If an Arbitration Panel Rules on an Issue the Parties did not Agree to Submit to that Panel, Should a Court Vacate the Award?

Introduction: Arbitration as a Way to Resolve those Disputes?and Only those Disputes?Parties Submit to Arbitrators

The ?first principle? of labor and commercial arbitration law is that ?arbitration is a matter of consent, not coercion" ?put differently, arbitration "is a way to resolve those disputes?but only those disputes?that the parties have agreed to submit to arbitration." **Stolt-Nielsen, S.A. v. AnimalFeeds Int'l Corp.**, 559 U.S. 662, 678-80 (2010) (citation and quotations omitted); **First Options of Chicago, Inc. v. Kaplan**, 514 U.S. 938, 943 (1995) (citations omitted); **Granite Rock Co. v. International Brotherhood of Teamsters**, 561 U.S. 287, 295 & n.7, 294 n.6 (2010); **AT&T Technologies, Inc. v. Communications Workers**, 475 U. S. 643, 648 (1986). That first principle is integrally intertwined with ?the central or primary purpose of the [Federal Arbitration Act (?FAA?)][,]? which is ?to ensure that private agreements to arbitrate are enforced according to their terms.?Stolt-Nielsen, 559 U.S. at 679 (citations and quotations omitted).

What happens if the parties agree to submit one category of disputes to a two-person arbitration panel and to submit another category of disputes to a three-person panel?

Suppose, as part of a collective bargaining agreement (the ?CBA?) Union A agrees with Employer B to submit to arbitration most, but not all, grievances before a two-person panel (the ?Bipartite Panel?), and to submit to arbitration all ?work-jurisdiction? grievances?grievances about whether the Union A or another union is entitled to perform particular work assignments for Employer B?to a three-person panel (?Tripartite Panel?) featuring a ?permanent umpire? (the ?Permanent Umpire?).

Shortly after A begins work for B, B informs A that it was reassigning the work to another Union, Union C. A demands arbitration against B before the Bipartite Panel; B objects; the Bipartite Panel overrules the objection and decides the dispute in favor of A; and the district court, acting under Section 301 of the Labor Management Relations Act, upholds the award.

Should the District Court have Vacated the Award Simply Because the Parties Did not Agree to Submit Work-Jurisdiction Disputes to the Bipartite Panel and Agreed to Submit them Only to the Tripartite Panel?

Should the district court have vacated the award because the Bipartite Panel decided a category of dispute that A and B agreed to submit only to the Tripartite Panel?

We think the question answers itself, but you don't have to take our word for it?on April 8, 2019, in Brock Indus. Servs., LLC v. Laborers' Int'l Union.], __ F.3d ___, No. 17-2597, slip op. (7th Cir. April 8, 2019), the United States Court of Appeals for the Seventh Circuit, considering substantially identical facts, said the answer was ?yes.? See slip op. at 7, 15-16.

The Court said ?[t]he gravamen of . . . [A's] grievance is work jurisdiction [,]? for ?[A] complained (and the [Bipartite Panel] found) that [B] assigned work to the wrong union.? Slip op. at 7. That is by ?definition? ?a jurisdictional dispute[,]? and the Bipartite Panel ?therefore had no authority to arbitrate the grievance.? Slip op. at 7. ?The contract[,]? said the Court, ?required tripartite arbitration in which the competing unions and the employer could be heard.? Slip op. at 7. Because the Bipartite Panel ?had no authority,? its award had to be vacated. Slip op. at 7 & 9.

Does it Discourage Arbitration to Vacate an Award Simply Because the Panel Ruled on an Issue the Parties did not Submit to Arbitration?

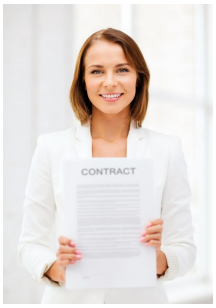
There are commentators and others who profess to be such avid fans of arbitration that they are reflexively critical of practically any decision that vacates an award. Or they look at the remedy of vacatur with distaste, expressly or impliedly characterizing it as? or akin to?a ?necessary evil.?

People who hold that view tend to be very ?pro-arbitration,?
and there's nothing wrong with that. Labor and commercial arbitration offers
many actual and potential benefits to parties, the courts, and the public, and
so it is deserving of broad-based, thoughtful support.

But reflexive criticism of the exercise of judicial power to vacate arbitration awards is misplaced, and ironically so when offered by a person who honestly wants arbitration to be an attractive alternative to litigation. Whether or not a court vacates an award under Section 301 of the Labor Management Relations Act, or Section 10 of the Federal Arbitration Act, the limited judicial review authorized is designed principally to ensure that the award upon which the court is asked to enter judgment (or enforce under Section 301) is a legitimate product of the parties' agreement to arbitrate.

Former Circuit Judge Richard A. Posner of the U.S. Court of Appeals for the Seventh Circuit summarized the point well:

It is tempting to think that courts are engaged in judicial review of arbitration awards under the Federal Arbitration Act, but they are not. When parties agree to arbitrate their disputes they opt out of the court system, and when one of them challenges the resulting arbitration award he perforce does so not on the ground that the arbitrators made a mistake but that they violated the agreement to arbitrate, as by corruption, evident partiality, exceeding their powers, etc.?conduct to which the parties did not consent when they included an arbitration clause in their contract. Wise v. Wachovia Securities, LLC, 450 F. 3d 265, 269 (7th Cir. 2006).



When, as in Brock, a Court vacates an arbitration award on an issue the parties did not submit to arbitration, it is simply enforcing the parties' arbitration agreement. To ?enforce? an arbitration agreement ?courts and arbitrators must give effect to the contractual rights and expectations of the parties.? Stolt-Nielsen, 559 U.S. at 679. When courts do not give effect to the parties' contractual rights and expectations, they fail to abide by the first principle.

Sometimes Vacating an Award is the Only way to Give Effect to the Parties' Arbitration Agreement

The best thing any Court can do to promote labor and commercial arbitration is to enforce the parties' agreement to arbitrate. As Brock illustrates, sometimes enforcing the parties' arbitration agreement requires courts to vacate awards, especially when panels exceed their authority by deciding disputes that the parties did not submit to them.

Any other result would, quite perversely, make arbitration a less attractive alternative to litigation. Arbitration is risky enough when courts properly exercise their limited review powers and vacate only awards that are the products of certain specified, serious violations of arbitration agreements. If they cannot be counted on to vacate those awards, then rational persons will (or at least should) be reluctant to enter into arbitration agreements.

Want to Learn More about Why it is Sometimes Necessary to Vacate an Award to Enforce the Parties' Agreement to Arbitrate?

Read Loree Reinsurance and Arbitration Law Forum Posts here] and here].

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