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Three Strikes & You're Out: The Supreme Court's Reaffirmation of the Scope of Judicial Review of Arbitrators' Decisions

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Three Strikes & You're Out: The Supreme Court's Reaffirmation of the Scope of Judicial Review of Arbitrators' Decisions

Major League Baseball Players Association v. Garvey[1]

I. INTRODUCTION

In *Major League Baseball Players Association v. Garvey*, the United States Supreme Court affirmed an arbitrator's decision to deny a former major league baseball player recovery from a settlement fund established to compensate players who were damaged by collusion amongst team owners in the market for free agent baseball players.[2] In so doing, the Supreme Court reversed the United States Court of Appeals for the Ninth Circuit and reaffirmed the principle the Court announced in *United Steelworkers v. Enterprise Wheel & Car Corp.*,[3] that judicial review of an arbitrator's decision in the labor context is extremely limited. The Supreme Court's holding was a correct and logical application of the *United Steelworkers* principle to the facts of the *Garvey* case.

II. FACTS AND HOLDING

In the late 1980s, major league baseball was scandalized by charges that team owners had colluded to control the salaries of "free agent" players.[4] The Major League Baseball Players Association ("Association") responded by filing a grievance against the team owners ("Owners"), alleging that their conduct violated the parties' Collective Bargaining Agreement ("CBA").[5]

A panel of arbitrators heard the grievance and ruled that the Owners had engaged in collusion, causing extensive financial damage to numerous players.[6] Consequently, the Association and Owners entered into a Global Settlement Agreement ("Settlement Agreement"), which established a two hundred-eighty million dollar fund for players who were financially damaged by the Owners' collusion.[7] Pursuant to the Settlement Agreement, the Association designed a

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1. 532 U.S. 504 (2001).
2. *Id.* at 505-06.
3. 363 U.S. 593 (1960).
4. A "free agent" is a player who has the right to contract with any Major League Baseball team, rather than a player whose right to contract is restricted to a particular team. *Garvey*, 532 U.S. at 505.
5. *Id.*
6. *Id.* at 505-06.
7. *Id.* at 506.

Framework[8] under which individual players were entitled to file claims through the Association to receive a portion of the fund.[9] Any disputes over a player's entitlement to a payout were to be resolved through arbitration.[10]

According to the terms of the agreement, the arbitrator's responsibility was to determine "only whether the approved Framework and criteria set forth therein have been properly applied in the proposed Distribution Plan."[11] The framework set forth criteria that were generally applicable to all player claims[12] and established the specific requirements for lost contract extension claims.[13] Such lost contract extension claims were valid "only in those [few] 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."[14]

Former player Steve Garvey ("Garvey")[15] submitted a claim to the Association seeking damages.[16] Garvey, who retired from baseball in 1987, contended that collusion by the owners prevented his contract with the San Diego Padres ("Padres") from being extended to the 1988 and 1989 seasons.[17] The Association rejected Garvey's claim and submitted the matter to arbitration.[18] During the arbitration hearing, Garvey presented a letter written in 1996 by former Padres President Ballard Smith ("Smith") stating that the Padres

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8. The purpose of the Framework was to establish a process for evaluating and determining whether an individual player was entitled to money from the fund. *Id.* Per the terms of the Settlement Agreement, before the Framework went into effect, the Association was required to present the proposed framework to an arbitration panel for independent consideration of its contents and any player was allowed to file objections. *Id.* The arbitration panel approved the proposed framework with amendments on September 14, 1991. Garvey v. Roberts, 203 F.3d 580, 583 (9th Cir. 2000).

9. *Id.*

10. *Id.*

11. *Id.* (quoting the Framework) (internal quotation marks omitted).

12. *Id.* at 584. The general criteria included consideration of the player's history of compensation, recent performance, salaries of comparable players, etc. *Id.*

13. *Id.*

14. Major League Baseball Players Ass'n v. Garvey, 532 U.S. 504, 507 (2001) (quoting *Roberts*, 203 F.3d at 584) (internal quotation marks omitted).

15. Garvey's career spanned nineteen seasons with the Los Angeles Dodgers and San Diego Padres. A first-baseman, he had 2599 career hits and a lifetime batting average of .295. Additionally, he was a ten-time All-Star.

16. *Garvey*, 532 U.S. at 506. Garvey's alleged lost-contract extension would have covered the 1988 and 1989 Major League Baseball seasons and would have been worth approximately three million dollars. *Id.*

17. *Id.*

18. *Id.*

initially offered to extend his contract but later refused to negotiate with him as a result of the collusion.[19]

Nonetheless, the arbitrator denied Garvey's claim, explaining that there was "substantial doubt as to the credibility of the statements in the Smith letter."[20] The arbitrator noted that Smith had previously stated in another proceeding that collusion among the teams did not play a role in the decision not to extend Garvey's contract.[21] Further, the arbitrator noted that Garvey presented no other evidence corroborating his claims.[22]

Garvey sought judicial review of the arbitrator's decision.[23] The United States District Court for the Central District of California denied Garvey's motion to vacate the arbitrator's award.[24] Garvey, however, found a more sympathetic court in the Ninth Circuit Court of Appeals, which reversed the district court by a divided vote.[25] The Ninth Circuit recognized that Smith's prior testimony with respect to collusion conflicted with his statements in the 1996 letter,[26] and, in the Ninth Circuit's view, the arbitrator's refusal to give credit to Smith's inculpatory admissions in the 1996 letter was "inexplicable" and "border[ed] on the irrational."[27] Thus, while acknowledging that judicial review of an arbitrator's decision is extremely limited, the Ninth Circuit found that it was required to reverse the arbitrator's decision because he had "dispense[d] his own brand of industrial justice."[28]

The Ninth Circuit remanded the case to the district court, which then remanded it to the arbitrator for further hearings.[29] Garvey appealed the district court's remand to the Ninth Circuit.[30] The Ninth Circuit, again by a divided vote, explained that its earlier ruling "left only one possible result [on remand] . . . an award in Garvey's favor."[31] The court's reasoning was that "[r]emand to an arbitrator is inappropriate where such remand would be futile because [the court] could not accord judicial deference to any other conclusion by the

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19. *Id.* at 506-07.

20. *Id.* at 507 (quoting Garvey v. Roberts, 203 F.3d 580, 586 (9th Cir. 2000)) (internal quotation marks omitted).

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. Garvey v. Roberts, 203 F.3d 580, 590 (9th Cir. 2000).

28. *Id.* at 590-91.

29. *Garvey*, 532 U.S. at 508.

30. *Id.*

31. Garvey v. Major League Baseball Players Ass'n, No. CV-97-05643-WJR, 2000 WL 1801383, at *1 (9th Cir. Dec. 7, 2000).

arbitrator."[32] Consequently, the Ninth Circuit ordered the arbitrator to award Garvey the amount he claimed, without any further hearings.[33]

The Association appealed the Ninth Circuit's ruling to the United States Supreme Court.[34] The Supreme Court granted certiorari, and, without briefing or oral argument, ruled that the Ninth Circuit erred because the arbitrator was construing the parties' contract and acting within the scope of his authority.[35] Therefore, even if the arbitrator made "serious errors," the Ninth Circuit was not justified in intervening.[36]

The Court further went on to say that even when an arbitrator's award may be properly overturned, the case should be returned for further arbitration proceedings[37] and a court should not decide the matter on the merits.[38] Following its own advice, the Supreme Court remanded the case for still further proceedings.[39]

III. LEGAL BACKGROUND

A. The Historical Role and Subsequent Evolution of Labor Arbitration

The arbitration system is probably collective bargaining's greatest contribution to labor law.[40] Arbitrators play key roles in the collective bargaining system "by being the final arbiters in most of the contract disputes that cannot be settled voluntarily by unions and management. In so doing they have promoted the interests of employers in uninterrupted production as well as those of employees in fair and equitable treatment."[41]

In the early days of labor arbitration following the Second World War, the subject matter of arbitration was largely confined to collective bargaining

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32. *Id.*

33. *Id.*

34. *See* Major League Baseball Players Ass'n v. Garvey, 532 U.S. 504, 508-09 (2001).

35. *See id.* at 510.

36. *Id.* (quoting United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29, 38 (1987)) (internal quotation marks omitted).

37. *Id.* at 511.

38. *See id.*

39. *Id.* at 511-12.

40. *See* LLOYD G. RENYOLDS ET AL., LABOR ECONOMICS AND LABOR RELATIONS 257-60, 541-62 (10th ed. 1991); SUMNER H. SLICHTER ET AL., THE IMPACT OF COLLECTIVE BARGAINING ON MANAGEMENT 954-61 (1960).

41. Theodore J. St. Antoine, *The Changing Role of Labor Arbitration*, 76 IND. L.J. 83, 101-02 (2001).

agreements.[42] Because "[e]xternal civil law in the form of statutes and common law court decisions rarely intruded" into arbitration proceedings, judges were more than happy to avoid reviewing the decisions of arbitrators.[43] Furthermore, arbitrators and union and management officials thought judicial intervention into labor arbitration objectionable because they "uniformly believed that judges . . . did not understand the pragmatic and fast-moving nature of the labor arbitration process."[44]

The autonomous role of labor arbitration began to change when civil rights statutes and other laws aimed at protecting individual employee rights in the workplace poured forth during the 1960s and 1970s.[45] Thereafter, unions and employers began to make these federal statutes issues during arbitration proceedings.[46] Consequently, arbitrators were forced to assume the additional responsibility of ensuring that collective bargaining agreements did not violate an employee's federal statutory rights.[47]

These statutory enactments created a problem because statutory interpretation is a special responsibility of the courts.[48] When federal judges noticed this development, they made it clear that they were not going to let a private arbitrator get away unchallenged with noticeable misreadings of legislative text.[49] Thus, judges decided that some form of scrutiny was necessary to correct flagrant and abusive arbitrator errors made in statutory interpretation.[50]

Consequently, federal judges read Section 301 of the Labor Management Relations Act[51] to confer jurisdiction upon federal courts and the courts began to enforce or vacate arbitration awards.[52] For example, in *Textile Workers Union v. American Thread Co.*,[53] one of the first cases to address this issue, the district court held that an agreement to arbitrate a dispute concerning the interpretation

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42. *See* David E. Feller, *The Coming End of Arbitration's Golden Age*, 29 PROC. NAT'L ACAD. OF ARB. 97 (Barbara D. Dennis & Gerald G. Somers eds., 1976).

43. St. Antoine, *supra* note 41, at 102.

44. Kathleen M. Paravola, *Source of Law in Labor Arbitration*, in FAIRWEATHER'S PRACTICE & PROCEDURE IN LABOR ARBITRATION 1, 2 (Ray. J. Schoonhoven ed., 3d ed. 1991).

45. *See, e.g.*, 42 U.S.C. §§ 2000e-2 to -16 (2000) (dealing generally with equal employment opportunities including unlawful employment practices and enforcement provisions).

46. Feller, *supra* note 42, at 121-26.

47. Feller, *supra* note 42, at 126.

48. Feller, *supra* note 42, at 126.

49. Feller, *supra* note 42, at 126.

50. Feller, *supra* note 42, at 126.

51. 29 U.S.C. § 185(a) (2000).

52. *See* Paravola, *supra* note 44, at 3-4.

53. 113 F. Supp. 137 (D. Mass. 1953).

and application of a labor agreement could be enforced under Section 301.[54] Subsequently, in *Textile Workers Union of America v. Lincoln Mills of Alabama*,[55] the Supreme Court clearly stated that Section 301 provided not only the jurisdictional basis for the federal courts to preside over labor contract arbitration clauses, but also the source of procedural law for labor arbitration.[56] In *Lincoln Mills*, the United States Court of Appeals for the Fifth Circuit had held that although the court had jurisdiction over the suit, an agreement to arbitrate could not be enforced because there was no federal or state common law or statute that required or permitted such an agreement.[57] The Supreme Court, however, reversed the Fifth Circuit and enforced the agreement.[58] The Court noted:

> Other courts—the overwhelming number of them—hold that s 301(a) 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 that federal law specific performance of promises to arbitrate grievances under collective bargaining agreements.[59]

After *Lincoln Mills*, it was clear that labor arbitration was going to change dramatically from the autonomous institution it had once been.[60]

B. The Scope of Judicial Review of Arbitrators' Rulings

Vacation, enforcement, or correction of an arbitration award begins when a dissatisfied party files suit in a federal or state court[61] under Section 301 of the Labor-Management Relations Act ("LMRA") to upset or modify a labor arbitration award.[62] "The guiding principle concerning judicial review of labor

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54. *Id.* at 141-42.

55. 353 U.S. 448 (1957).

56. *Id.* at 451-56.

57. Lincoln Mills of Ala. v. Textile Workers Union, 230 F.2d 81, 84, 88 (5th Cir. 1956), *rev'd*, 353 U.S. 448 (1957).

58. *Lincoln Mills*, 353 U.S. at 448.

59. *Id.* at 450-51.

60. *See* St. Antoine, *supra* note 41, at 83.

61. "When such a suit is filed in state court, it is removable to federal court." Steven R. Kinberg et al., *The Award*, in FAIRWEATHER'S PRACTICE AND PROCEDURE IN LABOR ARBITRATION 388, 388 (Ray. J. Schoonhoven ed., BNA Books 1991).

62. 29 U.S.C. § 185(a) (2000) ("Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be

arbitration awards is whether the award 'draws its essence' from the labor agreement."[63] In its seminal decision in *United Steelworkers v. Enterprise Wheel & Car Corp.*[64] the Court stated:

> [A]n arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.[65]

In the same decision, however, the Supreme Court declared that "[t]he refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements. The federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards."[66]

Giving substance to this directive, the United States Court of Appeals for the Third Circuit said in *Ludwig Honold Manufacturing Co. v. Fletcher*:[67]

> [I]f the interpretation can in any rational way be derived from the agreement, viewed in the light of its language, its context, and any other indicia of the parties' intention [it should not be overturned]; only where there is a manifest disregard of the agreement, totally unsupported by principles of contract construction and the law of the shop, may a reviewing court disturb the award.[68]

At this point, it seemed as though the Supreme Court had promulgated a clear standard and the lower courts were properly applying the standard.

With the passage of years, however, more decisions setting aside arbitration awards appeared than might have been expected in light of the Supreme Court's

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brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.").

63. Kinberg, *supra* note 61, at 396.

64. 363 U.S. 593 (1960) (union bringing suit to enforce the provisions of an arbitrator's award when the employer refuses to abide by the arbitrator's ruling).

65. *Id.* at 597.

66. *Id.* at 596.

67. 405 F.2d 1123 (3d Cir. 1969).

68. *Id.* at 1128.

clear directive in *United Steelworkers*.[69] As a result, the Supreme Court felt the need to reaffirm the finality of arbitrators' awards. In *United Paperworkers International Union v. Misco, Inc.*,[70] the Court emphasized Congress' "decided preference for private settlement of labor disputes" without judicial or other governmental intervention.[71] Accordingly, the Supreme Court reminded the lower courts that they "do not sit to hear claims of factual or legal error by an arbitrator as an appellate court does in reviewing decisions of lower courts."[72] All that needs to be shown for a court to enforce an arbitrator's award is that the arbitrator has not ignored the plain language of the contract:

> [A]s long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision.[73]

The Court proceeded to reverse the Fifth Circuit decision vacating the arbitrator's award.[74]

C. *The Appropriate Remedy When the Arbitrator's Decision Does Not "Draw Its Essence" From the Labor-Management Agreement*

In light of the general principle of judicial deference to arbitrators' decisions expressed in *United Steelworkers*, courts have been reluctant to remand a case to an arbitrator with instructions to enter judgment in one party's favor when the arbitrator's decision did not "draw its essence"[75] from the labor

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69. *See, e.g.*, H.K. Porter Co. v. United Saw, File & Steel Prods. Workers, No. 22254, 333 F.2d 596 (3d Cir. 1964) (vacating arbitrator's decision because there was no evidence in his record to support his finding); Int'l Ass'n of Machinists & Aerospace Workers, Dist. No. 9 v. Olin Mathieson Chem. Corp., 335 F. Supp. 212 (E.D. Mo. 1971) (setting aside arbitration award because arbitrator disregarded clear provisions of labor agreement in formulating order).

70. 484 U.S. 29 (1987) (arbitrator determining employee did not violate employer's rule regarding use or possession of marijuana on company property, but district court vacating the award and Fifth Circuit affirming, holding that reinstatement would violate the public policy against operation of dangerous machinery by persons under the influence of drugs).

71. *Id.* at 37.

72. *Id.* at 38.

73. *Id.*

74. *Id.* at 45.

75. *See id.* at 38.

agreement.[76] The more common, and more appropriate, remedy is for the court to remand the case to the arbitrator for further proceedings.[77] By doing so, the jurisdiction of the arbitrator is deemed to be reestablished.[78]

The Supreme Court clearly announced this general principle in *Misco, Inc.*[79] In that case, the justices noted that if a court "foreclose[s] further proceedings by settling the merits according to its own judgment of the appropriate result," it "improperly substitute[s] a judicial determination for the arbitrator's decision."[80] Such a substitute is improper because the arbitrator's decision is what the parties bargained for in their agreement.[81]

IV. THE INSTANT DECISION

In *Garvey*, the Supreme Court considered whether an arbitrator's application of the framework of a settlement agreement between the Major League Baseball Player's Association union and team owners was within the scope of his authority.[82] In so doing, the court revisited the issue of the scope of judicial review of arbitrators' decisions.[83] The Court expressly reaffirmed the principle it promulgated in *United Steelworkers* and its progeny and applied that principle to the factual circumstances in *Garvey*.[84]

A. The Scope of Judicial Review of Arbitrator's Decisions

The court began by stating the *United Steelworkers* principle that an arbitrator's ruling must "draw its essence" from the labor-management agreement.[85] The labor-management agreement in *Garvey* was a settlement agreement pursuant to which "the arbitrator shall determine only whether the approved Framework and the criteria set forth therein have been properly

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76. *See, e.g.*, Todd Shipyards Corp. v. Indus. Union of Marine & Shipbuilding Workers, Local 15, 242 F. Supp. 606 (D.N.J. 1965) (remanding award to arbitrator); Winnebago Lodge No. 1947 of Int'l Ass'n of Machinists v. Kiekhaefer Corp., 215 F. Supp. 611 (E.D. Wis. 1963) (remanding award to arbitrator).

77. *See* cases cited *supra* note 76; 9 U.S.C. § 10(a)(5) (2000) ("Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators.").

78. *See* 9 U.S.C. § 10(a)(5) (2000).

79. *See Misco*, 484 U.S. at 40 n.10.

80. *Id.*

81. *See id.* at 45.

82. Major League Baseball Players Ass'n v. Garvey, 532 U.S. 504, 510 (2001).

83. *Id.* at 510-11.

84. *Id.* at 509.

85. *Id.* ("Garvey's right to be made whole is founded on that agreement.").

applied."[86] In order to state a claim for relief under the terms of the Framework, Garvey had to provide evidence that a specific offer of extension was made by the Padres prior to collusion only to be withdrawn when the collusion scheme was initiated.[87] As proof of a specific offer of extension, Garvey offered a letter from Ballard Smith, the Padres former President/Chief Executive Officer, stating that the Padres had in fact made an extension offer to Garvey only to withdraw it as the result of collusion.[88] The arbitrator did not find this letter to be credible because of testimony that Smith gave in the 1986 collusion proceedings in which he stated that the Padres were not interested in continuing Garvey's contract in 1986 and that there had been no collusion.[89]

The Supreme Court noted that the arbitrator's credibility determination was unquestionably a factual finding.[90] When the arbitrator made the credibility determination, however, he was construing the terms of the settlement agreement by applying the criteria set forth in the Framework.[91] Thus, the arbitrator was performing the exact function that the Settlement Agreement set forth for him. Therefore, the Ninth Circuit erroneously overturned the arbitrator's decision merely because they disagreed with his factfinding.[92] In reversing, the Supreme Court held that, because the arbitrator's finding drew its essence from the settlement agreement, it should not have been overturned.[93]

B. The Appropriate Remedy When the Arbitrator's Decision Does Not "Draw Its Essence" From the Labor-Management Agreement

In *Garvey*, the Supreme Court also considered what is the appropriate remedy when an arbitrator commits serious error by making a ruling that does not "draw its essence" from the labor-management agreement.[94] Accordingly, the court applied and expressly reaffirmed the principle promulgated in *Misco, Inc.* that the proper remedy is to remand the case to the arbitrator for further proceedings not inconsistent with the holding reached by the court.[95]

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86. Garvey v. Roberts, 203 F.3d 580, 583 (9th Cir. 2000) (quoting the Framework).

87. *Id.* at 584.

88. *Id.* at 585.

89. *Id.* at 586. The arbitration panel squarely rejected the notion that these statements were made for the sole purpose of supporting the owners' attempt to deceive the arbitrators about the existence of collusion. *Id.*

90. Major League Baseball Players Ass'n v. Garvey, 532 U.S. 504, 510 (2001).

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.* at 509-10; *see* United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597 (1960).

95. *Id.* at 511.

The Court did note that in the rare cases in which a court finds that an arbitrator strays from the interpretation and application of an agreement and effectively "dispense[s] his own brand of industrial justice," a court may overturn the decision.[96] The appropriate remedy, however, is for the court to return the case to the arbitrator for further proceedings.[97] It was, therefore, improper for the Ninth Circuit to settle the dispute on its own by simply ordering the arbitrator to enter judgment for Garvey without an opportunity for the arbitrator to conduct further proceedings.[98]

Finally, the Court clarified that when parties agree to submit a dispute to an arbitrator, "[i]t is the arbitrator's construction [of the agreement] which was bargained for."[99] In those cases, if a court enters judgment, it is improperly substituting a judicial determination for the arbitrator's decision.[100] That, the Court concluded, was what the Ninth Circuit did in the present case by ordering judgment in Garvey's favor.[101] In effect, the Ninth Circuit "usurped the arbitrator's role."[102]

C. *The Dissent*

In his dissenting opinion, Justice Stevens began by agreeing with the majority as to the applicable principles of law to the facts of *Garvey*.[103] He declined, however, to join the majority opinion for two reasons. First, he believed that the case law before the Court was insufficient to determine when an arbitrator's finding "draws its essence" from the labor-management agreement or what the appropriate remedy is when this is not what occurs.[104] Second, Stevens objected that the Court declined to accept briefing or hear oral arguments on the issues and reversed a fact-bound determination without considering the Ninth Circuit's reasoning.[105]

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96. *Id.* at 509 (quoting Steelworkers v. Enter. Wheel & Car Corp., 363 U.S. 593, 597 (1960)) (internal quotation marks omitted).

97. *Id.* at 511.

98. *Id.* at 510-11.

99. *Id.* at 510 (quoting *United Steelworkers*, 363 U.S. at 599).

100. *Id.*

101. *Id.* at 511.

102. *Id.*

103. *Id.* at 512-13 (Stevens, J., dissenting).

104. *Id.* at 513 (Stevens, J., dissenting); *see* United Steelworkers v. Enter. Wheel & Car Corp., 363 U.S. 593, 597 (1960).

105. *Garvey*, 532 U.S. at 513 (Stevens, J., dissenting).

V. COMMENT

In *Garvey*, the Supreme Court applied the logic of *United Steelworkers* to affirm an arbitrator's ruling which construed the terms of a labor-management agreement.[106] The majority correctly applied the *United Steelworkers* principle that a reviewing court should not overrule an arbitrator's decision if it "draws its essence" from the labor-management agreement.[107] Applying this principle, the Court in *Garvey* refused to overrule the arbitrator because he made a credibility determination which was supported by the record.[108] Given that this was a factual determination, the arbitrator's ruling in this case "drew its essence" from the settlement agreement between the players' union and team owners.[109]

As late as 1972 an experienced arbitrator reported that most "losing" parties did not attempt to have awards vacated: "[N]early all labor arbitration is conducted with the understanding that the decision of the arbitrator will be 'final and binding.'"[110] This situation is undoubtedly what the parties desire in the vast majority of cases.[111] They do not expect the arbitration to be merely a way station on the road to further and protracted litigation.[112]

In the ensuing years, however, the rush to commence Section 301[113] suits to vacate, modify, enforce, or revise awards had increased so greatly that former Chief Justice Warren Burger expressed concern that these suits were clogging the trial courts.[114] Burger stated, "remedies for personal wrongs, that once were considered the responsibility of institutions other than the courts, are now boldly asserted as legal entitlements."[115] These developments made it necessary for the Supreme Court in *Garvey* to reaffirm the doctrine of the finality of arbitration awards.

The Supreme Court's holding should have an impact on both labor employers and employees because it reinforces the doctrine of finality in labor

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106. *Id.* at 510.

107. *Id.* at 509-10; *see* United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597 (1960).

108. *See id.*

109. *Id.*; *see* United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597 (1960).

110. *See* Joseph Brandschain, *Preparation and Trial of a Labor Arbitration Case*, 18 PRAC. LAW. (Nov. 1972), at 17, 40.

111. *See id.*

112. *See id.*

113. *See* 29 U.S.C. § 185(a) (2000).

114. *See* Warren E. Burger, *Isn't There a Better Way?*, 68 A.B.A. J. 274 (1982) (report on the state of the judiciary).

115. *See id.*

arbitration awards.[116] The Court's ruling in *Garvey* reinforces the notion that it should be extremely rare for an arbitrator's ruling to be overturned by a court.[117] With employment-related disputes consuming an even larger portion of the courts' resources,[118] the attention the justices have placed on arbitration suggests that they hope more disputes are resolved in this forum and apparently they will encourage it.[119] Accordingly, the Supreme Court is sending a clear message to unions and employers that if they decide to resolve disputes through arbitration, they should not expect the courts to intervene simply because they disagree with the finding.[120]

The focus of a court's reviewing function is to ascertain whether the arbitrator did his or her job; the focus is *not* to determine whether the arbitrator did it accurately.[121] Thus, all that is required is some support in the record for the arbitrator's decision.[122] When the court finds some support, the inquiry is over.[123] Even if a court finds the arbitrator's factual analysis, such as credibility determinations, to be unpersuasive, the decision hardly qualifies as serious error, let alone an irrational or inexplicable error.[124] The bargain for arbitration implies

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116. *See* Kinberg, *supra* note 61, at 400.

117. *See* Kinberg, *supra* note 61, at 400.

118. During the 2000-01 term, the Supreme Court heard four arbitration cases in addition to *Garvey*. *See* Circuit City Stores, Inc. v. Adams, 532 U.S. 105 (2001) (holding that Section 1 of the Federal Arbitration Act ("FAA"), which excludes from coverage "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce," is confined to transportation workers only); C & L Enters, Inc. v. Citizen Band Potawatomi Indian Tribe of Okla., 532 U.S. 411 (2001) (holding that where an Indian tribe agreed to arbitrate contractual disputes with a company, it subjected itself to Oklahoma law and thus agreed to the enforcement of awards in courts having jurisdiction over Oklahoma law, thereby waiving its sovereign immunity); Green Tree Fin. Corp.-Ala. v. Randolph, 531 U.S. 79 (2000) (upholding ruling that where an arbitration agreement between petitioner and respondent did not specify who would pay arbitration costs, there was no justification for invalidating the agreement because the risk that respondent would be saddled with costs so prohibitive as to prevent her from enforcing her statutory rights was too speculative); E. Assoc. Coal Corp. v. United Mine Workers, 531 U.S. 57 (2000) (upholding arbitration award which required reinstatement of employee who had twice failed a random drug test).

119. *See* Editorial Comment, *Assessing the Garvey Case and Arbitration in the Ninth Circuit and Beyond*, 11 WORLD ARB. & MEDIATION REP. 107, 107 (2000).

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

an acceptance of the limitations of the process, including periodic factual errors by the arbitrator.[125]

From a public policy standpoint, at least three distinguished federal appellate judges have publically extolled the advantages of arbitration over litigation.[126] They stressed arbitration's merits of speed, cost savings, and relative informality.[127] Arbitration can be advantageous for claimants because even if they can get to court, mounting empirical evidence indicates most of them will prevail less often than they would before a qualified arbitrator.[128] Employers also favor arbitration because successful plaintiffs typically are awarded more by a judge or jury than they are in arbitration proceedings.[129]

Only time and experience will tell whether the lower courts will correctly apply the principle of finality of arbitrator's awards as reaffirmed by *Garvey*. In view of the Supreme Court's plainly stated ruling, it seems likely they will. Thus, vacation of an award because it does not draw its essence from the language of the parties' agreement will occur only when it is so express and clear on its face that courts can be confident the decision is irrational or completely unsupported by the agreement's provisions.

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125. *Id.*

126. The judges include The Honorable Harry Edwards of the District of Columbia Circuit, The Honorable Betty Fletcher of the Ninth Circuit, and The Honorable Alvin Rubin of the Fifth Circuit. *See* Harry T. Edwards, *Advantages of Arbitration over Litigation: Reflections of a Judge*, 35 PROC. ANN. MEETING, NAT'L ACAD. ARB. 16, 26-27 (James L. Stern & Barbara D. Dennis eds., 1982); Betty Binns Fletcher, *Arbitration of Title VII Claims: Some Judicial Perceptions*, 34 PROC. ANN. MEETING, NAT'L ACAD. ARB. 218, 228 (James L. Stern & Barbara D. Dennis eds., 1981); Alvin D. Rubin, *Arbitration: Toward a Rebirth, in Truth, Lie Detectors, and Other Problems in Labor Arbitration*, 31 PROC. ANN. MEETING, NAT'L ACAD. ARB. 30, 36 (James L. Stern & Barbara D. Dennis eds., 1978).

127. *See* Rubin, *supra* note 126, at 36.

128. *See* Lewis L. Maltby, *Private Justice: Employment Arbitration and Civil Rights*, 30 COLUM. HUM. RTS. L. REV. 29, 46, 49 (1998). In a study by the American Arbitration Association, arbitral claimants prevailed sixty-three percent of the time. *See id.* at 48-49. By contrast, plaintiffs' success rate in separate surveys of federal court and EEOC cases was only 14.9% and 16.8%, respectively. *See id.*

129. *See id.* at 54.

VI. CONCLUSION

The legal principle guiding judicial review of arbitration awards is relatively straightforward. A court is justified in overturning an arbitrator's findings only when the award does not "find its essence" from the collective bargaining agreement.[130] It was necessary, however, for the Court to reaffirm this principle in *Garvey* because the lower courts' application of this principle to the facts of cases before them had been less than exemplary. The Supreme Court in *Garvey* made it clear that when a court simply disagrees with an arbitrator's factual finding, it is not appropriate for the court to intervene; the arbitrator's construction of the agreement was specifically bargained for as part of the labor-management agreement.

Additionally, it was necessary for the Supreme Court in *Garvey* to reaffirm the appropriate remedy when an arbitrator's decision does not "draw its essence" from the agreement. The Court made it extremely clear that in the rare cases in which an arbitrator's award may properly be vacated, the appropriate remedy is to remand the case for further arbitration proceedings rather than substituting a judicial determination for the arbitrator's ruling and, thereby, taking over the arbitrator's role.

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130. *See* Major League Baseball Players Ass'n v. Garvey, 532 U.S. 504, 511 (2001); United Steelworkers v. Enter. Wheel & Car Corp., 363 U.S. 593, 597 (1960).

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