AS THE ENTERPRISE WHEEL TURNS: NEW EVIDENCE ON THE FINALITY OF LABOR ARBITRATION AWARDS

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I. INTRODUCTION

A. CONTEXT FOR THIS EMPIRICAL RESEARCH

Two parties in a long-term relationship become embroiled in a dispute. A third person is drawn into their private circle and unwittingly complicates the relationship. Before long, their escalating quarrel is taken before a judge for resolution. TV fans of As the World Turns are familiar with this triangular intrigue.

This summary also describes the subject of our empirical research in As the Enterprise Wheel Turns. Two parties in a long-term relationship—here, a union and employer—are entangled in a contract dispute. A third person—an arbitrator—enters into the controversy. Next, the arbitrator’s decision disturbs the underlying relationship. One of the parties cannot accept the ruling and appeals to a federal judge.

The Supreme Court has indulgently regulated this triangular affair since its 1957 landmark decision in Textile Workers Union v. Lincoln Mills1—about the time that the popular TV soap opera first aired.2 Lincoln Mills authorized federal courts to fashion a common law for the enforcement of collective bargaining agreements (CBAs), including court petitions to confirm or vacate

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1. 353 U.S. 448 (1957). The Court ruled that federal jurisdiction to enforce collective bargaining agreements, including arbitration provisions, arises under Section 301 of the Labor-Management Relations Act of 1947 and not the Federal Arbitration Act. Id. at 450-51.
2. CBS Daytime, As the World Turns, http://www.cbs.com/daytime/atwt/about/showinfo/ (last visited Nov. 21, 2006). The show has run continuously since April 1956. See id.
arbitrator awards that rule on grievances of alleged contract violations. In 1960, the Court set forth principles in three closely integrated decisions—now called the Steelworkers Trilogy\(^3\)—to guide federal judges who are drawn into arbitration disputes.

Trilogy standards for reviewing an arbitrator’s award were set forth in United Steelworkers of America v. Enterprise Wheel & Car Corp.\(^4\) Federal judges at that time understood the institutional history that led to the Trilogy. Unions were an economic force.\(^5\) Because grievance arbitration was agreed upon in most CBAs, Section 301 of the Labor-Management Relations Act (LMRA) provided a legal process to enforce this bargain.\(^6\) In a vital quid pro quo, unions promised not to strike if employers agreed to submit disputes to binding arbitration.\(^7\)

But from the inception of the Trilogy, the judiciary’s role has been questioned. Skeptics claim that judges intrude on this private process by usurping the role of the arbitrator and adjudicating grievances.\(^8\) We take these

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5. THOMAS A. KOCHAN, COLLECTIVE BARGAINING AND INDUSTRIAL RELATIONS 128 tbl.5-1 (1980) (showing that in 1956, 17,490,000 out of 52,408,000 employees, or 33.4%, were union members).
6. S. REP. NO. 80-105 (1947), reprinted in 1 NLRB, LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947 at 421 (1959). Compare H.R. REP. NO. 80-245 (1947), reprinted in 1 NLRB, LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947 at 337 (1959) (explaining congressional intent for enacting Section 301: When labor organizations make contracts with employers, such organizations should be subject to the same judicial remedies and processes in respect of proceedings involving violations of such contracts as those applicable to all other citizens. Labor organizations cannot justifiably ask to be treated as responsible contracting parties unless they are willing to assume the responsibilities of such contracts to the same extent as the other part must assume his.)
7. See R.W. FLEMING, THE LABOR ARBITRATION PROCESS 31-32 (1965) ("Indeed, it is apparent that the decisions of the Supreme Court which have so greatly enhanced labor arbitration . . . are in large part based on the theory that the arbitration clause is the quid pro quo for the no-strike clause."). The use of labor arbitration grew from the 1940s to the 1950s and has been a mainstay ever since. See the 1944 survey, BUREAU OF LABOR STATISTICS, U.S. DEP’T OF LABOR, BULLETIN NO. 780, ARBITRATION PROVISIONS IN UNION AGREEMENTS 2 tbl.1 (1944) (reporting that 73% of firms covered by a labor agreement had an arbitration provision in their contract) and the 1952 survey in BUREAU OF LABOR STATISTICS, U.S. DEP’T OF LABOR, BULLETIN NO. 1142, LABOR-MANAGEMENT CONTRACT PROVISIONS 10 (1952) (reporting that eighty-nine percent of firms covered by a labor agreement had an arbitration provision in their contract).
concerns seriously because of the potential for court review to reduce arbitration to a pre-trial discovery proceeding—adding delay and cost to a process that is supposed to be quick and inexpensive.9

This background highlights the importance of our empirical research on federal court review of labor arbitration awards. Debate among judges, academics, and attorneys as to the proper level of judicial deference is driven by textual analysis of appellate decisions.10 We do not believe that lead cases are accurate gauges of court behavior. So, in two earlier studies, we collected and analyzed data contained in over 1783 federal court rulings on labor arbitration awards that were rendered from June 1960 to March 2001.11 In the

Judge Paul Raymond Hays’s view that “the arbitrator has the jurisdiction to be wrong . . . [t]he question is whether he has authority to decide issues contrary to the provisions of the contract.”Id. at 104. Arbitrator Christensen believed that acceptance of Judge Hays’s view “makes very real the warning of Enterprise that ‘plenary review by a court of the merits would make meaningless the provisions that the arbitrator’s decision is final, for in reality it would almost never be final.’”Id. See also Michael H. Gottesman, Enforceability of Awards: A Union Viewpoint, 41 PROC. NAT’L ACAD. ARB. 88 (1989); William B. Gould IV, Judicial Review of Labor Arbitration Awards—Thirty Years of the Steelworkers Trilogy: The Aftermath of AT&T and Misco, 64 NOTRE DAME L. REV. 464, 464 (1989) (observing that in the thirty years since the Trilogy, “the landscape of judicial review of labor arbitration is now more reminiscent of a thirty years’ war than a substitute for strife once heralded”); Christopher T. Hexter, Judicial Review of Labor Arbitration Awards: How the Public Policy Exception Cases Ignore the Public Policies Underlying Labor Arbitration, 34 ST. LOUIS U. L.J. 77 (1989); Stephen R. Reinhardt, Arbitration and the Courts: Is the Honeymoon Over?, 40 PROC. NAT’L ACAD. ARB. 25 (1988); Jan Vetter, Enforceability of Awards: Public Policy Post-Misco, 41 PROC. NAT’L ACAD. ARB. 75 (1989).


10. We cite two especially significant critiques because their authors are widely respected. See David E. Feller, End of the Trilogy: The Declining State of Labor Arbitration, 48 ARB. J. 18 (Sept. 1993) for a pessimistic assessment by a leading labor law professor who played a personal role in the original Trilogy litigation. Also consider the very negative assessment of fellow jurists by a D.C. Circuit Court of Appeals judge in 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, 4 (1988): In recent years, this long-standing policy of judicial deference has been significantly undercut by a series of lower court decisions that vacate arbitration awards on the ground that they conflict with public policy. In my view, these courts have engaged in unprincipled and unwarranted judicial activism. . . . Under the guise of public policy, therefore, these courts have substituted their own views of industrial justice for the views of the arbitrator.

present study, we add 281 new cases from federal court decisions that were issued between April 1, 2001, and May 31, 2006. Our extensive database puts us in a unique position to evaluate critical claims that arise in this on-going debate.

But why does this matter? Our research is relevant to the Supreme Court’s continuing stewardship of this vital process. As we explain in more detail later, the *Trilogy* was sufficiently comprehensive to be the final word on this subject. But the Court has repeatedly felt obliged to warn lower courts from interfering with an arbitrator’s award. This litany suggests that the Justices believe that too many federal courts fail to heed its strong message of deference—in effect, endorsing the recent view of critics that too many judges re-arbitrate contract disputes that were meant to be resolved by a final and binding award. Adding cogency to our empirical research, the Court issued two recent opinions that admonished federal judges.

As the *Enterprise Wheel* nears its fiftieth anniversary, more is at stake than the institution of labor arbitration. Private sector unions are waning. Strikes—the ultimate concern of Congress when it passed the law that led to *Enterprise Wheel*—are almost non-existent. But the Supreme Court’s docket shows that arbitration is expanding to lending, individual employment, commercial, international, and technology disputes. Even in water-use lawsuits between states, one can see the labor arbitration model as an ADR paradigm. While regulating these newer dispute resolution applications, the Supreme Court has

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12. See infra notes 117-24 and accompanying text.
14. Unions: BLS Reports Percentage of Workers in Unions Still 12.5 Percent, But Overall Numbers Up, DAILY LAB. REP’T (BNA) No. 14, Jan. 23, 2006, at AA-1 (noting that only 7.8% of U.S. workers in the private sector belong to a union, according to the most recent measurement).
21. See Kansas v. Colorado, 543 U.S. 86 (2004), where two states disputed water rights to the Arkansas River. The Court said that “the need for a River Master is diminished by the fact that the parties may find it possible to resolve future technical disputes through arbitration.” *Id.* at 93. It continued by describing a tri-partite arbitration model that is familiar to railroads and airlines under the Railway Labor Act: “In case of an equally divided vote, the Administration (with the consent of both States) may refer a matter for resolution to the Representative of the United States or other arbitrator or arbitrators. The arbitrator’s determinations are binding.” *Id.* at 94.
relied on Trilogy lessons, and therefore has a large investment in the independent functioning of labor arbitration.

B. ORGANIZATION OF THIS ARTICLE

Our quantitative findings cannot be understood without some background. In Part II, we examine the standards of judicial review in Enterprise Wheel and related Trilogy cases. Part II.A demonstrates that Enterprise Wheel instructed judges in a patient, instructional voice. Part II.B shows that as the employment relationship was more regulated, tensions arose between the requirements of a CBA and new laws. This prompted employers to challenge arbitration awards on public policy grounds. In Misco, the Supreme Court deterred courts from overturning awards that are inconsistent with public policies. More recently, in Eastern and Garvey, the Court has abandoned its collegial tone as Justices have grown weary of repeating the same award-deference message to federal judges.

Part III.A explains our research methodology, and Part III.B reports our statistical findings. Finding Number 1 puts our present findings in a historical light by showing that award enforcement is now at its peak in our 46 year database of cases. Finding Number 2 shows that courts now enforce awards in about seventy-six percent of their decisions, a marked increase from past years. Finding Number 3 reports that more appellate decisions have reversed a lower court’s non-enforcement order, compared to appellate decisions that have vacated an award which a lower court has enforced.

Courts have enforced between seventy and eighty percent of challenged awards, regardless of the legal argument, in Finding Number 4A. The four-part essence test is examined in Finding Number 4B. This test yields the same enforcement rate as other legal arguments that challenge awards. Unfortunately, it also stimulates excessive award lawsuits. Two court opinions provide context for these statistics. One demonstrates that the test can be applied with deference, and the other illustrates intrusive court review.

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22. E.g., AT&T Tech., Inc. v. Commc’ns Workers of Am., 475 U.S. 643, 648 (1986) (“The first principle gleaned from the Trilogy is that arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.”).
26. See infra notes 100-103 and accompanying text.
27. See infra note 104 and accompanying text.
28. See infra notes 105-106 and accompanying text.
29. See infra notes 107-109 and accompanying text.
30. See infra notes 110-134 and accompanying text.
32. Alken-Ziegler, Inc. v. UAW Local Union 985, 134 F. App’x 866 (6th Cir. 2005).
Finding Number 4C shows that the public policy test does not diminish court enforcement of arbitrator rulings—an important change from our last study. Two cases explain this outcome. The first case shows that other employers blend a public policy argument with the idea that an unlawful award cannot draw its essence from the contract. So far, this approach has not persuaded judges. Second, there is the case of a nurse who was reinstated after violating a drug-dispensing policy. It shows the great deference that courts now pay to awards in the face of continuing public policy challenges.

Finding Number 5 shows that the Second and Seventh Circuits are significantly more deferential to arbitration, and the Fifth Circuit is significantly less deferential, compared to other courts. A case on Rule 11 sanctions demonstrates why courts in the Seventh Circuit are so deferential. A second case cleverly communicated this court’s policy on great deference. In contrast, a Fifth Circuit case shows that judges rearbitrated a grievance while vacating an award. It contradicts the deference precepts in Eastern and Garvey.

Part IV reports the general conclusions and implications from these findings.

II. THE SUPREME COURT’S MANAGEMENT OF FEDERAL COURTS: FROM PATIENT GUIDANCE TO REPROACHFUL REMINDERS

In our earlier studies, we explained the reviewing standards in Enterprise Wheel and related Trilogy decisions. Repeating this entire background is unnecessary, but omitting this context is also unwise. In developing this part of our Article, we have two aims. First, we describe how the Supreme Court’s award reviewing principles are related to the research variables and results that appear later in the Article. Second, we focus on the Supreme Court’s tone in talking to other federal courts since 1960. Its collegiality has worn thin, descending from patient guidance in the Trilogy to verbal jabs. This subtlety is easy to overlook because Supreme Court rulings provide more substantive information. But, while recently overseeing judicial review of labor arbitration

33. See infra notes 135-152 and accompanying text.
34. See infra notes 137-152 and accompanying text.
37. See infra notes 153-179 and accompanying text.
38. CUNA Mut. Ins. Soc’y v. Office & Prof’l Employees Int’l Union, Local No. 39, 443 F.3d 556 (7th Cir. 2006).
39. Dexter Axle Co. v. Int’l Ass’n of Machinists, Dist. 90, 418 F.3d 762 (7th Cir. 2005).
40. Cont’l Airlines, Inc. v. Int’l Bhd. of Teamsters, 391 F.3d 613 (5th Cir. 2004).
41. The most complete history appears in LeRoy & Feuille, Private Justice, supra note 11, at 29-44.
awards, the Court has made no new ruling. Instead, its opinions have served as public notices to judges and attorneys to treat awards as final resolutions to grievances.

A. Enterprise Wheel’s Patient Guidance for Judges Who Review Awards

In Enterprise Wheel, an arbitrator’s award reduced the termination of several employees to ten-day suspensions. After the employer refused to comply with the ruling, the matter was taken up by the federal courts. The Fourth Circuit denied enforcement of the award, but the Supreme Court reversed this ruling. In a short opinion, the Enterprise Wheel Court said much. Setting a tone of great deference, the majority said that the “refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements.”

Adding substance to this respectful approach, Enterprise Wheel said that an arbitrator is “to bring his informed judgment to bear in order to reach a fair solution of a problem.” We emphasize “informed judgment” because these two words say something about the Court’s understanding of labor arbitration. Arbitrators are selected by the parties because they are familiar with the peculiarities of unionized work in an industrial setting. While collective bargaining agreements are contracts, they are not bargained and administered like commercial transactions.

Enterprise Wheel also mentioned “fair solution of a problem.” In using this expression the Court said that an arbitrator plays a more complex role than a judge in contract litigation. When arbitrators reach a fair solution to a problem, courts must understand “the need . . . for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy

43. Id.
44. Id. at 595-96.
45. Id. at 599.
46. Id. at 596.
47. Id.
48. Id. at 597 (emphasis added).
49. Id. at 596 n.2.
50. Id. at 599 (explaining that the agreement by unions and employers to submit contract disputes to labor arbitrators is founded in their confidence in this neutral’s abilities). More evidence of this distinction appears in United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 578 (1960) (“In the commercial case, arbitration is the substitute for litigation. Here arbitration is the substitute for industrial strife.”).
should be awarded to meet a particular contingency.”

But Enterprise Wheel provided judges grounds to deny enforcement to an award: “Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice.” We highlight “confined to interpretation and application” because this passage is in tension with Enterprise Wheel’s idea that an arbitrator serves as a problem solver. Confining an arbitrator to interpreting and applying contract terms creates a judicial check on arbitrator awards.

An arbitrator “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.” Our research shows this is the most common argument in post-award litigation. “Essence” is emphasized to demonstrate the abstruse quality of this test.

Enterprise Wheel also stated that “[a] mere ambiguity in the opinion accompanying an award, which permits the inference that the arbitrator may have exceeded his authority, is not a reason for refusing to enforce the award. Arbitrators have no obligation to the court to give their reasons for an award.” An award should not be disturbed unless the arbitrator “has abused the trust the parties confided in him and has not stayed within the areas marked out for his consideration.” A court should not vacate an award merely because it disagrees with the arbitrator’s construction of the agreement.

Enterprise Wheel patiently guided federal judges. The Court’s voice was instructional when it said that “the question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitrator’s construction which was bargained for; and so far as the arbitrator’s decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his.”

Other Trilogy decisions added to Enterprise Wheel’s body of law for reviewing awards. American Manufacturing noted that “[t]he function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator,” because it is “the arbitrator’s judgment . . . that was bargained for.” Warrior & Gulf noted that the arbitrator “is not a public tribunal imposed upon the parties by superior authority which the parties are obliged to accept. . . . He is rather part of a system of self-government

51. Enter. Wheel, 363 U.S. at 597.
52. Id. (emphasis added).
53. Id. (emphasis added).
54. See infra Tbl.2 (showing that award challenges relied on the essence argument more often—139 times in a sample of 201 awards—than any other argument).
55. 363 U.S. at 598.
56. Id.
57. Id. at 599.
created by and confined to the parties.”59 In this vein, “[t]he 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.”60 The decision also said that arbitrators have special competence to resolve workplace disputes: “The labor arbitrator performs functions which are not normal to the courts; the considerations which help him fashion judgments may indeed be foreign to the competence of courts.”61 Warrior & Gulf created a paradox for judges by allowing an arbitrator to consider matters not contained in a contract.62

B. STERNER MESSAGES FOR JUDGES WHO REVIEW AWARDS

As government regulation of the employment relationship grew by the 1980s, laws impinged on working conditions that were otherwise governed by a CBA. For example, new regulations authorized employers to implement drug testing.63 Controversies arose when arbitrators reinstated employees who were discharged without just cause for drug violations.64 Some employers challenged these awards on grounds that reinstatement undermined criminal laws and workplace regulations.65

In United Paperworkers International Union v. Misco, Inc.,66 the Supreme

60. Id. at 582.
61. Id. at 581.
62. Id. (“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, his judgment whether tensions will be heightened or diminished.”).
66. 484 U.S. 29 (1987). An arbitrator reinstated a paper mill worker who was fired after he was arrested in the company parking lot on a drug charge. Lower courts vacated the award—and thus, the Company did not reinstate the grievant—because they believed that it would violate a public policy against operating dangerous machinery by drug users. Id. at 35. Misco reversed these rulings, holding that awards may be set aside only if they “would violate some explicit public policy that is well defined and dominant, and is to be ascertained by reference to laws and legal precedents and not from general considerations of supposed
Court discouraged federal courts from upsetting awards that contradict the spirit but not the substance of a public policy. In a notable refinement of Trilogy principles, Misco warned lower courts from interfering with “improvident, even silly factfinding.”67 The Court reminded judges: “This is hardly a sufficient basis for disregarding what the agent appointed by the parties determined to be the historical facts.”68

But some judges continued to meddle in these public policy cases,69 prompting the Supreme Court in 2000 to restate its ground rules for reviewing these awards in Eastern Associated Coal Corp. v. United Mine Workers District 17.70 A coal company fired an employee on two different occasions after concluding that he used marijuana while driving heavy machinery on a public highway.71 Separate arbitration awards reinstated him with conditions after finding that just cause was lacking.72 The company refused to comply with the second award, contending that it violated a federal law providing that “the greatest efforts must be expended to eliminate the . . . use of illegal drugs . . . by those individuals . . . involved in . . . the operation of . . . trucks.”73 Rejecting the employer’s argument, the Supreme Court noted that Department of Transportation rules also favor rehabilitation of drug users, and do not preclude reinstatement of offenders to driving positions.74 Eastern reminded judges to review awards with great deference. Its stern tone in addressing federal judges is highlighted:

- “[B]oth employer and union have granted to the arbitrator the authority to interpret the meaning of their contract’s language, including such words as ‘just cause.’”75
- “They have ‘bargained for’ the ‘arbitrator’s construction’ of their agreement. And courts will set aside the arbitrator’s interpretation of what their agreement means only in rare instances.”76
- “‘[A]s long as [an honest] 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

public interests.” Id. at 43.

67. Id. at 39.

68. Id.

69. E.g., Gulf Coast Indus. Workers Union v. Exxon Co., 991 F.2d 244 (5th Cir. 1993); Newsday, Inc. v. Long Island Typographical Union, No. 915, 915 F.2d 840 (2d Cir. 1990); Delta Air Lines v. Airline Pilots Ass’n, 861 F.2d 665 (11th Cir. 1988).

70. 531 U.S. 57 (2000).

71. Id. at 60.

72. Id. at 60-61.


74. Id. at 64.

75. Id. at 61.

76. Id. at 62 (emphasis added) (quoting United Steelworkers of Am. v. Enter. Wheel & Car Corp., 363 U.S. 593, 599 (1960)).
overturn his decision.’” 77

• “[T]he ‘proper’ judicial approach to a labor arbitration award is to ‘refus[e] . . . to review the merits.’” 78

These reminders to judges should have sufficed. Apparently, though, the Supreme Court believed it needed to reinforce its award deference policy. So, one year later, in Major League Baseball Players Association v. Garvey, 79 the Court used a particularly egregious example of judicial interference in arbitration to speak again to judges. An arbitrator denied a grievance from a star baseball player who alleged that team owners conspired to limit his contract offers. 80 A federal district court denied Steve Garvey’s appeal to vacate the award. 81 But the Ninth Circuit reversed and remanded with instructions to vacate the award. 82 The district court ordered a remand to the arbitrator without vacating the award, causing Garvey to appeal again. 83 This time, the appeals court reversed the district court, and directed that it remand the case to the arbitration panel with instructions to enter an award for Garvey in the amount he claimed. 84 By this order, the Ninth Circuit rearbitrated the grievance.

In acerbic language, the Supreme Court held up the Ninth Circuit’s review of the arbitrator’s award as an example to avoid. At the heart of this arbitration, the parties disputed the credibility of a 1996 letter written by a baseball team owner, which supported Garvey’s collusion theory. The arbitrator did not find the letter credible, prompting the Ninth Circuit to conclude that this fact-finding was “‘inexplicable’ and ‘border[ed] on the irrational.’” 85

The Supreme Court castigated the Ninth Circuit for insincerely reciting Trilogy principles. And the Court embarrassed the Ninth Circuit by calling its behavior “nothing short of baffling.” 86 Garvey emphasized that “established law ordinarily precludes a court from resolving the merits of the parties’ dispute on the basis of its own factual determinations, no matter how erroneous the arbitrator’s decision.” 87 Making no effort to veil its blame, Garvey charged that the “Court of Appeals usurped the arbitrator’s role by resolving the dispute and barring further proceedings, a result at odds with this governing law.” 88

The Court added: “The arbitrator’s analysis may have been unpersuasive to the

77. Id. (emphasis added) (quoting United Paperworkers Int’l Union v. Misco, Inc., 484 U.S. 29, 38 (1987)).
78. Id. (emphasis added) (quoting Enter. Wheel, 363 U.S. at 596).
80. Id. at 506.
81. Id. at 507.
82. Id. at 508.
83. Id.
84. Id.
85. Id.
86. Id. at 510.
87. Id. at 511.
88. Id.
Court of Appeals, but his decision hardly qualifies as serious error, let alone irrational or inexplicable error. And, as we have said, any such error would not justify the actions taken by the court." 89 Garvey sent a clear, reinforcing message to the federal judiciary: Do not overturn "the arbitrator’s decision because it disagree[s] with the arbitrator’s factual findings, particularly those with respect to credibility." 90 And do not resolve the merits of the parties’ dispute. 91 Instead, if a court cannot enforce an award, it must remand the matter "for further arbitration proceedings." 92

III. EMPIRICAL RESEARCH METHODS AND FINDINGS

A. RESEARCH METHODS

We used research methods from our earlier empirical studies. 93 The sample was derived from Westlaw’s internet service. Using an appropriate federal law database (FLB-ALL), we employed pertinent keywords. 94 In order to be included, a case involved a post-award dispute between a union and employer in which the arbitrator’s ruling was challenged.

The sample was limited to published and unpublished decisions from April 1, 2001 to May 31, 2006. 95 When a potential case was identified, we read it to see if it met our criteria. A case was added when it (1) was made either by a federal district or circuit court pursuant to some form of federal jurisdiction, (2) involved award confirmation or vacatur, and (3) had an employer and union as parties. A decision was not included if it failed to meet any criterion. 96

Once a case met the criteria, it was checked against a roster of previously read and coded cases to avoid duplication. In its final form, this roster appears

89. Id. 511 n.2.
90. Id. at 510.
91. Id.
92. Id.
94. Examples include “TRILOGY,” “WARRIOR & GULF,” “ENTERPRISE WHEEL,” “AMERICAN MANUFACTURING,” “MISCO,” “EASTERN ASSOCIATED COAL,” and “GARVEY.”
95. We started the current database at the point where our 1991-2001 database ended.
96. Examples of cases that did not meet the research criteria are: (1) an award that was ruled on by a state court, see City of Dayton v. AFSCME, Ohio Council 8, No. 21092, 2005 WL 3240794 (Ohio Ct. App. Dec. 2, 2005); (2) an award ruled on by an administrative agency, see U.S. Dep’t of Homeland Sec. and Am. Fed’n of Gov’t Employees Local 2805, 61 F.L.R.A. No. 26 (2005); (3) an action to compel arbitration, see R.J. Corman Derailment Serv., L.I.C. v. Int’l Union of Operating Eng’rs Local No. 150, 422 F.3d 522 (7th Cir. 2005); (4) a labor arbitration award that was challenged by an individual employee, rather than a party to the underlying labor agreement, see Smith v. Lyondell Citgo Refining, No. H-05-1708, 2005 WL 2875306 (S.D. Tex. Oct. 31, 2005); and (5) an arbitration award resulting from an individual employment agreement, see Lee v. McDonald Sec., Inc., No. 04 C 2886, 2004 WL 2535277 (N.D. Ill. Sept. 27, 2004).
in the Appendix. Next, data were extracted from each case for the following variables: (1) federal circuit in which court was located; (2) year of district decision; (3) year of circuit court decision; (4) type of issue that was ruled on by the arbitrator; (5) party who prevailed in the arbitration award, (6) party who challenged the award; (7) legal arguments made by party who challenged the award; (8) party who won at the district court level; (9) district court ruling on motion to confirm or vacate an award; (10) party who won at the circuit court level; and (11) circuit court ruling on motion to confirm or vacate an award.

**B. RESEARCH FINDINGS**

We begin our discussion by describing characteristics of the sample. As Table 1 shows, we found 201 labor arbitration awards that were appealed to a federal district court and ruled upon by a judge. In eighty cases, a party appealed the district court order to a federal circuit court, and received a second decision. In 45.9% of the awards, arbitrators decided a termination issue. They ruled on lesser forms of discipline in another 4.6% of cases. The next most common issues were work jurisdiction-subcontracting (18.6%) and work conditions (9.8%).

Table 3 shows that court rulings were unevenly distributed by federal circuit. More than half of the cases were from the Sixth (26.4%), Eighth (13.4%), and Third Circuits (11.4%). In the next cluster were the Fifth (9.0%), Seventh (8.5%), Second (7.5%), Ninth (7.5%), and First Circuits (7.0%). Few cases occurred in the Fourth (3.5%), Eleventh (2.5%), D.C. (2.5%), and Tenth Circuits (1.0%). In reporting the following findings, we also examine textual details of selected cases. This explains developments that are not obvious in the data.

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97. We coded each type of argument individually because many award challenges rely on more than one legal theory.

98. These three circuits accounted for 51.2% of our national sample.
Finding No. 1: District courts confirmed 77.6% of challenged awards, an increase of about seven percentage points compared to our earlier studies of litigated awards from 1960 to 2001. The confirmation rate for appellate courts was 76.3%, an approximate increase of seven percentage points.99

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Our current study follows two previous investigations into court review of labor arbitration awards. In the first study, award confirmation rates by district and appellate courts from 1960 to 1991 were respectively 71.8% and 70.5%.100 In a more recent study that examined court rulings from 1991 to 2001, very similar confirmation rates were observed: district courts enforced 70.3% of all challenged awards, and appellate courts confirmed 66.4% of awards.101

The current sample (April 1, 2001 to May 31, 2006) shows the first marked departure—a notable increase—from this long trend with a district court enforcement rate of 77.6%. The confirmation rate among circuit courts has been more variable over the past forty-six years. Our last measurement, a 66.4% award confirmation rate from 1991 to 2001, registered a four percentage point drop from the previous period. Because appellate courts set precedents for district judges, the trend from 1991 to 2001 also had potential to undermine the clear message of judicial deference in Enterprise Wheel. The data in Table 2 for 1991 to 2001 suggest that the Supreme Court, near the end of that period, wisely intervened by deciding Eastern102 in 2000 and Garvey103 a year later.

The present confirmation rate of 76.3% for appellate courts has three-fold significance: (1) it is the highest rate we have ever measured in our database that begins with cases in 1960; (2) it is ten percentage points higher than the previous period; and (3) the rate is especially significant because of the managerial role that appellate courts play in implementing Trilogy standards throughout the federal court system.

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99. Note that the confirmation rate refers to confirmation of the arbitration award, not upholding the District Court’s order.
100. LeRoy & Feuille, The Steelworkers Trilogy, supra note 11, at 102.
101. LeRoy & Feuille, Private Justice, supra note 11, at 49.
Finding No. 2: Federal courts enforce more than 76% of challenged awards.

Table 1 shows that district court judges confirmed 156 out of 201 awards, yielding an enforcement rate of 77.6%.\(^{104}\) Appellate courts enforced 61 of the 80 contested awards, for a 76.3% confirmation rate.

Finding No. 3: Appellate courts confirmed awards that district courts vacated three times more often than appellate courts vacated awards that district courts confirmed.

Fifteen appellate decisions confirmed awards that were vacated by district courts,\(^{105}\) while five awards were vacated by appellate courts after these arbitrator rulings were confirmed by lower courts.\(^{106}\)

\(^{104}\) The terms “enforce” and “enforcement” are interchangeable with “confirm” and “confirmation.”

\(^{105}\) See Int’l Union of Operating Eng’rs Local 139 v. J.H. Findorff, Inc., 393 F.3d 742 (7th Cir. 2004); City Market, Inc. v. Local 7 United Food & Comm. Workers Int’l Union, 116 F. App’x 960 (10th Cir. 2004); Teamsters Local No. 5 v. Formosa Plastics, Corp., 363 F.3d 368 (5th Cir. 2004); Butler Mfg. Co. v. United Steelworkers of Am. Local 2629, 336 F.3d 629 (7th Cir. 2003); Eisenmann Corp. v. Sheet Metal Workers Int’l Ass’n Local No. 24, 323 F.3d 375 (6th Cir. 2003); Finley Lines Joint Protection Bd. Unit 200 v. Norfolk S. Ry. Co., 312 F.3d 943 (8th Cir. 2002); Bhd. of Maint. of Way Employees v. Terminal R.R. Ass’n of St. Louis, 307 F.3d 737 (8th Cir. 2002); Huber, Hunt & Nichols v. United Ass’n of Journeymen & Apprentices of Plumbing & Pipefitters, 282 F.3d 746 (9th Cir. 2002); United Paperworkers Int’l Union Local 1737 v. Inland Paperboard & Packaging, Inc., 25 F. App’x 316 (6th Cir. 2001); Airline Prof’ls Ass’n of Int’l Bhd. of Teamsters Local Union No. 1224 v. ABX Air, Inc., 274 F.3d 1023 (6th Cir. 2001); Bhd. of Maint. of Way Employees v. Soo Line R.R. Co., 266 F.3d 907 (8th Cir. 2001); Boston Med. Ctr. v. Serv. Employees Int’l Union Local 285, 260 F.3d 16 (1st Cir. 2001); Weber Aircraft Inc. v. Gen. Warehousemen & Helpers Union Local 767, 253 F.3d 821 (5th Cir. 2001); Teamsters Local No. 58 v. BOC Gases, 249 F.3d 1089 (9th Cir. 2001); Keebler Co. v. Truck Drivers Local 170, 247 F.3d 8 (1st Cir. 2001).

\(^{106}\) See Alken-Ziegler, Inc. v. UAW Local Union 985, 134 F. App’x 866 (6th Cir. 2005); Cont’l Airlines, Inc. v. Int’l Bhd. of Teamsters, 391 F.3d 613 (5th Cir. 2004); Citgo Asphalt Ref. Co. v. Paper, Allied-Ind., Chem. & Energy Workers Int’l Union, Local No. 2-991, 385 F.3d 809 (3d Cir. 2004); Anheuser-Busch, Inc. v. Local Union No. 744, Int’l Bhd. of Teamsters, 280 F.3d 1133 (7th Cir. 2002); Pa. Power Co. v. Local Union No. 272, 276 F.3d 174 (3d Cir. 2001). For insight on a new justice’s deferential view of arbitration, see Judge Alito’s dissenting opinion—expressing a view that supported the union’s position in this litigation—stating that:

[The arbitrator’s decision drew its essence from and was based on a construction of the anti-discrimination section. That the arbitrator probably misconstrued that provision is beside the point. The parties bargained for the arbitrator’s construction of the agreement, and that is what they got. By intervening to rescue the Pennsylvania Power Company from one of the consequences of its bargain, the majority has exceeded the proper scope of our court’s authority.]

Finding No. 4(A): The frequency of court confirmation of awards did not significantly vary by the type of legal argument.

Table 2 shows the frequency of Trilogy, Federal Arbitration Act (FAA), and miscellaneous arguments that lawyers used to challenge awards. There was no statistically significant relationship between a legal argument and court rulings. Whatever the argument, courts enforced between 70% and 80% of arbitrator rulings.

There were two exceptions, but they were not statistically significant. When a party contended that an award violated the FAA’s manifest disregard of the law standard, district courts enforced only 57.1% of these awards. However, this was observed in only three out of seven cases. Similar results occurred at the circuit court level when a party contended under Enterprise Wheel that an arbitrator applied his own brand of industrial justice. In five out of nine cases (55.6%) courts refused to enforce an award.

107. Labor arbitration awards are occasionally reviewed under the Federal Arbitration Act, 9 U.S.C. § 10 (1994). The law authorizes courts to vacate an award if: (1) the award was procured by corruption, fraud, or undue means; (2) there was evident partiality or corruption by the arbitrators; (3) 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; or (4) 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.

108. E.g., Electrolux Home Prods. v. UAW, 416 F.3d 848 (8th Cir. 2005).

109. E.g., Sterling Fluid Sys. (USA), Inc. v. Chauffeurs, Teamsters & Helpers Local Union No. 7, 144 F. App’x 457 (6th Cir. 2005).

<table>
<thead>
<tr>
<th>Appealed Awards</th>
<th>District Court Rulings</th>
<th>Appeals Court Rulings</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Basis For Challenge of Award:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trilogy (Authority)</td>
<td>96/125 76.8%</td>
<td>36/51 70.6%</td>
</tr>
<tr>
<td>Trilogy (Essence)</td>
<td>106/139 76.3%</td>
<td>43/60 70.5%</td>
</tr>
<tr>
<td>Trilogy (Four-Part Essence)</td>
<td>24/32 75.0%</td>
<td>8/10 80.0%</td>
</tr>
<tr>
<td>Trilogy (Fact Finding)</td>
<td>17/23 73.9%</td>
<td>7/9 77.8%</td>
</tr>
<tr>
<td>Trilogy (Public Policy)</td>
<td>34/42 81.0%</td>
<td>18/22 81.8%</td>
</tr>
<tr>
<td>Trilogy (Brand of Justice)</td>
<td>17/24 70.8%</td>
<td>4/9 44.4%</td>
</tr>
<tr>
<td>FAA (Evident Partiality)</td>
<td>5/5 100.0%</td>
<td>1/1 100.0%</td>
</tr>
<tr>
<td>FAA (Misconduct)</td>
<td>4/4 100.0%</td>
<td>2/2 100.0%</td>
</tr>
<tr>
<td>FAA (Exceeds Power)</td>
<td>14/15 93.3%</td>
<td>4/4 100.0%</td>
</tr>
<tr>
<td>FAA (Manifest Disregard)</td>
<td>4/7 57.1%</td>
<td>3/4 75.0%</td>
</tr>
<tr>
<td>Miscellaneous—Incomplete Award</td>
<td>13/17 76.5%</td>
<td>3/3 100.0%</td>
</tr>
<tr>
<td>Miscellaneous—Punitive Award</td>
<td>2/2 100.0%</td>
<td>0</td>
</tr>
<tr>
<td>Miscellaneous—Fraudulent Award</td>
<td>4/4 100.0%</td>
<td>4/4 100.0%</td>
</tr>
</tbody>
</table>


The results in Table 2 are especially noteworthy in light of a current controversy in the Sixth Circuit. For the past twenty years, this court has fashioned its own version of Enterprise Wheel’s essence test. In the lead case, Cement Divisions, National Gypsum Co. v. United Steelworkers, Local 135, 110

the Sixth Circuit said that an award fails to draw its essence from a collective bargaining agreement if any of the following is true: (1) it conflicts “with express terms of the . . . agreement;” (2) it “imposes additional requirements not expressly provided for in the agreement;” (3) it is not rationally supported by or derived from the agreement; or (4) it “is based on general considerations of fairness and equity instead of the exact terms of the agreement.” 111 By requiring a labor arbitration award to jump through four hoops for enforcement, this standard does not look like the picture of judicial deference that Enterprise Wheel painted.

The test has generated controversy by appearing to contradict the same circuit’s pronouncement that appeals of arbitration awards are judged by “one of the narrowest standards of judicial review in all of American jurisprudence.” 112 In 2006, this tension came to a head. Judge Sutton, in Michigan Family Resources, Inc. v. Service Employees International Union Local 517M, 113 wrote a lengthy concurring opinion to support his view that the four-part essence test “made it easier to vacate an arbitration award on the merits than the Supreme Court meant it to be.” 114 Voicing unusual concern that “[r]epeated incantations of our test seem to have led us to vacate a surprising number of arbitration awards,” 115 he conducted his own empirical research of Sixth Circuit rulings from 1986 through 2006 and found that “we have vacated 29% (ten out of thirty-four) of labor-arbitration awards that we have reviewed on merits-based grounds.” 116 Judge Sutton asked, “Who among the practicing bar would not appeal an award that has a one-in-four chance of winning?” 117

This was not the first criticism of the four-part essence test. An especially critical scholar remarked that this court’s “variant of the essence construct sweeps away all pretense of judicial deference to the contract interpretation and application decisions of the arbitrator.” 118 Another expert concluded that “the Sixth Circuit serves as an example of the circuits’ attempted end run around the

Employees Int’l Union, Local 517M, 475 F.3d 746 (6th Cir. 2007) (en banc). After we collected and analyzed data for this study, the Sixth Circuit overruled Cement Divisions in the aforementioned en banc decision. Writing for the majority, Judge Sutton concluded that “instead of continuing to apply Cement Divisions’ four-part inquiry, a test we now overrule, we will consider the questions of ‘procedural aberration’ that Misco and Garvey identify.” 475 F.3d at 753.

111. 793 F.2d at 766.
113. 438 F.3d 653, 658 (6th Cir. 2006) (Sutton, J., concurring).
114. Id. at 661.
115. Id. at 662.
116. Id.
117. Id. The judge also found that among unpublished opinions, the Sixth Circuit vacated 25% of those awards (nineteen out of seventy-five) on similar grounds. Id.
Supreme Court’s rulings. Our findings speak in two important ways to this controversy. On one hand, they refute Judge Sutton’s concern by showing that when a court invokes this standard, the award enforcement rate does not drop from the high national norms in this study. In other words, a party who challenges an award on this basis is no more likely to succeed than by using any other legal argument.

But we find statistical support for Judge Sutton’s concern that the four-part essence test invites too many award challenges. More than one-fourth of our national sample (26.4%) originated in the Sixth Circuit. Strengthening our inference, the Third Circuit also uses the four-part essence test. Although it covers a small territory, this circuit ranked third in the percentage of cases that appear in our sample (11.4%).

We briefly turn our attention from data to qualitative analysis. Bixby Medical Center, Inc. v. Michigan Nurses Association illustrates the Sixth Circuit Court’s deferential use of the four-part essence test. The hospital attempted to vacate an award that prohibited it from unilaterally changing health benefits, but lost its appeal before a district court. The Sixth Circuit focused on contract language that gave the employer the right to select or change insurance carriers, but this right was conditioned on providing the same


120. See Tbl.2, supra. Courts still enforce awards to an overwhelming extent. District courts confirmed twenty-four out of thirty-two awards (75.0%), while eight out of ten appeals courts confirmed awards that were challenged under the four-part essence test. Id.

121. See Citgo Asphalt Ref. Co. v. Paper, Allied-Indus., Chem. & Energy Workers Int’l Union Local No. 2-991, 385 F.3d 809, 817 (3d Cir. 2004). The decision is explained in some detail because it demonstrates that this circuit invites a disproportionate amount of award challenges. The employer unilaterally implemented a zero-tolerance substance abuse policy at all of its facilities, citing the hazardous nature of its refining and manufacturing processes. Id. at 811-12. The arbitrator issued a mixed award. He found no contract violation in the company’s unilateral adoption and implementation of this substance abuse policy. Id. at 814. He also found that the mandatory, random testing procedure was both proper and reasonable. Id. However, he sustained the Local’s challenge to the zero tolerance policy, believing that it was unreasonable not to provide erring employees a second chance. Id. at 814-15. He fortified his thinking by stating that this “is especially so where the DOT regulations permit second chance or rehabilitation opportunities. I therefore find that the Policy should be modified in that regard.” Id. at 814. The Third Circuit reversed the district court order that enforced the award, using the fourth element in the essence test: “However, an arbitrator’s opinion and award based on ‘general considerations of fairness and equity,’ as opposed to the exact terms of the CBA, fails to derive its essence from the CBA.” Id. at 817. The court noted that the agreement said that “the arbitrator shall not substitute his judgment for that of the Company in the absence of a clear abuse of discretion.” Id. at 812. “[Although] the award here comported with the arbitrator’s view of fairness . . . [it] did not draw its essence from the CBA.” Id. at 817.

122. 142 F. App’x 843 (6th Cir. 2005).

123. The employer changed health insurance coverage for its workers by increasing deductibles and co-payments. Id. at 844. The hospital contended that the CBA did not require it to maintain a consistent level of health benefits. Ruling for the union, an arbitrator ordered the hospital to cease making unilateral benefit changes. Id.
benefits. The court found that the arbitrator construed the CBA in light of these two sections and concluded that she provided “a fair construction of the parties’ agreement.” The court also approved the arbitrator’s remedy, which ordered only prospective relief.

However, we also found inappropriate examples of judicial review under the four-part essence test. *Alken-Ziegler, Inc. v. UAW Local Union 985* is a case in point. The Sixth Circuit vacated the award that interpreted the meaning of the term “actually working” because the arbitrator’s construction was based upon “general considerations of fairness and equity” instead of the exact terms of the agreement. The court said that “the phrase ‘actually working’ is unambiguous—an employee must work on January 1 to be eligible for vacation pay.” The arbitrator was faulted for finding contractual ambiguity, where the court believed none existed, as a means to preclude the contract’s harsh effect on some employees. In basing his ruling on considerations of reasonableness, the arbitrator disregarded the contract. Thus, he failed “to enforce the labor contract as written,” while imposing his own brand of industrial justice.

These judges failed to distinguish between reviewing an award for error and reviewing to see if the arbitrator based the award on the contract. They did the former, not the latter, by delving into the contractual meaning of “actually working.” Thus, the Sixth Circuit treated the award as if it were a lower court ruling subject to ordinary appellate review. The arbitrator probably misinterpreted the contract. But the record shows that he based the award on a provision in the CBA. Thus, *Alken-Ziegler* conflicts with *Eastern’s* clear

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124. *Id.* at 849.
125. *Id.*
126. *Id.* (finding the bargaining remedy to be “a fair solution to the problem presented, and we will not question it”).
127. 134 F. App’x 866 (6th Cir. 2005). While closing its plant on Oct. 17, 2001, the company refused to pay vacation-pay benefits to employees who did not work for it on Jan. 1, 2002. *Id.* at 867. The CBA provided that eligibility for payment of vacation benefits is determined in reference to a “vacation year,” defined as “the calendar year period from January 1st to December 31st.” *Id.* In ruling for the union, and awarding vacation pay to all employees who were laid off before 2002, the arbitrator reasoned that these workers were not at fault for failing to work the full year, and therefore “[i]t would be unreasonable to cause such forfeitures particularly where an employee has no control over the situation.” *Id.*
128. *Id.* at 868.
129. *Id.* (quoting Beacon Journal Publ’g Co. v. Akron Newspaper Guild, 114 F.3d 596, 600 (6th Cir. 1997)).
130. *Id.*
131. *Id.*
132. *Id.*
133. Chief Judge Boggs dissented, believing that the disputed term, “actually working,” was ambiguous and therefore subject to the arbitrator’s interpretation. *Id.* He emphasized: “When the arbitrator must interpret a contract ambiguity, our case law is now quite clear (despite my dissent) that our review is restrained by one of the narrowest standards of judicial review in all of American jurisprudence.” *Id.*
warning: “[A]s long as an honest 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.”

Finding No. 4(C): The public policy pest makes no significant difference in court enforcement of arbitrator rulings.

Table 1 shows that forty-two awards were challenged in district courts on public policy grounds, and were confirmed in thirty-four cases (81.0%). On twenty-two occasions an award was taken before an appellate court and was confirmed eighteen times (81.8%). This bears on the public policy controversy in *Misco* and *Eastern* by showing that compared to other forms of award review, these challenges are now more likely to end in enforcement.

This finding is important but does not tell the whole story. Briefly, we examine two cases that offer valuable insights. The first case (*Sandvik*) suggests that employers realize that the Supreme Court has strong concerns about public policy review of an award. As a consequence, they avoid a frontal assault on the award, and recharacterize their public policy argument in terms of the CBA. Employers contend that an award that violates a public policy also fails to draw its essence from the agreement, because no contract can be interpreted to circumvent the law. The second case (*Mercy Hospital*) presents compelling facts that could prompt a court before *Eastern* to vacate a reinstatement award on public policy grounds. But in this example, the appellate court steadfastly refused to upset the arbitrator’s award.

*Paper Allied-Industrial Chemical v. Sandvik Special Metals Corp.* highlights a new type of public policy challenge: a hybrid approach that blends public policy and “essence of agreement” reasoning. An employee repeatedly taunted a co-worker by calling him a “queer,” “faggot,” and “MF.” Blending its public policy and contract arguments, the company contended that the labor agreement, as interpreted by the arbitrator, violated the law. The Ninth Circuit rejected this reasoning: “We generally regard an arbitrator’s

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139. 132 F. App’x 149 (9th Cir. 2005).
141. Sandvik, 132 F. App’x at 149-50.
interpretation of a collective bargaining agreement as the final word on the meaning of the contract because both employer and union have granted to the arbitrator the authority to interpret the meaning of their contract’s language, including such words as just cause.”\textsuperscript{142} The court added that “[a]lthough strong public policy supports the prevention and reporting of harassment in the work force, no law, regulation, or precedent requires the Company to fire [an employee], without progressive discipline, for one allegation of harassment.”\textsuperscript{143}

In addition, \textit{Mercy Hospital, Inc. v. Massachusetts Nurses Association}\textsuperscript{144} rejected a compelling public policy challenge to an award that reinstated a nurse who violated a drug dispensing procedure.\textsuperscript{145} The hospital said that the arbitrator’s award violated a clear and dominant public policy in Massachusetts of protecting patients from medical errors.\textsuperscript{146} The court rejected this reasonable challenge: “After stuffing this straw man, the Hospital proceeds to shred it, telling us that because [the nurse] improperly diverted drugs in contravention of the state regulatory scheme, reinstating her to a sensitive position violates public policy.”\textsuperscript{147} The hospital ignored the fact that “the arbitrator, far from glossing over the discrepancies in the [dispenser] and SMS records, explicitly found that the Hospital had failed to prove that [the nurse] diverted any drugs away from patients.”\textsuperscript{148} The court explained that “even if the mandated reinstatement of a nurse found to have deliberately diverted drugs might violate an explicit, well-defined, and dominant public policy . . . the mandated reinstatement of a nurse who has been exonerated of all charges of intentional drug diversion, such as [this nurse], plainly would not.”\textsuperscript{149}

In a related vein, the hospital attempted to find a separate public policy violation in the reinstatement of a nurse who commits serious documentation errors. It argued that improper accounting for controlled substances, even if not

\textsuperscript{142} Id. at 150.
\textsuperscript{143} Id.
\textsuperscript{144} 429 F.3d 338 (1st Cir. 2005).
\textsuperscript{145} A hospital discharged a nurse with an excellent twenty-five year work history after she diverted drugs several times. Id. at 340-42. The problem arose when the hospital installed an automated medicine dispenser. Id. at 341. The nurse took too much medication to set up an intravenous drip bag for later use. Id. She violated the hospital’s policy for the new dispenser, but did not divert medicine to an improper source or harm any patients. Id. at 345. She followed an old practice of preparing medications ahead of time, instead of using an automated method to dispense and record medications. Id. at 341.

The arbitrator determined that the nurse violated an important and reasonable rule, but reinstated her with reduced back pay because the penalty was too harsh in light of her lengthy and superior record. Id. at 342. The hospital sued to vacate the award and was unsuccessful before the district court. Id. at 343. On appeal the hospital lost again, as the First Circuit confirmed the arbitrator’s ruling. Id. at 347.
\textsuperscript{146} Id. at 344.
\textsuperscript{147} Id.
\textsuperscript{148} Id.
\textsuperscript{149} Id.
deliberate, is intolerable.\textsuperscript{150} The court agreed that the nurse’s conduct seemed to violate Massachusetts nursing regulations,\textsuperscript{151} but citing \textit{Eastern}, it rejected the employer’s conclusion that this fact prohibited the arbitrator from ordering a reinstatement order.\textsuperscript{152}

Overall, appellate courts are taking to heart the stern messages of \textit{Misco} and \textit{Eastern}. With few exceptions, the final judgment in a discharge case rests with the arbitrator. Courts are reluctant to intervene, even when compelling facts imply that reinstatement of an errant employee might pose a risk to the public or coworkers. The trend is the same whether employers make conventional public policy challenges or blend their theory with a \textit{Trilogy} essence-of-agreement argument.

Finding No. 5: The Second and Seventh Circuits were significantly more deferential to arbitration, and the Fifth Circuit was significantly less deferential to arbitration than all others.

Table 3 reports award confirmation rates by circuit courts of appeals. The center column shows district court results. The column on the right reports data for appellate courts. A statistical software program (crosstabs in SPSS) analyzed whether different enforcement rates among circuits were due to chance. All courts effectuate the \textit{Enterprise Wheel} policy of judicial deference to awards, except in the Fifth Circuit. Higher than predicted award-confirmation rates were observed in the Second Circuit\textsuperscript{153} and Seventh Circuit.\textsuperscript{154} These high rates are not a problem for \textit{Enterprise Wheel}, because the Supreme Court has never expressed concern about too much judicial deference to arbitration. But the result for the Fifth Circuit defies the Supreme Court’s repeated concern about judicial interference in arbitration. District courts confirmed only eight out of eighteen arbitration awards (44.4%). The appeals court did nothing to correct this aberrant tendency, enforcing only 44.4% of

\textsuperscript{150} Id. at 345.

\textsuperscript{151} Id. (citing 244 MASS. CODE REGS. 9.03(38)-(39)).

\textsuperscript{152} Id., using this strong language:

Once the issue is framed in that manner, it becomes nose-on-the-face plain that the Hospital has failed to establish any barrier at all to [the nurse’s] reinstatement. Indeed, the Hospital has not identified a single iteration of positive law that prohibits the reinstatement of a nurse who, without causing injury to patients, made a few documentation errors or deviated slightly from doctors’ orders on a single occasion in a long and distinguished career. This failure strongly suggests that the reinstatement order does not violate public policy.

\textsuperscript{153} District courts enforced fourteen out of fifteen awards (93.3%) (Chi-square ($\chi^2$) 33.815, df = 22, p < 0.051). Interestingly, only one award was appealed and it was confirmed. This suggests that lawyers are so aware of the Second Circuit’s propensity to enforce awards that they do not bother to litigate labor arbitration awards before the appeals court.

\textsuperscript{154} District courts enforced fifteen out of seventeen awards (88.2%), and eight out of nine awards (88.9%) (Chi-square ($\chi^2$) 33.815, df = 22, p < 0.051).
disputed awards (in four of nine cases).

Two cases from the Seventh Circuit shed light on the result for very deferential courts. The Seventh Circuit uses Rule 11 sanctions and clever word plays more than any other court to restrain attorneys from launching meritless challenges to awards.

TABLE 3: Labor Arbitration Award Confirmation, District Courts and Appellate Courts, Arranged by Federal Circuits (April 2001-May 2006)

<table>
<thead>
<tr>
<th>District Sample</th>
<th>District Confirmation of Awards</th>
<th>Appellate Confirmation of Awards</th>
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<tbody>
<tr>
<td>Percent of</td>
<td>14/201 (7.0%)</td>
<td>10/14 (71.4%)</td>
</tr>
<tr>
<td>First Circuit</td>
<td>15/201 (7.4%)</td>
<td>14/15 (93.3%)*</td>
</tr>
<tr>
<td>Second Circuit</td>
<td>23/201 (11.4%)</td>
<td>18/23 (78.3%)</td>
</tr>
<tr>
<td>Third Circuit</td>
<td>7/201 (3.5%)</td>
<td>5/7 (71.4%)</td>
</tr>
<tr>
<td>Fourth Circuit</td>
<td>18/201 (9.0%)</td>
<td>8/18 (44.4%)*</td>
</tr>
<tr>
<td>Fifth Circuit</td>
<td>53/201 (26.4%)</td>
<td>42/53 (79.2%)</td>
</tr>
<tr>
<td>Sixth Circuit</td>
<td>17/201 (8.5%)</td>
<td>15/17 (88.2%)*</td>
</tr>
<tr>
<td>Seventh Circuit</td>
<td>27/201 (13.4%)</td>
<td>22/27 (81.5%)</td>
</tr>
<tr>
<td>Eighth Circuit</td>
<td>15/201 (7.4%)</td>
<td>12/15 (80.0%)</td>
</tr>
<tr>
<td>Ninth Circuit</td>
<td>2/201 (1.0%)</td>
<td>1/2 (50.0%)</td>
</tr>
<tr>
<td>Tenth Circuit</td>
<td>5/201 (2.5%)</td>
<td>4/5 (80.0%)</td>
</tr>
<tr>
<td>Eleventh Circuit</td>
<td>5/201 (2.5%)</td>
<td>5/5 (100.0%)</td>
</tr>
</tbody>
</table>

N= 201 Cases  Chi-Square ($\chi^2$) 33.815, df = 22, p < 0.051.
* Indicates observed values that departed from expected values.

Chi-Square ($\chi^2$) 16.864, df = 22, p < 0.051. The result is
not statistically significant, but may be due to the smaller
sub-sample size.

The court recently applied Rule 11 sanctions to make this point. The employer announced a plan to outsource twenty-two housekeeping jobs as a cost-saving measure in CUNA Mutual Insurance Society v. Office & Professional Employees International Union, Local No. 39. After negotiations with the union failed to lower wages, the company acted on its

155. 443 F.3d 556 (7th Cir. 2006).
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The union’s grievance was sustained by the arbitrator. The award directed that the work be restored to the bargaining unit, ordered the parties to attempt to resolve back pay issues, and reserved the arbitrator’s jurisdiction to resolve any remaining controversy regarding implementation of the award.

The employer sued to vacate the award, contending that the company had a right to outsource this work and the arbitrator lacked authority to order the parties to negotiate the issue of damages. Besides confirming the award, the court ordered CUNA to pay the union its $9132 attorney’s fees as a result of Rule 11 sanctions. Judge Cudahy reemphasized “the long line of Seventh Circuit cases that have discouraged parties from challenging arbitration awards and have upheld Rule 11 sanctions in cases where the challenge to the award was substantially without merit.”

This decision did more than discourage long-shot appeals of awards. It shouted a warning to attorneys who have unappeased arbitration clients to think twice before seeking redress in court. Judge Cudahy added that the “precedent is clear and emphatic and directs us to uphold sanctions in a broad spectrum of arbitration cases. The filing of meritless suits and appeals in arbitration cases warrants Rule 11 sanctions.”

The Seventh Circuit’s high deference to arbitration is also captured in a recent decision, Dexter Axle Co. v. International Association of Machinists, District. 90, which cleverly played on a word in Enterprise Wheel. Affirming

156. Id. at 558-59.
157. Id. at 559.
158. Id. at 559-60.
159. Id. at 560.
160. Id.
161. Id.
162. Id. at 561.
163. Id., quoting the following admonition—the most strongly worded we have read in over 2000 federal court opinions—from Judge Posner in Dreis & Krump Manufacturing Co. v. International Association of Machinists & Aerospace Workers, District 8, 802 F.2d 247, 255 (7th Cir. 1986):

A company dissatisfied with the decisions of labor arbitrators need not include an arbitration clause in its collective bargaining contracts, but having agreed to include such a clause it will not be permitted to nullify the advantages to the union by spinning out the arbitral process unconscionably through the filing of meritless suits and appeals. For such conduct the law authorizes sanctions that this court will not hesitate to impose. Mounting federal caseloads and growing public dissatisfaction with the costs and delays of litigation have made it imperative that the federal courts impose sanctions on persons and firms that abuse their right of access to these courts. . . . Lawyers practicing in the Seventh Circuit, take heed!

164. 443 F.3d at 561.
165. 418 F.3d 762 (7th Cir. 2005). The decision involved an incentive pay standard that was part of the parties’ CBA. The agreement specifically allowed the union to challenge incentive standards, and the arbitration clause provided for submission of such a dispute to an expert in the field of work measurement or an arbitrator who is experienced in arbitrating incentive grievances. Id. at 764 (“Arbitrator shall have no power to set a standard and/or
the lower court, the Seventh Circuit declared: “It is abundantly clear that it is
the arbitrator who is behind the driver’s wheel of interpretation, not the court.
Great deference is paid to an arbitrator’s construction and interpretation of an
agreement.”

In contrast, a Fifth Circuit decision, Continental Airlines, Inc. v.
International Brotherhood of Teamsters, highlights this court’s propensity to
rearbitrate grievances. An airline mechanic, Mark Johnson, was randomly drug
tested. He registered a blood alcohol content of .115, an amount above the legal
limit for intoxication in Texas. Although the airline discharged the
employee, his grievance was resolved by reinstating him. However, his Last
Chance Agreement (LCA) set a long list of conditions, including more testing
and an absolute prohibition against using medications that contain alcohol.

On March 20, 2001, the worker left a voicemail for the employee
assistance program director stating that he was taking cough medicine. Continental tested the employee for alcohol two days later, and measured his
blood alcohol content level at .04 for the first test, and .029 for a confirmatory
test. Continental terminated Johnson for consuming alcohol. The arbitrator
issued an opinion holding that the LCA was valid and binding. However, the
award concluded that the employee had not violated this agreement and
ordered Continental to reinstate him.

This case is featured because of its striking similarity to Eastern and
Garvey. The company in Eastern fired a repeat drug-policy violator on two
separate occasions after he used marijuana while driving heavy machinery on
highways, only to be directed by arbitrators to reinstate him. The Supreme
Court ordered enforcement of the disputed award, stating that “both employer
and union have granted to the arbitrator the authority to interpret the meaning
of their contract’s language, including such words as just cause.” In Garvey,
the Ninth Circuit delved deeply into the record to reverse the arbitrator’s fact

rate, or to establish methods or procedures. His authority shall be limited to reviewing whether the standard is proper and consistent with those established in the plant and has been properly applied.”). The company’s 1999 incentive standard was referred to arbitration, and the resulting award favored the union. Id. The arbitrator granted affected employees lost wages resulting from the implementation of the new, improper standard. Id. at 765.

166. Id. at 768.
167. 391 F.3d 613 (5th Cir. 2004).
168. Id. at 615.
169. Id.
170. Id.
171. Id. at 616.
172. Id.
173. Id.
174. Id.
175. Id.
findings. This provoked a severe rebuke from the Supreme Court. Garvey emphasized that “established law ordinarily precludes a court from resolving the merits of the parties’ dispute on the basis of its own factual determinations, no matter how erroneous the arbitrator’s decision.” The Fifth Circuit ignored these clear examples and instructions from the Supreme Court. The appeals court re-arbitrated the grievance by making its own findings of fact.

IV. CONCLUSIONS

Words often play a larger role than statistics in communicating legal trends. The role of precedent in American legal culture leads to the belief that prominent opinions are barometers of broader judicial conditions. But we believe that statistics speak much louder than words and tell a more important story about the independence of arbitration from courts. The findings show that federal courts are fulfilling the vision of judicial deference to awards in Enterprise Wheel.

Nonetheless, readers who worry about erosion of judicial deference to arbitration will find new material in our current research to stoke their concern. The most controversial evidence of judicial activism that we uncovered is the Sixth Circuit’s now-abandoned four-part essence test. Judge Sutton condemned this test, remarking that no appellate standard except for those in Enterprise Wheel “requires more federal-court modesty than this one. Plain error, clear error, abuse of discretion, Chevron deference, AEDPA deference, substantial evidence and reasonableness all would seem to have more teeth than federal-

178. Id. at 511.
179. To support our conclusion that the court rearbitrated the grievance, we quote at some length from Continental Airlines, Inc. v. International Brotherhood of Teamsters, 391 F.3d 613, 620 (5th Cir. 2004):

Here, the [arbitrator] concluded that Johnson was in compliance with the LCA [Last Chance Agreement] . . . because he spoke with someone on his doctor’s staff and obtained approval from that person to take over-the-counter cough medicine. He then informed the EAP Director via voicemail that he was taking such medication. The record establishes that Johnson contacted his doctor’s office to schedule an appointment, that he spoke with a member of the doctor’s staff, and that the staff member informed Johnson that the doctor could not prescribe medicine without an appointment, but approved his taking over-the-counter cough medicine until his appointment date. There is no evidence of any kind that Johnson or a member of the doctor’s staff spoke with the doctor regarding Johnson’s situation, or that the doctor, either directly to Johnson, or indirectly to his staff, instructed Johnson to take over-the-counter cough medicine which contained alcohol. Thus, the uncontroverted evidence is that Johnson’s doctor never approved the use of the cough medicine he took, either orally or by a formal prescription. Because Johnson’s doctor did not prescribe him medicine containing alcohol, his notification to the EAP director, and that person’s not calling him back, is irrelevant.
court review of arbitration awards." 180 He concluded that the four-part essence test “has made it easier to vacate an arbitration award on the merits than the Supreme Court meant it to be.”

We have already shown that this seemingly intrusive standard does not lower award enforcement rates, but it stimulates an excessive amount of federal lawsuits. 182 Even if the enforcement rate is unaffected, the parties’ underlying bargain to make their arbitration award final and binding is seriously compromised. We, therefore, first conclude that other circuits should avoid this standard. In particular, we hope the other circuits will note that the Sixth Circuit just abandoned its four-part essence test. Likewise, we look forward to similar action by the Third Circuit. This four-part essence test should be seen as a twenty-year experiment that has failed, in that the lawsuits it generated detracted from the finality of an outcome that is promised in an arbitration agreement.

This prompts the question: What reviewing standard should replace the four-part essence test? There is no need to find a verbal replacement for the four-part essence test, and it is not practical to recant the more simple essence test in *Enterprise Wheel*. But if a replacement standard is desired, judges should simply recite the Supreme Court’s recent formulation—“‘as long as [an honest] 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.’” 183 This expresses the idea in the essence test, but with clarity.

Second, a correction is needed for the Fifth Circuit’s long-term deviation from the deferential posture that the Supreme Court has commanded. The results in Table 2 put judges in this circuit in an isolationist camp. At the district and appellate levels, Fifth Circuit courts confirmed awards in only 44.4% of the cases. This follows similar findings in our earlier studies. In ninety-six district court decisions from 1960 to 1991 judges confirmed only fifty-seven awards, yielding an enforcement rate of 59.4%. 184 For 1991 to 2001, appellate courts confirmed two out of five challenged awards, resulting in a 40% confirmation rate. 185

This behavior exposes awards to a coin toss chance of non-enforcement, and ignores the precepts of *Enterprise Wheel*. More investigation is needed to see what factors explain this aberrant behavior. For now, our finding enables Fifth Circuit judges to see the problem and correct it by exercising more

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181. Id. at 661.
182. The judge also found that among unpublished opinions, the Sixth Circuit vacated 25% of those awards (nineteen out of seventy-five) on similar grounds. Id. at 662.
185. Id.
For our third conclusion, we return to our finding that fifteen appellate decisions confirmed awards that were vacated by district courts, \(^{186}\) while appellate courts vacated five awards after lower courts confirmed them. \(^{187}\) This measurement means that appellate courts are ensuring that lower courts adhere to *Enterprise Wheel* deference. As long as this ratio favors confirmation over vacatur—and notice the lopsidedness of this proportion—the precedent-based judicial system will continue to send *Enterprise Wheel* reinforcing messages to district judges.

Fourth, the results are a healthy indicator for the national policy that favors arbitration. Table 3 shows that labor arbitration is largely independent from court interference. Current award confirmation rates are high and have jumped seven to ten percentage points since the last measurement period. If judges give credence and effect to *Enterprise Wheel* during challenges to labor arbitration awards, this implies that other forms of arbitration also operate without court interference.

The Trilogy, and the popular soap opera that inspires our title, are remarkable for their continuing relevance. As in the TV show, the actors in the Trilogy have changed as a new generation of judges and arbitrators have come onto the scene. The antagonists—employers and unions—have changed, too, as have the viewers—lawyers and academics. But the underlying dramas that play out in courts and on TV are no different today compared to the 1950s and 1960s. We seriously doubt that *As the World Turns* would be a perennial favorite if the occasional judge in the show played a starring role, which leads to the fundamental conclusion of this empirical study: As challenges to arbitrator awards turn the *Enterprise Wheel*, federal judges play only a cameo role in the overall functioning of the nation’s labor arbitration system.

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186. See supra note 105 and accompanying text.
187. See supra note 106 and accompanying text.
RESEARCH APPENDIX: SAMPLE CASES


Airline Prof'ls Ass'n of Int'l Bhd. of Teamsters, Local Union No. 1224 v. ABX Air, Inc., 274 F.3d 1023 (6th Cir. 2001).


Alken-Ziegler, Inc. v. UAW Local Union 985, 134 F. App’x 866 (6th Cir. 2005).

Am. Eagle Air Lines, Inc. v. Airline Pilots Ass’n Int’l Union, 343 F.3d 401 (5th Cir. 2003).

Am. Fed’n of Gov’t Employees, Local 1617 v. Fed. Labor Relations Auth., 103 F. App’x 802 (5th Cir. 2004).188


188. The authors and editors share a debate as to the inclusion of this case in the sample. The editors point out that the court ruled it lacked jurisdiction and that an employer and union were not parties to the case in court. Consequently, the case does not meet two of the three criteria for inclusion in the sample. The authors concede the factual accuracy of these points, but contend that this reasoning misses important context. The authors point out that a union and employer were the actual and only parties at the arbitration, and the proceeding resulted in an award that the employer challenged. Under applicable government-employment labor law, the Federal Labor Relations Authority is the first step to appeal an award. In this case, the authors believe that the FLRA is a proxy for a party who sought a second-bite at the arbitration apple. Here, a labor union sued the FLRA, contending that the adjudicatory body exceeded its authority in overruling an arbitration decision. The authors further believe that when the courts denied this appeal on jurisdiction grounds, the effective result was to vacate the award.


Anheuser-Busch, Inc. v. Local Union No. 744, Int’l Bhd. of Teamsters, 280 F.3d 1133 (7th Cir. 2002).


Armco Employees Indep. Fed’n v. AK Steel Corp., 149 F. App’x 347 (6th Cir. 2005).


Beard Indus. v. Local Union 2297, Int’l Union, UAW, 404 F.3d 942 (5th Cir. 2005).


Bhd. of Locomotive Eng’rs & Trainmen Gen. Comm. of Adjustment v. CSX Transp., Inc., No. 3:05CV0018JHMTEM, 2005 WL 1863372 (M.D. Fl. Aug. 4,
Bhd. of Maint. of Way Employees v. Soo Line R.R. Co., 266 F.3d 907 (8th Cir. 2001).

Bhd. of Maint. of Way Employees v. Terminal R.R. Ass’n of St. Louis, 307 F.3d 737 (8th Cir. 2002).


Boise Cascade Corp. v. Paper, Allied-Chem. & Energy Workers, 309 F.3d 1075 (8th Cir. 2002).


Bureau of Engraving v. Graphic Commc’n Int’l Union, Local 1B, 284 F.3d 821 (8th Cir. 2002).

Butler Mfg. Co. v. United Steelworkers of Am., Local 2629, 336 F.3d 629 (7th Cir. 2003).


City Mkt., Inc. v. Local No. 7, United Food & Comm. Workers Int’l Union, 116 F. App’x 960 (10th Cir. 2004).


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Consolidation Coal Co. v. Dist. 12, United Mine Workers of Am., No. 05-2342, 2006 WL 481638 (3d Cir. Mar. 1, 2006).

Cont’l Airlines, Inc. v. Int’l Bhd. of Teamsters, 391 F.3d 613 (5th Cir. 2004).


CUNA Mut. Ins. Soc’y v. Office & Prof’l Employees Int’l Union, Local No. 39, 443 F.3d 556 (7th Cir. 2006).


DBM Techs., Inc. v. Local 277, United Food & Commercial Workers, 257 F.3d 651 (6th Cir. 2001).


Dexter Axle Co. v. Int’l Ass’n of Machinists, Dist. 90, 418 F.3d 762 (7th Cir. 2005).


Dixie Warehouse & Cartage Co. v. Gen. Drivers, Local Union No. 89, 35 F. App’x 169 (6th Cir. 2002).


E. Associated Coal Corp. v. United Mine Workers of Am., Dist. 17, 141 F. App’x 164 (6th Cir. 2005).


Eisenmann Corp. v. Sheet Metal Workers Int’l Ass’n Local No. 24, 323 F.3d 375 (6th Cir. 2003).

Electrolux Home Prods. v. UAW, 416 F.3d 848 (8th Cir. 2005).


Exxon Mobil Corp. v. Paper, Allied-Chem. & Energy Workers, Local Union No. 4-12, 383 F. Supp. 2d 877 (M.D. La. 2005).


Ganton Tech., Inc. v. UAW Local 627, 358 F.3d 459 (7th Cir. 2004).


Goulds Pumps, Inc. v. United Steelworkers of Am., 39 F. App’x 658 (2d Cir. 2002).


Haw. Teamsters & Allied Workers Union, Local 999 v. UPS, 241 F.3d 1177 (9th Cir. 2001).


Highland Mining Co. v. United Mine Workers of Am., Dist. 12, 105 F. App’x 728 (6th Cir. 2004).

Highway & Local Motor Freight Employees Local Union No. 667 v. Wells Lamont Corp., 69 F. App’x 300 (6th Cir. 2003).


Huber, Hunt & Nichols v. United Ass’n of Journeymen & Apprentices of Plumbing and Pipefitters, 282 F.3d 746 (9th Cir. 2002).


Indep. Chem. Corp. v. Local Union 807, Int’l Bhd. of Teamsters, No. 05-CV-


Int’l Bhd. of Teamsters, Local 519 v. UPS, 335 F.3d 497 (6th Cir. 2003).


Int’l Union of Operating Eng’rs, Local 139 v. J.H. Findorff, Inc., 393 F.3d 742 (7th Cir. 2004).


JCI Comme’ns v. Int’l Bhd. of Elec. Workers, Local Union No. 103, 324 F.2d 42 (1st Cir. 2003).


Keebler Co. v. Truck Drivers, Local 170, 247 F.3d 8 (1st Cir. 2001).

Kennametal, Inc. v. United Steelworkers of Am., 96 F. App’x 851 (4th Cir. 2004).


Local 15, Int’l Bhd. of Elec. Workers v. Exelon Corp., No. 05 C 2746, 2005


Major League Umpires Ass’n v. Am. League of Prof’l Baseball Clubs, 357 F.3d 272 (3d Cir. 2004).


Media Gen. Operations, Inc. v. Richmond Newspapers Prof. Ass’n, 36 F. App’x 126 (4th Cir. 2002).


Monee Nursing & Landscaping Co. v. Int’l Union of Operating Eng’rs, Local 150, 348 F.3d 671 (7th Cir. 2003).

Mountain States Sheet Metal Co. v. Sheet Metal Workers, Local Union No. 9, No. 03CV01970MSKBNB, 2005 WL 1677511 (D. Colo. July 18, 2005).


Ohio Valley Coal Co. v. Pleasant Ridge Synfuels, Inc., 54 F. App’x 610 (6th Cir. 2002).


Perfection Bakeries, Inc. v. Teamsters Local 414, 105 F. App’x 102 (7th Cir. 2002).


Pioneer Natural Res. USA, Inc. v. Paper, Allied-Indus., Chem. & Energy Workers Int’l Union, Local No. 4-487, 328 F.3d 818 (5th Cir. 2003).

Poland Spring Corp. v. United Food & Commercial Workers, Local Union No. 1445, 314 F.3d 29 (1st Cir. 2002).

Providence Journal Co. v. Providence Newspaper Guild, 271 F.3d 16 (1st Cir. 2001).


Rock-Tenn Co. v. Paper, Allied-Indus., Chem. & Energy Workers Int'l Union, Local No. 4-0895, 108 F. App’x 905 (5th Cir. 2004).


Shank/Balfour Beatty v. Int’l Union of Operating Eng’rs, Local Union No. 12, 22 F. App’x 876 (9th Cir. 2001).


S. Cal. Gas Co. v. Utility Workers Union of Am., Local 132, 265 F.3d 787 (9th Cir. 2001).

Smurfit Newsprint Corp. v. Ass’n of W. Pulp & Paperworkers, Local 60, 59 F. App’x 207 (9th Cir. 2003).


SSA Terminals v. Machinists Automated Trades Dist. Lodge No. 190, 244 F. Supp. 2d 1031 (N.D. Cal. 2001).


Sterling Fluid Systems (USA), Inc. v. Chauffeurs, Teamsters & Helpers, Local Union No. 7, 144 F. App’x 457 (6th Cir. 2005).


Teamsters Local No. 5 v. Formosa Plastics, Corp., 363 F.3d 368 (5th Cir. 2004).

Teamsters Local No. 58 v. BOC Gases, 249 F.3d 1089 (9th Cir. 2001).

Teamsters Local No. 61 v. United Parcel Serv., 272 F.3d 600 (D.C. Cir. 2001).


Technical Career Insts., Inc. v. Local 2110, UAW, No. 00 CIV. 9786(RCC), 2002 WL 441170 (S.D.N.Y. Mar. 21, 2002).


Int’l Union v. Dana Corp., 278 F.3d 548 (6th Cir. 2002).


United Steelworkers of Am., Local 9452 v. MacSteel, 68 F. App’x 750 (8th Cir. 2003).


Way Bakery v. Truck Drivers Local No. 164, 363 F.3d 590 (6th Cir. 2004).

Weber Aircraft Inc. v. Gen. Warehousemen & Helpers Union, Local 767, 253 F.3d 821 (5th Cir. 2001).

Wholesale Produce Supply Co. v. Teamsters Local Union No. 120, No. 02-2911 ADM/AJB, 2002 WL 31655844 (D. Minn. Nov. 22, 2002).