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## Retaining Bargained-for Finality and Judicial Review in Labor Arbitration Decisions: Dual Interests Preserved in Major League Baseball Players Association v. Garvey - Major League Baseball Players Assn. v. Garvey

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# **Retaining Bargained-For Finality and Judicial Review in Labor Arbitration Decisions: Dual Interests Preserved in *Major League Baseball Players Association v. Garvey*.**

*Major League Baseball Players Assn. v. Garvey*<sup>1</sup>

## I. INTRODUCTION

Arbitration has for years been the principal means of labor dispute resolution. As a part of labor contracts, workers agree to arbitrate disputes with their employers, bargaining for this forum as their choice method of dispute resolution. Occasionally, however, the decision of an arbitrator strays far from what a court believes the outcome of the dispute between employer and employee should be. In these cases, a conflict arises between the finality and stability of the bargained-for arbitrator's decision and the need for judicial upset of clearly errant arbitral decisions.

## II. FACTS AND HOLDING

In the late 1980s, the Major League Baseball Players Association ("Association") claimed that the Major League Baseball Clubs ("Clubs") had colluded in the market for free-agent services<sup>2</sup> after the 1985, 1986, and 1987 baseball seasons, violating the industry's collective-bargaining agreement.<sup>3</sup> After a series of decisions regarding this controversy, arbitrators found collusion by the Clubs and damage to the players.<sup>4</sup> The Clubs and Association then entered into a Global Settlement Agreement, whereby the Clubs established a \$280 million fund to be distributed to injured players, and the Association designated a "Framework" to evaluate individual player's claims.<sup>5</sup> The Framework set forth factors to be considered in evaluating the players' claims and specific requirements the players had to meet in order to have a viable claim for lost contract-extension.<sup>6</sup> If players were unsatisfied with the distribution plan, they were allowed to seek an arbitrator's

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1. 532 U.S. 504 (2001).

2. *Id.* at 505. A free agent is a player who may contract with any Club, rather than one whose right to contract is restricted to a particular Club.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.* The Framework stated that such claims were cognizable "only in those cases where evidence exists that a specific offer of an extension was made by a club prior to collusion only to thereafter be withdrawn when the collusion scheme was initiated." *Id.* (quoting *Garvey v. Roberts*, 203 F.3d 580, 583 (9th Cir. 2000)).

review of the distribution under the Framework.<sup>7</sup> The arbitrator's job was to determine if the Framework had been properly applied in the Distribution Plan.<sup>8</sup>

Steve Garvey, a retired baseball player, submitted a claim for damages of approximately \$3 million dollars, alleging his contract with the San Diego Padres was not extended due to collusion.<sup>9</sup> The Association rejected his claim because Garvey presented no evidence that the Padres had actually offered to extend his contract.<sup>10</sup> Garvey objected to the Association's rejection of his claim and requested an arbitration hearing.<sup>11</sup> The arbitrator denied Garvey's claim, concluding that the evidence Garvey had put forth to support his claim of collusion was not credible and was uncorroborated.<sup>12</sup> The arbitrator concluded that:

[t]he shadow cast over the credibility of the Smith testimony<sup>13</sup>, coupled with the absence of any other corroboration of the claim submitted by Garvey compels a finding that the Padres declined to extend his contract not because of the constraints of the collusion effort of the clubs but rather as a baseball judgment founded upon [Garvey's] age and recent injury history.<sup>14</sup>

Garvey filed a motion in federal district court to vacate the arbitrator's award, alleging that the arbitrator violated the Framework.<sup>15</sup> The District Court denied Garvey's motion.<sup>16</sup> Garvey appealed to the United States Court of Appeals for the Ninth Circuit, which reversed and remanded the decision to the District Court with directions to vacate the arbitrator's award.<sup>17</sup> The Ninth Circuit held that review on the merits of the arbitrator's award was necessary even though judicial review of an arbitrator's decision in a labor dispute is extremely limited because in this case, the arbitrator "dispensed his own brand of industrial justice."<sup>18</sup>

7. *Id.*

8. *Id.*

9. *Id.* Garvey alleged that the seasons in which his contract should have been extended were in 1988 and 1989. *Id.*

10. *Id.*

11. *Id.*

12. *Id.* at 507. Garvey's evidence of collusion consisted of his own testimony that the Padres offered to extend his contract for two seasons and then withdrew the offer after collusion with other teams. *Id.* at 506. Garvey also presented a June 1996 letter from the Padre's President and CEO, Ballard Smith, stating that before the end of the 1985 season, Smith had offered to extend Garvey's contract through the 1989 season, but that the Padres refused to negotiate with Garvey thereafter due to collusion. *Id.* at 506-07. The arbitrator did not find this evidence to be credible, based on the "stark contradictions" between the 1996 letter and Smith testimony in earlier arbitration proceedings regarding the collusion. *Id.* at 507 (citing *Garvey v. Roberts*, 203 F.3d at 583). The arbitrator determined that because of the contradictions he had to reject the "more recent assertion that Garvey did not receive [a contract] extension." *Id.*

13. See *supra* n. 12 (quoting *Garvey v. Roberts*, 203 F.3d at 586).

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* (quoting *Garvey v. Roberts*, 203 F.3d at 589). The Ninth Circuit thought that the arbitrator's refusal to credit Smith's letter was "inexplicable" and "border[ed] on the irrational," since he relied on earlier arbitrations that he had chaired, where the panel of arbitrators had concluded that Smith's

The district court then remanded the case to the arbitration panel for further hearings.<sup>19</sup> Garvey again appealed and the Ninth Circuit reversed the district court, directing it to remand the case to the arbitration panel with instructions to enter an award for Garvey for the amount he claimed.<sup>20</sup>

The United States Supreme Court granted certiorari, and then examined the case, holding that judicial review of a labor-arbitration decision is very limited, occurring only in the circumstance where an arbitrator strays so far from interpretation and application of the agreement that he “dispense[s] his own brand of industrial justice.”<sup>21</sup> The Court held that in the rare occasions when this error occurs, a reviewing court may not weigh the merits of the particular claim, but must instead vacate the award and remand the case for further arbitral proceedings.<sup>22</sup> The Court reversed the Ninth Circuit and remanded the case for further arbitration proceedings consistent with its opinion.<sup>23</sup>

### III. LEGAL BACKGROUND

Two Congressional statutes set forth the basis of arbitral resolution and judicial enforcement of collective bargaining agreements: the National Labor Relations Act of 1935 (“NLRA”) and the Labor Management Relations Act of 1947 (“LMRA”).<sup>24</sup> The NLRA declared it “to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce . . . by encouraging the practice and procedure of collective bargaining.”<sup>25</sup> The NLRA provides employees with “the right to self-organization, to form, join, or assist labor organizations [and] to bargain collectively with their employers through representatives of their own choosing.”<sup>26</sup> In 1947, Congress specifically amended the NLRA to emphasize the legitimacy of negotiated agreements, indicating that the duty to bargain involves “the mutual obligation of the employer and the representative of the employees to . . . confer in good faith with respect to . . . the negotiation of an agreement, or any question arising thereunder.”<sup>27</sup> The same year, Congress enacted the LMRA which gave federal district courts jurisdiction over suits to enforce collective bargaining agreements.<sup>28</sup>

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testimony was false. *Id.* The Court also rejected the arbitrator’s reliance on the absence of other corroborating evidence, attributing that fact to Smith and Garvey’s direct negotiations. *Id.*

19. *Id.*

20. *Id.* The Ninth Circuit Court of Appeals noted that its prior instructions may have been unclear, clarifying that the arbitrator must be told to enter a judgment for Garvey, instead of initiating further proceedings, because the case “left only one possible result – the result our holding contemplated – an award in Garvey’s favor.” *Id.* (quoting *Garvey v. Major League Baseball Players Assn.*, 243 F.3d 547, 547 (9th Cir. 2000)).

21. *Id.* at 509 (quoting *Steelworkers v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 597 (1960)).

22. *Id.* at 511.

23. *Id.* at 512.

24. 29 U.S.C. § 151 et seq. (1982); 29 U.S.C. § 185 (1982).

25. 29 U.S.C. § 151.

26. *Id.* § 157.

27. *Id.* § 158(d).

28. *Id.* § 185.

The Supreme Court's early interpretations of the relationship between arbitral conflict resolution and judicial enforcement thereof show support for a policy of judicial deference to the arbitral decision. In 1957, the Court decided *Textile Workers Union of Am. v. Lincoln Mills*, interpreting the LMRA.<sup>29</sup> In this case, the Court held that Congress, in enacting the LMRA and NLRA, instructed judges to recognize that these Acts set forth a clear legislative policy favoring the enforcement of arbitral procedures.<sup>30</sup> The Court also held that the LMRA "authorizes federal courts to fashion a body of federal law for the enforcement of . . . collective bargaining agreements."<sup>31</sup>

The Court's support of arbitral decision enforcement was contrary to the traditional common law rule disfavoring grievance-arbitration provisions.<sup>32</sup> Prior to 1960, state courts enforced labor arbitration agreements reluctantly, if at all.<sup>33</sup> In 1960, however, the Supreme Court's "Steelworkers Trilogy"<sup>34</sup> decisions stood staunchly opposed to the old common law distrust of labor dispute arbitration. The Steelworkers Trilogy stalwartly declared arbitration to be the "kingpin of federal labor policy."<sup>35</sup> These decisions set forth the ideas that: (1) a judge's role should be guided by self-restraint since grievance arbitration is essential to the bargaining process;<sup>36</sup> (2) this necessary self-restraint requires the Court not to weigh the merits of particular disputes when determining if they are arbitrable;<sup>37</sup> (3) an arbitrator selected by the employer and employee is better suited than a judge to resolve the controversy between the parties;<sup>38</sup> and that (4) an arbitrator's decision may only be

29. 353 U.S. 448 (1957).

30. *Id.* at 455.

31. *Id.* at 451.

32. Charles B. Craver, *Labor Arbitration as a Continuation of the Collective Bargaining Process*, 66 Chi.-Kent. L. Rev. 571, 579 (1990).

33. *Id.* at 578.

34. The "Steelworkers Trilogy" includes the three 1960 United States Supreme Court decisions regarding labor-dispute arbitration, including *United Steelworkers of Am. v. Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960); *United Steelworkers of Am. v. Am. Mfg. Co.*, 363 U.S. 564 (1960); and *United Steelworkers of Am. v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

35. *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195, 226 (1962).

36. *Warrior & Gulf Nav. Co.*, 363 U.S. 574. In this case, the Court notes that arbitration is "part and parcel" of the bargaining process. *Id.* at 578. Also, the Court explicitly recognizes the "congressional policy in favor of settlement of disputes by the parties through the machinery of arbitration." *Id.* at 582.

37. *Am. Mfg Co.*, 363 U.S. at 567. The Court here indicates that:

The function of the court is very limited when the parties agree to submit all questions of contract interpretation to the arbitrator. It is confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. . . The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim. The agreement is to submit all grievances to arbitration, not merely those which the court will deem meritorious. The processing of even frivolous claims may have therapeutic values of which those who are not a part of the plant environment may be quite unaware.

*Id.* at 567-68.

38. *Warrior & Gulf Nav. Co.*, 363 U.S. 574. The Court states:

The labor arbitrator is usually chosen because of the parties' confidence in his knowledge of the

unenforceable when the arbitrator strays from interpretation and application of the agreement, and thereby “dispense[s] his own brand of industrial justice.”<sup>39</sup> Following the Steelworkers Trilogy, the case *John Wiley & Sons v. Livingston* again highlighted the hands-off role of judges in evaluating arbitration decisions by limiting judicial review of arbitral proceedings to cases where the arbitration is challenged on substantive, rather than procedural, grounds.<sup>40</sup>

In *The United Paperworkers Intl. Union v. Misco*,<sup>41</sup> the Court re-emphasized the limitations and self-restraint included in a judge’s role in reviewing the arbitration of labor disputes. In *Misco*, the Court held that the judges’ roles in reviewing arbitral decisions differ from their role in reviewing lower court decisions where they review claims of factual or legal error.<sup>42</sup> Instead, the Court found that judges are not authorized to review an arbitrator’s decision on the merits *even if* there are allegations that the decision rests on factual errors or misinterprets the parties’ agreement.<sup>43</sup> The Court held that even when the arbitrator’s decision is not alleged to be dishonest, “improvident, even silly, factfinding,” it is not a basis for a reviewing judge to refuse enforcement of the arbitrator’s award.<sup>44</sup> Further, the Court decided that a judge shall not even reject an award on the ground that the arbitrator misread the contract or even committed serious error, “as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority.”<sup>45</sup> The *Misco* Court found that the judge’s role in reviewing the arbitral award arises only in “very rare instances when an arbitrator’s procedural aberrations rise to the level of affirmative misconduct.”<sup>46</sup> Even in that very rare situation, the Court held that the role of a judge is only to vacate the arbitrator’s award, and not to substitute the judge’s own interpretation “for the arbitrator’s decision that the

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common law of the shop and their trust in his personal judgment to bear considerations which are not expressed in the contract as criteria for judgment. . . . [H]is judgment of a particular grievance will reflect not only what the contract says but . . . such factors as the effect upon productivity of a particular result, its consequence to the morale of the shop, and his judgment whether tensions will be heightened or diminished. . . . The ablest judge cannot be expected to bring the same experience and competence to bear upon the determination of a grievance, because he cannot be similarly informed.

*Id.* at 581-82.

39. *Enter. Wheel & Car Corp.*, 363 U.S. 593, 597.

40. 376 U.S. 543, 557 (1964). The Court held that “[d]oubt whether grievance procedures . . . have been followed or excused, or whether the unexcused failure to follow them avoids the duty to arbitrate cannot ordinarily be answered without consideration of the merits of the dispute which is presented for arbitration. . . . ‘[P]rocedural’ questions which grow out of the dispute and bear on its final disposition should be left to the arbitrator.” *Id.* at 557.

The Court upheld this limit of review to only substantive questions in *Operating Engineers v. Flair Builders, Inc.*, 406 U.S. 487, 490-492 (1972).

41. 484 U.S. 29 (1987).

42. *Id.* at 38.

43. *Id.* at 36.

44. *Id.* at 39.

45. *Id.* at 38. The Court recently has echoed the *Misco* Court’s reasoning in holding that if the “‘arbitrator is even arguably construing or applying the contract and acting within the scope of his authority,’ the fact that ‘a court is convinced he committed serious error does not suffice to overturn his decision.’” *E. Associated Coal Corp. v. United Mine Workers of Am.*, 531 U.S. 57, 62 (2000) (quoting *Misco*, 484 U.S. at 38).

46. *Id.* at 40-41 n. 10.

parties bargained for" in their agreement.<sup>47</sup> Appellate courts have differed greatly in the instances in which they have allowed active judicial review of arbitral awards and when they have exercised self-restraint, deferring to the arbitrator's judgment. Some circuits have allowed broad judicial overview of an arbitrator's decision, overturning decisions for many reasons: because the court believed that the controversy was improperly submitted to the arbitral forum;<sup>48</sup> because the arbitrator's award contained some ambiguity;<sup>49</sup> and because the judge found that the arbitrator's award was inconsistent with the contract's wording.<sup>50</sup> Yet other cases have focused on *Misco's* holding of judicial self-restraint in cases where "the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority"<sup>51</sup> and have been much less inclined to overturn arbitral decisions.<sup>52</sup>

To muddy the waters further, the Supreme Court has expressed a public policy exception to judicial deference to arbitral decisions in *W. R. Grace & Co. v. Loc. Union 759, Intl. Union of United Rubber, Cork, Linoleum and Plastic Workers of Am.*<sup>53</sup> According to this exception, a "court may not enforce a collective-bargaining agreement that is contrary to public policy."<sup>54</sup> This exception requires a policy that is "well-defined and dominant, and is to be ascertained 'by reference to the laws and legal precedents.'"<sup>55</sup> Several federal courts of appeal have readily vacated arbitral awards based on public policy considerations, interpreting their authority to do so quite widely.<sup>56</sup> Conversely, other courts have interpreted this exception very narrowly.<sup>57</sup>

47. *Id.*

48. *Teamsters Loc. 315 v. Union Oil Co. of Cal.*, 856 F.2d 1307 (9th Cir. 1988); *Gen. Drivers Warehousemen and Helpers, Loc. Union 89 v. Moog Louisville Warehouse*, 852 F.2d 871 (6th Cir. 1988).

49. *HCM Management Corp. v. Carpenters Dist. Council*, 750 F.2d 1302, 1304 (5th Cir. 1985).

50. *Delta Queen Steamboat Co. v. Dist. 2*, 889 F.2d 599, 601 (5th Cir. 1989).

51. 484 U.S. at 38.

52. *United Food & Com. Workers, Loc. 7R v. Safeway*, 889 F.2d 940, 946-947 (10th Cir. 1989); *Stead Motors v. Automotive Machinists Lodge 1173*, 886 F.2d 1200, 1205-1209 (9th Cir. 1989).

53. 461 U.S. 757 (1983).

54. *Id.* at 766. See *Hurd v. Hodge*, 334 U.S. 24, 34-35 (1948) (stating that federal courts must refrain from exercising judicial power to enforce private agreements where the agreement would violate public policy).

55. *Id.* (quoting *Muschany v. United States*, 324 U.S. 49, 66 (1945)).

56. See *Amalgamated Meat Cutters v. Great Western Food Co.*, 712 F.2d 122, 124 (5th Cir. 1983) (refusing to enforce an arbitral reinstatement of a truck driver who had been caught drinking while on duty on grounds of the public policy that "[i]n a nation where motorists practically live on the highways, no citation of authority is needed to establish that an arbitration award ordering a company to reinstate an over-the-road truck driver caught drinking liquor on duty violates public policy"); *U.S. Postal Service v. Am. Postal Workers Union*, 736 F.2d 822 (1st Cir. 1984) (vacating arbitral award reinstating a postal service employee convicted of embezzling several thousands of dollars in postal funds on the grounds of the public policy behind upholding public trust in the postal system and the danger of encouraging other postal service employees to be likewise dishonest); *Iowa Elec. Light & Power v. Loc. Union 204, IBEW*, 834 F.2d 1424 (8th Cir. 1987) (refusing to enforce arbitrator's reinstatement of worker who had deliberately undermined nuclear safety on the grounds of the strong public policy in favor of nuclear plant safety in the general Nuclear Regulatory Commission regulations).

57. See *Daniel Constr. Co. v. Loc. 257, IBEW*, 856 F.2d 1174, 1181-1183 (8th Cir. 1988) (refusing to vacate arbitral award ordering reinstatement of nuclear plant worker who was terminated after he filed a psychological test used to determine if company workers would be security risks); *U.S. Postal Service*

Against the backdrop of this wide variety of decisions in the various federal courts of appeal, ranging from activist judicial review in some cases to more limited self-restraint in others, the United States Supreme Court decided *Major League Baseball Players Assn. v. Garvey*.<sup>58</sup> In *Garvey*, the Court reinforced the idea of very narrow judicial review of arbitral awards, rejecting any application of activist judicial review by the various federal courts of appeal in this arena.<sup>59</sup>

#### IV. INSTANT DECISION

##### A. *The Majority Opinion*

In *Garvey*, the Supreme Court had to decide whether to uphold an arbitrator's dismissal of Garvey's claim for damages. In doing so, the Court first noted that judicial review of a labor-arbitration decision is very limited.<sup>60</sup> The Court cited its earlier decisions supporting this idea, stating that courts are not authorized to review an arbitral decision on the merits despite fears that the decision rests on factual errors or misconstrues the parties' agreement.<sup>61</sup> The Court also noted that even when a court is convinced that an arbitrator has committed serious error, the arbitrator's decision should not be overturned.<sup>62</sup> Additionally, the majority cited *Misco*, noting that a court is not allowed to refuse to enforce an award of an arbitrator that the judge finds to be based on "improvident, even silly, factfinding" when there is no dishonesty alleged.<sup>63</sup> The Court then reaffirmed that the only grounds for not enforcing the decision of an arbitrator who is "even arguably construing or applying the contract and acting within the scope of his authority"<sup>64</sup> are when the arbitrator has strayed from the interpretation and application of the contract so far that he has effectively "dispense[d] his own brand of industrial justice."<sup>65</sup>

The Court next examined a judge's limited role in reviewing the merits of an arbitration award, noting that a court should not usurp the function of an arbitrator who has been agreed-upon by the parties to resolve the dispute.<sup>66</sup> Here, the majority noted that a court should not weigh the merits of the dispute or consider additional

*v. Natl. Assn. of Letter Carriers*, 839 F.2d 146, 148-150 (3d Cir. 1988) (refusing to vacate arbitral award ordering reinstatement of postal worker who had fired gunshots into his supervisor's unoccupied vehicle); *Stead Motors v. Automotive Machinists Lodge 1173*, 886 F.2d 1200, 1212-1213 (9th Cir. 1989) (refusing to vacate arbitral award ordering reinstatement of continuously reckless mechanic, finding no "explicit, well defined and dominant public policy" barring his reinstatement, and requiring more than "general considerations of supposed public interests" to overturn arbitral award); *U.S. Postal Service v. Natl. Assn. of Letter Carriers*, 810 F.2d 1239, 1241-1242 (D.C. Cir. 1987) (refusing to vacate arbitral award ordering reinstatement of letter carrier who was convicted of unlawful delay of the mail).

58. 532 U.S. 504 (2001).

59. *Id.*

60. *Id.* at 509.

61. *Id.* (citing *Misco*, 484 U.S. at 36).

62. *Id.* (citing *E. Associated Coal Corp. v. Mine Workers, Dist. 17*, 531 U.S. 57, 62 (2000) (quoting *Misco*, 484 U.S. at 38)).

63. *Id.* (quoting *Misco*, 484 U.S. at 39).

64. *Id.* (quoting *E. Associated Coal Corp. v. Mine Workers, Dist. 17*, 531 U.S. at 62).

65. *Id.* (quoting *Enter. Wheel & Car Corp.*, 363 U.S. at 599).

66. *Id.*

equitable claims.<sup>67</sup> If a court were to do so, the Court noted, it would be usurping the function entrusted to the arbitrator.<sup>68</sup> Likewise, the majority stated that in very rare instances, when the arbitrator's conduct does become affirmative misconduct, the reviewing court should not settle the merits of the dispute by its own judgment, but instead should vacate the award for potential further arbitral proceedings.<sup>69</sup> The purpose of vacating the award rather than instituting its own judgment, according to the Court, is to ensure that a judicial determination is not improperly substituted for the parties' bargained-for arbitrator's decision.<sup>70</sup>

After setting forth these principles of law from earlier decisions, the Court concluded that the Ninth Circuit's application of this law in its decision "is nothing short of baffling."<sup>71</sup> The majority noted that although the Ninth Circuit recited the above principles, the substance of its opinion shows that it overturned the arbitrator's decision because it did not agree with the arbitrator's finding of facts.<sup>72</sup> The Court stated that even though the Ninth Circuit may have found the arbitrator's findings of credibility "irrational" and "bizarre," the guiding principles from *Misco* do not allow a court to overturn the arbitral award when the arbitrator is construing the contract and acting within the scope of his authority, even when the decision is the result of serious error.<sup>73</sup> The majority then noted that the Ninth Circuit also erred in directing the arbitrator to enter a different award, and that it should have instead merely vacated the award, following *Misco*.<sup>74</sup> The Court concluded that in disrupting the arbitrator's award because of its disagreement with the arbitrator's findings of facts and in resolving, rather than vacating, the award, the Ninth Circuit wrongly usurped the arbitrator's role and instead substituted its own judgment.<sup>75</sup> The Court reversed the judgment of the Ninth Circuit and remanded the case for further proceedings consistent with its opinion.<sup>76</sup>

### B. The Concurring and Dissenting Opinions

Justice Ginsburg concurred in the opinion, noting only that she agreed that the Ninth Circuit should not have disturbed the arbitrator's award, but that she saw no need to say anything more on the matter.<sup>77</sup> In his dissent, Justice Stevens first lamented the lack of standards given by previous cases for the Court to use in deciding whether an arbitrator has dispensed his own brand of industrial justice.<sup>78</sup> To begin with, Justice Stevens noted that the Court's cases do not provide enough

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67. *Id.* at 510. The Court quotes *Am. Mfg. Co.*: "courts . . . have no business weighing the merits of the grievance [or] considering whether there is equity in a particular claim." *Id.* (quoting 363 U.S. at 568).

68. *Id.*

69. *Id.* (quoting *Misco*, 484 U.S. at 40-41 n.10).

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.* at 509-10 (quoting *Misco*, 484 U.S. at 38).

74. *Id.* at 511 (citing *Misco*, 484 U.S. at 40-41 n. 10).

75. *Id.*

76. *Id.* at 511-12.

77. *Id.* at 512.

78. *Id.*

guidance as to how a federal court should assess when an arbitrator's behavior constitutes "dispensing his own brand of industrial justice" or when the arbitrator's finding "borders on the irrational."<sup>79</sup> He reasoned that since the Court's prior cases do not set forth a sufficiently clear standard to allow him to conclude that the Ninth Circuit made the wrong decision, he therefore must dissent from the Court's disposition.<sup>80</sup>

Justice Stevens' second contention with the majority's holding was that the case had been decided without the benefit of briefing and argument.<sup>81</sup> He argued that the Court's holding that the only course open to a reviewing court was to vacate an arbitrator's award instead of substituting its own judgment was not compelled by any prior cases, and thus required argument on both sides of the issue.<sup>82</sup> Also, he argued that without the Court's review of the record and without the solicitation of briefing, he could not endorse reversing the Ninth Circuit's "reasoned explanation" of its conclusion.<sup>83</sup> Justice Stevens found the majority's willingness to reverse the Ninth Circuit's fact-bound decision without the benefit of the record and briefing to be troubling and in contradiction with the Court's normal practice.<sup>84</sup>

Finally, Justice Stevens noted that he found the majority's reasoning for overturning the Appeals Court's decision to be somewhat ambiguous.<sup>85</sup> He found particularly unclear whether the Court had ever held that a court may never set aside an arbitration because of a factual error, "no matter how perverse," or whether the Court instead had held that this can occur, but that the error in this case was not enough to allow the Court to take this step.<sup>86</sup>

This decision plainly upheld the principles the Court set forth in its earlier cases on the judicial overview of arbitral decisions, emphasizing the importance of upholding the validity of the arbitral forum and also the importance of judicial review of errant arbitral decisions. However, this decision is not unassailable on the basis of its practical effects for future courts in their potentially difficult task of reviewing particular arbitral decisions, and in determining just when these arbitral decisions may be overturned.

## V. COMMENT

The Court in *Garvey* clearly upheld the principles of judicial self-restraint and deference to arbitral awards found in its earlier cases, including the *Steelworkers Trilogy* and *Misco*. However, the Court's application of this analysis to the *Garvey* case lacked clear standards as to when and how a court is allowed to set aside an arbitral award.

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79. *Id.*

80. *Id.* at 512-13.

81. *Id.* at 513.

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.* at 513 n. 1.

86. *Id.* Further, he notes that if the Court did indeed hold that a factual error could warrant setting aside an arbitral award, but there was no error severe enough in this case to do so, that the Court still has not offered an explanation as to what standards it used to make that decision. *Id.*

The Court's decision is in accord with its earlier decisions supporting judicial self-restraint in reviewing arbitral judgment. The Court clearly and precisely set forth the principles of the cases before the instant decision that also dealt with the issue of judicial review of arbitral decisions.<sup>87</sup> It recognized the need for judicial deference to the arbitrator's award in the absence of an arbitrator's act of "dispens[ing] his own brand of industrial justice," harmonizing its reasoning with the Court's earlier decisions on this matter.<sup>88</sup> The Court also reiterated the judicial function as separate and discrete from the arbitrator's function, and highlighted the necessity of non-usurpation of arbitral power, as seen in earlier decisions.<sup>89</sup>

Although the Court's decision is consistent with the principles set forth in earlier decisions regarding judicial deference to an arbitrator's award when there is no affirmative misconduct on the part of the arbitrator, the Court's opinion does not shed great light on when exactly an arbitrator's decision may be set aside. The hazy insight the Court gives is only that a decision may be overturned when the arbitrator strays so far from interpretation of the contract that he effectively "dispense[s] his own brand of industrial justice" and notes that this will only be in "very rare instances when an arbitrator's procedural aberrations rise to the level of affirmative misconduct."<sup>90</sup> Although the Court decided that this case does not represent such an instance, the Court did not issue any clear guidelines as to when such an instance may occur beyond its tenuous language about "dispensing his own brand of industrial justice" and "the arbitrator's procedural aberrations."<sup>91</sup> Justice Steven's dissent highlighted this fact, concluding that the instant decision does not illuminate when and how a court should know that an arbitrator's award may be overturned.<sup>92</sup> As Justice Stevens pointed out, this difficulty with the majority's decision is compounded by the fact that the Court's opinion is ambiguous as to whether a court may ever set aside an arbitral award because of factual error, or whether that practice would never be allowed.<sup>93</sup> On the one hand, the Court reasoned that judges are not authorized to review an arbitral award despite allegations that the decision rests upon factual error.<sup>94</sup> On the other hand, the majority also responded to Justice Stevens' dissent by remarking that a remand will ordinarily be appropriate when the arbitrator has made factual findings that the judge perceives as "irrational."<sup>95</sup> This ambiguity sends mixed signals, and therefore produces great difficulty for future courts who must try to decide if they can appropriately set aside an arbitrator's award because of factual error.

The policies at stake in this decision are the policy behind supporting arbitration as a final resolution to labor disputes, and the policy behind ensuring that the resulting arbitral decision is fair, just, and issued by a competent arbitrator. First of all, the Supreme Court has noted that the idea that arbitration is binding and final

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87. *Id.* at 509.

88. *Id.*

89. *Id.* at 509-10.

90. *Id.* at 510.

91. *Id.* at 509-10.

92. *Id.* at 512.

93. *Id.* at 513 n. 1.

94. *Id.* at 509.

95. *Id.* at 511.

“best accords with the parties’ presumed objectives in pursuing collective bargaining.”<sup>96</sup> Also, the statutes of the NLRA and LMRA illustrate Congress’s support of arbitration as an ideal means of labor-dispute resolution.<sup>97</sup> The efficiency of arbitration particularly makes it ideal for labor disputes, which need to be resolved quickly.<sup>98</sup> Further, those parties in labor contracts who agree to have their contracts arbitrated have bargained for this means of dispute resolution to address their contract problems, and thus it should not be lightly disrupted.<sup>99</sup> This bargain includes the finality of arbitration proceedings, for otherwise, arbitration would not be truly bargained for if its results could be summarily disregarded.<sup>100</sup> Binding arbitration is particularly good for such labor disputes because an arbitrator may be better suited to resolve labor disputes than a judge who may be more uninformed

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96. *Schneider Moving & Storage Co. v. Robbins*, 466 U.S. 364, 371-72 (1984).

97. *Lincoln Mills*, 353 U.S. at 455 (also noting that “the agreement to arbitrate grievance disputes is the *quid pro quo* for an agreement not to strike”). See *Warrior & Gulf Nav. Co.*, 363 U.S. at 582 (highlighting “congressional policy in favor of settlement of disputes by the parties through the machinery of arbitration.”)

98. Craver, *supra* n. 32, at 573. Craver states that “[w]hen parties to a labor contract are unable to agree, they have several options available to them. The dissatisfied party may interrupt operations through a strike or lockout. That party may seek redress through costly, time-consuming, and cumbersome judicial procedures. It may alternately employ grievance-arbitration procedures set forth in the bargaining agreement.” *Id.* at 573. Craver also suggests that arbitration is particularly well-suited for the labor setting because the arbitral determination “alleviates the tension associated with unresolved disputes” and “permits the unsuccessful participant to impose blame for the result on an outside individual, instead of the other member of the continuing labor-management relationship.” *Id.* at 576.

99. *Misco*, 484 U.S. at 45 (stating “[t]he parties did not bargain for the facts to be found by a court, but by an arbitrator chosen by them who had more opportunity to observe [the witnesses] and to be familiar with the plant and its problems”); *Enterprise Wheel & Car Corp.*, 363 U.S. at 599; See Lewis B. Kaden, *Judges and Arbitrators: Observations on the Scope of Judicial Review*, 80 Colum. L. Rev. 267, 287 (1980). Kaden states that:

[When the] losing party in arbitration asks a court not to give effect to an award, it is asking that the conclusiveness which is at the heart of the process be withheld. The core considerations seem clear. First, the parties have contracted for a final and binding award; the party who resists adherence to it is therefore seeking to be relieved of his bargain. Second, whether judicial intecession results in enforcement or vacation of the award, expediency in the resolution of the dispute is lost. Finally, an employer’s resistance to compliance with the award may also strike action by the union to press for enforcement.

*Id.*

See e.g. Joseph H. Borning, *Judicial Review by Sense of Smell: Practical Application of the Steelworkers Essence Test in Labor Arbitration Appeals*, 65 U. Det. L. Rev. 643, 659 (1988) (noting that “the parties freely agree[ ] to give up some accuracy in arbitration awards in exchange for greater efficiency.”)

100. Kaden, *supra* n. 99, at 275. Kaden notes that “the parties have an institutional stake in finality because the arbitrator is their creation; he functions by their consent and at their sufferance, and his powers and roles can and should be molded by them to suit their own purposes.” See Craver, *supra* n. 32, at 577 (noting simply that if arbitration awards are not binding, the prevailing party will be deprived of its bargain); Edgar A. Jones, “*His Own Brand of Industrial Justice*”: *The Stalking Horse of Judicial Review of Labor Arbitration*, 30 UCLA L. Rev. 881, 893 (1983) (stating that a court should “give short shrift to those plaintive cries of surprise and outrage from the party who now discovers that it has lost its taste for the brand of arbitrator it had investigated and then bought”).

about the workings of the workplace.<sup>101</sup> Finally, even if an arbitral award is unjust, contracting parties can seek modification of its interpretation through the bargaining process, so some scholars suggest that there is no need for judicial review of such matters.<sup>102</sup>

However, the policy competing with arbitration as always final and binding upon labor parties is the idea that sometimes the results of the arbitral decision may be based on the decision of an arbitrator who has strayed too far from the facts or the agreement between the parties.<sup>103</sup> If an arbitral award is unreviewable, an arbitrator will be unchecked if she decides unjustly apart from the facts and the law.<sup>104</sup> If a limit on the power to review arbitral decisions is too vast, arbitrators may dispense nonequitable judgments with no check on their decisions.<sup>105</sup> If the limit on reviewing arbitral decisions is too limited, great injustices may be done with great

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101. *Warrior & Gulf Nav. Co.*, 363 U.S. at 581-582. The Court noted that:

The labor arbitrator's source of law is not confined to the express provisions of the contract, as the industrial common law – the practices of the industry and the shop – is equally a part of the collective bargaining agreement although not expressed in it. The labor arbitrator is usually chosen because of the parties' confidence in his knowledge of the common law of the shop and their trust in his personal judgment to bring to bear considerations which are not expressed in the contract as criteria for judgment. The parties expect that his judgment of a particular grievance will reflect not only what the contract says but, insofar as the collective bargaining agreement permits, such factors as the effect upon productivity of a particular result, its consequence to the morale of the shop, and his judgment whether tensions will be heightened or diminished. . . . The ablest judge cannot be expected to bring the same experience and competence to bear upon the determination of a grievance, because he cannot be similarly informed.

*Id.*

See Jones, *supra* n. 100, at 883-884; Saul Wallen, *Recent Supreme Court Decisions on Arbitration: An Arbitrator's View*, 63 W. Va. L. Rev. 295, 296-297 (1961); Harry Wellington, *Judicial Review of the Promise to Arbitrate*, 37 N.Y.U. L. Rev. 471, 479-80 (1962).

102. Craver, *supra* n. 32, at 576; Jones, *supra* n. 100, at 896; 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, 29 (1988).

103. See Edwards, *supra* n. 100, at 7-8 (stating that "an arbitrator who ignores the contract and interjects his own values into the decision-making process exceeds his authority and thus abdicates his special role as 'contract reader' for the parties").

104. See generally *Enterprise Wheel & Car Corp.*, 363 U.S. at 597 (holding that the arbitrator's award "is legitimate only so long as it draws its essence from the collective bargaining agreement").

105. See generally Richard M. Alderman, *Pre-Dispute Mandatory Arbitration in Consumer Contracts: A Call for Reform*, 38 Hous. L. Rev. 1237, 1241-42 (2001). Alderman suggests that arbitration inherently favors "repeat-players" such as employers who repeatedly turn to this method for dispute resolution, where "the informal rules, lack of guidelines, and finality of the decision often favor the business organization, due in large part to its significant role as a 'repeat-player.'" *Id.* He supports his idea that arbitration is inherently favorable to "repeat-players," such as large employers, by explaining that arbitration is "privately funded and answerable to no one," unlike the judicial system which is "publicly funded and presided over by judges who are answerable to the legislature and the public." *Id.* at 1256. He points out that judges' salaries remain constant no matter what decisions they render, but that the arbitration business is revenue-producing and dependent on continued use by "repeat-players." *Id.* Based on the revenue-producing nature of arbitration, supplied by the repeat-players who require arbitrator's services, Alderman concludes, "[t]hus, an almost symbiotic relationship exists between the arbitrator and the repeat-player." *Id.*

consequences: employers may be forced to take back employees who acted outside of the scope of their contracts, and employees may be unjustly discharged from their positions with no check upon these errors if an arbitrator strays too far from the contract.

Obviously, these two policies need to be balanced against each other – parties to labor contracts should be able to depend on the validity of their arbitration contracts, and unjust results of arbitration proceedings should be reviewable. The Court in *Garvey* recognized the necessity of balancing these two policies, but failed to set forth workable standards by which to do so. By giving mixed signals as to whether an award based on factual error may ever be overturned and by being extremely vague about when an error may rise to the level of one which may be overturned, the Court issued no steadfast guidelines to direct lower courts. As a result, in some cases courts may overturn arbitral decisions too quickly, undermining arbitration as an efficient and final means of dispute resolution for labor contracts. Conversely, in other cases courts may refuse to overturn an erroneous arbitrator's decision, resulting in great injustice to the employers and/or employees affected by the unreviewable arbitrator's award.

## VI. CONCLUSION

In *Garvey*, the Court balanced the competing policy interests behind the protection of arbitration as a bargained-for forum for labor disputes and behind allowing judges to review erroneous arbitral decisions. In its decision, the Court preserved the validity of the arbitral forum unless the mistakes of the arbitrator in rendering the decision rise to the level of procedural aberrations and a dispensing of a brand of justice wholly apart from the merits of the case. In so holding, the Court recognized the interests of the other parties who contract for arbitral resolution of their contracts as well as the principles of judicial review of the resulting arbitration decisions in some circumstances. Though the principles of this decision are sound, the practical effects of it are uncertain because the Court failed to give judges much guidance in deciding which arbitration agreements may be overturned and which may not.

EMILY J. HUI TSING

