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Functus Officio: Does the Doctrine Apply in Labor Arbitration - Teamsters Local 312 v. Matlack, Inc.

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NOTES

Functus Officio: Does the Doctrine Apply in Labor Arbitration?

Teamsters Local 312 v. Matlack, Inc.[1]

I. INTRODUCTION

The doctrine of *functus officio* was developed at common law in response to concerns about the "solemnity of judgments" and the effect of outside influences on arbitrators' decisions.[2] Although not strictly applied in arbitration that is conducted pursuant to the Labor Management Relations Act,[3] the doctrine of *functus officio* prevents an arbitrator from vacating, modifying, supplementing, or correcting his award.[4] Most courts recognize three narrow exceptions to the doctrine which allow an arbitrator to revisit his award under limited circumstances.[5] This Note examines the application of the "clarification exception" to the doctrine in a labor dispute setting and outlines an alternative method by which this case could have been resolved with minimal damage to the doctrine.

II. FACTS AND HOLDING

On September 7, 1995, the Teamsters Local 312 ("the Union" or "Local 312") brought a complaint against Matlack, Inc. ("Matlack") in the United States District Court for the Eastern District of Pennsylvania to enforce in its entirety an award that the Union had obtained against Matlack following an arbitration hearing.[6] The complaint was brought pursuant to §301(c) of the Labor Management Relations Act.[7]

The Local 312 represents truck drivers and haulers employed by Matlack in its Bensalem, Pennsylvania, waste water transportation terminal.[8] As a condition of the collective bargaining agreement between the Union and Matlack, Matlack was

1. 118 F.3d 985 (3rd Cir. 1997).
2. Glass Workers Int'l Union v. Excelsior Foundry Co., 56 F.3d 844, 847 (7th Cir. 1995).
3. Courier-Citizen Co. v. Boston Electrotypers Union No. 11, 702 F.2d 273, 279 (1st Cir. 1983).
4. Cadillac Uniform & Linen Supply, Inc. v. Union de Tronquistas de Puerto Rico, 920 F. Supp. 19, 21 (D. Puerto Rico 1996) (citing Courier-Citizen, 707 F.2d at 278).
5. Colonial Penn Ins. Co. v. Omaha Indem. Co., 943 F.2d 327, 332 (3rd Cir. 1991).
6. *Matlack*, 118 F.3d at 990.
7. Labor Management Relations (Taft-Hartley) Act §301(c), 29 U.S.C. §185 (1995), provides: For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in any district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.
8. *Matlack*, 118 F.3d at 986.

prohibited from diverting or subcontracting to other facilities any work which was already being handled by the Bensalem drivers and haulers, as well as any work that might be assigned to the Bensalem workers at a later date.[9] The bargaining agreement also provided for grievance procedures to be followed by the parties in the event that a complaint arose between the Union and Matlack.[10]

When the Local 312 employees discovered what appeared to be a violation of the "work preservation" provision, the Union instituted the initial step in the grievance process: the Union President filed a grievance letter with Matlack indicating his belief that Matlack was violating the collective bargaining agreement by diverting work originating in the Northern Region to another facility.[11] In a meeting with Matlack's Bensalem Terminal Manager, the Union President made a handwritten amendment to his grievance letter which purported to expand the scope of the complaint to include the diversion of *any* work which had been assigned to the Bensalem terminal as opposed to work originating solely in the Northern Region.[12] The Terminal Manager did not object to the handwritten amendment to the grievance letter, but nevertheless refused to sign it.[13]

Following unsuccessful attempts to resolve the issue, the Union and Matlack agreed to arbitration before Arbitrator Charles D. Long.[14] The arbitration covered two main issues: (1) procedural issues as to whether the Union had filed its grievance within the time limitation outlined in §7 of the agreement and whether the grievance extended beyond work originating in the Northern Region, and (2) a substantive

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9. *Id.* at 986. Article 50.1 of the collective bargaining agreement, the "work preservation" provision, provides as follows:

> For the purpose of preserving work and job opportunities for the employees covered by this Agreement, the Employer agrees that no operation, work or services of the kind, nature or type covered by, or presently performed or hereafter assigned to the collective bargaining unit by the Employer will be subcontracted, transferred, leased, diverted, assigned or conveyed in full or in part (hereinafter referred to as "divert" or "subcontract"), by the Employer to any other plant, business, person, or non-unit employees, or to any other mode of operation, unless specifically provided and permitted in this Agreement.
>
> In addition, the Employer agrees that it will not, as hereinafter set forth, subcontract or divert the work presently performed by or hereafter assigned to, its employees to other business entities owned and/or controlled by the Employer, or its parent, subsidiaries, or affiliates.

10. *Id.* at 987. Section 7.2 of the Agreement, in pertinent part, provides for the steps that a party must follow when making a complaint:

> Step 1: All grievances must be made known in writing to the other party within seven (7) working days after the reason for such grievance has occurred . . . . .
> Step 2: If the disposition of the matter by the Terminal Manager in charge, or his duly authorized representative, is not satisfactory, the matter must be taken up by the Business Agent, and the Employer's Regional Representative, or other representatives of the Employer with authority to act, within five (5) working days of the written disposition set forth in Step 1 . . .
> Step 3: If the disposition of the matter by the Regional Representative or other representatives of the employer with authority to act, is not satisfactory either party has the right to file its grievance with the Joint Committee . . .

11. *Id.* The Northern Region consisted primarily of loads originating in Muscatine, Iowa.

12. *Id.* The amendment, dated August 9, 1994, read: "To *any* waste water that came into and out of this terminal!" (emphasis added).

13. *Id.*

14. *Id.* at 988.

issue as to whether Matlack had violated the "work preservation" provision of Article 50.1.[15] During the course of the hearing, Matlack indicated that it was not prepared to address and argue the substantive issue.[16] Based on Matlack's statement, Arbitrator Long informed the parties that he would permit questioning on both the procedural and substantive issues, but would only decide the procedural issues.[17] Any decision by Long with respect to the alleged "work preservation" violation would be delayed until a later date at which time Matlack would be permitted to reopen the hearing and address the substantive issue.[18]

Despite his words to the contrary, Arbitrator Long rendered a decision in favor of the Union on both the procedural and substantive questions without giving Matlack an opportunity to reopen the hearing.[19] This resulted in voluminous correspondence between all of the parties involved, including Long, who eventually withdrew as arbitrator.[20] In a letter to both parties following his withdrawal, Long purported to clarify where he believed the case stood in the aftermath of his decision.[21] The letter indicated that Long had intended to resolve the procedural issues but had not intended to render a decision with respect to Matlack's alleged violation of the "work preservation" provision.[22] As a result of Long's clarification, Matlack refused to comply with the written terms of the award, and the Union filed its complaint in the United States District Court for the Eastern District of Pennsylvania.[23]

The Union argued that Arbitrator Long's award was final and entitled to deference by the court.[24] Matlack countered by claiming that Long's withdrawal as

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15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*
19. *Id.* at 989. Long's written award indicated that his decision would address four issues:
    1. Is the grievance of June 1, 1994, timely filed pursuant to Article 7 § 7.2 of the collective bargaining agreement?
    2. Is the amendment of August 9, 1994, timely and, otherwise, valid?
    3. If not, is the grievance filed on June 1, 1994, limited solely to the loads of waste water originating in Muscatine, Iowa?
    4. If it is determined that the grievance is timely filed, has there been a violation of Article 50 of the collective bargaining agreement, as alleged?
20. *Id.*
21. *Id.* at 990. Long's letter read as follows:
    My decision to withdraw from this matter concerned a misunderstanding concerning the procedure to be followed prior to a decision resolving that the substantive portion of the issue which is separate and unrelated to that portion of the issue concerning the scope of the grievance. Consistent with the record at the close of the hearing on April 27, 1995, it was my intent to leave the matter in the following posture:
    1. A binding decision dated June 13, 1995, extending the scope of the underlying substantive issue to include the grievance on June 1, 1995, as amended during the step 2 grievance meeting on August 9, 1995.
    2. No decision concerning the underlying substantive issue of whether the Employer's conduct violated Article 50, Subcontracting, of the collective bargaining agreement, as alleged.
22. *Id.*
23. *Id.*
24. *Id.*

arbitrator in combination with his subsequent letter of clarification rendered his decision void and entitled Matlack to a new arbitration proceeding.[25] Both parties made motions for summary judgment in which they articulated their respective positions.[26] In light of Long's award, his clarification letter, and testimony from a deposition in which Long stated that he had not communicated to either party that the award had been vacated, the district court declined to grant summary judgment in favor of either party.[27] The court requested that Long testify in an evidentiary hearing in order to clarify some of the court's uncertainties with respect to his intent.[28] Following Long's testimony, the district court found that his statements during the hearing had led Matlack to believe that it would be permitted to reopen the proceeding and admit evidence before the substantive issue was decided.[29] As such, Long's award resulted from a procedural irregularity which necessitated that the portion of the award which decided on the substantive issue be vacated and remanded; however, his decision with respect to the "timeliness and scope of the grievance" remained enforceable.[30]

The Union appealed the district court's decision to the United States Court of Appeals for the Third Circuit, which affirmed.[31] The Third Circuit focused its affirmance on two legal issues: whether the doctrine of *functus officio* prevented the district court from examining Long's letter of clarification when deciding whether a procedural irregularity existed and whether the district court had the power to vacate the portion of the award which resulted from the irregularity.[32] The court identified three exceptions to the doctrine of *functus officio* as well as several methods by which arbitration decisions may be set aside at common law.[33] The court held that when a court is presented with a question of a fundamental procedural irregularity and an arbitrator has issued a post-award comment in order to clarify his intended award, the doctrine of *functus officio* will not prevent the district court from considering the post-award comment.[34] The court also held that by deciding on the substantive issue after indicating that he would not do so, Arbitrator Long made a

25. *Id.*
26. *Id.*
27. Teamster's Local 312 v. Matlack, Inc., 916 F. Supp. 482, 484 (E.D. Pa. 1996).
28. *Id.*
29. *Id.*
30. *Id.* at 487.
31. *Matlack*, 118 F.3d at 996.
32. *Id.* at 990 ("The doctrine of *functus officio* . . . was applied strictly at common law to prevent an arbitrator from in any way revising, reexamining, or supplementing his award.").
33. "The doctrine's [exceptions are]: (1) an arbitrator can correct a mistake which is apparent on the face of his award; (2) where the award does not adjudicate an issue which has been submitted, then as to such issue the arbitrator has not exhausted his function and it remains open to him for subsequent determination; and (3) where the award, although seemingly complete, leaves doubt whether the submission has been fully executed, an ambiguity arises which the arbitrator is entitled to clarify." *Id.* at 995. In addition, "at common law, an arbitration award may be set aside where there is an adequate showing of fraud, partiality, misconduct, violation of a specific command of law, or vagueness rendering enforcement impractical, or a showing that enforcement would be contrary to public policy...Procedural irregularities...may also result in such fundamental unfairness as to warrant the vacation of an arbitral award." *Id.* at 995.
34. *Id.* at 996.

fundamental procedural error which warranted the vacation of the substantive portion of the award.[35]

III. LEGAL BACKGROUND

Functus officio means "having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority."[36] When the term is used with respect to arbitration awards, it refers to a "common law principle that once an arbitrator has made and published a final award his authority is exhausted and he is *functus officio* and can do nothing more in regard to the subject matter of the arbitration."[37] Historically, the doctrine has been strictly applied at common law to prevent an arbitrator from vacating, modifying, supplementing, or correcting his award.[38] In order for *functus officio* to apply, the award must be executed by the arbitrator and delivered or declared.[39]

The doctrine was judicially developed in response to three basic policy concerns.[40] The first was the original hostility of judges towards the use of arbitration to resolve disputes.[41] Judges were reluctant to allow individuals who were not judicial officers and who served only sporadically to change their rulings.[42] This judicial hostility has been replaced by a strong federal policy favoring arbitration.[43]

The second reason for advancing a "policy of finality" was derived from the "primitive view of the solemnity of all judgments."[44] In practice, this policy has ancient origins and operates to forbid the alteration of *any* judicial records.[45] Finally, and most importantly, the doctrine of *functus officio* developed from the fear that an arbitrator is not as insulated as a judge and could be convinced by "the potential evil of outside communication and unilateral influence" to re-examine a final decision.[46] In other words, it was felt that the doctrine would prevent arbitrators from being influenced, or perhaps even coerced, by communication with the parties or other outside sources.[47] This is still recognized among jurisdictions as a valid concern surrounding the process of arbitration.[48]

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35. *Id.*

36. *Functus Officio* is "a task performed; having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further official authority. Applied to an officer whose term has expired and who has consequently no further official authority." BLACK'S LAW DICTIONARY 606 (5th ed. 1979).

37. La Vale Plaza, Inc. v. R.S. Noonan, Inc., 378 F.2d 569, 572 (3rd Cir. 1967).

38. Cadillac Uniform & Linen Supply, Inc. v. Union de Tronquistas de Puerto Rico, 920 F. Supp. 19, 21 (D. Puerto Rico 1996).

39. United Steelworkers of Am. v. Ideal Cement Co., 762 F.2d 837, 842 (10th Cir. 1985).

40. Glass Workers Int'l Union v. Excelsior Foundry Co., 56 F.3d 844, 847 (7th Cir. 1995).

41. *Cadillac Unif. & Linen Supply, Inc.*, 920 F. Supp. at 21.

42. *Id.*

43. *Id.* at 23.

44. La Vale Plaza, Inc. v. R.S. Noonan, Inc., 378 F.2d 569, 572 (3rd Cir. 1967).

45. *Id.*

46. International Bhd. of Teamsters v. Silver State Disposal Serv., Inc., 109 F.3d 1409, 1411 (9th Cir. 1997) (quoting *La Vale Plaza, Inc.*, 378 F.2d at 572).

47. *Id.*

48. *Glass Workers Int'l Union*, 56 F.3d at 847.

The status and application of *functus officio* in labor arbitration pursuant to the Labor Management Relations Act became muddied when the United States Supreme Court ruled that federal courts have the authority to fashion substantive law with respect to labor relations.[49] Since that time, federal courts fashioning such law have refused to strictly apply the doctrine of *functus officio*.[50] These courts have either considered the doctrine irrelevant or have recognized exceptions to its strict application.[51]

Most courts agree that there are only three exceptions to the strict application of *functus officio* to arbitration awards.[52] The first exception allows an arbitrator to "correct a mistake which is apparent on the face of his award."[53] This exception is designed to allow the arbitrator to correct the award in "cases of clerical mistakes or obvious errors of arithmetic computation," but does not "apply to alleged mistakes where extraneous facts must be considered."[54]

The second exception applies "where the award does not adjudicate an issue which has been submitted."[55] The rationale behind this exception is that if the arbitrator has not adjudicated the issue, he has not "exhausted his function and it remains open to him for subsequent determination."[56] Because there has been no adjudication of the issue, an arbitrator in this scenario is no more vulnerable to outside influence than he would normally be throughout the arbitration proceeding.[57]

The third exception provides that "where the award, although seemingly complete, leaves doubt as to whether the submission has been fully executed, an ambiguity arises which the arbitrator is entitled to clarify."[58] It is this exception, and its application by the court in *Matlack*, which has created doubt as to when clarification is appropriate and useful in light of the policy concerns addressed above.[59]

IV. INSTANT DECISION

In *Matlack*, the court began its analysis by examining the doctrine of *functus officio* to determine whether it should have operated to preclude the district court from considering Arbitrator Long's letter of clarification.[60] The court determined that the doctrine is still viable in actions brought pursuant to §301(c) of the Labor

49. Labor Management Relations (Taft-Hartley) Act §301 (c), 29 U.S.C. §185 (1995); Textile Workers Union of Am. v. Lincoln Mills of Ala., 353 U.S. 448, 450-51 (1957) (Frankfurter, J., dissenting).

50. Courier-Citizen Co. v. Boston Electrotypers Union No. 11, 702 F.2d 273, 279 (1st Cir. 1983); *Cadillac Unif. & Linen Supply, Inc.*, 920 F. Supp. at 21.

51. *Ideal Cement Co.*, 762 F.2d at 842 & n.3.

52. Colonial Penn Ins. Co. v. Omaha Indem. Co., 943 F.2d 327, 332 (3rd Cir. 1991).

53. *Id.*

54. *Matlack*, 118 F.3d at 992.

55. *Colonial Penn Ins. Co.*, 943 F.2d at 332.

56. *Id.*

57. *Matlack*, 118 F.3d at 992.

58. *Colonial Penn Ins. Co.*, 943 F.2d at 332.

59. *Matlack*, 118 F.3d at 992.

60. *Id.* at 991-93.

Management Relations Act.[61] This finding was based primarily on the continuing concern over an arbitrator's vulnerability to outside influence.[62]

The court's discussion of *functus officio* included an analysis of the three recognized exceptions to the doctrine.[63] After considering each, the court placed the circumstances of *Matlack* within the "clarification exception" which "entitles an arbitrator to clarify an ambiguity in a seemingly complete award where there is doubt whether the submission has been fully executed."[64] The court reasoned that "if the *functus officio* doctrine were to prevent parties from clarifying what they perceive to be a fundamental procedural irregularity, the result would be a gap in the system of arbitral justice that would make very little sense."[65] Citing Eighth and Tenth Circuit decisions in favor of this interpretation, the court determined that the clarification exception was properly applied to the fact pattern of the instant case.[66] It concluded that because the tapes of the proceedings were inaudible in parts and incomplete, and because the letter addressed procedural issues unrelated to the merits of the controversy (thus eliminating the concern over outside influence), the doctrine of *functus officio* did not operate to preclude the district court from considering Arbitrator Long's clarification letter.[67]

With this issue determined, the court moved on to consider whether the substantive portion of the award was properly vacated by the district court.[68] It noted that at common law, an arbitration award may be set aside due to a showing of procedural irregularity, fraud, partiality, misconduct, violation of a specific command of law, vagueness rendering enforcement impractical, or a showing that enforcement would be contrary to public policy.[69] The court then proceeded to analyze cases, and their specific circumstances, in which procedural irregularities warranted vacation.[70] It also examined the Federal Arbitration Act, which was not binding in *Matlack*, in order to analyze by analogy using examples of when procedural irregularities have required that the arbitration award be vacated under the FAA.[71] Based on this analysis, the court concluded that because Arbitrator Long told the parties he would not be deciding the substantive issue at that stage, and because Matlack was given no opportunity to present evidence on the merits of the case, Matlack's right to notice and opportunity to be heard in an adversarial proceeding was "severely impeded."[72] As a consequence, Arbitrator Long's

61. 29 U.S.C. §185 (1994); *Matlack*, 118 F.3d at 992.
62. *Id.* at 991.
63. *Id.* at 991-92.
64. *Id.* at 992.
65. *Id.* at 993.
66. *Id.*
67. *Id.* at 994.
68. *Id.*
69. *Id.* at 995.
70. *Id.* (discussing Textile Workers Union of Am. v. Am. Thread Co., 291 F.2d 894 (4th Cir. 1961); Harvey Aluminum v. United Steelworkers of Am., 263 F. Supp. 488 (C.D. Cal. 1967); and Int'l Bhd. of Elec. Workers v. WGN of Colorado, Inc., 615 F. Supp. 64 (D. Colo. 1985)).
71. Federal Arbitration Act, 9 U.S.C. §10 (1994).; *Matlack*, 118 F.3d at 995. The cases explored by the court were Mutual Fire, Marine & Inland Ins. Co. v. Norad Reinsurance Co., Ltd., 868 F.2d 52, 56-57 (3rd Cir. 1989); Newark Stereotypers' Union No. 18 v. Newark Morning Ledger Co., 397 F.2d 594, 599 (3rd Cir.); and Robbins v. Day, 954 F.2d 679, 685 (11th Cir.).
72. *Id.* at 996.

resolution of the substantive issue constituted a fundamental procedural irregularity, and the district court was properly justified in its vacation of that portion of the award.[73]

V. COMMENT

In most cases, it is clear that the doctrine of *functus officio* provides at least three benefits. First, it preserves the solemnity of judgments, and second, it helps to protect an arbitrator's award from outside communication or influence.[74] The third benefit, though not specifically mentioned by the courts, is that the doctrine protects the reliance of the parties by offering an assurance that the award will not be altered unless specific circumstances exist.

Despite its usefulness in addressing these concerns, the advantages of the doctrine can be negated if it is applied too rigidly. A strict application of *functus officio* would prevent an arbitrator from considering a party's motion for reconsideration, clarification, amendment, or other modification.[75] This result would leave the parties with no avenue to resolve problems and would result in "a gap in the system of arbitral justice that would make very little sense."[76] An examination of the practices of the judges serving under King Edward I provides a historical example of this "gap."[77] King Edward I applied a strict policy preventing judges from erasing or altering their records even in the case of a manifest mistake.[78] The fines for doing so were so enormous that judges refused to amend their judgments to be "agreeable to truth", stating that "even palpable errors . . . were too sacred to be rectified or called in question."[79] Since there was no avenue by which to appeal, their approach worked obvious injustices on the parties which came before them and is very similar to the results which would be required by a strict application of *functus officio*.

The recognized exceptions to *functus officio* are applied in an effort to prevent the inflexibility and inherent unfairness present in a system like King Edward's.[80] In order to balance the need for flexibility with the need for continuity and reliability, the three exceptions were narrowly drawn and, as a result, are to be narrowly applied.[81]

Although the *Matlack* court recognizes that the exceptions are narrowly drawn, it proceeds to broaden the clarification exception beyond its defined scope.[82] The clarification exception applies "where the award, although seemingly complete, leaves doubt whether the submission has been fully executed," resulting in an

73. *Id.*
74. *La Vale Plaza, Inc.*, 378 F.2d at 572.
75. *Glass Workers Int'l Union*, 56 F.3d at 847.
76. *Id.*
77. *La Vale Plaza, Inc.*, 378 F.2d at 572.
78. *Id.* at 572 & n.15. (citing 3 Blackstone Commentaries, 409-410).
79. *Id.*
80. *Glass Workers Int'l Union*, 56 F.3d at 847.
81. *Matlack*, 118 F.3d at 992.
82. *Id.*

ambiguity which the arbitrator is entitled to clarify.[83] In *Matlack*, the defendant's original complaint was that Arbitrator Long had rendered a decision with respect to the substantive issue despite the fact that he had said he would not do so.[84] Neither party indicated a belief that the award was incomplete or that the submission was not fully executed, as required by the exception.[85] If anything, Matlack's complaint was that the award was *more* complete than it should have been.[86] As such, the elements necessary to allow Arbitrator Long's clarification were not present in the instant case, and the clarification exception to the *functus officio* doctrine was improperly applied.

While the application of the clarification exception was improper, it was also unnecessary in order for the court to reach its desired result. Arbitration awards may be set aside by a court for a variety of reasons, including fundamental procedural irregularity.[87] Although the *Matlack* court rejects this approach, it appears as if procedural irregularity could have easily been ascertained from tapes of the hearing despite the fact that they were inaudible or incomplete in parts.[88] In any event, expanding the scope of procedural irregularity to encompass the facts of the instant case would have been more appropriate and had less of an impact on the arbitration process than the expansion of the clarification exception.

The broad application of the clarification exception only serves to undermine a doctrine which is already "hanging on by its fingernails."[89] In *Matlack*, the court's application of the clarification exception essentially enabled Arbitrator Long to reverse his initial ruling by means of the clarification letter considered by the court.[90] This clear violates the spirit of the doctrine of *functus officio* which seeks to prevent arbitrators from reexamining or altering their determinations.[91] Although Arbitrator Long did not write his letter in an attempt to retry the issue on its merits or to change his decision to favor Matlack, he did attempt to alter his award by saying that he had not intended to resolve the substantive issue.[92] This "alteration" is not covered under any of the three *functus officio* exceptions as they are commonly interpreted: the letter did not attempt to correct a clerical or arithmetic error, to resolve an issue which had not previously been resolved, or to clarify an ambiguity in the "seemingly complete" award.[93] Rather, its sole purpose was to abandon a clear ruling where no ruling should have been rendered.

Forcing the *Matlack* facts to fit into the confines of the clarification exception chips away at the foundation underlying the *functus officio* doctrine. Although the expansion of the exception in *Matlack* helps the court to reach an arguably correct decision, the exceptions were not intended to be broadly applied.[94] In fact, broad

83. *La Vale Plaza, Inc.*, 378 F.2d at 573.
84. *Matlack*, 118 F.3d at 989.
85. *Id.*
86. *Id.*
87. *Id.* at 994.
88. *Id.* at 988-89, 993-94.
89. *Glass Workers Int'l Union*, 56 F.3d at 846.
90. *Matlack*, 118 F.3d 985.
91. Domino Group, Inc. v. Charlie Parker Mem'l Found., 985 F.2d 417, 420 (8th Cir. 1993).
92. *Matlack*, 118 F.3d at 990.
93. *Id.* at 992.
94. *Id.*

applications will render *functus officio* unable to serve the purposes for which it was designed. Under *Matlack*, an arbitrator could be influenced by outside sources to write a letter claiming that he never intended to make a ruling on a particular issue. Allowing outside influences to seep into an arbitrator's decision or subsequent communications in this way is contrary to the doctrine's most important goal: protecting arbitrators and insulating their decisions from improper influences.[95]

In *Local P-9 v. George Hormel & Co.*,[96] the Eighth Circuit provided an example of how the instant case could have been resolved without resorting to the distortion of the *functus officio* doctrine. In *Hormel*, the company and the union submitted to binding arbitration in order to resolve a dispute over a new work schedule.[97] The problem arose when the original award in favor of the Union was supplanted by an amended award in favor of Hormel.[98] The Union claimed that the first award was final and could not be reconsidered by the arbitrator because he was *functus officio*.[99] Hormel claimed that the first award was a draft and offered an affidavit by the arbitrator in which he made two assertions.[100] First, he stated that his intention was that the first award be merely a draft.[101] His second assertion was that he had advised the parties at the first hearing that his initial award would be provisional.[102] The court concluded that the arbitrator's first statement indicating intent was inadmissible because "absent the consent of the parties, it is generally improper for an arbitrator to interpret, impeach or explain a final and binding award."[103] However, the court allowed the consideration of the second statement, stating that it did not "impeach the initial award or explain the arbitrator's decision-making process, but [that it] merely describe[d] the procedural process which the arbitrator allegedly told the parties he would follow."[104] The court ruled that the portion of the arbitrator's affidavit dealing with the procedural process must be considered with all of the other evidence to determine whether the award was final or provisional.[105]

Applying *Hormel* to the instant case, the *Matlack* court could have refused to consider Arbitrator Long's clarification letter, which essentially impeaches and explains his award. Instead, the court could have focused on determining what procedural process was agreed upon by the parties by use of the parties' testimony, Arbitrator Long's testimony, and the tapes of the arbitration hearing. When compiled, this evidence would probably have indicated that the procedural issue was the only issue that was supposed to be decided following the first hearing. On that basis, the court could have found that Arbitrator Long's resolution of the substantive issue constituted a procedural irregularity justifying vacation. If the *Matlack* court had adopted the *Hormel* analysis instead of the expanded clarification exception, the

95. *Silver State Disposal Service, Inc.*, 109 F.3d at 1411.
96. 776 F.2d 1393 (8th Cir. 1985).
97. *Id.* at 1394.
98. *Id.*
99. *Id.*
100. *Id.* at 1395.
101. *Id.*
102. *Id.*
103. *Id.*
104. *Id.* at 1395-96.
105. *Id.* at 1396.

doctrine of *functus officio* would remain a limited but effective tool in the Third Circuit.

VI. CONCLUSION

Although ultimately reaching an arguably correct result, the analysis of the *Matlack* court has further damaged the fragile doctrine of *functus officio*. By expanding the narrow clarification exception to encompass the facts in *Matlack*, the court has eroded the protection that the doctrine provides against outside influence over arbitrators thus undermining its primary purpose. Perhaps the Third Circuit could prevent additional damage to the doctrine in similar cases by applying the "procedural process" analysis of the Eighth Circuit in *Hormel,* rather than expanding the exceptions to *functus officio* beyond their intended scope.

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