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Cover Page Footnote

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MISCO AND THE ENFORCEMENT OF LABOR ARBITRATION AWARDS: NO LONGER A HOUSE DIVIDED?

*Joseph F. Tremiti**

I. INTRODUCTION

It is a well-established principle of American labor law that the grievance-arbitration process is the chief vehicle for resolving disputes arising from a collective bargaining agreement.[1] In large measure, the collective bargaining agreement establishes the relationship between the employer and the employees and among the employees themselves.[2] Many collective bargaining agreements authorize grievances to be submitted to binding arbitration.[3]

The circuit courts of appeal were divided on the question of when courts may set aside a labor arbitrator's award as being in contravention of public policy.[4] The United States Supreme Court in *United Paperworkers International Union v. Misco, Inc.*,[5] reaffirmed unanimously that the function of the federal courts is narrow in reviewing an arbitrator's decision.[6] Absent evidence of fraud by the parties or dishonesty by the arbitrator, the Court refused to reconsider the merits of an arbitrator's award.[7] Although the Court stated that an arbitration

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1. *See, e.g.*, C. MORRIS, DEVELOPING LABOR LAW 914 (1983); *see also* F. ELKOURI & E.A. ELKOURI, HOW ARBITRATION WORKS 1–95 (1985); O. C. FAIRWEATHER, PRACTICE AND PROCEDURE IN LABOR ARBITRATION 1–9 (1983).

2. R. GORMAN, BASIC TEXT ON LABOR LAW 540–43 (1976). For a general discussion of labor arbitration conduct and procedures, see generally F. ELKOURI & E.A. ELKOURI, *supra* note 1; O.C. FAIRWEATHER, *supra* note 1.

3. O.C. FAIRWEATHER, *supra* note 1, at 8–18.

4. *See* Northwest Airlines v. Air Line Pilots Ass'n Int'l, 808 F.2d 76 (D.C. Cir. 1987); E.I. DuPont de Nemours and Co. v. Grasselli Employees Indep. Ass'n of E. Chicago, Inc., 790 F.2d 611 (7th Cir.), *cert. denied*, 479 U.S. 853 (1986); Bevles Co. v. Teamsters Local 986, 791 F.2d 1391 (9th Cir. 1986); American Postal Workers Union v. United States Postal Serv., 789 F.2d 1 (D.C. Cir. 1986); United States Postal Serv. v. American Postal Workers Union, 736 F.2d 822 (1st Cir. 1984); Amalgamated Meat Cutters and Butcher Workmen of N. Am. v. Great W. Food Co., 712 F.2d 122 (5th Cir. 1984); Super Tire Eng'g Co. v. Teamsters Local Union No. 676, 721 F.2d 121 (3d Cir. 1983).

5. 108 S. Ct. 364 (interim ed. 1987).

6. *Id.* at 366.

7. *Id.*

award which violates public policy could be overturned,[8] this exception is, at best, amorphous. The Court's narrow approach in *Misco* is consistent with the views adopted by the Third, Ninth, and D.C. Circuits.[9]

This article will address the impact of the Court's decision in *Misco* on arbitration procedures. This article will also discuss the limits imposed by the Court on reviewing courts in matters involving the enforcement of arbitration awards. Finally, this article will consider the practical ramifications of *Misco*.

II. FACTS AND HOLDING

Misco, Inc., was a party to a collective bargaining agreement with the United Paperworkers International Union.[10] The collective bargaining agreement authorized the company or the union to submit to arbitration any grievance that arose from the interpretation or application of the agreement.[11] The agreement covered Isaiah Cooper, a Misco employee who operated a machine which used sharp blades to cut paper.[12]

Misco was concerned about and forbade the use and possession of illegal drugs on company property.[13] On January 21, 1983, the police apprehended Cooper in the Misco parking lot in the backseat of a car with the smell of marijuana smoke in the air. A lit marijuana cigarette was in the front seat ashtray.[14] The police also searched Cooper's own car, which was also in the parking lot, and found marijuana gleanings.[15] Cooper was arrested and charged with possession of marijuana.[16] Within a week, Misco learned of Cooper's arrest and of the marijuana cigarette in the car. Misco investigated the incident and discharged Cooper.[17] Misco asserted that Cooper's presence in a car with a lit marijuana cigarette violated Misco's rule against having illegal drugs on company property.[18] At the time of its decision to discharge Cooper, Misco was unaware that marijuana had been found in Cooper's own car. Cooper filed a grievance, and the matter was submit-

8. *Id.* at 367.

9. *Id.* at 369 n.7; *see also* Northwest Airlines v. Air Line Pilots Ass'n Int'l, 808 F.2d 76 (D.C. Cir. 1987); Bevles Co. v. Teamsters Local 986, 791 F.2d 1391 (9th Cir. 1986); American Postal Workers Union v. United States Postal Serv., 789 F.2d 1 (D.C. Cir. 1986); Super Tire Eng'g Co. v. Teamsters Local Union No. 676, 721 F.2d 121 (3d Cir. 1984).

10. United Paperworkers Int'l Union v. Misco, Inc., 108 S. Ct. 364, 367 (interim ed. 1987).

11. *Id.*

12. *Id.* at 368.

13. *Id.* at 367–68.

14. *Id.* at 368.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 368 n.4.

ted to arbitration.[19]

The arbitrator upheld the grievance and ordered that Cooper be reinstated with backpay and full seniority.[20] Five days before the arbitration hearing, Misco discovered that the police had found marijuana in Cooper's own car.[21] At the hearing, Misco attempted to submit evidence of the marijuana found in Cooper's car.[22] The arbitrator refused to admit this evidence. The arbitrator reasoned that Misco did not know of the evidence when it discharged Cooper and did not rely on the evidence as a basis for his discharge.[23] The arbitrator found that Misco had failed to prove that Cooper had used or possessed marijuana on company property.[24] As a result, the arbitrator found that there was not just cause for Cooper's discharge.[25]

Misco filed suit in federal district court seeking to have the arbitrator's award vacated.[26] The district court held that the arbitrator's award should be vacated because it was against public policy regarding "safety concerns that arise from the operation of dangerous machinery while under the influence of drugs, as well as . . . state criminal laws against drug possession."[27] The Court of Appeals for the Fifth Circuit affirmed the decision of the district court.[28] In so doing, the court of appeals found that the facts indicated that Cooper had violated company policy.[29] The court of appeals did consider the evidence of the marijuana found in Cooper's car.[30]

The United States Supreme Court reversed the decision of the lower courts in *United Paperworkers International Union v. Misco, Inc.*[31] The Court held that an arbitrator's award cannot "be set aside on public policy grounds unless the award orders conduct that violates the positive law."[32] The Court held that the court of appeals exceeded

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19. *Id.* at 368.
20. *See Misco, Inc.*, 89 Lab. Arb. (BNA) 137 (1983) (Fox, Arb.).
21. United Paperworkers Int'l Union v. Misco, Inc., 108 S. Ct. 364, 367 (interim ed. 1987).
22. *Id.*
23. *Id.*
24. *Id.* at 368–69.
25. *Id.* at 368.
26. *Id.* at 369.
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.*
31. *Id.*
32. *Id.* at 374. In Ohio, arbitrators' decisions are reviewed under the statutory guidelines found at OHIO REV. CODE ANN. § 2711.10 (Baldwin 1989) which reads as follows:

> In any of the following cases, the court of common pleas shall make an order vacating the award upon the application of any party to the arbitration if:
>
> (A)The award was procured by corruption, fraud, or undue means.
>
> (B)There was evident partiality or corruption on the part of the arbitrators, or any of

its authority to review an arbitrator's award which was entered according to the terms of a collective bargaining agreement.[33] The Court reasoned that an arbitrator's award "draws its essence from the collective bargaining agreement," and it should not be disturbed by the courts.[34] The Court further stated that when an arbitrator's decision is appealed, a court should not review the decision in the same way that it reviews judicial decisions.[35]

The next question addressed by the Supreme Court was the arbitrator's refusal to consider the evidence of the marijuana in Cooper's car.[36] Again, the Court looked to the collective bargaining agreement for guidance.[37] The Court held that the determination of what evidence is admissible at an arbitration hearing involves an interpretation of the agreement.[38] Unless the agreement sets forth specific procedural rules, the arbitrator shall make the evidentiary decisions.[39]

The third issue presented in *Misco* was the arbitrator's authority to determine the appropriate remedy.[40] The arbitrator ruled that the discharge of Cooper was not required.[41] The Court stated that if the parties wanted to limit the arbitrator's discretion as to the appropriate remedy, the collective bargaining agreement could require a particular sanction.[42] No particular sanction was required of the arbitrator under the collective bargaining agreement in *Misco*.[43]

The fourth issue addressed by the *Misco* Court concerned public policy. The Court cited the doctrine announced in *W.R. Grace & Co. v. Local Union 759, International Union of the United Rubber Workers*.[44] There, the Supreme Court held that whether a collective bargaining agreement is against public policy is a question for the courts.[45] In

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them.

(C)The arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(D)The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

Id.

33. *Misco*, 108 S. Ct. at 367.
34. *Id.* (quoting from Steelworkers v. Enterprise & Car Corp., 363 U.S. 593, 597 (1960)).
35. *Id.* at 372.
36. *Id.*
37. *Id.* at 370.
38. *Id.*
39. *Id.*
40. *Id.* at 372.
41. *Id.* at 366.
42. *Id.* at 370.
43. *Id.*
44. 461 U.S. 757 (1983).
45. *Misco*, 108 S. Ct. at 370.

Misco, the Court stated that the public policy used to invalidate arbitration awards must be grounded in positive law and cannot simply be based on "general considerations of supposed public interests."[46] The Court stated that the court of appeals had not reviewed existing laws and legal precedent to determine if a public policy existed against a person operating a machine while under the influence of drugs.[47] According to the *Misco* Court, the court of appeals' decision was not grounded in positive law.[48] The Court then stated that, even if such a policy existed, Misco had failed to prove that Cooper had violated the policy.[49] The Court regarded the assumption that Cooper was operating machinery while under the influence of drugs as mere speculation.[50]

III. BACKGROUND

In 1925, Congress passed the United States Arbitration Act,[51] a statute designed to permit the enforcement of commercial arbitration agreements. Parties to labor agreements, however, began to bring enforcement actions under the statute, despite the uncertainty of the statute's application to such agreements.[52] Section 1 of the Arbitration Act states that "nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."[53] Regardless of the disagreement over the scope of the Arbitration Act, it is well-settled that any doubts concerning the scope of issues potentially subject to arbitration should be resolved in favor of arbitration.[54]

The Labor Management Relations Act (LMRA) of 1935[55] created administrative machinery for the purpose of addressing representational matters, as well as procedures for the redress of unfair labor practices, within a context designed to foster collective bargaining and industrial stability.[56] In 1947, as part of the Taft-Hartley amendments, Congress enacted section 301 of the National Labor Relations Act.[57]

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46. *Id.* at 375.
47. *Id.*
48. *Id.* at 374.
49. *Id.*
50. *Id.* at 375.
51. 9 U.S.C. §§ 1–14 (1982).
52. *Id.* at § 1.
53. *Id.*
54. *See* Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24–25 (1985).
55. 61 Stat. 136 (1947) (current version at 29 U.S.C. § 173(d) (1975)).
56. *Id.*
57. *See* 29 U.S.C. §§ 185–301 (1976); R. GORMAN, *supra* note 2, at 543–44.

Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in

Although, under section 301, promises to arbitrate were enforceable in the federal courts, congressional intent remained unclear on whether the rules of contract construction in federal court proceedings would be substantive rules or state contract law.[58] The United States Supreme Court in *Textile Workers Union v. Lincoln Mills,*[59] held that section 301 not only authorized the federal courts to assume jurisdiction over actions for specific performance of agreements to arbitrate, but also obligated the federal courts to apply federal substantive law, which was to be fashioned from the policy underlying the national labor legislation.[60]

Shortly thereafter, in the landmark *Steelworkers Trilogy Cases,*[61] the United States Supreme Court defined the relationship between the authority of the federal courts under section 301 and the procedures of labor arbitration.[62] The Court, in the *Steelworkers Trilogy Cases,* enhanced the function of the labor arbitrator and articulated the limits within which the federal judiciary was to govern itself in matters of arbitral dispute resolution.[63]

In *United Steelworkers v. American Manufacturing Co.,*[64] the first *Trilogy* case, the Supreme Court determined that the function of the courts is "confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the [collective bargaining agreement]."[65] The Court stated that it is the arbitrator's duty to decide the merits of a grievance.[66] The Court noted that when the judiciary undertakes to determine the merits of a grievance, it usurps a function entrusted to the arbitrator.[67] The Court reasoned:

> The function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator. It is con-

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this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

29 U.S.C. § 301 (1976).

58. *See* R. GORMAN, *supra* note 2, at 544.

59. 353 U.S. 448 (1957).

60. *Id.* at 451–56.

61. United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); United Steelworkers v. American Mfg. Co., 363 U.S. 564 (1960).

62. *See* F. ELKOURI & E.A. ELKOURI, *supra* note 1, at 27–28; C. MORRIS, *supra* note 1, at 917.

63. *See* R. GORMAN, *supra* note 2, at 551.

64. 363 U.S. 564 (1960).

65. *Id.* at 567–68.

66. *Id.* at 568.

67. *Id.* at 569.

> fined 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 wrong is a question of contract interpretation for the arbitrator. In these circumstances the moving party should not be deprived of the arbitrator's judgment, when it was his judgment and all that it connotes that was bargained for.
>
> 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.[68]

The second *Trilogy* case, concerning the question of an arbitral issue, was *United Steelworkers v. Warrior & Gulf Navigation Co.*[69] There, the Court held that "[a]n order to arbitrate a particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation which covers the asserted dispute, and any doubts should be resolved in favor of coverage."[70] The Supreme Court reasoned that arbitration functions as a substitute for industrial strife rather than a substitute for litigation.[71] The Court stated that arbitration is a part of the collective bargaining process.[72] The collective bargaining process was perceived as an effort to erect a system of industrial self-government.[73] The Court stated that the arbitrator's source of law was not confined to the express provisions of the negotiated agreement, but that it included the common law of the shop.[74] In sum, the Supreme Court found that, where an arbitration clause is broad in scope, the claim should be covered.[75]

The third *Trilogy* case, *United Steelworkers v. Enterprise Wheel & Car Corp.*,[76] concerned the judicial review of an arbitrator's award.[77]

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68. *Id.* at 567–68 (footnotes omitted).

69. 363 U.S. 574 (1960).

70. *Id.* at 582–83. The relevant collective bargaining agreement had "no-strike, no lockout" provisions, a management rights clause which provided that such rights were not subject to arbitration, and a grievance procedure which provided that differences as to the meaning and application of the agreement's provisions were subject to that procedure. *Id.* at 576, 583.

71. *Id.* at 578.

72. *Id.*

73. *Id.* at 580.

74. *Warrior & Gulf Navigation*, 363 U.S. at 581–82. The Court therein also cited Cox, *Reflections upon Labor Arbitration*, 72 HARV. L. REV. 1482 (1959).

75. *Warrior & Gulf Navigation*, 363 U.S. at 584–85.

76. 363 U.S. 593 (1960).

There, the Court reversed a Fourth Circuit Court of Appeals' decision that denied enforcement of an arbitrator's decision granting reinstatement and backpay to several employees.[78] The Court emphasized that mere ambiguity is not a justification for refusing to enforce an arbitration award, and questions concerning the interpretation of collective bargaining agreements are for the arbitrator.[79] According to the Court, the parties bargained for the arbitrator's interpretation.[80] The Supreme Court also limited the authority of reviewing courts to set aside arbitration awards:[81]

> [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.[82]

Years after the *Steelworkers Trilogy Cases,* the United States Supreme Court, in *W.R. Grace & Co. v. Local Union 759, International Union of the United Rubber Workers,*[83] addressed certain aspects of public policy in relation to the enforcement of agreements to arbitrate, as well as the enforcement of labor arbitration awards.[84] In *W.R. Grace,* while the employer was conciliating a dispute with the Equal Employment Opportunity Commission (EEOC) over alleged racially discriminatory hiring practices at a Mississippi plastics manufacturing facility, certain male employees filed grievances after failed negotia-

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77. *Id.* at 592.

78. *Id.* at 599.

79. *Id.*

80. *Id.* Questions of substantive arbitrability, that is, whether the collective bargaining agreement creates a duty to arbitrate, are questions for the court to answer. Questions of procedural arbitrability are intertwined with matters of contract interpretation, and are therefore proper for the arbitrator to resolve. *See* AT&T Technologies v. Communication Workers of Am., 475 U.S. 643 (1986); John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543 (1964).

81. *Enterprise Wheel & Car,* 363 U.S. at 597.

82. *Id.*

83. 461 U.S. 757 (1983).

84. *See* Dowd Box Co. v. Courtney, 368 U.S. 502, 507 (1961) (it is well settled that state courts have concurrent jurisdiction in enforcement matters); Textile Workers v. Lincoln Mills, 353 U.S. 448, 457 (1957) (enforcement of an agreement to arbitrate, vacation of the agreement, and enforcement or correction of an arbitration award are remedies ordinarily sought by a suit pursuant to section 301 of the LMRA, 29 U.S.C. § 185 (1978), in either federal or state court, to the extent such federal and state statutes are compatible with the body of federal substantive law created under section 301). For a more detailed discussion, see F. ELKOURI & E.A. ELKOURI, *supra* note 1, at 25–39; O.C. FAIRWEATHER, *supra* note 1, at 29–53. For railroads and airlines, see the provisions of the Railway Labor Act, 45 U.S.C. §§ 151–88 (1926).

tions precipitated a strike in 1974.[85] The grievances alleged that the company had precluded the male employees from exercising shift preference seniority under the terms of a collective bargaining agreement that could have enabled them to obtain positions held by female strike replacement employees.[86] The company filed suit pursuant to section 301 of the Labor Management Relations Act in district court seeking an injunction prohibiting arbitration of the grievances, pending conciliation negotiations with the EEOC.[87] Before the district court's ruling, the company and the commission signed a conciliation agreement that contained seniority provisions in conflict with the then–existing collective bargaining agreement.[88] While the case was under consideration, the company laid off several employees pursuant to the conciliation agreement.[89] The district court granted summary judgment in favor of the company.[90]

The court of appeals reversed the district court in *W.R. Grace*.[91] In response, several pending grievances proceeded to arbitration.[92] In one situation, the company did not dispute that it had failed to adhere to the seniority provisions of the collective bargaining agreement, inasmuch as it had in good faith followed the conflicting provisions of the conciliation agreement.[93] The arbitrator, however, held that the negotiated agreement made no exception for good faith violations of the seniority provisions.[94] The arbitrator, therefore, sustained the grievance and awarded backpay.[95] The company then instituted another action under section 301, seeking to overturn the arbitrator's award.[96] Although the district court again entered summary judgment for the company, finding that public policy prevented enforcement of the collective bargaining agreement, the court of appeals reversed.[97]

The sole issue before the Supreme Court was whether the arbitrator's award should be enforced.[98] The Supreme Court affirmed the judgment of the court of appeals.[99] In so doing, the Court rejected the

85. *W.R. Grace*, 461 U.S. at 759.
86. *Id.* at 760.
87. *Id.*
88. *Id.* at 760–61.
89. *Id.*
90. *Id.* at 761.
91. *Id.* at 762.
92. *Id.*
93. *Id.* at 763.
94. *Id.*
95. *Id.* at 762–64.
96. *Id.* at 764.
97. *Id.*
98. *Id.*
99. *Id.* at 772.

employer's argument that the arbitration award, ordering compensation for employees laid off pursuant to the terms of the conciliation agreement, could not be enforced.[100] The Court reasoned that there were no public policy considerations which allow the employer to escape its contractual obligation to compensate those employees laid off pursuant to the conciliation agreement.[101] The Court stated that, in order for an arbitrator's contract interpretation to be unenforceable, it must be in violation of and contrary to public policy.[102] The public policy must be well-defined and dominant, and is to be ascertained by reference to laws and legal precedent, and not from general consideration of supposed public interests.[103]

A. The Broad View

In *United States Postal Service v. American Postal Workers Union,*[104] the First Circuit Court of Appeals held that, if a court is to bar the enforcement of an arbitration award on the basis of public policy, then the policy must be clearly defined.[105] The district court, upon a request for review by the Postal Service, ruled that the award violated public policy and was unenforceable.[106] The arbitration award mandated the reinstatement of an employee who had been convicted of embezzling postal funds. The court of appeals reasoned that the public policy against the reinstatement of the grievant was clearly defined in the positive law, in the various federal statutes setting out the fiduciary responsibilities of the postal employee, and in the dictates of common sense.[107] Likewise, in *Amalgamated Meat Cutters and Butcher Workmen of North America v. Great Western Food Co.,*[108] the district court had enforced an arbitration award that ordered the employer to reinstate an over-the-road truck driver who had been caught drinking while on duty.[109] The court of appeals reversed, reasoning that the public policy of preventing people from drinking and driving was embodied in case law, in statutory law, and in pure common sense.[110]

The Seventh Circuit Court of Appeals in *E.I. DuPont de Nemours*

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100. *Id.*; *See also* Alexander v. Gardner-Denver, 415 U.S. 36, 59–60 (1974) (employee's statutory right to a trial de novo under Title VII is not waived by prior submission of the claim to grievance arbitration).

101. *W.R. Grace,* 461 U.S. at 767–72.

102. *Id.* at 766.

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

104. 736 F.2d 822 (1st Cir. 1984).

105. *Id.* at 825.

106. *Id.* at 823–24.

107. *Id.* at 825–26.

108. 712 F.2d 122 (5th Cir. 1984).

109. *Id.* at 123.

110. *Id.* at 125–26.

and Co. v. Grasselli Employees Independent Association of East Chicago, Inc.,[111] reversed the judgment of the United States District Court for the Northern District of Illinois, which had overruled a motion by an employees' association to enforce an arbitration award reinstating an employee who had been discharged after experiencing a mental breakdown, attacking his supervisor, and damaging company property.[112] In enforcing the award of the arbitrator, the court of appeals reasoned that the arbitrator's decision to reinstate the grievant drew its essence from the negotiated agreement and was therefore not in violation of the public policy of providing a safe working environment.[113] The court of appeals held that the judiciary has no authority to reach and determine the merits of an arbitrator's award, even if the arbitrator clearly misinterpreted the collective bargaining agreement.[114] The Seventh Circuit further held that, although the issue of whether an arbitration award violates public policy is ultimately for the courts to determine, the public policy must be well-defined and dominant to justify a refusal to enforce the award.[115] The policy of promoting a safe workplace was not violated according to the court of appeals.[116]

Judge Easterbrook, in a concurring opinion, engaged in a lengthy discussion of the term "public policy" and concluded that a district court is bound to enforce an arbitration award unless the negotiated agreement is construed as contrary to law or against public policy.[117] Citing the decision of the United States Supreme Court in *W.R. Grace & Co. v. Local Union 759, International Union of the United Rubber Workers*,[118] Judge Easterbrook opined that the Court has never held that an arbitrator's award, which complies with the collective bargaining agreement and positive law, may be set aside on the basis of a vague belief about public policy.[119] Thus, the question, according to Judge Easterbrook, is whether the negotiated agreement violates positive law; general considerations of supposed interests do not, in his view, justify setting aside an award.[120]

B. The Narrow View

The Ninth Circuit Court of Appeals, in *Bevles Co. v. Teamsters*

111. 790 F.2d 611 (7th Cir.), *cert. denied*, 479 U.S. 853 (1986).
112. *Id.* at 613.
113. *Id.* at 614–17.
114. *Id.* at 614.
115. *Id.* at 615.
116. *Id.* at 615, 617.
117. *Id.* at 617, 620.
118. 461 U.S. 757 (1983).
119. *DuPont*, 790 F.2d at 620.
120. *Id.*

Local 986,[121] upheld the award of an arbitrator granting reinstatement and backpay to two aliens whom the employer had discharged because they were undocumented.[122] The court of appeals ruled that the award did not violate a clearly defined public policy and was not in manifest disregard of the law.[123] The court's decision relied on the fact that the enforcement of the arbitrator's award did not violate the law, since, at that time, an employer could not be subject to civil or criminal liability for hiring an illegal alien who was already present in the United States.[124]

Similarly, in *Northwest Airlines, Inc., v. Air Line Pilots Association International*,[125] the United States Court of Appeals for the District of Columbia Circuit reversed the holding of the district court which had overturned an arbitration award issued by a panel of the Northwest Airline System Board of Adjustment.[126] The system board had found that because a pilot was suffering from alcoholism, his discharge by the carrier was without just cause pursuant to the terms of a collective bargaining agreement between the carrier and the Air Line Pilots Association.[127] The court of appeals held that a labor arbitration award must be enforced if the award draws its essence from the parties' collective bargaining agreement, even if the reviewing court disagrees with the arbitration panel's judgment on the merits.[128] However the court of appeals stated, that in limited circumstances, the award may be set aside if it violates a public policy which emanates from clear statutory or case law, as opposed to general considerations of supposed public interests.[129] The court found that the arbitration panel's award was based upon its construction of the negotiated agreement and was not otherwise inconsistent with the law.[130] Moreover, the United States Court of Appeals for the District of Columbia Circuit, in *American Postal Workers Union v. United States Postal Service*,[131] held that it had no authority to upset an arbitration award that drew its essence from the collective bargaining agreement, even if the reviewing court disagreed with the findings of the arbitrator, and regardless of an al-

121. 791 F.2d 1391 (9th Cir. 1986).
122. *Id.* at 1392–94.
123. *Id.* at 1394.
124. *Id.* at 1392–93.
125. 808 F.2d 76 (D.C. Cir. 1987).
126. *Id.* at 78.
127. *Id.* at 77–78.
128. *Id.* at 78, 82.
129. *Id.* at 83.
130. *Id.* at 83–84.
131. 789 F.2d 1 (D.C. Cir. 1986).

leged mistake of law made by the arbitrator.[132] The court further held that an arbitration award will not be enforced as a matter of public policy if it violates some established law or compels unlawful action.[133]

The Third Circuit Court of Appeals, in *Super Tire Engineering Co. v. Teamsters Local Union No. 676*,[134] reversed a decision of the United States District Court of New Jersey, which had vacated an arbitration award that reinstated an employee who had been discharged for drinking alcoholic beverages during working hours.[135] The court of appeals ruled that, in the absence of a clear provision in the negotiated agreement mandating dismissal for drinking alcoholic beverages during working hours, the arbitrator was free to determine whether the employee had been dismissed for just cause.[136] The court held that it may disturb an arbitration award when that award is in manifest disregard of the collective bargaining agreement, or totally unsupported by principles of contract construction or by the law of the shop.[137]

It was against this background of prior court precedent and division among the courts of appeal that the Supreme Court granted certiorari in *United Paperworkers International Union v. Misco, Inc.*[138] The First, Fifth, and Seventh Circuits subscribed to a broader scope of review,[139] while the decisions of the Third, Ninth, and D.C. Circuits adopted a more limited view.[140] Under the broad view, arbitration awards were overturned on public policy grounds when the policy was grounded in statutory law, in common sense, and in case law.[141] Under the limited view, however, arbitration awards were vacated on public policy grounds when the awards were in manifest disregard of clear statutory or case law.[142]

IV. ANALYSIS

Several practical implications are raised by the Supreme Court's

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132. *Id.* at 3–7.

133. *Id.* at 8–9.

134. 721 F.2d 121 (3d Cir. 1983).

135. *Id.* at 122.

136. *Id.* at 125.

137. *Id.* at 124.

138. 108 S. Ct. 364 (interim ed. 1987).

139. *See, e.g., DuPont*, 790 F.2d at 611; United States Postal Serv. v. American Postal Workers Union, 736 F.2d 822 (1st Cir. 1984); *Amalgamated Meat Cutters*, 712 F.2d at 122.

140. *See, e.g., Northwest Airlines*, 808 F.2d at 76; *Bevles*, 791 F.2d at 1391; *American Postal Workers*, 789 F.2d at 1; *Super Tire*, 721 F.2d at 121.

141. *See, e.g., DuPont*, 790 F.2d at 611; *Postal Serv.*, 736 F.2d at 822; *Amalgamated Meat Cutters*, 712 F.2d at 122.

142. *See, e.g., Northwest Airlines*, 808 F.2d at 76; *Bevles*, 791 F.2d at 1391; *American Postal Workers*, 789 F.2d 1; *Super Tire*, 721 F.2d at 121.

reasoning in *United Paperworkers International Union v. Misco, Inc.*[143] The Court in *Misco* emphasized that arbitration awards could be set aside if the award orders conduct in violation of public policy,[144] or if the conduct of the arbitrator is characterized by fraud or dishonesty.[145] Arbitration awards, however, will not be overturned if they compel conduct in violation of general considerations of supposed public interests, if the arbitrator misreads the collective bargaining agreement, or if the award draws its essence from the agreement.[146] The Court reaffirmed the unique role of labor arbitration in American industry.[147]

The Supreme Court in *Misco* began its analysis by looking at the role of the courts in reviewing arbitration awards, and at the general rules set forth in the *Steelworkers Trilogy Cases*.[148] The Court acknowledged that those cases hold that as long as an arbitrator's award "draws its essence from the collective bargaining agreement," it should not be disturbed.[149] The Court stated that, when an arbitrator's decision is appealed, it should not be reviewed in the same way that an appellate court reviews a lower court's decision.[150] In the absence of fraud or dishonesty, an arbitration award should not be rejected even if

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143. 108 S. Ct. 364 (interim ed. 1987). Several other commentators have reviewed the implications raised by the Court's reasoning in *Misco*. *See* Cone, *Public Policies Against Drug Use: Paperworkers v. Misco*, 40 LAB. L.J. 243 (1989); Dunsford, *The Judicial Doctrine of Public Policy: Misco Reviewed*, 4 THE LAB. LAW. 669 (1988); 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 (1988); Meltzer, *After the Labor Arbitration Award: The Public Policy Defense*, 10 INDUS. REL. L.J. 241 (1988); Parker, *Judicial Review of Labor Arbitration Awards: Misco and Its Impact on the Public Policy Exception*, 4 THE LAB. LAW. 683 (1988); Ray, *Protecting the Parties' Bargain After Misco: Court Review of Labor Arbitration Awards*, 64 IND. L.J. 1 (1988).

144. *Misco*, 108 S. Ct. at 373. Distinguishing *Misco*, the United States Court of Appeals for the Eighth Circuit shortly thereafter refused to enforce an arbitration award reinstating a nuclear power plant employee who was discharged for deliberately disconnecting a safety system mechanism so that he could temporarily leave his work station to have lunch, citing what the court termed a well-defined and dominant national policy requiring strict adherence to nuclear safety rules. Iowa Elec. Light & Power v. Local 204, 834 F.2d 1424 (8th Cir. 1987).

145. *Misco*, 108 S. Ct. at 366.

146. Relying on *Misco*, the United States Court of Appeals for the Third Circuit ruled in 1988, that an arbitrator's reinstatement of a postal employee should not have been overturned by a United States district court on the basis of a public policy against violence directed at supervisors, inasmuch as such policy was not "well defined and dominant," where the employee had been discharged pursuant to a just cause provision of the negotiated agreement for discharging a pistol at the supervisor's parked car after working hours. Postal Serv. v. Letter Carriers Ass'n, 839 F.2d 146 (3d Cir. 1988).

147. *Misco*, 108 S. Ct. at 370.

148. United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); United Steelworkers v. American Mfg. Co., 363 U.S. 564 (1960).

149. *Misco*, 108 S. Ct. at 370 (quoting United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597 (1960)).

the arbitrator misreads the agreement.[151] The *Misco* Court endorsed the principle that parties to a collective bargaining agreement empower their selected arbitrators;[152] if the parties wish to place limitations on the authority of the arbitrator, then the parties must impose these limitations through their collective negotiations.

The Court in *Misco* recognized the preference for the private settlement of labor disputes.[153] Arbitration is a speedy vehicle for the settlement of such disputes.[154] The goal of quickly and efficiently resolving employee grievances would be undermined if the courts were given the power to usurp the arbitrator's role.[155] The *Misco* Court emphasized that arbitration is a terminal process.[156]

Equally significant is what the Court did not hold in *Misco*. The *Misco* Court adopted the limited view that an arbitration award may be overturned for public policy reasons only if it violated positive law. The Court, however, failed to define this exception clearly.[157] Although the Court did suggest that positive law consists of existing laws and legal precedent, the Court excluded areas of public concern which, while not grounded in existing laws, or legal precedent, may conflict with an arbitrator's award.[158] The Supreme Court focused not on whether the employee's conduct violated public policy, but on whether the arbitrator's award violated public policy.[159] One cannot help but speculate that the Court has left the door of the public policy exception partially ajar in anticipation of clarifying the issue at a future date.

V. CONCLUSION

United Paperworkers International Union v. Misco., Inc.,[160] represents another holding in favor of binding arbitration and the finality of the labor arbitrator's award.[161] The Supreme Court reaffirmed the limited role played by reviewing courts.[162] The Court ruled that courts

151. *Id.*
152. *Id.*
153. *Id.* (quoting United Steelworkers v. American Mfg. Co., 363 U.S. 564, 567–68 (1960)).
154. *Id.*
155. *Id.*
156. *Id.*
157. *Id.* at 374.
158. *Id.*
159. *Id.* at 373–74.
160. *Id.* at 364.
161. *Id.* at 370–71.
162. Further clarification of the public policy exception appeared to be forthcoming when the United States Supreme Court granted certiorari in United States Postal Serv. v. National Ass'n of Letter Carriers, 108 S. Ct. 500 (interim ed. 1987), just two weeks after *Misco*. However, certiorari was dismissed as improvidently granted. United States Postal Serv. v. National

may overturn an arbitrator's award when the award is in violation of public policy, when the award does not draw its essence from the negotiated agreement, when the parties' conduct is characterized by fraud, or when the arbitrator has acted dishonestly.[163] In short, the Supreme Court supports the general rule that the judiciary owes great deference to the decisions of labor arbitrators. In so doing, the Court has resolved a conflict among the courts of appeal and, at the same time, has adopted the limited view of the Third, Ninth, and D.C. Circuits. The *Misco* decision reduces the probability that reviewing courts will overturn arbitration awards.

The Supreme Court observed in a footnote to the *Misco* decision that "it need not address the union's position that a court may refuse to enforce an award on public policy grounds only when the award itself violates a statute, regulation, or other manifestation of positive law, or compels conduct by the employer that would violate such a law."[164] As a result, the Court did not specifically answer the question of when an arbitration award must be set aside on public policy grounds.

Ass'n of Letter Carriers, 108 S. Ct. 1589 (interim ed. 1988).

163. *Misco*, 108 S. Ct. at 370.

164. *Id.* at 374–75 n.12.