lecture, in *THE COLLECTED WORKS OF ABRAHAM LINCOLN* (Roy P. Basler & Christian O. Basler eds., 1990), <http://showcase.netins.net/web/creative/lincoln/speeches/lawlect.htm>. Even in 1850, Abraham Lincoln seemed to recognize the need for alternatives to litigation. *Id.*

3. Kenneth M. Curtin, *An Examination of Contractual Expansion and Limitation of Judicial Review of Arbitral Awards*, 15 OHIO ST. J. ON DISP. RESOL. 337, 338 (2000) (discussing attempts by contracting parties to expand or limit judicial review of arbitration awards and the corresponding public policy considerations).

4. *Id.* at 338. Arbitration is becoming a popular means of dispute resolution for parties in many different arenas. Curtis D. Brown, *Arbitration: It's Not Just for Baseball Players Anymore*, at [http://expertpages.com/news/arbitration\\_baseball.htm](http://expertpages.com/news/arbitration_baseball.htm) (last visited Dec. 17, 2002). For example, companies have added arbitration clauses to customer accounts, using it as means of quick and cheap resolution for collecting on delinquent accounts. *Id.* Also, consumers are utilizing arbitration to solve disputes over faulty products and services. *Id.* As arbitration is expanding into many different settings, the majority of the adults in the United States say they would choose arbitration over filing a lawsuit to resolve a dispute. American Financial Services Association, *Lenders Adopt Voluntary Standard on Arbitration Agreements*, at [http://www.afsaonline.org/news/docs/ArbitrationAgreements\\_June2000.doc](http://www.afsaonline.org/news/docs/ArbitrationAgreements_June2000.doc) (last visited Dec. 17, 2002) (stating that when adults are informed of the cost difference between arbitration and traditional lawsuits, eighty-two percent would opt for arbitration).

5. See BLACK'S LAW DICTIONARY 100 (7th ed. 1999) (defining “arbitration” as “a method of dispute resolution involving one or more neutral third parties who are usu[ally] agreed to by the disputing parties and whose decision is binding”).

arena for resolving disputes under a collective bargaining agreement.<sup>6</sup> The majority of collective bargaining agreements contain provisions for some form of grievance<sup>7</sup> procedure to resolve disputes that arise from the application and interpretation of the agreement.<sup>8</sup> Although parties to a collective bargaining agreement do not have to include an arbitration clause, its inclusion can serve purposes valuable both to the employer and to the employee.<sup>9</sup>

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6. Joseph F. Tremiti, *Misco and the Enforcement of Labor Arbitration Awards: No Longer a House Divided?*, 14 U. DAYTON L. REV. 279, 279 (1989) (discussing public policy grounds for vacating arbitration awards and the vagueness of the exception as articulated by the Supreme Court in prior holdings). Collective bargaining agreements usually govern the relationship between labor unions and management. Gregory T. Mayes, *The Third Circuit Defines the Public Policy Exception to Labor Arbitration Awards – Exxon Shipping Co. v. Exxon Seamen’s Union*, 993 F.2d 357 (3d Cir. 1993), 67 TEMPLE L. REV. 493, 493 (1994) (discussing Third Circuit’s application and formulation of the public policy exception for vacating arbitration awards). A collective bargaining agreement is negotiated and entered into by the labor union (on behalf of the employees) and the management. *Id.* These agreements cover a wide variety of subjects, including wages, hours, lay-offs, discipline, working conditions, health and accident insurance, retirement, pensions, and promotions. *See also* Archibald Cox, *Reflections Upon Labor Arbitration*, 72 HARV. L. REV. 1482, 1490 (1959) (discussing the limits of the judicial function in suits to compel performance of an agreement to arbitrate grievances). For a basic overview of collective bargaining agreements, see Cornell Law School’s Legal Information Institute, *Collective Bargaining & Labor Arbitration: An Overview*, at [http://www.law.cornell.edu/topics/collective\\_bargaining.html](http://www.law.cornell.edu/topics/collective_bargaining.html) (last visited Dec. 17, 2002).

7. *See* Mark E. Zelek, *Labor Grievance Arbitration in the United States*, 21 U. MIAMI INTER-AM. L. REV. 197, 202 (1989) (discussing the benefits of grievance arbitration and the effect of the procedure in the field of labor employment). A “grievance” is defined as “an assertion that the collective bargaining agreement has been violated” by one of the parties to the agreement. *Id.*

8. Mayes, *supra* note 6, at 493 (citing MARVIN. F. HILL, JR. & ANTHONY V. SINICROPI, *REMEDIES IN ARBITRATION* 32 (2d ed. 1990)). The most common remedy for grievances arising from a collective bargaining agreement is to submit the dispute to an arbitrator, who will determine a resolution to the problem. Zelek, *supra* note 7, at 197. By providing for arbitration in a collective bargaining agreement, parties to the agreement have a method for “solving the unforeseeable by molding a system of private law for all the problems which may arise and to provide for their solution in a way which will generally accord with the variant needs and desires of the parties.” *Id.* *See also* Douglas E. Ray, *Protecting the Parties’ Bargain After Misco: Court Review of Labor Arbitration Awards*, 64 IND L.J. 1, 6 (1988) (discussing *Misco* decision and urging courts to generally defer to the decisions of labor arbitrators and discussing necessary limits and dangers of the public policy exception). *See also infra* note 28.

9. *Int’l Ass’n of Machinists & Aerospace Workers v. Gen. Elec. Co.*, 865 F.2d 902, 903 (7th Cir. 1989) (holding that the parties had not agreed to arbitrate disputes over work assignments and thus a court could not decide the merits of the claim that the employer, in refusing to arbitrate, violated the collective bargaining agreement). The arbitration clause is usually included in a collective bargaining agreement as a final stage in a grievance procedure designed to prevent the discharge of employees without just cause. *Id.* These grievance and arbitration procedures provided in the collective bargaining agreement are conventionally regarded as the union’s compensation for surrendering the right to strike during the period while the agreement is in force. *See, e.g., United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 578 n.4 (1960) (commenting that the arbitration and grievance procedures are “the ‘quid pro quo’ for an agreement

Arbitration has gained widespread acceptance by Congress<sup>10</sup> and the Supreme Court of the United States.<sup>11</sup> With the extensive inclusion of arbitration as a means of resolving labor disputes, questions have arisen as to the court's role (if any) in the arbitration process. If the court is recognized as having some role in the arbitration process, the question then becomes: When is court intervention appropriate?<sup>12</sup> Further

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not to strike"); *Textile Workers Union v. Lincoln Mills of Ala.*, 353 U.S. 448, 455 (1957) (stating that "[p]lainly the agreement to arbitrate grievance disputes is the quid pro quo for an agreement not to strike"). Because a labor union is unlikely to easily give up the right to strike, agreements to arbitrate grievances are seen as a substitute method for holding the employer to the terms of the collective bargaining agreement. *Int'l Ass'n of Machinists*, 865 F.2d at 903.

10. See 9 U.S.C. §§ 1-16 (2001). In 1925, Congress enacted the Federal Arbitration Act. See 9 U.S.C. §§ 1-16 (2001). The principle objective of Congress was to "render commercial arbitration agreements enforceable in the face of a common law tradition that treated unexecuted promises to arbitrate as revocable." Samuel Estreicher, *Symposium on Labor Arbitration Thirty Years after the Steelworkers Trilogy: Arbitration of Employment Disputes Without Unions*, 66 CHL.-KENT. L. REV. 753, 761 (1990) (addressing the question of the appropriate legal response to arbitration of employment disputes in nonunion settings). However, it is important to note that the Federal Arbitration Act explicitly applies to commercial arbitration and not to labor arbitration. 9 U.S.C. § 1 (2001) (stating that "nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce"). For further discussion of the Federal Arbitration Act, see notes 31-38 *infra*.

In 1947, Congress passed Section 301 of the Labor Management Relations Act in which Congress declared that it favored arbitration, as opposed to other methods, for resolving labor and/or industrial disputes. See 29 U.S.C. § 185 (2001). This statute is also referred to as the Taft-Hartley Act. Roberto L. Corrada, *Taft-Hartley Symposium: The First Fifty Years: The Arbitral Imperative in Labor and Employment Law*, 47 CATH. U.L. REV. 919, 919 (1998) (examining arbitration in the workplace and discussing rationales that arbitration should be included in labor and employment law). For further discussion of this statute, see notes 40-42 *infra*. This statute will be referred to as "Section 301" throughout this note.

11. Zelek, *supra* note 7, at 200. The United States Supreme Court established some basic legal principles which laid the foundation for labor arbitration that remain strong today. *Id.* See *United Steelworkers v. Am. Mfg. Co.*, 363 U.S. 564 (1960) (holding that the function of the courts in a dispute arising from a collective bargaining agreement is limited to ascertaining whether the party seeking arbitration is making a claim which is governed by the contract in question and the court is not to weigh the merits of the grievance); *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960) (holding that an arbitrator, and not the courts, is to decide the meaning of the collective bargaining agreement); *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960) (holding that a reviewing court should not interfere with an arbitrator's interpretation of the collective bargaining agreement and such an award should not be vacated because the court's interpretation is different than the arbitrator's); *Textile Workers Union v. Lincoln Mills of Ala.*, 353 U.S. 448 (1957) (holding that the Taft-Hartley Act is not only a jurisdictional basis for federal courts over labor contract arbitration clauses but is also a source of procedural law for labor arbitration). For a further discussion of these cases, see notes 42-49 *infra*.

12. See Curtin, *supra* note 3, at 339. Traditionally, courts have intervened in arbitration "at the onset of arbitration to determine whether the agreement to arbitrate is valid and enforceable . . . whether the issue itself is arbitrable or whether it concerns an area where public policy dictates that all such disputes be resolved by the courts." *Id.* Courts also may become involved in arbitration when it is complete and the arbitrator has rendered a decision. *Id.* Parties may ask a court to enforce an award and the court then "reviews the award to ensure that [its] enforcement will not

problems arise when parties petition a court to vacate an arbitration award.<sup>13</sup> For instance, what is a reviewing court's role if it finds that the arbitration award violates public policy?<sup>14</sup> What is a reviewing court's role when it finds the arbitrator's factual findings are erroneous or irrational?<sup>15</sup>

This note examines judicial review of arbitration awards emphasizing if and when a reviewing court can vacate an arbitrator's award.<sup>16</sup> Part II explores the goals and principles of arbitration,<sup>17</sup> the benefits of arbitration,<sup>18</sup> arbitration legislation,<sup>19</sup> and grounds for vacating an arbitration award.<sup>20</sup> Also discussed in Part II are Supreme Court decisions dealing with judicial review of arbitration awards.<sup>21</sup> Part III provides a statement of the facts,<sup>22</sup> the procedural history,<sup>23</sup> and the United States Supreme Court decision in *Major League Baseball Players Ass'n v. Garvey*.<sup>24</sup> Finally, Part IV analyzes the *Garvey* decision, argues for a broader scope of judicial review of arbitration awards, and suggests an alternative ground for vacating arbitration awards.<sup>25</sup>

## II. BACKGROUND

### A. *The Process of Arbitration*

Most employers and unions who enter into a collective bargaining relationship usually have a well-defined procedure for resolving disputes

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violate any procedural due process or other public policy concerns." *Id.*

13. See *infra* notes 43-71. Problems generally arise when parties attempt to appeal an arbitration award because such appeals lead to delay and these delays may "undercut the entire labor arbitration by threatening both the finality of the process and the positive labor relations benefits of a final decision." Douglas E. Ray, *Court Review of Labor Arbitration Awards Under the Federal Arbitration Act*, 32 VILL. L. REV. 57, 67 (1987) (discussing how federal courts apply the Federal Arbitration Act in reviewing arbitration awards).

14. See *infra* notes 63-67.

15. See *infra* notes 68-71.

16. See *infra* Parts II-IV.

17. See *infra* notes 27-29 and accompanying text.

18. See *infra* note 30 and accompanying text.

19. See *infra* notes 31-42 and accompanying text.

20. See *infra* notes 57-71 and accompanying text.

21. See *infra* notes 43-49 and accompanying text.

22. See *infra* notes 75-86 and accompanying text.

23. See *infra* notes 87-95 and accompanying text.

24. See *infra* notes 96-106 and accompanying text.

25. See *infra* notes 107-84 and accompanying text.

which arise under the labor contract.<sup>26</sup> The arbitrator's role in this process is ordinarily very limited.<sup>27</sup>

Arbitration promotes two primary objectives: "settling disputes efficiently and avoiding long and expensive litigation."<sup>28</sup> The benefits of arbitration explain its widespread use in labor disputes arising from collective bargaining agreements.<sup>29</sup> However, "[m]uch of the benefit of

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26. Mark Berger, *Can Employment Law Arbitration Work?*, 61 UMKC L. REV. 693, 698-99 (1993) (discussing possible changes to labor arbitration principles in order to recognize it for what it can offer and so that it may be applied in a manner which is adapted to the aspects of employment law dispute resolution). This procedure usually requires the parties to submit their grievances to arbitration. *Id.* at 699-700. For a general outline of how this procedure can be structured, see *id.* at 698-701. The parties to the collective bargaining agreement may fashion the arbitration process as they wish. For example, the arbitration can be conducted by one arbitrator or a panel of arbitrators, depending on how the parties structure their agreement. Jane Byeff Korn, *Changing Our Perspective on Arbitration: A Traditional and A Feminist View*, 1991 U. ILL. L. REV. 67, 70 (1991) (discussing the courts' view of arbitration from a traditional view and from a feminist perspective). Also, parties can select the arbitrator(s) "through the mutual preferences of the parties." Harold H. Bruff, *Public Programs, Private Deciders: The Constitutionality of Arbitration in Federal Programs*, 67 TEX. L. REV. 441, 444 (1989) (discussing a general approach addressing the concerns raised by arbitration in federal programs). This may be a key aspect of arbitration that makes the process more appealing to parties than traditional litigation. *Id.*

27. Charles B. Craver, *Labor Arbitration as a Continuation of the Collective Bargaining Process*, 66 CHI.-KENT. L. REV. 571, 622 (1990) (discussing the way in which contracting parties and arbitrators should modify their behavior to guarantee that arbitral proceedings will optimally enhance labor-management relationships). The arbitrator's principal function "is to effectuate the intent of the parties." *Id.* The arbitrator's main "source of authority is the [actual] collective bargaining agreement and he [or she] must interpret and apply that agreement in accordance . . . with . . . the various needs and desires of the parties." *Id.*

28. *Remmey v. Painewebber, Inc.*, 32 F.3d 143, 146 (4th Cir. 1994) (holding that courts are not free to overturn an arbitration award because the court would have reached a different conclusion if presented with the same facts). The objective of arbitration is commonly stated as the final disposition of differences between parties in a faster, less expensive, more expeditious and possibly less formal manner than is available in ordinary court proceedings. 4 AM. JUR. 2D *Alternative Dispute Resolution* § 8 (1995). *But see* Julian J. Moore, Note, *Arbitral Review (or Lack Thereof): Examining the Procedural Fairness of Arbitrating Statutory Claims*, 100 COLUM. L. REV. 1572, 1595-98 (2000) (discussing that some of these objectives and benefits need additional safeguards in order for the system to work properly and for the benefit of all parties involved).

29. Harry T. Edwards, *Judicial Review of Labor Arbitration Awards: The Clash Between the Public Policy Exception and the Duty to Bargain*, 64 CHI.-KENT. L. REV. 3, 3 (1988) (discussing the need in the federal courts for a uniform rule of public policy in allowing courts to vacate arbitration awards). One such benefit is that arbitration allows workers to "have their day in court," which can be "therapeutic" to parties that have a grievance with their employer. *Id.* Another recognized benefit of arbitration is that the decision involves a judgment from a neutral third party who is well known and respected by the parties. *Id.* An alternative benefit includes the flexibility of the process, which can be adjusted to suit the needs of the particular parties to the dispute. *Id.* *But see*, William B. Gould IV, *Judicial Review of Labor Arbitration Awards—Thirty Years of the Steelworkers Trilogy: The Aftermath of AT&T and Misco*, 64 NOTRE DAME L. REV. 464, 493 (1989) (indicating that the arbitration process is beginning to resemble traditional litigation, with the pervasive presence of lawyers, cross-examination of witnesses, submission of briefs, and written

labor arbitration . . . appears to be premised on the finality of the arbitrator's ruling.<sup>30</sup>

### B. Legislation Relating to Arbitration

In 1925, Congress enacted the Federal Arbitration Act<sup>31</sup> to permit judicial enforcement of commercial arbitration agreements.<sup>32</sup> The major

decisions containing legal citations).

For additional benefits of the arbitration process and specific methods of alternative dispute resolution, see Edward Brunet, *Questioning the Quality of Alternate Dispute Resolution*, 62 TUL. L. REV. 1, 11-15 (1987) (discussing the relationship of alternative dispute resolution and litigation); Jethro K. Lieberman & James F. Henry, *Lessons from the Alternative Dispute Resolution Movement*, 53 U. CHI. L. REV. 424 (1986) (discussing the theory behind alternative dispute resolution). However, these advantages are usually nullified if arbitration decisions are subject to broad judicial review. Moore, *supra* note 28, at 1583.

*But see*, Di Jiang-Schuerger, Note, *Perfect Arbitration = Arbitration + Litigation?*, 4 HARV. NEGOT. L. REV. 231, 246 (1999) (discussing some of the disadvantages of arbitration). Although arbitration is often commended for its vast benefits to parties involved, there are some possible disadvantages to arbitrating disputes, rather than engaging in litigation. *Id.* These disadvantages may include possible bias or partiality of the arbitrator and the inability to appeal awards under a regular standard of judicial review. *Id.* Some parties may appreciate the fast and final decision that arbitration produces, but others would rather have the assurance that any possible legal or factual mistakes can be brought to a court for correction. *Id.*

30. Mark Berger, *Judicial Review of Labor Arbitration Awards: Practices, Policies and Sanctions*, 10 HOFSTRA LAB. L.J. 245, 249 (1992) (discussing the standards of judicial review of arbitration awards and possible sanctions for parties who improperly seek such review). The speed, low cost, and informality of the process would not be of much benefit to parties if a decision was not considered final and binding. *Id.* If arbitration decisions are not considered final, then an arbitration hearing would just be an added step in the litigation process, which most parties would probably choose to forego. *Id.* See also, Charles J. Coleman & Gerald C. Coleman, *Toward a New Paradigm of Labor Arbitration in the Federal Courts*, 13 HOFSTRA LAB. L.J. 1, 27 (1995) (stating that “[a]n arbitration award is supposed to be the last word on a subject”).

31. 9 U.S.C. §§ 1-16 (2000). The Federal Arbitration Act, by its language, appears to exclude labor arbitration from its scope. See 9 U.S.C. § 1 (2000). Section one states that “nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.” *Id.*

32. *Id.* The Act was passed in response to the refusal of many courts to enforce arbitration clauses in contracts. Karon A. Sasser, *Freedom to Contract for Expanded Judicial Review in Arbitration Agreements*, 31 CUMB. L. REV. 337, 340 (2000) (citing Allied-Bruce Terminix Companies v. Dobson, 513 U.S. 265, 270 (1995)). Congress expressed its intent that the Act was to reverse past judicial animosity toward arbitration and to place arbitration agreements as being equal to other enforceable contracts. Curtin, *supra* note 3, at 339 (citing H.R. REP. NO. 68-96 at 1 (1924)). The Federal Arbitration Act favors arbitration, particularly when parties have contractually agreed to arbitration as the method for settling disputes. Lane-Tahoe, Inc. v. Kindred Constr. Co., 536 P.2d 491, 493 (Nev. 1975) (holding that arbitration is appropriate when the parties to a construction contract have agreed to it as the method for settling disputes). Many changes to the courts' treatment of arbitration agreements followed the enactment of the Federal Arbitration Act. Sasser, *supra*, at 340 (discussing the split in the federal courts on attitudes towards contracting for expanded judicial review). See notes 33-38 *infra*.

The underlying purposes of the Act have been interpreted differently by the courts. For

sections of the Act make written arbitration clauses in contracts “valid, irrevocable, and enforceable,”<sup>33</sup> provide methods for courts to enforce arbitration agreements,<sup>34</sup> permit courts to compel arbitration,<sup>35</sup> provide for selection of arbitrators,<sup>36</sup> and allocate certain powers to the arbitrator(s).<sup>37</sup> The Act also places strict boundaries on judicial review of arbitration awards.<sup>38</sup> After 1925, parties to labor agreements began to seek enforcement of collective bargaining agreements to arbitrate under the Federal Arbitration Act.<sup>39</sup>

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example, the Nevada Supreme Court stated that “[t]he underlying purpose of the Act is to preclude court intervention into the merits of disputes when arbitration has been provided for contractually.” *Lane-Tahoe*, 536 P.2d at 493. The federal courts, however, have stated that the Act was passed, in part, to relieve congestion in the courts and to provide parties with alternative methods for resolving disputes that are quicker and cheaper than litigation. *Wilko v. Swan*, 346 U.S. 427, 431 (1953) (stating that the Federal Arbitration Act establishes the desirability of arbitration as a method of avoiding the delay and expenses of litigation). *But see* *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 219 (1985) (rejecting the suggestion that the Act was passed to promote the quick resolution of claims). The Supreme Court in *Dean Witter* stated that the sole purpose of the Act was to place arbitration agreements on the same ground as other enforceable contracts. *Id.* at 219.

33. *See* 9 U.S.C. § 2 (2000).

34. *See* 9 U.S.C. § 3 (2000). Section three states that courts “shall stay the trial of [any issue referable to arbitration under an agreement in writing for arbitration] until such arbitration has been had in accordance with the terms of the agreement.” *Id.* However, the court must first determine if “the issue involved is referable to arbitration under [the] agreement.” *Id.*

35. *See* 9 U.S.C. § 4 (2000). The Act empowers the courts to compel parties to arbitrate when it is expressly provided for in a valid agreement. *Id.*

36. *See* 9 U.S.C. § 5 (2000). Section five allows the parties to the agreement to appoint or name the arbitrator by a specific method provided for in the agreement. *Id.* If for some reason, the parties do not appoint an arbitrator, either party to the dispute can petition the court to appoint an arbitrator for the parties. *Id.*

37. *See* 9 U.S.C. § 7 (2000). Section seven provides arbitrators with the power to summon witnesses, documents, and other relevant evidence when conducting the arbitration hearing. *Id.*

38. *See* 9 U.S.C. §§ 10-11 (2000). For further discussion of these Sections, see *infra* notes 52-54 and accompanying text.

39. FAIRWEATHER’S PRACTICE AND PROCEDURE IN LABOR ARBITRATION 4 (Ray J. Schoonhoven ed., The Bureau of National Affairs, Inc. 4th ed. 1999). Most courts, however, hold that the Act is not applicable to collective bargaining agreements. *Id.* *See, e.g.,* *A.M. Castle & Co. v. United Steelworkers*, 898 F. Supp. 602, 610 (N.D. Ill. 1995) (stating that the Federal Arbitration Act is “formally inapplicable to labor arbitration,” but recognizing that the Act can be used as source to guide labor arbitration cases); *Dean Foods Co. v. United Steelworkers*, 911 F. Supp. 1116, 1123 (N.D. Ind. 1995) (indicating that the Federal Arbitration Act applies to arbitration awards involving interstate commerce or admiralty rather than to labor arbitration awards); *McClendon v. Continental Group, Inc.*, 648 F. Supp. 1115, 1117 n.1 (D.N.J. 1986) (indicating that the language of the Federal Arbitration Act and past case law “raises a serious question as to whether the applicability of the Act to labor arbitration agreements retains any vitality in this circuit”). It appears that the United States Supreme Court stated its opinion on this issue in *Misco*, where in dictum, the Court stated that the Federal Arbitration Act does not apply to labor arbitration awards “but the federal courts have often looked to the Act for guidance in labor arbitration cases. . . .” *United Paperworkers Int’l Union v. Misco, Inc.*, 484 U.S. 29, 40 n.9 (1987). *But see*, David P. Pierce, Comment, *The Federal Arbitration Act: Conflicting Interpretations of Its Scope*, 61 U. CIN.

In 1947, Congress passed Section 301 of the Labor Management Relations Act.<sup>40</sup> This statute states that arbitration, rather than strikes and/or other measures, is the preferred method for settling industrial disputes.<sup>41</sup> In *Textile Workers Union of America v. Lincoln Mills of Alabama*, the United States Supreme Court resolved the issue of whether Section 301 conferred jurisdiction upon the courts to compel or stay labor arbitration and to review an arbitration award.<sup>42</sup>

### C. Vacating an Arbitration Award

In a trio of cases, commonly referred to as the “Steelworkers Trilogy,”<sup>43</sup> the Supreme Court established the basic principles regarding judicial review of arbitration awards.<sup>44</sup> The first general rule gleaned

L. REV. 623 (1992) (arguing for expanding the scope of the Federal Arbitration Act in future cases).

40. 29 U.S.C. § 185 (2000). *See supra* note 10.

41. 29 U.S.C. § 173(d) (2000). This section states:

“Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement.” *Id.* The United States Supreme Court has stated that statutes such as the Taft-Hartley Act “reflect a decided preference for private settlement of labor disputes without the intervention of government.” *Misco*, 484 U.S. at 37.

However, the lower federal courts were unsure as to whether Section 301 or the Federal Arbitration Act conferred jurisdiction upon the courts to compel or stay labor arbitration and to enforce or vacate an arbitration award. FAIRWEATHER’S PRACTICE AND PROCEDURE IN LABOR ARBITRATION 4 (Ray J. Schoonhoven ed., The Bureau of National Affairs, Inc. 4th ed. 1999) (citing Archibald Cox, *Grievance Arbitration in the Federal Courts*, 67 HARV. L. REV. 591 (1954)). In 1953, the District Court of Massachusetts held that federal courts could enforce under Section 301 an agreement to arbitrate a dispute, concerning the interpretation and application of a labor agreement. *Textile Workers Union v. Am. Thread Co.*, 113 F. Supp. 137, 142 (D. Mass. 1953). The court also stated that federal courts should utilize the Federal Arbitration Act as a guiding analogy in enforcing arbitration agreements. *Id.* Several other cases have held that when dealing with labor agreements, federal courts should use the Federal Arbitration Act as a guide in labor arbitration cases. *See, e.g.,* Pizzuto v. Hall’s Motor Transit Co., 409 F. Supp. 427 (E.D. Va. 1976) (holding that the Federal Arbitration Act is not applicable to collective bargaining contracts, but that the act must be looked to for guidance as to what period of time is reasonable for filing an appeal from arbitration awards pursuant to a collective bargaining agreement); Ludwig Honold Mfg. Co. v. Fletcher, 405 F.2d 1123, 1127 (3d Cir. 1969) (stating that even though the Federal Arbitration Act applies only to commercial arbitration, review standards utilized under the Act could be analogized to judicial review of labor agreements).

42. *Textile Workers Union v. Lincoln Mills of Ala.*, 353 U.S. 448, 458-59 (1957). The Court stated that Section 301 is the jurisdictional basis for the federal courts over labor contract arbitration clauses. *Id.* at 450-51. According to the Court, the statute is also the source of procedural law for labor arbitration. *Id.* But courts continue to look to the Federal Arbitration Act as a guide for reviewing arbitration awards. *See supra* note 41.

43. The “Steelworkers Trilogy” includes the following cases: *United Steelworkers v. Am. Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960). *See also supra* note 11.

44. *Estreicher, supra* note 10, at 757. These cases established a general framework of default

from these three cases is that “grievances are presumed to be arbitrable.”<sup>45</sup> The second general rule is that judicial review of an arbitrator’s decision is extremely limited.<sup>46</sup>

Twenty-seven years later in *United Paperworkers Int’l Union v. Misco, Inc.*,<sup>47</sup> the Supreme Court reiterated the basic principles that it established in the Steelworkers Trilogy.<sup>48</sup> The Court went further than it previously had in stating that as long as the arbitrator is arguably construing or applying the contract, and acting within the scope of his/her authority, a court cannot overturn that decision.<sup>49</sup>

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rules for labor agreements with arbitration clauses that require arbitration proceedings for virtually all disputes arising during the agreement’s term and further stringently restricting access to the courts except where in aid of the arbitration process. *Id.*

45. Martin H. Malin, *Symposium on Labor Arbitration Thirty Years After the Steelworkers Trilogy: Foreword: Labor Arbitration Thirty Years After the Steelworkers Trilogy*, 66 CHI.-KENT. L. REV. 551, 551 (1990) (discussing the state of labor arbitration as it existed before and after the decision in the Steelworkers Trilogy). The Supreme Court has expressly reserved the question of arbitrability—whether a collective bargaining agreement creates a duty for the parties to arbitrate the particular grievance—for judicial determination. *United Steelworkers v. Warrior & Gulf Navigating Co.*, 363 U.S. 574, 583 n. 7 (1960). Since arbitrability is for the courts to decide, the Supreme Court has laid down the general rule that where a contract contains an arbitration clause, there is a presumption of arbitrability, stating that “[d]oubts should be resolved in favor of coverage.” *Id.* at 583. The Supreme Court has prohibited lower courts from deciding the merits of a particular grievance filed under a contract with an arbitration clause and has instead limited them to inquiring whether the claim on its face is in fact governed by the contract. *United Steelworkers v. Am. Mfg. Co.*, 363 U.S. 564, 564 (1960).

46. James M. Magee, *The Public Policy Exception to Judicial Deferral of Labor Arbitration Awards—How Far Should Expansion Go?*, 39 S.C. L. REV. 465, 469 (1988). When a party brings a suit to force another party to comply with an arbitrator’s award, a court may not overturn the award simply because it disagrees with the arbitrator’s interpretation of the agreement or believes that the arbitrator did not apply correct construction principles. *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 599 (1960). The Supreme Court has emphasized the fact that the arbitrator’s interpretation of the contract was bargained for and as long as that decision concerns the contract’s construction, the courts have no business overruling him because their interpretation differs from the arbitrator’s. *Id.* The Court stated that the proper approach to arbitration under collective bargaining agreements is for courts to refuse to review the merits of the award. *Id.* at 596. If a court were to review the merits of every arbitration decision, the provisions rendering an arbitrator’s award final would be meaningless. *Id.* The Court also recognized that the federal policy of settling labor disputes by arbitration would be undermined if a court had a final say on the merits of arbitration awards. *Id.* The rationale behind such a bright line rule is that the parties contracted for the settlement of their disputes by an arbitrator of their choice and if dissatisfied with the decision, they are free to select a different arbitrator in the future. Dennis O. Lynch, *Deferral, Waiver, and Arbitration Under the NLRA: From Status to Contract and Back Again*, 44 U. MIAMI L. REV. 237, 267 (1989) (analyzing the process of disputing and the relationship between that process and the substantive outcomes of workplace disputes).

47. *United Paperworkers Int’l Union v. Misco, Inc.*, 484 U.S. 29 (1987).

48. *See supra* notes 43-46.

49. *Misco*, 484 U.S. at 38. The Court emphasized that a court is not authorized to reconsider the merits of an arbitration award even though the parties may allege the award was decided on errors of fact or on a misinterpretation of the contract. *Id.* It is the arbitrator’s role to make findings

As evidenced above, the United States Supreme Court has constantly reiterated that a court's review of an arbitration award is extremely limited.<sup>50</sup> The question therefore arises, can a court ever vacate an arbitration award? The Federal Arbitration Act<sup>51</sup> establishes four statutory grounds for vacating an arbitration award.<sup>52</sup> The first three grounds for vacating an arbitration award address the perception of fairness and impartiality in the arbitration proceedings.<sup>53</sup> The final ground addresses the arbitrator's conduct (or power) in deciding the matter.<sup>54</sup>

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of fact in reaching a decision, and a court cannot reject those findings simply because it disagrees with them. *Id.* The Court seemed concerned that too many disappointed parties were seeking judicial relief from arbitration awards and attempted to resuscitate the doctrine that arbitration awards are to be considered final and binding on the parties. FAIRWEATHER'S PRACTICE AND PROCEDURE IN LABOR ARBITRATION 559 (Ray J. Schoonhoven ed., The Bureau of National Affairs, Inc. 4th ed. 1999).

50. See *supra* notes 45-49.

51. See *supra* notes 31-38.

52. See 9 U.S.C. § 10 (2000).

53. See 9 U.S.C. § 10(a)(1-3) (2000).

54. See 9 U.S.C. § 10(a)(4) (2000). It is important to remember that the Act applies only to commercial arbitration and not labor agreements. See *supra* note 10. However, courts may look to the Act when deciding labor disputes. See *supra* note 41. Section ten of the Federal Arbitration Act sets out four specific grounds for when a court may vacate an arbitrator's decision. The pertinent portions provide:

(a) In any of the following cases the United States court . . . may make an order vacating the award upon the application of any party to the arbitration—

- (1) Where the award was procured by corruption, fraud, or undue means;
- (2) Where there was evidence of partiality or corruption in the arbitrators, or either of them;
- (3) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or of any other misbehavior by which the rights of any party have been prejudiced; or
- (4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10 (2000). These extremely limited grounds for vacating an arbitration award "reflect the [Federal Arbitration Act]'s bias towards upholding arbitrations." Monica J. Washington, Note, *Compulsory Arbitration of Statutory Employment Disputes: Judicial Review Without Judicial Reformation*, 74 N.Y.U. L. REV. 844, 850 (1999) (examining recent appellate cases and the policy rationale supporting increased judicial scrutiny of an arbitral decision). For a detailed analysis of these standards, see Stephen L. Hayford, *A New Paradigm for Commercial Arbitration: Rethinking the Relationship Between Reasoned Awards and the Judicial Standards for Vacatur*, 66 GEO. WASH. L. REV. 443, 451-61 (1998) (discussing new practices that should be implemented in commercial arbitration decisions in order to maintain their validity). See also Andrew M. Campbell, Annotation, *Construction and Application of § 10(a)(4) of Federal Arbitration Act (9 U.S.C.A. § 10(a)(4)) Providing for Vacating of Arbitration Awards Where Arbitrators Exceed or Imperfectly Execute Powers*, 136 A.L.R. FED. 183 (2001) (collecting and analyzing federal cases which have applied this section of the Federal Arbitration Act in vacating arbitration awards).

Because the Federal Arbitration Act does not apply to labor disputes,<sup>55</sup> and Section 301 does not provide statutory grounds for vacation, courts have established some basic standards for vacating a labor arbitration award.<sup>56</sup>

### 1. Vacation for Error of Law

The majority of courts take a deferential view to arbitration awards holding that an award must be in “manifest disregard of the law” in order for it to be vacated.<sup>57</sup> Most courts refuse to vacate an arbitrator’s award based on this argument.<sup>58</sup> However, some arbitration awards have been vacated using this standard.<sup>59</sup>

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55. See *supra* notes 10 and 39. See also Ray, *supra* note 13, at 67 (arguing that the Federal Arbitration Act does not and should not apply to arbitration arising under a collective bargaining agreement).

56. See *infra* notes 57-71. For a general overview of these standards, see Bret F. Randall, Comment, *The History, Application, and Policy of the Judicially Created Standards of Review for Arbitration Awards*, 1992 B.Y.U. L. REV. 759 (1992) (discussing the current judicially created standards for vacating an arbitration award and the history, application, and policy of the standards).

57. See Kenneth R. Davis, *When Ignorance of the Law is No Excuse: Judicial Review of Arbitration Awards*, 45 BUFF. L. REV. 49, 89-98 (1997), for a general discussion of this standard and how courts apply it. The manifest disregard of the law standard was first established in the dictum of *Wilko v. Swan*. Norman S. Poser, *Arbitration: Judicial Review of Arbitration Awards: Manifest Disregard of the Law*, 64 BROOK. L. REV. 471, 505 (1998). This case was overruled on different grounds, but the Court has continued to cite the manifest disregard dictum with approval. *Id.* at 505.

Courts have given this standard varying definitions. See, e.g., *Montes v. Shearson Lehman Bros.*, 128 F.3d 1456, 1461 (11th Cir. 1997) (explaining that “[t]o manifestly disregard the law, one must be conscious of the law and deliberately ignore it”); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bobker*, 808 F.2d 930, 933-34 (2d Cir. 1986) (defining the standard as implying that the arbitrator appreciates the existence of clearly governing legal principle but deliberately decides to ignore it); *Durkin v. CIGNA Prop. & Cas. Corp.*, 986 F. Supp. 1356, 1358 (D. Kan. 1997) (defining the standard as “willful inattentiveness to the governing law”); *Verland Found. v. United Steelworkers*, No. 92-2225, 1993 U.S. Dist. LEXIS 20373, at \*12 (W.D. Pa. 1993) (defining the standard as “beyond the authorized confines of the agreement between the parties”).

58. See, e.g., *Nat’l Mar. Union v. Fed. Barge Lines, Inc.*, 304 F. Supp. 256, 258-59 (E.D. Mo. 1969) (upholding an arbitration award that was alleged to be contrary to the federally established Jones Act by determining that the award was not totally inconsistent with the statute). The Second Circuit has used the “manifest disregard of the law” standard as a means for giving extreme judicial deference to arbitrator’s decisions. *DiRussa v. Dean Witter Reynolds Inc.*, 121 F.3d 818, 821 (2d Cir. 1997).

59. See, e.g., *Glendale Mfg. Co. v. Local No. 520, Int’l Ladies’ Garment Workers Union*, 283 F.2d 936, 940-41 (4th Cir. 1960) (holding that vacation of an arbitration award that would require an employer to commit an unfair labor practice is proper); *Wonderland Greyhound Park, Inc. v. Autotote Sys., Inc.*, 144 F. Supp. 2d 25, 29 (D. Mass. 2001) (holding that the arbitrator acted in manifest disregard of the law in accelerating payments owed by the operator even though the arbitrator had found that the provider had breached the contract); *Am. Postal Workers Union v. U.S. Postal Serv.*, No. C-80-0748-WWS, 1980 U.S. Dist. LEXIS 13350 at \*1-2, (N.D. Cal. Apr. 11,

## 2. Vacation Because the Award Does Not Draw its Essence from the Labor Agreement

The Supreme Court has held that courts have the power to vacate an award when the award does not “draw its essence” from the labor agreement.<sup>60</sup> This standard has led some courts to vacate an arbitrator’s award, despite the traditional discretion afforded arbitration awards.<sup>61</sup> Most courts, however, have refused to vacate an arbitration award based on this standard.<sup>62</sup>

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1980) (holding that vacation of arbitration award was proper when it required the performance of an illegal act). For a more thorough analysis of this vacatur standard, see Adam Milam, Comment, *A House Built on Sand: Vacating Arbitration Awards for Manifest Disregard of the Law*, 29 CUMB. L. REV. 705 (1998) (discussing the development of the manifest disregard of the law standard among the circuits and proposing a uniform standard that should be incorporated into the Federal Arbitration Act). *But see* Randall, *supra* note 56, at 766 (arguing that courts are extremely reluctant to vacate an arbitration award based on the “manifest disregard of the law” standard, and finding no cases vacating an award on these grounds).

60. *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960). The Court stated that an arbitrator’s role “is confined to interpret[ing] and apply[ing] . . . the collective bargaining agreement “and that the arbitrator may look to many sources for guidance, but that “his award is legitimate only so long as it draws its essence from the collective bargaining agreement.” *Id.* Courts have given varying standards to determine if an arbitration award “draws its essence” from the labor agreement. *See, e.g.*, *The Beacon Journal Publ’g Co. v. The Akron Newspaper Guild Local No. 7*, 114 F.3d 596, 600 (6th Cir. 1997) (stating that an arbitrator’s award fails to draw its essence from the agreement when it conflicts with the express terms of the agreement, imposes additional requirements not expressly provided for in the agreement, or is based on “general considerations of fairness and equity” instead of the exact terms of the agreement); *Ludwig Honold Mfg. Co. v. Fletcher*, 405 F.2d 1123, 1128 (3d Cir. 1969) (holding that an arbitrator’s award “draws its essence from the collective bargaining agreement if the interpretation can in any rational way be derived from the agreement, view[ed] in the light of its language, its context, and any other indicia of the parties’ intention”).

61. *See supra* notes 45-49. For cases vacating arbitration awards based on this standard, *see, e.g.*, *The Beacon Journal Publ’g Co. v. The Akron Newspaper Guild Local No. 7*, 114 F.3d 596, 601 (6th Cir. 1997) (holding that an arbitration award that included four supervisors in vacation provisions of the collective bargaining agreement, despite the fact that those employees were exempt from the agreement, did not draw its essence from the collective bargaining agreement); *Kewanee Mach. Div., Chromalloy Am. Corp. v. Local No. 21, Int’l Bhd. Of Teamsters*, 450 F. Supp. 1074, 1078 (E.D. Mo. 1978) (holding that an arbitrator exceeded his authority when he reinstated an employee who was terminated pursuant to a labor agreement rule that two absent occasions in a month were cause for termination, despite the fact that the employee’s absences were due to illnesses).

62. *See, e.g.*, *N. Ind. Pub. Serv. Co. v. United Steelworkers*, 243 F.3d 345, 348 (7th Cir. 2001) (upholding an arbitration award where the arbitrator added terms to the contract even though he was not empowered under the collective bargaining agreement to do so); *Local 77, Am. Fed’n of Musicians v. Philadelphia Orchestra Ass’n*, 252 F. Supp. 787, 792 (E.D. Pa. 1966) (holding that an arbitration award that required orchestra members to travel by airplane would not be vacated because its “essence” could be found by the absence of requirements of travel in the labor agreement). Many of these courts reason that the arbitrator has been given authority to interpret the labor agreement and an award should not be upset without an express provision excluding the subject matter from arbitration. *Id.* *But see infra* note 120, discussing the problems with the

### 3. Vacation Based on Public Policy Considerations

Many courts hold an arbitration award that violates public policy should be vacated.<sup>63</sup> Despite the Supreme Court's precedent on this standard,<sup>64</sup> the circuit courts have divided on how they apply this exception.<sup>65</sup> The majority of circuits follow the narrow public policy

"essence" standard.

63. See Edwards, *supra* note 29, at 3-5. The public policy exception which permitted vacation of an arbitration award began in 1983. *Id.* At this time, the Supreme Court held that an award should only be vacated on narrow public policy grounds. *W.R. Grace & Co. v. Local 759, Int'l Union of United Rubber*, 461 U.S. 757, 766 (1983). The Court defined the public policy exception as being "well defined and dominant, and is to be ascertained 'by reference to the laws and legal precedents and not from general considerations of supposed public interests.'" *Id.* For a more in-depth discussion of the public policy exception to vacating arbitration awards, see Maria T. Roebker, Note, *Public Policy Exception to the General Rule of Judicial Deference to Labor Arbitration Awards: United Paperworkers International Union v. Misco, Inc.*, 108 S.Ct. 364 (1987), 57 U. CIN. L. REV. 819 (1988) (discussing the *Misco* case and the Supreme Court's attempts to encourage finality of arbitration awards and the possibility of limiting finality by carefully formulated considerations of public policy).

64. See *supra* notes 43-49.

65. See Scott Barbakoff, Note, *Application of the Public Policy Exception for the Enforcement of Arbitral Awards: There is No Place Like "The Home" in Saint Mary Home, Inc. v. Service Employees International Union, District 1199*, 43 VILL. L. REV. 829, 830-31 (1998). The majority of circuits interpret the public policy exception narrowly, showing great deference to the arbitrator because the parties bargained for an arbitrator's judgment. *Id.* See, e.g., *Limitorque Corp. v. Int'l Ass'n of Machinists, Lodge No. 10*, No. 97-2345, 1998 U.S. App. LEXIS 15081 at \*3-4 (4th Cir. July 6, 1998) (discussing in dictum that a court will not overturn an arbitration award unless it violates a well-settled and prevailing public policy); *SFIC Props., Inc. v. Int'l Ass'n of Machinists, Local Lodge 311*, 103 F.3d 923, 924 (9th Cir. 1996) (finding scope of review of arbitral awards in labor disputes extremely narrow); *Seymour v. Blue Cross/Blue Shield*, 988 F.2d 1020, 1023 (10th Cir. 1993) (holding that a court's ability to vacate an arbitration award is defined under strict statutory or judicially created standards); *Brown v. Rauscher Pierce Refsnes, Inc.*, 994 F.2d 775, 782 (11th Cir. 1993) (ruling that the public policy exception allows a court to vacate an arbitration award if it is contrary to well-defined and dominant public policy ascertained by laws and legal precedents); *Monroe Auto Equip. Co. v. Int'l Union, UAW*, 981 F.2d 261, 269 (6th Cir. 1992) (holding that an arbitration award must violate some explicit public policy); *Am. Postal Workers Union v. U.S. Postal Serv.*, 789 F.2d 1, 8 (D.C. Cir. 1986) (holding that the public policy exception is extremely narrow); *Capital Dist. Chapter v. Int'l Bhd. of Painters, Local No. 201*, 743 F.2d 142, 147 (2d Cir. 1984) (holding that public policy exception is very narrow).

The minority of circuit courts apply a broad interpretation of the public policy exception, expanding it to account for considerations of public welfare. Barbakoff, *supra*, at 831. See, e.g., *Iowa Elec. Light & Power Co. v. Local 204 of the Int'l Bhd. of Elec. Workers*, 834 F.2d 1424, 1428-29 (8th Cir. 1987) (holding that an arbitration award that violates public safety regulations should be vacated based on the public policy exception); *U.S. Postal Serv. v. Am. Postal Workers Union*, 736 F.2d 822, 825 (1st Cir. 1984) (holding that a public policy that clearly dictates common sense is enough to vacate an arbitration award); *Local No. P-1236, Amalgamated Meat Cutters v. Jones Dairy Farm*, 680 F.2d 1142, 1145 (7th Cir. 1982) (holding that a company rule prohibiting employees from contacting the USDA was against public policy); *Johns-Manville Sales Corp. v. Int'l Ass'n of Machinists, Local Lodge 1609*, 621 F.2d 756, 759 (5th Cir. 1980) (holding that arbitrator's decision did not offend a national policy against smoking in asbestos plants). However, over the past years, some of these circuits have begun to apply the public policy exception narrowly.

exception, defining it as the Supreme Court did in *Grace*.<sup>66</sup> Other circuits define the public policy exception broadly, vacating arbitration awards that violate general considerations of public interests.<sup>67</sup>

#### 4. Vacation for Errors in Fact

Normally when a party petitions the court to vacate an arbitration award based on a factual error on the part of the arbitrator, courts refuse to vacate the award.<sup>68</sup> At least one court, prior to the *Misco* decision, vacated an arbitration award because of factual errors.<sup>69</sup> The Supreme

*See* Barbakoff, *supra*, at 855-59.

The Third Circuit has applied a two-prong test that can be considered the “middle ground” of the public policy exception. *Id.* at 852-53. *See, e.g., Exxon Shipping Co. v. Exxon Seamen’s Union*, 993 F.2d 357, 360 (3d Cir. 1993) (requiring a court to identify a well-defined and dominant public policy that is expressed or implied by statute or regulation and then to consider whether the arbitration award violated the identified public policy or would undermine the stated purpose behind the policy).

66. *See, e.g., United Transp. Union Local 1589 v. Suburban Transit Corp.*, 51 F.3d 376, 382 (3d Cir. 1995) (upholding an arbitration award that reinstated a bus driver who had been involved in twenty-four accidents in twelve years because Suburban had not provided the court with laws and legal precedents which describe an explicit public policy that the award violated); *Chrysler Motors Corp. v. Int’l Union, Allied Indus. Workers*, 959 F.2d 685 (7th Cir. 1992) (upholding an arbitrator’s award that reinstated an employee accused of sexual harassment).

67. *See, e.g., Iowa Elec. Light & Power Co. v. Local Union 204 of the Int’l Bhd. of Elec. Workers*, 834 F.2d 1424, 1428-29 (8th Cir. 1987) (holding that an arbitration award ordering an employer to rehire an employee who deliberately violated federally imposed safety rules at employer’s nuclear power plant should be vacated under the public policy exception); *Amalgamated Meat Cutters, Local Union 540 v. Great Western Food Co.*, 712 F.2d 122, 125 (5th Cir. 1983) (holding that an arbitration award upholding a company policy of requiring workers to report unsanitary plant conditions to supervisors first, was contrary to public policy because it affected not only the Company and its employees, but also the consuming public).

68. *See, e.g., JS, Inc. v. Local 3, No. 90 Civ. 2511 (LMM)*, 1991 U.S. Dist. LEXIS 329 at \*3-\*4 (S.D.N.Y. Jan. 14, 1991) (upholding an arbitration award even though the court acknowledged that the award rested on an alleged miscalculation or factual error); *Keuchel v. Inmont Corp. Rapid Processing Co.*, C.A. No. 13051, 1987 Ohio App. LEXIS 9089 at \*4-5, (9th Dist. Oct. 7, 1987) (holding that an arbitrator is the sole judge of the laws and of the evidence so that an award that is factually or legally wrong will not be vacated); *Safeway Stores v. Am. Bakery Int’l Union*, Local 111, 390 F.2d 79, 83 (5th Cir. 1968) (holding that an arbitration award put forward a “passably plausible—even if perhaps erroneous—analysis” of the employment plan and refusing to vacate the award).

69. *See Elecs. Corp. of Am. v. Int’l Union of Elec. Local 272*, 492 F.2d 1255, 1257 (1st Cir. 1974) (vacating an arbitration award in which there was a “gross mistake . . . made out by evidence, but for which . . . a different result would have been reached”). The First Circuit clarified its ruling by saying that “in order to satisfy this test, the error must involve the ‘fact’ underlying the arbitrator’s decision.” *Id.* The Sixth Circuit has defined this standard of vacating an arbitration award by indicating that “where the record . . . before the arbitrator demonstrates an unambiguous and undisputed mistake of fact and . . . strong reliance on that mistake . . . in making his award . . . the arbitrator exceeded his powers or so imperfectly executed them that vacation may be proper.” *Nat’l Post Office Mailhandlers v. U.S. Postal Serv.*, 751 F.2d 834, 843 (6th Cir. 1985) (holding that

Court attempted to address this issue in *Misco*<sup>70</sup> by indicating that even obviously erroneous factual findings are not a basis for an award's vacation.<sup>71</sup>

The Federal Arbitration Act and Section 301 of the Labor Management Relations Act have commingled as the authority for courts' decisions upholding or vacating arbitration awards.<sup>72</sup> Notwithstanding the type of agreement involved (commercial or labor), courts have extremely limited the scope of review of arbitration awards.<sup>73</sup> The Supreme Court recently reiterated this extreme judicial deference in *Major League Baseball Players Association v. Garvey*.<sup>74</sup>

### III. STATEMENT OF THE CASE

#### A. *Statement of the Facts*

In the 1980's, the Major League Baseball Players Association filed grievances against the Major League Baseball Clubs.<sup>75</sup> The Association alleged that the Clubs violated the collective bargaining agreement by engaging in collusion<sup>76</sup> in the market for free agents.<sup>77</sup> Arbitration was

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an arbitrator's clear mistake of fact in finding an employee guilty prior to his discharge did not require vacation of the arbitration award).

70. See *supra* notes 47-49.

71. *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 39 (1987). The Court indicated that "improvident, even silly factfinding . . . is hardly [a] sufficient basis for disregarding [an arbitrator's factual findings]." *Id.* Courts dealing with the Federal Arbitration Act have held that "[f]actual or legal errors . . . even clear or gross errors—do not authorize courts to annul awards . . . under the FAA. . . ." *Flexible Mfg. Sys. Pty. v. Super Prods. Corp.*, 86 F.3d 96, 100 (7th Cir. 1996) (holding that a "searching review of arbitral awards . . . would . . . transform from a commercially useful alternative method of dispute resolution into a burdensome additional step on the march through the court system"). Following the *Misco* decision, commentators have asserted that disappointed parties who wish to vacate arbitration awards have "all but given up making arbitrators' assertedly erroneous findings of fact the linchpin of their actions." FAIRWEATHER'S PRACTICE AND PROCEDURE IN LABOR ARBITRATION, 575 (Ray J. Schoonhoven ed., The Bureau of National Affairs, Inc. 4th ed. 1999). This may explain the lack of recent court decisions that have vacated arbitration awards because of factual errors.

72. See *supra* notes 31-42.

73. See *supra* notes 43-71. In addition to the grounds and standards for vacation discussed above, other possible grounds for vacation of arbitration awards include situations where the arbitration proceeding was "tainted with corruption, misconduct, or bias," or when the arbitrator has exceeded his or her authority. Poser, *supra* note 57, at 471 (discussing the "manifest disregard of the law" standard for vacating or modifying an arbitration award and a proposed alternative).

74. *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504 (2001). See *infra* Part III.

75. *Major League Baseball Players Ass'n*, 532 U.S. at 505.

76. See WEBSTER'S THIRD INTERNATIONAL DICTIONARY 446 (1986) (defining "collusion" as "a secret agreement between two or more persons to defraud a person of his rights often by the forms of law").

held pursuant to these grievances and it was found that the Clubs colluded resulting in damage to the players.<sup>78</sup> Following the arbitrator's findings, the Association and the Clubs entered into a Global Settlement Agreement.<sup>79</sup>

Utilizing the Global Settlement Agreement and the Framework, Steve Garvey,<sup>80</sup> a retired first baseman, submitted a claim for damages of \$3 million.<sup>81</sup> "He alleged that his contract with the San Diego Padres was not extended in the 1988 and 1989 baseball seasons because of collusion."<sup>82</sup> In February 1996, the Association rejected Garvey's claim, concluding that he had not presented any evidence that the Padres actually made an offer to extend his contract.<sup>83</sup>

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77. *Major League Baseball Players Ass'n*, 532 U.S. at 505. These allegations covered the 1985, 1986, and 1987 baseball seasons. *Id.*

78. *Id.* at 506. Collusion by the Clubs was found after the 1985 season by arbitrator Thomas Roberts. Ronald Blum, *Appeals Court Likens Collusion to Black Sox Scandal*, THE FORT WORTH STAR-TELEGRAM, Feb. 15, 2000, at Sports 6 (discussing the federal court of appeals decision in the Garvey case). Arbitrator George Nicolau made similar rulings that the owners conspired after the 1986 and 1987 seasons. *Id.* Despite these findings, Major League Baseball Commissioners Bud Selig and Peter Ueberoth have never acknowledged management's conspiracy against free agents. *Id.* Arbitration is still widely used in Major League Baseball to settle numerous disputes, particularly issues dealing with players' salaries. *See generally*, Jonathan M. Conti, *The Effect of Salary Arbitration on Major League Baseball*, 5 SPORTS LAW J. 221 (1998); Kevin A. Rings, Note, *Baseball Free Agency and Salary Arbitration*, 3 OHIO ST. J. ON DISP. RESOL. 243 (1987).

79. *Major League Baseball Players Ass'n*, 532 U.S. at 506. Pursuant to this Agreement, the Baseball Clubs established a \$280 million fund to be distributed to players injured by the collusion of the Clubs. *Id.* The Association also developed a "Framework" to determine and evaluate individual player's claims. *Id.* Under the Framework, the Association was required to propose an overall distribution plan or a partial distribution plan for the claims relating to the affected seasons. *Garvey v. Roberts*, 203 F.3d 580, 583 (9th Cir. 2000). Each recommended plan was submitted to players with claims and also to the arbitrator. *Id.* The players could object to the proposed distribution plan recommendations and the Association would respond by providing the arbitrator with a written statement of how they arrived at the proposed damage evaluation for a particular player. *Id.* A player who objected to the plan could request oral argument before the arbitrator. *Id.*

80. From 1969-1982, Steve Garvey played first base for the Los Angeles Dodgers. David G. Savage, *Ruling Denies Garvey; Jurisprudence: Supreme Court reverses federal court in \$3.2 million collusion case*, LOS ANGELES TIMES, May 15, 2001, at 1, Sports Part 4 (discussing the Supreme Court decision involving Steve Garvey's claim for damages alleged to have resulted from collusion). He was a National League all-star eight times and the league's most valuable player in 1974. *Id.* He became a free agent after the 1982 season and signed a five-year contract with the San Diego Padres. *Id.* Steve Garvey led the Padres to its first World Series appearance in 1984. *Id.*

81. *Major League Baseball Players Ass'n*, 532 U.S. at 506.

82. *Id.* Ironically, Steve Garvey's final season of professional baseball was after the 1987 season, during which he suffered an arm injury and played in only 27 games for the Padres. Savage, *supra* note 80, at 1, Sports Part 4.

83. *Major League Baseball Players Ass'n*, 532 U.S. at 506. The Framework set forth factors to be considered in evaluating players' claims, as well as specific requirements for lost contract extension claims. *Garvey v. Roberts*, 203 F.3d 580, 583 (9th Cir. 2000). A player's claim was recognized only if it was "shown that the club in question actually made a specific offer of a contract extension only to later summarily withdraw that offer pursuant to the scenario of the

During the arbitration hearing, Garvey testified that the Padres had offered to extend his contract for the 1988 and 1989 seasons and then withdrew the offer after the baseball Clubs began colluding with other teams.<sup>84</sup> Garvey's main piece of evidence was a letter from Ballard Smith, the Padres' President and CEO from 1979 to 1987.<sup>85</sup> Despite this evidence, the arbitrator rejected Garvey's claim, explaining that "[t]here exists, however, substantial doubt as to the credibility of the statements in the Smith letter."<sup>86</sup>

### B. Procedural History

Garvey moved in Federal District Court for the Central District of California to vacate the arbitrator's award.<sup>87</sup> On December 8, 1997, the court denied Garvey's motion to vacate the arbitrator's award.<sup>88</sup> Garvey appealed this decision to the United States Court of Appeals for the Ninth Circuit.<sup>89</sup>

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collusion program." *Id.* at 584. Garvey objected to this finding and subsequently to the Framework, and an arbitration hearing was conducted. *Major League Baseball Players Ass'n*, 532 U.S. at 506.

84. *Id.*

85. *Id.* This letter stated that before the end of the 1985 season, Smith had offered to extend Garvey's contract through the 1989 season, but that the Padres subsequently refused to negotiate with Garvey due to collusion. *Id.* at 506-07. Strangely enough, in responses to claim questionnaires submitted in 1988 and 1991, Garvey never stated that a specific offer had been made to him by the Padres but only stated that "it would have been reasonable" for such an offer to have been made. Legal Defense Fund, *Case Decisions: Garvey v. Major League Baseball Players Association*, at <http://www.porac.org/ldf/cases> (last visited Oct. 12, 2002).

86. *Garvey*, 203 F.3d at 586. The arbitrator noted that there were "stark contradictions" between the 1996 letter and Smith's testimony in the earlier arbitration proceedings regarding collusion. *Id.* In those prior hearings, Smith denied that the Clubs had engaged in collusion and stated that the Padres were simply not interested in extending Garvey's contract. *Id.* The arbitrator was unable to find a "specific offer of extension" made prior to the collusion "only to thereafter be withdrawn when the collusion scheme was initiated" which he stated was required under the Framework. *Id.* Concluding that Smith's letter lacked credibility, coupled with the absence of any other evidence supporting Garvey's claim, the arbitrator rejected Garvey's claim for damages, reasoning that Garvey's contract was probably not extended because of his age and recent injury history, and that the collusion of the Clubs had no effect on whether or not the Padres extended Garvey's contract. *Id.*

87. *Major League Baseball Players Ass'n*, 532 U.S. at 507. Garvey's motion for vacating the award argued that the arbitrator's decision did not draw its essence from the collective bargaining agreement and that the award exceeded the arbitrator's authority. *Garvey*, 203 F.3d at 587.

88. *Id.* The district court dismissed the matter for lack of subject matter jurisdiction. *Id.* The court concluded that Garvey failed to meet the requirements of jurisdiction under §301 of the Labor Management Relations Act, which governs suits by and against labor organizations. *Id.* See also, *supra* notes 40-42. The court further stated that it did not "feel comfortable" disturbing the arbitrator's decisions, concluding that "[the arbitrator] heard the case, and made his decision, and [the court thinks] it was correct." *Garvey*, 203 F.3d at 587.

89. *Id.*

The court of appeals reversed and remanded the district court's decision with directions to vacate the award.<sup>90</sup> In reviewing Garvey's challenge of the arbitrator's award, the court took into consideration the contradictions of the arbitrator's decision in Garvey's claim and in the previous collusion hearings held in 1986.<sup>91</sup> The Court of Appeals held that Roberts' award should be vacated.<sup>92</sup>

Following the court of appeals decision, the District Court for the Central District of California granted Garvey's motion to vacate and proceeded to remand the case to the Arbitration Panel for *de novo* arbitration hearings.<sup>93</sup> The Court of Appeals for the Ninth Circuit

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90. *Garvey*, 203 F.3d at 589. In its analysis, the court initially stated that Garvey's motion to vacate the arbitration award was in fact proper under Section 301 of the Labor Management Relations Act. *Id.* at 588. The court acknowledged that, taken alone, the Framework was not an agreement between an employer and a labor organization. *Id.* at 587. Rather, the Framework was a set of rules and procedures developed pursuant to the Global Settlement Agreement between the Clubs (employer) and the Association (labor organization) designed as a means to remedy the employer's breach of the collective bargaining agreement as was established by the collusion hearings. *Id.* at 587-88. Garvey's right to payment for alleged damages caused by the Club's collusion arose from the collective bargaining agreement and was therefore proper under Section 301 of the Labor Management Relations Act. *Garvey*, 203 F.3d at 587-88.

91. *Id.* at 590. The court noted that Smith had testified on behalf of the owners in the 1986 collusion hearings and was now the key witness in Garvey's claim for damages based on collusion. *Id.* The court then placed emphasis on the fact that the same arbitrator participated in both decisions in which Smith testified. *Id.* The court stated "[i]n spite of [the arbitrator's] determination in the earlier arbitration that the testimony of the owners (including Smith) had been false, and in spite of the fact that the owners' testimony had been deliberately designed to cover-up their invidious scheme, the arbitrator rejected Garvey's claim on the ground that Smith's 1986 testimony had, in effect, been truthful." *Id.* Judge Steven Reinhardt questioned how the arbitrator could rely on Smith's 1986 testimony because much of it was to found to be false. *Savage*, *supra* note 80.

92. *Garvey v. Roberts*, 203 F.3d 580, 592 (9th Cir. 2000). The court stated that, based on the circumstances surrounding this case, the arbitrator's decision as to Garvey's claim was "completely inexplicable and border[ed] on the irrational." *Id.* at 590. Taking into account the professional experience of the arbitrator, the court felt the only explanation for the decision was "his desire to dispense his own brand of industrial justice." *Id.* at 590-91. In a concurring opinion, Circuit Judge Hawkins stated that

[N]o standard of review, no rule of deference is so slavish as to require [the reviewing court] to accept the conclusion of an arbitrator who says, in effect, "You lied before when you said there was no collusion, and I refused to rely on those lies in finding that there was collusion; but now that you are telling me that you did lie, that there really was collusion, I refuse to believe you."

*Id.* at 594.

93. *Garvey v. Major League Baseball Players Ass'n*, No. CV 97-05643 & CV 99-11774, 2000 U.S. Dist. LEXIS 20762, at \*4 (C.D. Cal. May 17, 2000). Garvey objected to this ruling, arguing that in reversing the court's denial of the motion to vacate, the Ninth Circuit found that a contract existed between the San Diego Padres and Garvey. *Id.* at \*3. The district court declined to enter judgment in favor of Garvey, reasoning that the Ninth Circuit had not instructed it to do so and that entering judgment for Garvey "would improperly substitute a judicial determination for the arbitrator's decision." *Id.* at \*4. Garvey appealed this ruling. *Garvey v. Major League Baseball*

reversed and remanded to the district court with specific directions.<sup>94</sup> The Major League Baseball Player's Association then petitioned for writ of certiorari to the United States Supreme Court, which the Court granted.<sup>95</sup>

### C. Supreme Court Decision

In a brief and unsigned opinion, the United States Supreme Court reversed the judgment of the Court of Appeals for the Ninth Circuit.<sup>96</sup> First, the Supreme Court stated that the court of appeals erred in reversing the district court's denial of Garvey's motion to vacate the arbitration award.<sup>97</sup> In so holding, the Supreme Court concluded that a reviewing court's disagreement with an arbitrator's factual findings is insufficient grounds for vacating an arbitration award.<sup>98</sup>

Secondly, the Supreme Court held that the court of appeals "erred further in directing that judgment be entered in Garvey's favor."<sup>99</sup> The

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Players Ass'n, No. 00-56080, 2000 U.S. App. LEXIS 31918, at \*5 (9th Cir. Dec. 7, 2000).

94. *Id.* The court concluded that "[t]he only question on appeal to this court was the propriety of the result reached by the arbitrator on a full and fair record." *Id.* at \*4. Therefore, because the court's previous decision on this matter found the arbitrator's ruling against Garvey to be in error, the only possible result was an award in Garvey's favor. *Id.* at \*4. The court specifically directed the district court to remand the case to the Arbitration Panel with instructions to enter an award in favor of Garvey. *Id.*

95. *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 1005 (2001). The Association's main argument was that the Ninth Circuit "overstepped its bounds and wrongfully interfered in a dispute that was to be resolved by arbitration, and not courts." *Savage*, *supra* note 80.

96. *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 512 (2001). The Court held that the court of appeals erred in two different respects in its ruling. *Id.*

97. *Id.* at 511. The Court reemphasized the judiciary's limited role in reviewing the merits of an arbitration award. *Id.* at 510. *See also supra* notes 43-49.

98. *Major League Baseball Players Ass'n*, 532 U.S. at 510. The Court stated that the court of appeals "recited" the principles established in prior Supreme Court decisions relating to the extreme judicial deference given to arbitration awards, but that "[the court of appeals'] application of [the principles was] nothing short of baffling." *Id.* The Court felt that the court of appeals overturned the arbitrator's decision because they did not agree with his factual findings relating to the issue of Smith's credibility. *Id.* Even if the arbitrator had committed "serious error," a court is not justified in overturning a decision as long as the arbitrator is construing the contract and acting within the scope of his authority. *Id.* (citing *United Paperworkers Int'l Union, v. Misco, Inc.*, 484 U.S. 29, 38 (1987)). In a footnote to its ruling, the Supreme Court stated that there was no serious error committed by the arbitrator. *Major League Baseball Players Ass'n*, 532 U.S. at 511 n.2. The Court reasoned that "[t]he fact that an earlier panel of arbitrators rejected the owners' testimony as a whole does not compel the conclusion that the panel found Smith's specific statements with respect to Garvey to be false." *Id.* The Court also stated that a plausible explanation for the arbitrator's apparent contradictory decisions was that he found Smith to be an unreliable witness and that without any other corroborating evidence, Garvey failed to show that the Padres had in fact offered to extend his contract. *Id.*

99. *Id.* at 511.

Court reasoned that “established law ordinarily precludes a court from resolving the merits of the parties’ dispute on the basis of its own factual determinations, no matter how erroneous the arbitrator’s decision.”<sup>100</sup> The Court noted that “[t]he court of appeals usurped the arbitrator’s role by resolving the dispute and barring further proceedings, a result at odds with this governing law.”<sup>101</sup>

Justice Ginsberg submitted a concurring opinion.<sup>102</sup> In her opinion, Justice Ginsberg stated that the court of appeals should not have “disturbed the arbitrator’s award.”<sup>103</sup> She concluded that this was all the Court needed to hold in order to “set this case straight.”<sup>104</sup>

In his dissenting opinion, Justice Stevens disagreed with the Court’s holding that even if an arbitrator’s award is found to be in error, the only course for a reviewing court to take is to remand the matter for another arbitration.<sup>105</sup> Justice Stevens concluded his dissent by attacking the vagueness of the majority’s holding in this case.<sup>106</sup>

100. *Id.* (citing *United Paperworkers Int’l Union v. Misco*, 484 U.S. 29, 40 n.10 (1987)).

101. *Major League Baseball Players Ass’n*, 532 U.S. at 511. The Court concluded that even if there had been a reason to vacate the arbitration award, the proper procedure was to remand the case for de novo hearings and not to direct the court to enter a judgment in favor of one of the parties. *Id.* The Court reasoned that “[i]f a remand is appropriate *even* when the arbitrator’s award has been set aside for ‘procedural aberrations’ that constitute ‘affirmative misconduct,’ it follows that a remand ordinarily will be appropriate when the arbitrator simply made factual findings that the reviewing court perceives as ‘irrational.’” *Id.* (emphasis in original). Garvey’s lawyer, Neil Papiano, has interpreted the Court’s decision as indicating that a court should not make the decision in this case, but that the case should go back to an arbitrator to make a decision. *Savage*, *supra* note 80. Despite this unfavorable ruling, Garvey is planning to return to an arbitrator to attempt to seek \$3.2 million that he claims was wrongfully withheld by the Padres. *Id.* Garvey’s attorneys have asked that a new arbitrator, George Nicolau, hold a new hearing on whether former Padres’ president Ballard Smith withdrew a \$3 million contract extension to Steve Garvey because of collusion. *Garvey seeking another chance*, THE SAN-DIEGO UNION-TRIBUNE, July 9, 2001, at D6 (discussing Garvey’s plans after the adverse Supreme Court ruling).

102. *Major League Baseball Players Ass’n*, 532 U.S. at 512.

103. *Id.*

104. *Id.*

105. *Id.* at 513. Justice Stevens felt that this conclusion is not compelled by any prior cases and is not convincing because the Court did not provide any analysis or support for its holding. *Major League Baseball Players Ass’n*, 532 U.S. at 513. He also vehemently objected to the Supreme Court’s ruling to decide this case without the benefit of briefing or oral argument. *Id.* He stated that the court of appeals had examined the record, obtained briefing and heard oral arguments prior to reaching its decision that the arbitrator’s findings were irrational, implying the Supreme Court’s decision may have been different if the Court had done its own review of the record prior to issuing its opinion. *Id.*

106. *Id.* at 513, n.1. Justice Stevens felt that the majority’s holding was ambiguous as to why they overturned the court of appeals decision to set aside the arbitration award, stating that “it is unclear whether the majority is saying that a court may never set aside an arbitration award because of a factual error, no matter how perverse, or whether the Court merely holds that the error in this

## IV. ANALYSIS

An umpire, like an arbitrator, should not be overruled on a close pitch, but this “pitch [was] so far outside the strike zone that it is unworthy of deference, however defined.”<sup>107</sup>

A. *The Garvey Decision*

The Supreme Court’s opinion in *Major League Baseball Players Ass’n v. Garvey* reaffirmed the unique role of labor arbitration in this country.<sup>108</sup> In the *Garvey* decision, the Court reiterated the well-known principles of previous labor arbitration cases, which established the extremely limited role of courts reviewing arbitration awards.<sup>109</sup> By upholding the arbitrator’s denial of Garvey’s claim, the Court emphasized that a reviewing court’s disagreement with an arbitrator’s factual findings are insufficient grounds for vacating an award.<sup>110</sup>

The Supreme Court addressed two issues in the *Garvey* decision.<sup>111</sup> The Court first discussed the court of appeals decision to reverse the denial of Garvey’s claim by the district court.<sup>112</sup> The second issue focused on by the Court was the court of appeals decision to enter judgment in favor of Garvey.<sup>113</sup> There is, however, no clear way to

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case was not sufficiently severe to allow a court to take that step.” *Id.*

107. *Garvey v. Roberts*, 203 F.3d 580, 594 (9th Cir. 2000). Judge Hawkins made this statement in his concurring opinion in which the Ninth Circuit Court of Appeals reversed the decision of the district court denying baseball player Steve Garvey’s claim for vacation of an arbitration award. *Id.* Judge Hawkins compared the court’s role in reviewing arbitration awards to reviewing an umpire’s calls on the baseball field. *Id.* at 592-94. He acknowledged the high level of deference normally accorded such decisions in both situations but believed that when either an arbitration award or a call on the baseball field is “so clearly and plainly wrong they cannot be rationally explained,” either decision should be overturned. *Id.* at 592.

108. See *supra* notes 96-106.

109. *Major League Baseball Players Ass’n*, 532 U.S. at 509-10 (2001). The Court first discussed its prior decision in *United Paperworkers Int’l Union v. Misco*. *Id.* For a thorough discussion of this decision, see *supra* notes 47-49. The Court then discussed the Steelworkers Trilogy, in which the Court first defined the original basis for judicial review of arbitration awards. *Major League Baseball Players Ass’n*, 532 U.S. at 509. See *supra* notes 43-46 for a discussion of the Steelworkers Trilogy cases. For a brief summation of the Supreme Court’s decision in the Steelworkers Trilogy, see Stephen L. Hayford, *Unification of the Law of Labor Arbitration and Commercial Arbitration: An Idea Whose Time Has Come*, 52 BAYLOR L. REV. 781, 791-801 (2000) (arguing that the distinctions made between labor arbitration and commercial arbitration should be vacated and the laws of each division unified).

110. *Major League Baseball Players Ass’n*, 532 U.S. at 510.

111. *Id.* at 510-11. In its decision, the Supreme Court found two errors in the court of appeals decision. *Id.*

112. *Id.*

113. *Id.*

discern the precise reason that the Supreme Court reversed the decision of the court of appeals.<sup>114</sup> This uncertainty in the Court's decision may lead to differing interpretations of the case.<sup>115</sup>

114. It is unclear if either one of these errors alone or the combination of both errors caused the Court to reverse the decision of the court of appeals. *See id.* at 510-11. The Court did not devote considerable time to either issue. *See Major League Baseball Players Ass'n*, 532 U.S. at 510-11 (2001). The Court reiterated the extremely limited scope of judicial review of arbitration awards. *Id.* at 509. The Court recognized that the court of appeals also recited these principles, "but [found] its application of them nothing short of baffling." *Id.* at 510. The Court then focused one paragraph of the decision on the court of appeals' failure to remand the case to the arbitrator for further proceedings and its order that judgment be entered in Garvey's favor. *Id.* at 510-11. Finding that the court of appeals had "usurped the arbitrator's role by resolving the dispute and barring further proceedings," the Court stated that this is inconsistent with the governing law. *Id.* at 511. In his dissent, however, Justice Stevens could not find any precedent for this holding. *Id.* at 512. The Court may have entered the same ruling even if the court of appeals' remand procedures had been correct. *See, e.g.,* Michael H. LeRoy & Peter Feuille, *Private Justice in the Shadow of Public Courts: The Autonomy of Workplace Arbitration Systems*, 17 OHIO ST. J. ON DISP. RESOL. 19, 40 (2001) (discussing the *Garvey* case as standing for the proposition that federal courts are to refrain from second guessing fact findings made by an arbitrator); Barbara K. Bucholtz, *Symposium: 2000-2001 Supreme Court Review: Gestalt Flips by an Acrobatic Supreme Court and the Business-Related Cases on its 2000-2001 Docket*, 37 TULSA L. J. 305, 320 (2001) (stating that the *Garvey* case is "thus, another brick in the wall protecting arbitration from judicial review"). It is probably safe to assume that the court of appeals' decision to vacate the arbitrator's award—because they believed the arbitrator "dispensed his own brand of industrial justice"—was the principal reason the Supreme Court reversed the decision. *Garvey v. Roberts*, 203 F.3d 580, 589 (9th Cir. 2000). But, as noted above, the exact reason is unclear from the Supreme Court opinion. *See Major League Baseball Players Ass'n*, 532 U.S. at 510-11. For a thorough discussion of the court of appeals decision, see *supra* notes 90-95.

*But see* Justice Stevens' dissent in the *Garvey* decision. *Major League Baseball Players Ass'n*, 532 U.S. at 508, n.1. Justice Stevens interpreted the Court's holding as being ambiguous as to why they overturned the court of appeals' decision. *Id.* The holding in the *Garvey* case could be interpreted as indicating that a court may never, under any circumstances, vacate an arbitration award because of a factual error. *Id.* But the Court's holding could also be understood as indicating that the error committed by the arbitrator in this case was not severe enough to allow the Court to vacate the award. *Id.*

115. *See* Justice Steven's dissent, *supra* note 105-106. It is possible that lower courts may interpret the decision as further enforcing the limited scope of judicial review. *See Shait v. Millennium Broadway Hotel*, 00 Civ. 5584 (GEL), 2001 U.S. Dist. LEXIS 6575, at \*31 (S.D.N.Y. May 18, 2001) (holding that review of arbitration decisions is extremely limited). The Court's decision emphasizes more heavily the narrow scope of judicial review of arbitration awards rather than proper remand procedures. *Major League Baseball Players Ass'n*, 532 U.S. at 509-11. Lower courts, however, could interpret the decision as defining the proper remand procedures when an arbitration award can properly be vacated. *Id.* at 511. This ambiguity in the exact reason for the Supreme Court's decision may lead to even more confusion in the lower courts with regard to judicial review of arbitration awards. *See Anheuser-Busch, Inc. v. Beer Drivers, Local Union No. 744*, No. 00-4089, 2002 U.S. App. LEXIS 2409, at \*24 (7th Cir. Feb. 15, 2002) (citing *Garvey* in its decision to vacate an arbitration award where the arbitrator committed serious error). As an example of this possible confusion, *Garvey's* lawyer stated that his interpretation of the Supreme Court decision is that "instead of the court making the decision, it should go back to the arbitrator." *Savage, supra* note 80. This may indicate that *Garvey* interprets the Supreme Court decision as

The Court enumerated the well-established principles of judicial review, but did not necessarily apply them to the facts of the *Garvey* case.<sup>116</sup> The arbitrator's decision to deny Garvey's claim for damages is only discussed briefly in a footnote to the opinion.<sup>117</sup> The Supreme Court's brief dismissal of the discrepancies in Smith's testimony and the arbitrator's rulings could indicate that the Court felt it did not warrant significant discussion in order to properly decide the case.<sup>118</sup>

focusing more on the court of appeals' remand procedures, rather than its expanded judicial review. *See id.*

Some recent cases, however, have cited the *Garvey* case as reinforcing the narrow scope of judicial review of arbitration awards. *See, e.g., Duluth, Missabe & Iron Range Ry. Co. v. Int'l Bhd. of Locomotive Engineers*, No. 00-3564, 2001 U.S. App. LEXIS 19336, at \*6 (8th Cir. Aug. 30, 2001) (remanding the case for further arbitration); *Morris v. UPS*, Local 804, '98 Civ. 7353(KMW)(RLE), 2001 U.S. Dist. LEXIS 8206, at \*16 (S.D.N.Y. June 13, 2001) (holding that a court may not substitute its judgment for that of an arbitrator). *See also* Mark Berger, *Arbitration's Grand Slam Victory in the Supreme Court's 2000-2001 Term*, 72 PA. BAR ASSN. QUARTERLY 175, 179 (2001) (stating that the Supreme Court's recent decisions (including *Garvey*) are likely to reverse the trend of losing parties petitioning the courts to vacate arbitration awards).

116. *Major League Baseball Players Ass'n*, 532 U.S. 504, 509. *See also supra* note 109.

117. *Major League Baseball Players Ass'n*, 532 U.S. at 511 n.2. The major issue facing the court of appeals was the discrepancies in the arbitrator's two rulings. *Garvey*, 203 F.3d at 590. The focus was on Smith's testimony. *Id.* In the original collusion hearings, Smith testified that the Clubs did not engage in collusion in order to depress players' salaries. *Id.* Then, in *Garvey's* hearing, Smith produced a letter stating that he had offered a contract extension to *Garvey*, but subsequently withdrew the offer because of collusion. *Id.* In the first hearing, the arbitrator believed that Smith was lying and found the Clubs guilty of collusion. *Id.* In *Garvey's* hearing, however, the arbitrator found that Smith was now lying when he admitted that collusion caused the Padres to withdraw the contract offer to *Garvey*. *Id.* This discrepancy appears to be the underlying basis for the court of appeals decision to vacate the arbitration award. *Id.* *See supra* notes 90-94.

The court of appeals discussed this issue at length in its opinion. *Garvey v. Roberts*, 203 F.3d 580, 589-92 (9th Cir. 2000). The Supreme Court paid little attention to this important issue, only discussing it in a footnote to the case. *Major League Baseball Players Ass'n*, 532 U.S. at 511 n.2. The Court accepted the arbitrator's determination that Smith was an unreliable witness and that, without corroborating evidence, *Garvey* failed to show that the Padres had offered to extend his contract. *Id.* Even if this analysis was unpersuasive to the court of appeals, the Supreme Court believed the arbitrator's decision did not qualify as serious, irrational, or inexplicable error. *Id.* The Court then stated, "[a]ny such error would not justify the actions taken by the [c]ourt [of appeals]." *Id.*

118. It is possible that the Court was making a broad and defining statement in regard to judicial review of arbitration awards: courts should not review them. *See id.* If this is the underlying premise of the Court's decision here, the reason the Court did not devote considerable time to the Smith testimony may be because there was nothing to discuss. *See id.* at 511 n.2. Finding that the court of appeals disagreed with the arbitrator's decision and thus vacated his award, the Supreme Court emphasized that this is not an acceptable ground for vacating an arbitration award and the facts of *Garvey's* situation were irrelevant to the outcome of the case. *Major League Baseball Players Ass'n*, 532 U.S. at 510. One commentator believes that this ruling adds "potency" to the arbitral process and will most likely be cited in support of the fundamental proposition that courts should refrain from overseeing the merits of rulings, a proposition already well established in most states. Marshall H. Tanick, *The Year of The Arbitrator: Upholding the Arbitral Process*, 58-NOV BENCH & B. MINN. 27, 29 (2001).

### B. Ambiguities in the Current Law of Vacatur of Arbitration Awards

The Supreme Court's decision in *Major League Baseball Players Ass'n v. Garvey* indicates that the Court believes the current scope of judicial review available for arbitration awards is adequate.<sup>119</sup> However, over forty years have passed since the Supreme Court first addressed the standards for vacatur of labor arbitration awards in the Steelworkers Trilogy.<sup>120</sup> Since those initial cases were decided, the Supreme Court

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119. Elizabeth H. Murphy, *Arbitration at Work: The California and U.S. Supreme Courts have Endorsed Mandatory Employment Arbitration Agreements—Provided That Employees' Due Process Rights are Protected*, 24-NOV. L.A. LAW. 27, 28 (2001).

120. Hayford, *supra* note 109, at 825. The initial principles laid down by the Supreme Court in the Steelworkers Trilogy and the cases following it seemed clear that there are only two grounds for vacating a labor arbitration award. *Id.* The first ground for vacating an arbitration award is violation of public policy. *W.R. Grace & Co. v. Local 759, Int'l Union of United Rubber*, 461 U.S. 757, 766 (1983). *See also supra* note 63. Other issues, such as findings of fact, interpretation of the contract, and application of that language to the facts of each case, are to be left solely to the arbitrator. Hayford, *supra* note 109, at 815.

The second ground is failure of the award to draw its essence from the collective bargaining agreement. *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960). The Supreme Court rejected the argument that an incorrect arbitral interpretation of a disputed contract provision can be deemed a failure of the arbitration award to draw its essence from the contract. Stephen L. Hayford, *The Federal Arbitration Act: Key to Stabilizing and Strengthening the Law of Labor Arbitration*, 21 BERKELEY J. EMP. & LAB. L. 521, 559 (2000). The reasoning behind this rejection was that if this standard were upheld, it would require courts to review the merits of every construct of the contract by the arbitrator. *Id.* Such a review of the merits would, in the Court's opinion, make meaningless the parties' bargain for a final and binding decision by arbitration. *Enterprise Wheel*, 363 U.S. at 589-99. Cases subsequent to the Steelworkers Trilogy do not support the view that the Supreme Court interprets the "essence" standard as sanctioning any judicial intrusion into merits of challenged arbitration awards even where gross error is alleged. Hayford, *supra*, at 560. *See also supra* note 60. For a further discussion of the "essence" standard, see Timothy J. Heinsz, *Judicial Review of Labor Arbitration Awards: The Enterprise Wheel Goes Around and Around*, 52 MO. L. REV. 243, 248-56 (1987).

Some commentators, however, have found the "essence" test laid down by the Supreme Court in the Steelworkers Trilogy unworkable. *See* Edgar A. Jones, Jr., "His Own Brand of Industrial Justice": *The Stalking Horse of Judicial Review of Labor Arbitration*, 30 UCLA L. REV. 881, 885 (1983). This test is unworkable because the Court has stated that judges must not allow arbitrators to stray beyond the parameters of the essence of collective bargaining agreements in fashioning arbitration awards. *Id.* at 884-85. But the Court has also said that the parties' chosen arbitrators are more aware than are judges of the parties' intent and needs that constitute that "essence." *Id.* at 884-85. It is virtually impossible to define the essence of a collective bargaining agreement so as to enable a reviewing court to differentiate between the correct brand of justice allowable for an arbitrator to dispense. *Id.* at 887.

Other critics of the "essence" standard have noted that the Supreme Court does not indicate exactly how much deference is to be given arbitration awards. *See* Clyde W. Summers, *The Trilogy and Its Offspring Revisited: It's a Contract, Stupid*, 71 WASH. U. L. Q. 1021, 1021 (1993). The federal circuit courts have disagreed over interpretations of the "essence" standard in part because of the Supreme Court's vague standards laid down in the Steelworkers Trilogy. *Id.* The Court's description of the character of collective bargaining agreements, the function of arbitration

has done little, if anything, to further clarify these vacatur standards.<sup>121</sup> As a result of this lack of clarity, the federal circuit courts have applied their own interpretations of the Supreme Court principles to vacate arbitration awards.<sup>122</sup>

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in the collective bargaining system, and the parties' confidence in the competence of arbitrators carries a clear message that courts should give deference, but not total deference, to arbitration and arbitrator's awards. *Id.* Therefore, there is no clear definition of "essence" and "deference" for the circuit courts to follow when asked to review an arbitration award. *Id.* The Supreme Court has left the courts to formulate their own interpretations of these standards. *Id.* As one commentator has stated, "[o]ne man's essence may be another man's (or a court's) nonsense." David E. Feller, *Labor Arbitration: Past, Present, and Future: Taft and Hartley Vindicated: The Curious History of Review of Labor Arbitration Awards*, 19 BERKELEY J. EMP. & LAB. L. 296, 302 (1998).

121. Hayford, *supra* note 109, at 825. The law of vacatur of labor arbitration awards, built upon the ambiguities of the Steelworkers Trilogy and the resulting inconsistencies in the circuit courts, is no clearer today than it was in 1960. *Id.* at 826. What is lacking is a clearly defined standard that allows for a substantive review of an arbitration award without compromising the strong policy favoring arbitral finality. Marcus Mungioli, Comment, *The Manifest Disregard of the Law Standard: A Vehicle for Modernization of the Federal Arbitration Act*, 31 ST. MARY'S L.J. 1079, 1117 (2000).

Other commentators have noted the problems with the ambiguities in the Supreme Court's holdings on the subject of judicial review of labor arbitration awards. See Gould, *supra* note 29. Mr. Gould believes that the Supreme Court's opinion in *Enterprise* was intended to eliminate or diminish challenges to arbitral awards but has failed. *Id.* at 472. For example, the Court of Appeals for the First Circuit commented:

It is a firm principle of federal labor law that where parties agree to submit a dispute to binding arbitration, absent unusual circumstances, they are bound by the outcome of said proceedings. . . . Yet we are, with exasperating frequency, confronted by challenges to such decisions, brought by parties who are apparently still under the delusion that, as a matter of course, the losing party is entitled to appeal to the courts any adverse ruling by an arbitrator.

*Posadas De Puerto Rico Assocs., Inc. v. Asociacion De Empleados De Casino De Puerto Rico*, 821 F.2d 60, 61 (1st Cir. 1987). Mr. Gould, however, feels that losing parties in the initial arbitration proceedings are not the only ones to blame for the increasing number of arbitration challenges brought to courts. Gould, *supra* note 29, at 472. Reaffirmance of the Steelworkers Trilogy and limited expansion of the Trilogy's principles, with new exceptions to the rule promoting finality of arbitration awards, has only invited more litigation and judicial contests to arbitration awards. *Id.*

It appears that the Supreme Court attempted to clarify the standards laid down in the Steelworkers Trilogy in its subsequent decision in *Misco*. See *supra* notes 47-49. Commentators, however, note that this decision, like the decisions in the Steelworkers Trilogy, "is not sufficiently clear or ambitious." See Gould, *supra* note 29, at 495. The decision in *Misco* has led a large number of circuits to approve or to provide for the vacatur of arbitral awards on both public policy and contract construction grounds, despite the Court's language about the need for finality in arbitration awards. *Id.*

122. Hayford, *supra* note 109, at 825. The circuit courts have been unable to formulate a clear, bright-line test that facilitates a consistent, predictable application on a case-by-case basis. *Id.* at 816. These courts have employed a variety of labels to determine if an arbitration award in fact "draws its essence" from the agreement and are more willing to scrutinize challenged awards for errors. *Id.* at 815. The opinions of several circuit courts of appeals consistently demonstrate that these courts are unable to articulate and apply the various non-statutory grounds for vacatur in a manner that remains loyal to the "essence" construct. Hayford, *supra* note 109, at 560. In doing so, one commentator argues that the circuit courts are slowly "vitiating the unequivocal command of

### C. *The Need for Expanded Judicial Review of Arbitration Awards*

The Supreme Court declined to clarify or expand the scope of judicial review of labor arbitration awards in the *Garvey* decision.<sup>123</sup> As a result, the *Garvey* decision has effectively done nothing to add to the field of judicial review of labor arbitration awards.<sup>124</sup> In this case, the

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the Supreme Court” that labor arbitration awards are not subject to vacatur because of arbitral errors of contract interpretation or fact.” *Id.* at 561. The unwillingness of judges to let stand what they perceive to be egregiously flawed decisions has destabilized labor arbitration by stripping it of its finality. *Id.* at 564. This inconsistency in the circuit courts is also evident in the varying interpretations of the public policy exception by the courts. See *supra* note 65 and accompanying text.

Despite courts expressing their reluctance to review arbitration awards, judicial review is becoming more prevalent because an increasing number of disputes are being arbitrated and because most circuits have expanded their scope of review. Milam, *supra* note 59, at 705-06. This confusion has led to circuit courts formulating their own interpretations of the “essence” standard. See, e.g., *Bruce Hardwood Floors v. UBC, Southern Council of Industrial Workers, Local No. 2713*, 103 F.3d 449, 452 (5th Cir. 1997) (vacating an arbitration award based on the court’s own independent interpretation of the relevant contract language); *Exxon Corp. v. Esso Workers’ Union, Inc.*, 118 F.3d 841, 844 (1st Cir. 1997) (permitting judicial tampering of arbitration awards if it can be shown that the arbitrator acted in a way for which neither party could have bargained); *U.S. Postal Serv. v. Nat’l Ass’n of Letter Carriers*, 847 F.2d 775, 778 (11th Cir. 1988) (holding that an arbitration award that is “arbitrary and capricious” does not draw its essence from the collective bargaining agreement).

The federal courts seem to be moving towards a broader standard of review and a greater willingness to set aside arbitration awards that courts find to be displeasing. See *Coleman & Coleman*, *supra* note 30, at 20. The judicial expansion of the scope of review of arbitration awards may indicate the desire of judges to prevent injustice in an arbitration proceeding where gross errors or mistakes may have occurred. Stephen L. Hayford, *Law in Disarray: Judicial Standards for Vacatur of Commercial Arbitration Awards*, 30 GA. L. REV. 731, 833-34 (1996). The numerous judicially created non-statutory grounds for vacating arbitration awards evidence this. See Hayford, *supra* at 763-98. These grounds include: (1) “manifest disregard” of the law, (2) conflict with a strong public policy, (3) an award that is “arbitrary and capricious or “completely irrational,” and (4) failure of an award to “draw its essence” from the parties’ underlying contract. Stephen A. Hochman, *Judicial Review to Correct Arbitral Error—An Option to Consider*, 13 OHIO ST. J. ON DISP. RESOL. 103, 110 (1997) (discussing a proposed alternative for parties who would like legally correct arbitral awards but are not willing to subject the award to substantive judicial review). The result of these vague and confusing judicially created standards for review is that losing parties in arbitration proceedings often attempt to overturn the award on one of these imprecise grounds, even though such attempts are almost always futile. *Id.* Despite the extremely low rate of success associated with such appeals, parties continue to petition courts to vacate arbitration awards, resulting in arbitration *and* litigation, rather than arbitration *instead of* litigation. See *id.* (emphasis added).

123. *Major League Baseball Players Ass’n v. Garvey*, 532 U.S. 504, 510-11 (2001). Though this exact issue is not discussed by the Court, it can probably be assumed that *Garvey* argued that the scope of judicial review should be broadened from its current standard, which would have enabled the Supreme Court to vacate the arbitrator’s award.

124. Until the Supreme Court clarifies its vacatur standards, the decision in *Garvey* may aid in destabilizing the arbitration process. See Hayford, *supra* note 109, at 825. Mr. Hayford argues that with the lack of clarity of vacatur standards, the growing number of challenges to arbitration awards, and the willingness of courts to overturn awards when they find the results troubling

Court had an opportunity to expand the scope of judicial review, which would be advantageous to all parties involved in future arbitration proceedings.<sup>125</sup>

Advocates of expanding the scope of judicial review<sup>126</sup> advance several valid arguments which the Supreme Court should consider the next time it is faced with a situation similar to Garvey's. For instance, when parties, such as an employer and union, negotiate a collective bargaining agreement, they expect that bargain to be protected.<sup>127</sup> The only way the parties' bargain can be fully protected is by expanding judicial scrutiny beyond what is currently afforded courts in reviewing arbitration awards.<sup>128</sup>

Others advocates advance a more formalistic argument based on the United States Constitution for expanding judicial review of arbitration awards.<sup>129</sup> It is argued that the Constitution specifically vests the judicial power of the United States in the federal courts, not in

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contribute to destabilization of the arbitration process. *Id.* The willingness of lower courts to reject arbitration awards in debatable circumstances provide ammunition to parties who may wish to use the courts to overturn awards. *Id.* See also *supra* note 122 discussing the willingness of some circuit courts to vacate arbitration awards.

125. Numerous benefits to expanding the scope of judicial review of arbitration awards are identified by commentators. See *infra* notes 126-43 and accompanying text.

126. For a brief summary of some court decisions upholding expanded judicial review, see Stephen P. Younger, *Agreements to Expand the Scope of Judicial Review of Arbitration Awards*, 63 ALB. L. REV. 241, 254-58 (1999).

127. Ray, *supra* note 8, at 2. Judicial scrutiny of arbitration awards will aid in protecting the parties' bargain from possible misreading by a labor arbitrator, who rarely has formal legal training. *Id.* It is important to consider that federal judges are legally trained and are chosen through a careful and public selection process. They deal regularly with a broad range of contract interpretation issues. *Id.* Therefore it would seem that parties would welcome the scrutiny of someone with such expansive legal experience as judges. *Id.* When parties enter into a contract to have disputes resolved by an arbitrator, they expect that the arbitrator will keep within limits, and if he or she does not, the court will then intervene to protect their bargain. Summers, *supra* note 120, at 1021. When an arbitrator's decision is beyond the boundaries of what other arbitrators might decide, then the parties' expectations have been defeated and the decision is not within the intent and purpose of the agreement to arbitrate. *Id.*

128. Ray, *supra* note 8, at 2. Protecting a party's bargain raises the issue of parties contracting for expanded judicial review of arbitration awards. See generally Alan Scott Rau, *Contracting Out of The Arbitration Act*, 8 AM. REV. INT'L ARB. 225, 256 (1997) (arguing that a court has the power and obligation to give effect to an arbitral award that the parties intended the award to have, even if a court must conduct an expanded review as called for in the agreement); Sasser, *supra* note 32, at 367 (arguing that parties should be able to contract for expanded judicial review of arbitration awards based on circuit court opinions and basic public policy reasons); Younger, *supra* note 126, at 261 (warning parties to use caution before agreeing to expand the scope of judicial review in arbitration agreements).

129. See, e.g., Randall, *supra* note 56, at 759 (discussing the need for somewhat limited but broader judicial review).

arbitrators.<sup>130</sup> Federal courts should review the merits of arbitration awards when these awards impinge on the judicial power granted by the United States Constitution.<sup>131</sup>

Without broader judicial review of arbitration awards, there is a strong possibility that serious errors may go uncorrected.<sup>132</sup> Allowing reviewing courts broader discretion in vacating arbitration awards can provide a losing party with a chance to secure the reversal of an erroneous arbitration decision.<sup>133</sup> Opponents of expanding judicial

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130. The United States Constitution states, "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may . . . establish." U.S. CONST. art III, § 1.

131. Randall, *supra* note 56, at 759. Arbitration cannot replace the courts, which are ultimately responsible for enforcing laws and safeguarding public interests. *Id.* Courts cannot permit violations of public policy, enforce illegal contracts, or otherwise condone illegal behavior, and thus should scrutinize arbitration awards more closely to prevent such problems and to protect public interests. *Id.* If courts could not vacate an award that conflicts with public policy or violates an important law or rule, then essentially, "[a]rbitration is above the law." LeRoy, *supra* note 114, at 23.

Another formalistic argument made for expanding judicial review of arbitration awards was made by the dissent in a Supreme Court case. *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 41 (1991). Whatever the underlying merits of arbitration, Congress has simply not authorized its use in the employment law area. *Id.* It has been argued, however, that Section 301 of the Labor Management Relations Act states that arbitration, rather than strikes and/or other measures, is the preferred method for settling industrial disputes. See *supra* notes 40-42 and accompanying text.

132. Jay C. Carlisle, *Simplified Procedure for Court Determination of Disputes Under New York's Civil Practice Law and Rules*, 54 BROOK. L. REV. 95, 109 (1988) (citing 3 J. WEINSTEIN, H. KORN & A. MILLER, *NEW YORK CIVIL PRACTICE* P3031.02 (1986)). When a decision is made by a judge, rather than by an arbitrator, the likelihood that a dispute will be settled according to generally recognized and predictable rules of substantive law is greater. *Id.* Also, arbitrators, who are usually non-judicial personnel, may not be sufficiently trained to hear and determine all types of disputes that may arise. *Id.*

133. Berger, *supra* note 30, at 256. Advocates of broader judicial review question whether arbitrators as a class should be immune from judicial review when district court judges can be reversed by appellate courts for errors. *Id.* Correcting errors in the labor arbitration process furthers the public interest in protection of bargains. *Id.* at 257. See also *supra* notes 127-28 for further discussion of protecting the parties' bargain.

The Supreme Court has so limited judicial review that "arbitrators are a true black box." Ralph A. Finizio et al., *Arbitration, A Reappraisal*, 3 NO. 18 LAWYERS J. 5, 13 (Sept. 7, 2001) (discussing the limitations of the arbitration process). In this regard, arbitrators may resolve the dispute by any means appropriate with "virtually unfettered discretion." *Id.* In some cases, unless the arbitration agreement specifically provides for limits on the arbitrator's discretion, the arbitrator may not be bound to rule based upon the evidence presented or governing law. *Id.* Allowing arbitrators such extreme deference ignores the fact that some cases are too complex to be finally disposed of through the inadequate procedures of arbitration. Robert N. Covington, *Employment Arbitration After Gilmer: Have Labor Courts Come To The United States?*, 15 HOFSTRA LAB. & EMP. L.J. 345, 387 (1998) (discussing the possibility of the development of labor and employment courts in the United States). One such case may be discrimination claims. *Id.* This argument,

review argue that the review process, based on any standard, undercuts the speed and finality that makes labor arbitration an ideal alternative to litigation.<sup>134</sup> Advocates, however, assert that reviewing arbitration awards based on errors of law or fact would be less burdensome than a full trial.<sup>135</sup>

Broadening the current standard of judicial review of arbitration awards may encourage parties to enter into arbitration agreements.<sup>136</sup> By forcing parties to resort to alternative means of resolving disputes, the current standard of judicial review may actually disrupt labor management relations, rather than promote them.<sup>137</sup>

Had the Supreme Court decided to expand the scope of judicial review of arbitration awards, the court of appeals decisions most likely would have been upheld.<sup>138</sup> Broadening the scope of judicial review could have allowed the serious error committed by the arbitrator to be corrected.<sup>139</sup> This would also have served to protect the bargain between

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however, has been made, and the Supreme Court rejected it. *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 31 (1991).

134. *See* Ray, *supra* note 8, at 2. For a further discussion of arguments against expanding judicial review of arbitration awards, see *infra* notes 146-68.

135. *See* Jiang-Schuerger, *supra* note 29, at 247; *Fils Et Cables D'Acier De Lens v. Midland Metals Corp.*, 584 F. Supp. 240, 244 (S.D.N.Y. 1984) (finding that reviewing an arbitrator's findings for substantial evidence and legal validity is "far less searching and time consuming" than a full trial). *But see* *LaPine Tech. Corp. v. Kyocera Corp.*, 909 F. Supp. 697, 706 (N.D. Cal. 1995) (declining to review an arbitration award based on errors of law and substantial facts because it would entail a huge review).

136. *Berger*, *supra* note 30 at 253. The absolute finality of an arbitration decision may cause parties to be less willing to arbitrate disputes. *Id.* In effect, limiting judicial review of arbitration awards as narrowly as the Supreme Court presently does may cause fewer parties to agree to arbitrate. Instead, they may choose to litigate grievances, causing even more congestion in the courts. *Id.*

137. *Id.* Without acceptable alternative dispute resolution mechanisms to resolve grievances, parties may resort to economic weapons or litigation to settle many of their disagreements. *Id.* It has long been established that this narrow review of arbitration awards is in place in order to promote the federal policy of settling labor disputes by arbitration. *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 596 (1960). Parties, however, may be less willing to arbitrate disputes, knowing that serious errors will go uncorrected by the courts. *See* *Torrington Co. v. Metal Prods. Workers' Union Local 1645*, 362 F.2d 677, 682 (2d Cir. 1966) (refusing to enforce an arbitration award reasoning that its decision to do so would "stimulate voluntary resort to labor arbitration"). In effect, the narrow standard of review may serve to force parties to settle labor disputes by litigation, rather than arbitration, in order to be sure that serious errors will not be made. *See* *Berger* *supra* note 30, at 253 (discussing the possibility that non effective methods of alternative dispute resolution will lead to more parties engaging in litigation).

138. *See* *Garvey v. Roberts*, 203 F.3d 580, 592 (9th Cir. 2000) (acknowledging the limited scope of judicial review of arbitration awards, but holding that in this case, the arbitrator's decision was "completely inexplicable and border[ed] on the irrational" and vacatur of the award was proper).

139. *See* *Finizio*, *supra* note 133, at 13 (discussing the limits of arbitration in that arbitrators

the Baseball Players Union and the Baseball Clubs.<sup>140</sup> The players who were damaged by the collusion of the Clubs and their owners were entitled to damages as agreed upon in the Global Settlement Agreement and the Framework.<sup>141</sup>

By declining to expand the scope of judicial review, the Supreme Court allowed the arbitrator to encroach upon the role of the judiciary and essentially failed to protect the interests of all baseball players damaged by the collusion.<sup>142</sup> In order to sustain the vitality and efficiency of labor arbitration, the Supreme Court will need to address some of these persuasive arguments and reconsider expanding the current standard of judicial review.<sup>143</sup>

#### *D. Maintaining Narrow Review of Arbitration Awards*

In the *Garvey* decision, the Supreme Court reaffirmed the limited role of courts in the process of labor arbitration.<sup>144</sup> Although the Court did not specifically articulate its reasons for upholding the extremely limited scope of judicial review, several rationales for its continued existence have been advanced.<sup>145</sup> The justifications suggested for maintaining a narrow standard of judicial review of arbitration awards presumably motivated the Supreme Court to reach its decision in *Garvey*.

The foremost argument advanced for maintaining a narrow standard of judicial review of arbitration awards is based on the initial goals of

are not required to follow the evidence presented or governing law). Had the evidence presented bound the arbitrator in *Garvey's* case, *Garvey* most likely would have prevailed. See *Garvey*, 203 F.3d at 594.

140. See *Summers*, *supra* note 120, at 1021 (discussing the fact that parties' bargains are only protected when an arbitral decision is within the intent and purpose of the parties' original agreement).

141. See *supra* note 79 for discussion of the Framework.

142. See *Randall*, *supra* note 56, at 759 (discussing the need for courts to review arbitration awards to prevent encroachment by the arbitrators on judicial power and to ensure representation of the general public interest).

143. However, if there is to be meaningful review of arbitration awards, there must be an adequate basis for review—either a record of the proceedings or, at a minimum, a statement by the arbitrator which reflects his or her factual findings and legal analysis. Joseph R. Grodin, *Arbitration of Employment Discrimination Claims: Doctrine and Policy in the Wake of Gilmer*, 14 HOFSTRA LAB. L.J. 1, 47 (1996) (discussing the alternatives of policing agreements to arbitrate statutory employment claims for fairness and voluntariness).

144. See *supra* notes 108-14. For a brief summary of court decisions declining to enforce expanded judicial review, see *Younger*, *supra* note 126, at 258-60.

145. See generally *Ray*, *supra* note 8, at 2; *Jiang-Schuerger*, *supra* note 29, at 247-50; *Berger*, *supra* note 30, at 246-54. For more specific justifications, see *infra* notes 148-68 and accompanying text.

arbitration.<sup>146</sup> Advocates argue that a narrow standard of review aids in promoting the finality of arbitration decisions.<sup>147</sup> Loss of finality not only increases out of pocket expenses, but also results in substantial delay in the settlement of grievances.<sup>148</sup>

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146. For a discussion of some of the reasons parties choose arbitration over litigation, see *supra* notes 28-30. A frequently cited benefit of arbitration is the informality of the process. 4 AM. JUR. 2D *Alternative Dispute Resolution* § 8 (1995). Some advocates argue that by avoiding judicial inquiry into factual issues, such as whether the arbitrator's findings of fact were supported by substantial evidence or clearly erroneous, it is hoped that the arbitration proceeding will not be conducted like a judicial trial and that the procedural efficiencies of arbitration will be preserved. Hochman, *supra* note 122, at 115. Although giving the arbitrator the power to make unreviewable findings of fact may create a potential for abuse by an arbitrator bent on reaching a legally incorrect result, this minimal risk seems to be more than offset by the advantage of a summary judgment type of judicial review limited to correcting errors of law. *Id.*

147. Elizabeth Tenorio, Note, *Modifying the Standard of Judicial Review of Labor Arbitration Awards: A Comparison to Administrative Review Hearings*, 1997 J. DISP. RESOL. 245, 256 (1997). If the courts consider an arbitration decision final and binding on the parties, they will be less willing to spend a great deal of time and money trying to go to court to overturn the decision. *Id.* Narrow review of arbitration awards will result in courts being faced with fewer cases to review, since a losing party will lack any incentive to litigate the validity of the arbitrator's ruling. Berger, *supra* note 30, at 256.

However, what may be gained by the informality and relative speed of arbitration proceedings may be offset by a perceived lack of due process. Gary W. Flanagan, *Expanded Grounds for Judicial Review of Employment Arbitration Awards*, 67 DEF. COUNS. J. 488, 495 (2000). In many arbitration proceedings, discovery is limited and arbitrators are sometimes less qualified than judges to handle the complexities of some cases. Michele L. Giovagnoli, Comment, *To Be or Not To Be?: Recent Resistance to Mandatory Arbitration Agreements in the Employment Arena*, 64 UKMC L. REV. 547, 575 (1996). Also, some parties may feel at a financial disadvantage if they are required by the arbitration agreement to pay for half of the arbitrator's time in order to bring a claim. Flanagan, *supra*, at 495. For a thorough discussion of the issue of due process and arbitration, see Jay E. Grenig, *When Due Process is Due: The Courts and Labor Arbitration*, 1995 DET. C.L. REV. 889 (1995) (discussing the issue of due process arising under collective bargaining agreements in employee discharge cases involving major offenses).

148. Covington, *supra* note 133, at 387. Allowing a broader standard of review will add significant costs to the arbitration process. Ray, *supra* note 8, at 2. Parties will spend money for the initial arbitration proceeding and then must pay court costs, including lawyer fees, in order to facilitate judicial review of an arbitration award. Broader judicial review will result in delay of a resolution which means grievances will remain unresolved for longer periods of time and will leave the parties in a continued state of uncertainty. Berger, *supra* note 30, at 252. Appeals lead to delay and delay undercuts the entire labor arbitration process by threatening both the finality of the process and the positive labor relation benefits of a final decision. Ray, *supra* note 13, at 65. Delays can cause uncertainty, interfere with the bargaining process, and undermine the union. Ray, *supra* note 8, at 12.

Besides delaying a final resolution to a grievance, broad judicial review can also serve to complicate what is usually a fairly simple process. Sasser, *supra* note 32, at 365. For instance, if courts are able to review an arbitration award much more closely, arbitrators will have to make specific findings of law and fact in order to facilitate proper review by the courts. *Id.* Also, arbitrators will have to be available to testify before a reviewing court in the appeal of the award. *Id.*

Garvey's claim was filed in 1996 and a final resolution was not reached until 2001, which substantially delayed the settlement of his grievance.<sup>149</sup> If Garvey had recognized the extremely narrow judicial review of arbitration awards, he most likely would not have appealed the unfavorable arbitral award, saving all parties involved time and money.<sup>150</sup> Presumably, the Supreme Court recognized that limited judicial review may promote finality of arbitration awards.<sup>151</sup> Applying this principle in the *Garvey* decision, it is possible that the Court intended to reestablish this objective of arbitration and hoped to limit future litigation seeking to vacate or overturn arbitration awards.<sup>152</sup>

Retaining a narrow scope of judicial review can also serve to preserve the integrity of the arbitration process.<sup>153</sup> Advocates of narrow judicial review emphasize the importance of protecting the parties' bargain in contracting for arbitration as a means of settling disputes.<sup>154</sup>

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149. See Covington, *supra* note 133, at 387 (discussing the substantial delays imposed by appeals of arbitration awards by losing parties). It may also be assumed that both Garvey and the Players Association expended considerable money on retaining counsel for the numerous appeals that followed Garvey's initial claim. See Berger, *supra* note 30, at 252. Even after all of the money and time spent, the result of Garvey's claim was obviously the same result as that rendered by the arbitrator. See *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 511 (2001).

150. See Tenorio, *supra* note 147, at 256 (discussing the disincentives of appealing arbitration awards under a narrow standard of judicial review). See also notes 147-149 *supra*.

151. *Major League Baseball Players Ass'n*, 532 U.S. at 509-10.

152. See *id.*

153. Jiang-Schuerger, *supra* note 29, at 248. Allowing for broader judicial review may add a redundant step to the arbitration process and bring parties to the table who do not trust arbitration as a final resolution forum and who would bring a case to court anyway. *Id.* at 251. Arbitration may be selected by the parties for many reasons, particularly because they are able to choose their own neutral third party to resolve the dispute. See *supra* note 29. Labor arbitrators, unlike judges, are selected by the parties themselves and are presumed to be experts in the narrow range of issues involved in interpreting labor contracts. Ray, *supra* note 8, at 2. On the other hand, federal judges are responsible for a broad range of legal areas and cannot quickly become experts in the "law of the shop." *Id.*

Judicial review of arbitration awards leads to delays, and delays destroy all the positive values implicit in the arbitration process. *Id.* at 11. Narrow review will also prevent management from using the opportunity of judicial review to frustrate the arbitration process. Jiang-Schuerger, *supra* note 29, at 252-54. A policy of deference will prevent labor and management from losing faith in the arbitration process as a result of continuing court reversals. Berger, *supra* note 30, at 277. If courts were allowed broad discretion in overturning arbitration awards, many parties would view arbitration as useless because the decision of the arbitrator may not be final and binding. *Id.* at 278. Bypassing the entire arbitration process will result in an increase in labor contract litigation. *Id.*

154. Davis, *supra* note 57, at 101. Limiting the scope of judicial review promotes the fundamental policy of arbitration: honoring the contractual intent of the parties to the arbitration agreement. *Id.* The limited scope of review flows from the private nature of arbitration. *Id.* at 86. A collective bargaining agreement providing for arbitration is an agreed upon substitute for labor and union strikes. The parties receive what they bargain for when the arbitrator renders an award

Broad judicial review may serve to contravene the parties' freedom of contract without any ground for doing so.<sup>155</sup>

The *Garvey* decision arguably maintains the integrity of the arbitration process by its refusal to vacate an arbitration award that was arguably premised on serious error on the part of the arbitrator.<sup>156</sup> After the original finding of collusion by the Clubs, the Major League Baseball Players Association and the Clubs entered into the Global Settlement Agreement.<sup>157</sup> By this agreement, the parties contracted for an arbitrator to settle the claims of players injured by the collusion.<sup>158</sup> Presumably, the parties felt this was the best means for redressing the injuries that resulted from the collusion of the Clubs to depress player's salaries.<sup>159</sup> Therefore, the Supreme Court may have declined to vacate the arbitrator's award or to broaden judicial review of such awards as a means of protecting the bargain struck between the Major League Baseball Players Association and the Clubs.<sup>160</sup>

One final argument for preserving a narrow standard of judicial review relies on the legislation relating to arbitration.<sup>161</sup> Both the Federal Arbitration Act<sup>162</sup> and Section 301 of the Labor Management Relations Act<sup>163</sup> establish a federal policy favoring arbitration as a means of resolving disputes.<sup>164</sup> The Federal Arbitration Act lists four

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resolving their dispute. Martin H. Milan & Robert F. Ladenson, *Privatizing Justice: A Jurisprudential Perspective on Labor and Employment Arbitration from the Steelworkers Trilogy to Gilmer*, 44 HASTINGS L.J. 1187, 1195 (1993). Also, the parties have bargained for the interpretation of the arbitrator and only the arbitrator, not the interpretation of a judge, and allowing a court the final decision on the parties' dispute ignores the parties' bargain. Ray, *supra* note 8, at 9. Therefore, an arbitrator's final ruling fully provides the benefit of the parties' bargain. *Id.* at 10. Milan and Ladenson suggest that parties who may consider an award to be erroneous or unsatisfactory can try to correct the error in negotiations with the other party. Milan, *supra*, at 1195.

155. Stephen J. Ware, *Default Rules from Mandatory Rules: Privatizing Law Through Arbitration*, 83 MINN. L. REV. 703, 739 (1999). Imposing judicial review of arbitrators' legal rulings goes beyond contract law in adding an extra barrier to enforcement of arbitration agreements. *Id.* Courts should be reluctant to override an earlier commitment of both parties to the selection of a particular arbitrator as the articulator of their contractual obligations in order to relieve one party from an unsatisfactory result of that choice. Jones, Jr., *supra* note 120, at 893.

156. *See* Major League Baseball Players Ass'n v. Garvey, 532 U.S. 504, 510-11 (2001).

157. *See supra* note 79.

158. *Id.*

159. *Id.*

160. *See Major League Baseball Players Ass'n*, 532 U.S. at 510. Even Garvey has conceded that, though the Supreme Court's ruling disappointed him, he understood that the Court was "trying to protect the arbitration process." *Garvey Seeking Another Chance*, THE SAN-DIEGO UNION-TRIBUNE, July 9, 2001, at D6.

161. *See* Hayford, *supra* note 109, at 890.

162. *See supra* notes 31-38 and accompanying text.

163. *See supra* notes 40-42 and accompanying text.

164. *See supra* notes 31-42 and accompanying text.

specific grounds for vacating an arbitration award,<sup>165</sup> while Section 301 does not list any grounds. Therefore, advocates of narrow judicial review have argued that these federal statutes do not allow for expanding judicial review beyond those established by Congress.<sup>166</sup>

Although the Supreme Court did not specifically articulate its reasons for refusing to overturn the arbitration award, it is reasonable to assume that some of the above arguments may have influenced its decision.<sup>167</sup> The only rationale supplied by the Court was prior case law and precedent in which the scope of judicial review of arbitration awards was established as extremely narrow.<sup>168</sup>

### *E. Proposed Standard for Vacating the Arbitration Award in Garvey*

As previously stated, the Supreme Court declined to consider expanding the scope of judicial review in the *Garvey* case.<sup>169</sup> The Court, however, should have considered an additional ground for vacating an arbitration award: the “completely irrational” standard.<sup>170</sup> This standard

165. See *supra* note 54 and accompanying text.

166. See Hayford, *supra* note 109, at 890. Congress declined to authorize judicial reversal of challenged awards for arbitral error of fact, contract interpretation, or misapplication of law, by limiting the grounds for vacatur to four standards. *Id.* Clearly, it was the intent of Congress that the parties to a valid arbitration agreement who have had the benefit of a full and fair arbitration proceeding are not to be permitted to escape that bargain at the back end of the process, just because they are displeased with the result. *Id.* Also, Congress has not granted courts power to expand the grounds of vacatur of arbitration awards. Jiang-Schuerger, *supra* note 29, at 248. By explicitly listing four grounds upon which a federal court may vacate or modify an arbitration award, Congress intended to ensure the proper functioning of the arbitral process. *Id.* The creation and application of non-statutory standards of review of an arbitrator’s decision is inconsistent with the language of the federal statutes and is not supported by statutory command or by arbitration law. *Id.* at 249.

167. For an empirical study of the frequency with which some of the above arguments are used by parties petitioning a court to vacate an arbitration award and how often federal courts accept these arguments, see LeRoy, *supra* note 114, at 49-91 (discussing empirical research of judicial review of workplace arbitration awards).

168. See *supra* note 109.

169. See *supra* notes 123-25.

170. See Hayford, *supra* note 109, at 878. Courts have used this standard as a means of determining that the arbitrator’s decision does not draw its “essence” from the parties’ agreement. The Third Circuit, relying on the Steelworkers Trilogy and its own labor arbitration precedent, has stated that “an arbitrator’s award does not draw its essence from the agreement if the arbitrator’s interpretation of the contract cannot be rationally derived there from . . . an award may not stand if it does not meet the test of fundamental rationality.” *Swift Indus., Inc. v. Botany Indus., Inc.*, 466 F.2d 1125, 1131 (3d Cir. 1972). The Ninth Circuit has held that “an arbitrator’s decision must be upheld unless it is ‘completely irrational.’” *French v. Merrill Lynch, Pierce, Fenner & Smith*, 784 F.2d 902, 906 (9th Cir. 1986). See also James E. Beckley, *Embracing Irrationality: A Functional Test for Vacating Arbitration Awards*, 1062 PLI/CORP 537, 545-47 (1998) (arguing that the

is similar in scope to the one advocated by Judge Joyce Kennard of the California Supreme Court, which she suggested is an “intermediate” position of judicial review of arbitration awards.<sup>171</sup>

Despite narrow judicial review, some courts recognize the need to hold arbitrators to a standard of rationality.<sup>172</sup> This standard requires that there be some support in the record for the arbitrator’s award.<sup>173</sup> Advocates of the “completely irrational” standard for vacating an arbitration award argue that this standard promotes the fundamental policy of arbitration: honoring the contractual intent of the parties to the arbitration agreement.<sup>174</sup>

However, this standard can be utilized only when an arbitrator reveals his reasoning process, preferably in a written opinion.<sup>175</sup> Written opinions are essential if courts are to exercise meaningful judicial review

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appropriate test for vacating arbitration awards is whether the award is “irrational”).

171. See Hochman, *supra* note 122, at 111 (citing Judge Joyce Kennard, Speech to the Section of Litigation of the American Bar Association (Apr. 19, 1997)). According to Judge Kennard, “even in the absence of an agreement by the parties to allow substantive judicial review, arbitration awards which are ‘manifestly erroneous’ and cause a ‘substantial injustice’ should be subject to vacation by a court.” *Id.*

172. Davis, *supra* note 57, at 101. This standard applies primarily to findings of fact. *Id.* at 103.

173. *Id.* at 101. The irrational standard vacates an award evincing an irrational interpretation, considering the magnitude and quality of the error, rather than the state of mind of the arbitrator. *Id.* at 107.

174. *Id.* at 101. This standard does not impose judicial intermeddling into the arbitration process. *Id.* Any party agreeing to arbitrate disputes with another expects the arbitrator to resolve the conflict reasonably. Davis, *supra* note 57, at 101. Parties should not be subject to an award so flawed that it is against the very principles the parties were attempting to resolve. Mungioli, *supra* note 121, at 1120.

This standard, however, has not been widely accepted and has, in fact, been criticized. Hayford, *supra* note 109, at 878. Critics indicate that the “completely irrational” standard allows for the intrusion of broad judicial review into the merits of challenged arbitration awards “deemed by a court to be grossly inaccurate on the facts or egregiously incorrect on the relevant contract language or law, without providing any concrete, objective guides to decision for the lower courts.” *Id.* The “completely irrational” award standard may open the door to substantial judicial evaluation of the merits of arbitration awards by a court that is predisposed to engage in reviewing the merits when confronted with an award it believes to be grossly inaccurate or incorrect. Hayford, *supra* note 122, at 793. Also noted is that neither of the above Third and Ninth Circuit cases have been cited as authority for further integration of the “completely irrational” standard. *Id.*

175. Davis, *supra* note 57, at 107. Ordinarily, arbitrators are required to issue written awards, but they are not required to issue opinions explaining the rationale behind their decisions. Christopher B. Kaczmarek, *Public Law Deserves Public Justice: Why Public Law Arbitrators Should Be Required to Issue Written, Publishable Opinions*, 4 EMPL. RTS. & EMPLOY. POL’Y J. 285, 297 (2000). The Supreme Court has stated that arbitrators have no obligation to the court to give their reasons for an award. *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 598 (1960). Not only do many arbitration awards contain no reasoned opinion, but in many cases, arbitrators are instructed not to give a reason for a decision. Flanagan, *supra* note 147, at 498.

of arbitral decisions, especially under the “completely irrational” standard.<sup>176</sup>

In the *Garvey* case, the arbitrator issued an opinion explaining the reasoning for denying Garvey’s claim alleging that collusion prevented his contract from being extended.<sup>177</sup> The arbitrator noted in his award the contradictions in Smith’s earlier testimony in the collusion hearings and in his present testimony for Garvey.<sup>178</sup> Had the Supreme Court applied the “completely irrational” standard to the arbitrator’s findings of fact, it is obvious the arbitrator’s decision would have failed this standard.<sup>179</sup>

The court of appeals found that the arbitrator’s rulings in the two separate hearings were “completely inexplicable and border[ed] on the irrational.”<sup>180</sup> The players’ union and Garvey expected the arbitrator to resolve the claim reasonably, which, given the peculiar circumstances, he did not do.<sup>181</sup> The only reference by the Supreme Court of any possible error on the part of the arbitrator was mentioned in a footnote at the end of the opinion.<sup>182</sup> The Court stated that even if the arbitrator had committed an error in his disbelief of Smith’s testimony, it was not irrational or inexplicable, and would not justify the actions taken by the court of appeals.<sup>183</sup> Had the Supreme Court looked more closely at the

176. Kaczmarek, *supra* note 175, at 323. A coherent explanation makes it possible for a reviewing court to fully understand the dispute as well as identify and correct any erroneous decisions made by the arbitrator. *Id.*

177. *Garvey v. Roberts*, 203 F.3d 580, 586 (9th Cir. 2000). The arbitrator’s award dedicated over five pages to discussion of Garvey’s claim and its denial by the Association. *Id.*

178. *Id.* The arbitrator indicated that on its face, Smith’s testimony supported Garvey’s claim for a contract extension, but that the shadow cast over his credibility, coupled with the absence of any other corroboration of a specific offer of a contract extension, compelled a finding that the Padres declined to extend his contract as a baseball judgment founded upon Garvey’s age and recent injury history. *Id.* See also *supra* notes 84-86. This glaring contradiction in the arbitrator’s two decisions hardly seems rational.

179. See *supra* notes 85-86. As the court of appeals noted, in the collusion hearing, the arbitrator found that Smith (and other club owners) were lying when they denied any collusion between baseball Clubs. *Garvey v. Roberts*, 203 F.3d 580, 591 (9th Cir. 2000). In light of that conclusion, the arbitrator then determined that Smith was lying when he admitted to collusion by the Clubs as the reason for refusing to extend Garvey’s contract. *Id.*

180. *Id.* at 590. The court vacated the award, finding that the arbitrator “dispense[d] his own brand of industrial justice.” *Id.* at 590-91.

181. As Circuit Judge Hawkins pointed out in his concurring opinion, the court refused to accept the conclusion of the arbitrator, who, in effect, stated “You lied before when you said there was no collusion, and I refused to rely on those lies in finding that there was collusion; but now that you are telling me that you did lie, that there really was collusion, I refuse to believe you.” *Id.* at 594. The Supreme Court did not fully consider the extenuating circumstances of this case.

182. *Major League Baseball Players Ass’n v. Garvey*, 532 U.S. 504, 511 n.2 (2001).

183. *Id.* The Court stated that there was no serious error on the part of the arbitrator in this

arbitrator's findings in the two proceedings, the irrationality would be apparent and his award should have been vacated.<sup>184</sup>

## V. CONCLUSION

Arbitration has become one of the most prevalent techniques of alternative dispute resolution,<sup>185</sup> particularly in labor disputes arising under collective bargaining agreements.<sup>186</sup> Congress and the Supreme Court have demonstrated their acceptance of arbitration by the establishment of statutes<sup>187</sup> and legal principles that govern the arbitration process.<sup>188</sup> In *Major League Baseball Players Ass'n v. Garvey*, Garvey petitioned the Court to vacate an adverse arbitration award.<sup>189</sup> The Supreme Court declined to vacate the arbitration award, as a further indication of its advocacy of arbitration as an alternative to litigation.<sup>190</sup>

In the *Garvey* decision, the Supreme Court was confronted with three options: 1) Clarify the judicial review standards for arbitration awards;<sup>191</sup> 2) Expand the scope of judicial review of arbitration awards;<sup>192</sup> or 3) Adopt the "completely irrational" standard for vacating an arbitration award.<sup>193</sup> The Supreme Court declined to implement any of these options, thereby retaining the ambiguous standards of judicial

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case. *Id.* The Court accepted the arbitrator's explanation for his decision that he found Smith to be an unreliable witness and that, in the absence of corroborating evidence, the arbitrator could only conclude that Garvey failed to show that the Padres had offered to extend his contract. *Id.*

184. The Supreme Court did not extensively consider the arbitrator's two conflicting decisions, which was the main thrust of the court of appeals decision. Circuit Judge Hawkins also noted that the arbitrator had two options, either of which would have rendered his decision rational and entitled to court deference. *Garvey v. Roberts*, 203 F.3d 580, 594 (9th Cir. 2000). First, the arbitrator could have accepted Smith's testimony, essentially admitting that he had lied in the previous collusion hearings. *Id.* No reviewing court, applying even the most rigorous standard of review, would have found that decision irrational. *Id.* Secondly, had the arbitrator required Smith to testify under oath to the truthfulness of his statements admitting to collusion, the decision to deny Garvey's claim may have been accepted as rational. *Id.* Instead, the arbitrator relied on Smith's testimony under oath in the original collusion hearings and Smith's letter, which was not given under oath. *Id.* Requiring Smith to testify under oath that the Clubs had colluded may have given more credibility to the arbitrator's reasoning that Smith was not a believable witness. *Id.*

185. *See supra* note 4.

186. *See supra* notes 28-30 and accompanying text.

187. *See supra* notes 10, 31-42 and accompanying text.

188. *See supra* notes 11, 43-49 and accompanying text.

189. *See supra* notes 75-106 and accompanying text.

190. *See supra* notes 96-106 and accompanying text.

191. *See supra* notes 120-22 and accompanying text.

192. *See supra* notes 123-43 and accompanying text.

193. *See supra* notes 170-76 and accompanying text.

review of arbitration awards established over forty years ago.<sup>194</sup> Had the Supreme Court clarified the current standards of vacatur, the disparities in circuit court decisions regarding vacatur of an arbitration award could be resolved.<sup>195</sup> Expanding the scope of judicial review would have prevented the arbitrator from encroaching upon the role of the judiciary and served to protect the interests of all baseball players damaged by the collusion of the Clubs.<sup>196</sup> Alternatively, adopting the “completely irrational” standard would not have destroyed the extremely narrow standard of judicial review of arbitration awards already established, but would allow for an award not based in reason to be vacated.<sup>197</sup>

The Supreme Court must resolve these issues in the near future in order to maintain the arbitration process as a viable alternative to litigation. Until it does, losing parties will continue to congest court dockets petitioning courts to vacate arbitration awards when they are dissatisfied with the results of arbitration. Most importantly, a system of strict uniformity in reviewing arbitration awards must be adopted by the Supreme Court in order to preserve the integrity of the arbitration process and allow for a “pitch (award) so far outside the strike zone”<sup>198</sup> to be overturned by a reviewing court.

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194. *See supra* notes 120-22 and accompanying text.

195. *See supra* notes 120-22 and accompanying text.

196. *See supra* notes 138-41 and accompanying text.

197. *See supra* notes 156-84 and accompanying text.

198. *Garvey v. Roberts*, 203 F.3d 580, 594 (9th Cir. 2000). *See supra* note 107.