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Labor Arbitration - A New Technology

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LABOR ARBITRATION — A NEW THEOLOGY

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HUME'S STRICTURE that Berkeley's philosophy was not only thoroughly unanswerable but thoroughly unconvincing, serves well as an introduction to the current eschatalogy of labor law. Like the ebb and flow of the picketing-free speech dialogue, arbitration has moved from judicial exile to grudging acceptance and now to a kind of exalted status supported by a new jurisprudence fashioned by arbitrators and elaborated by the courts. Its theory and structure may be summed up in a single phrase: all labor disputes, no matter how frivolous, which arise during the term of a collective labor agreement are arbitrable unless by the most explicit terms arbitration is foreclosed. Distinctions between substantive and procedural arbitrability are recognized but disregarded by reading into the Labor Management Relations Act[1] a grand design for a federal labor policy erected on a bedrock of arbitration. One court reads the signs this way:

> The entire import of the Supreme Court cases beginning with *Lincoln Mills,* through the trilogy of the *Steelworker* cases to *Drake* . . . is that arbitration, when agreed upon by the parties, is the best method for reconciliation of disputes arising out of collective agreements. Where an arbitration clause admits of a construction including the dispute in question within its ambit, recourse to the courts before any effort is made to process the dispute through arbitration is to be looked upon with disfavor . . .[2]

A scholar explains that:

> The meaning of the *Steelworkers* and *Lincoln Mills* cases cannot, however, be limited to the specific holdings described above or the many subsidiary findings and conclusions which are contained therein. Rather, of equivalent importance was the creation of an atmosphere in which the greatest values were placed upon the peaceful settlement of disputes through use of machinery designated by the parties for that purpose. To this end the litigants, the arbitrators and the courts were encouraged to use every available means to make the arbitration process effective.[3]

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1. 61 Stat. 136, 29 U.S.C. §§ 141–97 (1947).

2. Belk v. Allied Aviation Service Co. of New Jersey, Inc., 315 F.2d 513, 517 (2d Cir. 1963).

3. Weiss, *Labor Arbitration and the 1961–62 Supreme Court*, 51 GEO. L.J. 284, 286 (1963).

All that remains of the judicial function is the reserved power to decide whether there is an agreement to arbitrate:

> The Congress, however, has by Sec. 301 of the Labor Management Relations Act, assigned the courts the duty of determining whether the reluctant party has breached his promise to arbitrate. For arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.[4]

But this is a small role, indeed, since the slightest hint of an intention to arbitrate, couched in the most amorphous terms, leads almost inevitably to a reference to the arbitrator. This stems from the principal "if in doubt, arbitrate"[5] and the subordination of common law principles governing the construction of contracts to the federal policy which elevates arbitration from the status of a technique for settling labor disputes to a philosophy. It may well be then, that an inquiry into this subject is no more than an academic excursion into history.

I.

The origin of the current enchantment with arbitration is found in the *Lincoln Mills* case.[6] There, a labor contract prohibited strikes and lock-outs during its terms and required that grievances be handled under a specific procedure. After exhausting the grievance machinery, the union demanded arbitration, and when the employer refused, a suit was instituted in the Federal District Court to compel arbitration. The Supreme Court addressed itself, first, to the jurisdictional question, namely, whether Section 301 of the Labor Management Relations Act[7] was merely jurisdictional or whether it was a "source of substantive law." The Court concluded that Section 301 is "more than jurisdictional — that it authorizes federal courts to fashion a body of federal law for the enforcement of these collective bargaining agreements and includes within the federal law specific performance of promises to arbitrate grievances under collective bargaining agreements."[8]

II.

With this thesis as a cornerstone, a pyramid was erected and the new structure was appropriately designed by a trilogy of cases.[9] In

4. United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582 (1960).
5. *Id.* at 582–83.
6. Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957).
7. 61 Stat. 156, 29 U.S.C. § 185 (1947); Wollett and Wellington, *Federalism and Breach of the Labor Agreement*, 7 STAN. L. REV. 445 (1954).
8. Textile Workers v. Lincoln Mills, 353 U.S. 448, 451 (1957).
9. United Steelworkers of America v. American Mfg. Co., 363 U.S. 564 (1960); United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); United Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U.S. 593 (1960).

one case,[10] an employee quit his job and received workmen's compensation benefits on the basis of proof of permanent partial disability. When the union demanded that the employee be restored to his job under the seniority provisions of the labor agreement and the company refused, a grievance was filed. The company declined to arbitrate, and both the District Court[11] and the Court of Appeals[12] sustained the company's position.

The United States Supreme Court reversed, holding, in substance, that where an agreement provides for the arbitration of all grievances, a court is foreclosed from inquiring into the merits of the controversy.

A companion case[13] involved a dispute over subcontracting. Here, the labor agreement included both a broad arbitration clause and comprehensive "management prerogatives" provisions. The union's demand for arbitration was rejected by the company, and, again, the District Court[14] and the Court of Appeals[15] supported the Company's stand. But the United States Supreme Court saw it differently.[16] To be sure, said the Court, the determination as to whether or not a party has agreed to arbitrate is a judicial one, but, if the court finds that the "reluctant party did agree to arbitrate"[17] then:

> An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of any interpretation that covers the asserted dispute.[18]

In short, unless precise and explicit language excludes a particular grievance from arbitration, disputes "should be resolved in favor of coverage."[19] Conceivably, the absence of express exclusionary provisions is not fatal if there is "most forceful evidence of a purpose to exclude the claim from arbitration."[20] This suggests the possibility of analysis of past bargaining history as a clue to intention, but few courts have been persuaded to divert the judicial stream from the allegedly calm seas of arbitration.

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10. United Steelworkers of America v. American Mfg. Co., *supra* note 9.
11. The District Judge held that the employee was estopped from repudiating his claim that he was permanently partially disabled and he granted the employer's motion for summary judgment.
12. 264 F.2d 624 (6th Cir. 1959).
13. United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960).
14. 168 F. Supp. 702 (S.D. Ala. 1958).
15. 269 F.2d 633 (5th Cir. 1959).
16. United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960).
17. *Id.* at 582.
18. *Ibid.*
19. *Id.* at 583.
20. *Id.* at 585.

A recent decision by the Court of Appeals for the Fourth Circuit,[21] points out what appears to be the current trend. In that case, the publishers of three daily newspapers in Baltimore entered into a collective bargaining agreement with the Baltimore Typographical Union No. 12 covering the terms and conditions of employment of workers in the composing rooms. The agreement was to expire on December 31, 1964. In April, 1964, a dispute arose between the parties, and the publishers instituted an action under Section 301 of the Labor-Management Relations Act to enforce the grievance procedures and arbitration provisions of the agreement.

The facts involved were briefly these: one of the publishers, A. S. Abell Company, had a composing room with twelve line-casting machines operated by perforated tape produced manually by typesetters. Employees who operated the tape perforating units performed an additional operation known as "justification and hyphenation." Abell acquired an electronic computer which eliminated the manual function of "justification and hyphenation." When the union was advised of Abell's intention to operate the electronic computer, it contended that under the terms of the collective bargaining agreement, the publishers could not install the computer without bargaining about its installation and use. They argued that the employment of the machines would constitute "the use of tape not authorized by" the agreement. Abell rejected the claim, asserting that it was not extending the use of tape beyond the permissible contract limits and that the dispute concerning the use of the electronic computer was subject to arbitration. The pertinent portion of the agreement relied upon by the union was as follows:

> Section 3. In the event any Publisher shall introduce the Teletypesetter Keyboard tape-perforator and operating units as a means of producing type in their composing rooms the following shall apply:
>
> (k) Teletypesetter tape consisting of financial market quotations and Major League Baseball box scores received over the regularly leased wires of the Associated Press or the United Press International may be used. All other teletypesetter tape shall be perforated by employees covered by this agreement. . . .

21. A. S. Abell Co. v. Baltimore Typographical Union No. 12, 338 F.2d 190 (4th Cir. 1964), 50 L.C. Par. 19,326. In its opinion, the Court reviews the following authorities: International Union of Elec., R.&M. Wkrs. v. General Elec. Co., 332 F.2d 485 (2d Cir. 1964); Independent Petroleum Workers v. American Oil Co., 324 F.2d 903 (7th Cir. 1963), *cert. granted*, 377 U.S. 930 (1964); Independent Soap Workers v. Proctor & Gamble Mfg. Co., 314 F.2d 38 (9th Cir. 1963), *cert. denied*, 374 U.S. 807 (1963); Pacific Northwest Bell Telephone Company v. Communications Workers of America, 310 F.2d 244 (9th Cir. 1962); Ass'n of Westinghouse Sal. Emp. v. Westinghouse Elec. Corp., 283 F.2d 93 (3d Cir. 1960).

In the event the Publishers, during the life of this agreement, desire to extend the use of tape not authorized by this agreement, they shall notify the union. Upon such notification the parties shall, without undue delay, enter into negotiations for the purpose of arriving at a mutual agreement concerning the matter, but disagreement thereon shall not be subject to the Code of Procedure or arbitration.

Section 5. This contract alone shall govern relations between the parties on all subjects concerning which any provision is made in this contract, and any dispute involving any such subjects shall be determined in accordance with the Code of Procedure.

Section 8. . . . Both parties agree that whenever any differences of opinion as to the rights of either [Union and Publishers] under the Agreement shall arise, or whenever any dispute as to the construction of the contract or any of its provisions takes place, such difference or dispute shall be promptly resolved in the manner provided in this contract. . . .

Section 39 of the agreement required the arbitration of:

differences in the interpretation and enforcement of the terms of this contract, including the question of whether, under Section 5, the disputed issue is covered by the terms of this contract, and including the interpretation of all language contained in this contract.

When the matter came before the District Court, the union made an offer of proof relating to the negotiations between the parties which led to the drafting of Section 3(k). The proffer was rejected by the District Court which held that the clause was ambiguous and hence, referred the matter to arbitration. Upon appeal, the union contended that proffered evidence of bargaining history was admissible. The Court of Appeals, after reviewing the leading Supreme Court authorities (which dictate that disputes under collective bargaining agreements are best resolved by arbitrators and not by courts) rejected the union's claim that the bargaining in history was "forceful evidence" of an intention to exclude the particular dispute from arbitration and ruled:

Such a contention ignores the teaching of *Warrior & Gulf* which favors arbitration where doubts arise as to the meaning of language used in the collective bargaining agreement, particularly where, as in the present instance, the agreement is replete with indications that the parties broadly agreed upon arbitration of their disputes, and the exclusionary language of section 3(k) is vague and ambiguous. If indeed the union has "forceful evidence" of an exclusionary purpose this should be presented to the Board of Arbitration which is expressly empowered to interpret the

agreement, "including whether under section 5, the disputed issue is covered by the terms of this contract, and including the interpretation of all language contained in this contract." It is the Board of Arbitration who should make the determination of whether the controversy is subject to arbitration.

Distinguishing cases to the contrary, the Court held that:

> . . . in determining whether a dispute is subject to arbitration, evidence of bargaining history is admissible only where judicial construction of the arbitration clause in question would not involve the resolution of the underlying dispute. Since in this case, in order to determine whether the dispute comes within the exclusionary provisions of section 3(k) or the arbitration clause, the court would necessarily have to determine the underlying issues of whether Abel's contemplated use of the computer would constitute an extension of "the use of tape not authorized by this agreement . . ."

The lesson of the decision is clear: bargaining history is a matter to be considered by the arbitrator and not the court and, notwithstanding well reasoned decisions to the contrary, the opinion by the Court of Appeals appears to be consistent with the contemporary view of the role of the arbitrator vis-a-vis the Courts.

Another significant case[22] was concerned with the discharge of employees who left their jobs in protest against the firing of one employee. When the company refused to reinstate the workers, the union sued to compel arbitration and succeeded in the court and before the arbitrator. The company failed to comply with the award and the union sought and obtained an order enforcing the award.[23] The Court of Appeals reversed, holding *inter alia,* that the expiration of the labor agreement (which occurred between the time of the discharge and the date of the award) rendered the award unenforceable.

The United States Supreme Court again reversed[24] and enjoined the federal courts from reviewing the merits of the award, even one whose terms were plainly ambiguous.

The full sweep of the trilogy was elaborated in two principal decisions of the United States Supreme Court. It had always been assumed that the *quid pro quo* for the employer's agreement to arbitrate was the union's forebearance from exercising the right to strike.[25]

22. United Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U.S. 593 (1960).

23. 168 F. Supp. 308 (S.D. W.Va. 1958), *revised and modified,* 269 F.2d 327 (4th Cir. 1959).

24. United Steelworkers of America v. Enterprise Wheel and Car Corp., 363 U.S. 593 (1960).

25. Textile Workers v. Lincoln Mills, 353 U.S. 448, 455 (1957), but see Drake Bakeries, Inc. v. Local 50, American Bakery & Confectionery Workers International, 370 U.S. 254 n.7 (1962).

Hence, if a union struck in violation of a no-strike clause, it was reasonable to assume that the correlative right to pursue arbitration was abandoned. In *Drake Bakeries, Inc. v. Local 50, American Bakery & Confectionary Workers International,*[26] the Supreme Court said, in effect, that where a strike occurs and the employer fails to assert that the contract has been terminated, or at least evidences an intention to forever abandon the obligation to arbitrate, it cannot be said that the duty to arbitrate is conditioned upon the absolute observance, by the union, of its no-strike pledge. Hence, when employees refused to work and the union denied that it instigated or encouraged the work stoppage, the employer's suit to recover damages for breach of contract was stayed pending arbitration:

> Arbitration provisions, which themselves have not been repudiated, are meant to survive breaches of contract, in many contexts, even total breach. . . .[27]

Apart from termination of the entire agreement or express repudiation of the arbitration provisions, when may an employer sue for damages suffered by reason of the union's violation of a no-strike clause? This happy possibility exists only when the right to invoke arbitration is reserved exclusively to the union.[28] Indeed, it is doubtful that an employer who expressly terminates the entire agreement or claims the right to "extinguish permanently its obligations under the arbitration provisions"[29] may frustrate arbitration if the arbitration clause is unrestricted in text and scope and contemplates an agreement "to arbitrate all claims without excluding the case where the union struck over an arbitrable matter."[30] It appears, too, that the duty to arbitrate may be imposed upon an employer even where the labor agreement excludes certain issues from arbitration and preserves the union's right to strike over these.[31] To illustrate, when a labor contract provides that certain bargaining issues not covered by the existing agreement may be processed through the grievance machinery up to but not including arbitration, and that the union may strike if the company refuses to submit to arbitration,[32] a dispute relating to subcontracting (which is not a subject covered by the agreement) may be held referrable to an arbitrator under an arbitration clause which purports to cover questions

26. 370 U.S. 254 (1962).
27. *Id.* at 262.
28. Atkinson v. Sinclair Refining Co., 370 U.S. 238 (1962).
29. Drake Bakeries v. Local 50, 370 U.S. 254, 261 (1962).
30. *Id.* at 262.
31. United Steelworkers of America v. American Mfg. Co., 363 U.S. 564, 573 (1960). (Concurring opinion by Mr. Justice Brennan.)
32. See clause in Independent Petroleum Workers of America, Inc. v. American Oil Co., 324 F.2d 903 (7th Cir. 1963).

of "applications or interpretations" or of "alleged violations" of the agreement, if the union points to some clause of the agreement — *i.e.*, the recognition provisions as a basis for its claim.[33] Accordingly, the right to strike may not be a barrier to arbitration.[34]

III.

The hospitality accorded to arbitration is matched by the immunity accorded to arbitration awards. It is clear that the standards by which the validity of an arbitration award may be tested are, or ought to be, provided by the Federal Arbitration Act.[35] It is not enough that the award appears irrational or directly in conflict with the clear and unambiguous terms of the labor agreement. In the absence of fraud or breach of duty by the union or a clear demonstration that the arbitrator exceeded his power, an award is unassailable.[36] So long as the arbitrator's interpretation of the contract is not patently arbitrary or capricious, it will be enforced.[37]

IV.

Arbitration provisions bind not only the employer and union but individual employees:

> Where an arbitration clause can be construed to include the dispute in question within its ambit recourse to the courts before any effort is made to process the dispute through arbitration is to be looked upon with disfavor.[38]

Despite the provisions of Section 9(a) of the Labor-Management Relations Act,[39] the grievance and arbitration machinery cannot be scrapped or avoided. An employee can neither compel arbitration nor institute suit to vindicate a personal grievance or dispute. In *Black Clawson Co. v. International Ass'n of Machinists,*[40] an individual employee, one Best, who alleged that he had complied with the pre-

33. United Steelworkers of America v. American Mfg. Co., 363 U.S. 564, 568 (1960); National Tube Co., 17 Lab. Arb. 790 (1951); Celanese Corp. of America, 33 Lab. Arb. 925 (1959).
34. Association of Westinghouse Salaried Employees v. Westinghouse Elec. Corp., 283 F.2d 93 (3rd Cir. 1960).
35. 9 U.S.C. §§ 1-14 (1947).
36. Humphrey v. Moore, 375 U.S. 335 (1964).
37. Marble Products Co. of Georgia v. Local 155, 335 F.2d 468, 50 CCH Lab. Cas. 19,164 (5th Cir. 1964).
38. Belk v. Allied Aviation Service Co. of New Jersey, Inc., 315 F.2d 513, 517 (2d Cir. 1963).
39. 61 Stat. 143 (1947), 29 U.S.C. § 159(a) (1958).
40. 313 F.2d 179 (2d Cir. 1962); *cf.* Ostrofsky v. United Steelworkers, 171 F. Supp. 728, 790 (D. Md. 1959), *aff'd*, 273 F.2d 614 (4th Cir. 1959), *cert. denied*, 363 U.S. 849 (1960).

liminary steps of the grievance procedure, demanded arbitration of an alleged discharge. The employer then instituted a declaratory judgment action against Best (and his union) for a decree that the dispute was not arbitrable. The defendants moved to dismiss the complaint and for an order compelling the plaintiff to submit to arbitration. The District Court held that Best had no right to compel arbitration. The Court of Appeals for the Second Circuit affirmed the judgment of the District Court and held:

> We conclude that the terms of the grievance procedure in the collective bargaining agreement before us give the employee Best no right to compel Black-Clawson to submit to arbitration, and that this conclusion must be reached by applying federal law and by resorting to reasoned state precedent for guidance.[41]

The Court also referred to an earlier decision in *Proctor & Gamble Independent Union v. Proctor & Gamble Mfg. Co.*[42] In that case, the Court said:

> The right to arbitrate under a collective agreement is not ordinarily a right incident to the employer-employee relationship but one which is incident to the relationship between employer and union. Under the collective bargaining agreement between the parties, it was the union which had the right to take grievances to arbitration, not the individual employees. See Black-Clawson Co. v. International Ass'n of Machinists, 212 F. Supp. 818 (N.D. N.Y. 1962). . . . The wording of the grievance clause as a whole clearly indicates that only the union or the employer can demand arbitration.[43]

The governing principles are these:

> It seems clear, therefore, that rather than conferring an indefeasible right upon the individual employee to compel compliance with the grievance procedure up to and including any arbitration provision, section 9(a) merely set up a buffer between the employee and his union, "permitting" the employee to take his grievance to the employer and "authorizing" the employer to hear and adjust them without running afoul of the "exclusive bargaining representative" language of the operative portion of section 9(a). This construction also best comports with the structure of the section. "The office of a proviso is seldom to create substantive rights and obligations; it carves exceptions out of what goes before." Cox, "Rights Under a Labor Agreement." 69 Harv. L. Rev. 601, 624 (1956).

41. *Id.* at 184.
42. 312 F.2d 181 (2d Cir. 1962).
43. *Id.* at 184–85.

> As applied to the case before us, section 9(a) of the Labor Management Relations Act, and its adoption by Black-Clawson and the Union in their collective bargaining agreement, assured Best the privilege of presenting his grievance to the employer even without the cooperation of the Union, and with the consent of Black-Clawson to have those grievances adjusted, so long as the adjustment was not inconsistent with the terms of the collective agreement. See Ostrofsky v. United Steelworkers, etc., 171 F. Supp. 782, 791 (D. Md. 1959), *aff'd*, 273 F.2d 614 (4th Cir.), cert. denied 363 U.S. 849, 80 S.Ct. 1628, 4 L.Ed. 2d 1732 (1960); Arsenault v. General Elec. Co., 147 Conn. 130, 157 A.2d 918 (1960). See also General Cable Corp., 20 Lab. Arb. 443 (Hays, 1953). Best is therefore without power to compel Black-Clawson to arbitrate the grievance stemming from his accusation of wrongful discharge. The Union is the sole agency empowered to do so by the statute and by the terms of the contract before us.[44]

The rationale of this decision is the need to preserve the collective bargaining status and integrity of the union. Thus, the Court said:

> The Union represents the employees for the purposes of negotiating and enforcing the terms of the collective bargaining agreement. This is the modern means of bringing about industrial peace and channeling the resolution of intra-plant disputes. Chaos would result if every disenchanted employee, every disturbed employee and every employee who harbored a dislike for his employer, could harrass both the union and the employer by processing grievances through the various steps of the grievance procedure and ultimately by bringing an action to compel arbitration in the face of clear contractual provisions intended to channel the enforcement remedy through the union.[45]

The union, alone, may prosecute grievances to arbitration. Indeed, the outstanding labor lawyer of the Supreme Court, Mr. Justice Goldberg, suggests that the failure of the union to press a grievance forecloses both arbitration and an action at law and this is particularly true where the dispute is settled either by refusal of the union to process the grievance or by reference to the procedure agreed upon by the parties:

> A mutually acceptable grievance settlement between an employer and a union, which is what the decision of the Joint Committee was, cannot be challenged by an individual dissenting employee under section 301(a) on the ground that the parties exceeded their contractual powers in making the settlement.[46]

44. Black-Clawson Co. v. International Ass'n of Machinists, 313 F.2d 179, 185–86 (2d Cir. 1962).

45. *Id.* at 186; See also, Cox, *Rights Under A Labor Agreement*, 69 HARV. L. REV. 601 (1956); Summers, *Individual Rights in Collective Agreements and Arbitration*, 37 N.Y.U.L. REV. 362 (1962).

46. Humphrey v. Moore, 375 U.S. 335, 352 (1964).

V.

Even the National Labor Relations Board, an agency hardly distinguished by eagerness to surrender or share jurisdiction, will treat arbitration, in some circumstances, as equal in effect. Section 10(a) of the Labor-Management Relations Act[47] provides, in essence, that the Board's power to remedy and prevent unfair labor practices is not affected by any other means of adjustment established by agreement, law or otherwise. Nevertheless, if an arbitration award meets certain criteria of fairness and does not offend against the statute, the Board will respect and give it effect and stay the exercise of its jurisdiction.[48] However, the Board has begun to draw in the bit. In one case, the Board acted on unfair labor charges filed by an employee who was discharged for circulating a petition seeking the removal of union officers, notwithstanding that the grievance and arbitration procedures were not exhausted;[49] the Board acted where the grievance machinery was set in motion and then abandoned;[50] and it acted again where the arbitration procedures did not appear to adequately protect the employee who complained of a discriminatory job referral program under a union hiring hall arrangement.[51]

VI.

Textile Workers v. Lincoln Mills,[52] adumbrated the role of arbitrators in resolving the substantive merits of the controversy and the decision in *John Wiley & Sons v. Livingston*[53] was the final fulfillment. Simply stated, an arbitrator is empowered to decide both substantive and procedural issues. So-called "procedural arbitrability", like substantive arbitrability, is grist for the arbitrator's mill. It is, therefore, the arbitrator's function to decide whether an issue is arbitrable and whether the demand for arbitration was properly made or is time-barred. Clearly, where the issue of procedure is part and parcel of the basic substantive issue, the arbitrator's judgment is

47. 61 Stat. 146 (1947), 29 U.S.C. § 160(a) (1958).
48. Spielberg Mfg. Co., 112 N.L.R.B. 1080 (1955); Newspaper Guild of Buffalo, 118 N.L.R.B. 1471 (1957); Milk Drivers & Dairy Employees, Local 546, 133 N.L.R.B. 1314 (1961); International Union, United Automobile Workers Union, 130 N.L.R.B. 1035 (1961).
49. Aerodex, Inc., 145 N.L.R.B. No. 25, 50 L.R.R.M. 1261 (1964).
50. Electric Motors & Specialties, Inc., 149 N.L.R.B. No. 16, 57 L.R.R.M. 1258 (1964).
51. Local 469 of the United Ass'n of Journeymen and Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, 149 N.L.R.B. No. 4, 57 L.R.R.M. 1257 (1960).
52. 353 U.S. 448 (1957).
53. 376 U.S. 543 (1963).

supreme. The exceptions are two fold: first, where the procedural issue is palpably unrelated to the substance of the dispute, and second, when the complainant self-consciously abandons the procedural steps or refuses to follow it.[54]

CONCLUSION

Labor law is viable and the appearance of a fixed and immutable body of law may yield to the reality of new judicial refinements and commentaries. Until the full reach and dimensions of the federal substantive labor law is defined and described, the status of the collective labor agreement as a constitution for industrial self-government continues to be uncertain, if not unreliable. In these circumstances, the conception and drafting of a collective bargaining agreement calls for the most precise exercise in language, a competent knowledge of decisional precedents and a watchful eye on the courts and arbitrators. Arbitration is a singularly effective adjunct of industrial labor relations; it ought never to become a substitute for free collective bargaining.

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54. *In re* Long Island Lumber Co., Inc., ... App. Div. ..., (1st Dept.), 152 N.Y.L.J. 17 (1964).