

Steelworkers Trilogy— reinventing the wheel

The widespread adoption of rights or grievance arbitration in the United States originated during World War II. This period was marked by significant growth in union membership and an obvious public interest in avoiding strikes that interrupted war production. The U.S. government, through the National War Labor Board, prompted organized labor to give up the right to strike over grievances in return for binding grievance arbitration as the final step of the grievance procedure. At the conclusion of the war, the only thing that labor and management could agree on was that grievances were best settled through a grievance procedure ending in binding arbitration, rather than a strike.

Grievance arbitration was further institutionalized by the important Supreme Court decisions in *Textile Workers v. Lincoln Mills* (1957) and the Steelworkers Trilogy cases (1960). In short, these decisions prohibit labor and management from ignoring an arbitration clause in their contract, provide significant legitimacy to the arbitration process and restrict the scope of judicial review.

The United States Supreme Court, in three cases before them in 1960 known as the Steelworkers Trilogy, formed the basis for industrial arbitration by weaving together basic rules that provide guidance to arbitrators and grievance handlers.

Last month, we discussed the certification of shop stewards pursuant to Article 17 of the National Agreement. With management looking for ever-easier victories in the grievance procedure, it is important we understand what standard the Supreme Court set 50 years ago. The most important standard they found was that questions of arbitrability should be limited, and cases should be determined based on the merits of the case.

For example, management recently made arguments about the arbitrability of grievances based on the flimsiest of arguments. Whether the issue is timeliness, steward certification or the catch-all, “the issue is beyond the arbitrator’s authority to consider,” we need to be prepared not

only to counter management’s arguments, but to remind arbitrators of the limits the Supreme Court put on arbitrability. Arbitrator Carlton J. Snow, in a regular panel arbitration case (C-24877), explained the burden that the Supreme Court placed on management when making an arbitrability argument. Professor Snow states:

In determining subject matter jurisdiction, the U.S. Supreme Court has applied a presumption that favors arbitrability of claims. The Court has stated: “An order to arbitrate a particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage. (See *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960).” The way to avoid the presumption of arbitrability is expressly to exclude subject matter from the grievance procedure. As the Supreme Court has taught: “Apart from matters that the parties specifically exclude, all the questions on which the parties disagree must, therefore, come within the scope of the grievance and arbitration provisions of the collective agreement. (See *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960).” Moreover, a presumption favoring arbitrability is a strong one, and “only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail....” (See *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960). A vague exclusion combined with a broad arbitration clause generally will not be sufficient to exclude a complaint from arbitration.

In some cases, management may not raise the issue of arbitrability until the actual hearing, but if you suspect that an arbitrability issue may arise, let your union grievance handler at the next step know so they will be prepared. Lastly, always be prepared when arbitrability does come up, whether during the grievance procedure or at the hearing, to automatically cite the Steelworkers Trilogy language as part of our argument to have decision made on the merits of the case. ☒