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Judicial Remedies - Labor Management Relations Act

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JUDICIAL REMEDIES—LABOR MANAGEMENT RELATIONS ACT—The United States Supreme Court held that collective bargaining agreements, silent as to judicial remedies, cannot be construed to divest the courts of jurisdiction under section 301 of the Labor Management Relations Act.


In 1987, the petitioners, Arthur Groves and Bobby J. Evans, were discharged by their employer, Ring Screw Works (hereinafter “Ring Screw”). Groves was dismissed for alleged excessive, unexcused absences despite his contentions that the absences were for legitimate medical reasons. Evans was terminated for alleged falsification of company records. Subsequent to their dismissals, Groves and Evans, joined by the petitioner union, invoked the grievance procedures outlined in the two collective bargaining agreements (hereinafter “CBAs”) which were in effect between the union and respondent Ring Screw. Both CBAs prohibited the termination of employees without “just cause” and provided for a voluntary, four-step grievance procedure which reserved both par-

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3. Groves, 111 S Ct at 501, n.5.
4. Id at 500. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (hereinafter “UAW”), Local #771, was one of the three petitioners and served as collective-bargaining agent for the two employee petitioners. Id at 500, n.2.
5. Id. “Collective bargaining” in labor law is the negotiation of employment matters between employers and employees through the use of a bargaining agent designated by an uncoerced majority of the employees within the bargaining unit. Joseph Alton Jenkins, 1 Labor Law § 9.114 (W. H. Anderson Co., 1969). “Collective bargaining agreement is the contract negotiated between an employer and the employees’ bargaining agent, generally a labor union, which regulates terms and conditions of employment.” Black’s Law Dictionary 239 (West, 5th ed 1979).
6. Groves, 111 S Ct at 500-01. At the time of the discharges, Ring Screw and the union were parties to two collective bargaining agreements, one covering Groves and another covering Evans. Id at 500. The Court, in deciding Groves, treated the CBAs as one agreement between the union and Ring Screw because “[t]he two agreements are almost identical,” and “[a]t no stage of the litigation was there any claim that the two CBAs require different interpretations.” Id.
ties' right to resort to economic weapons\textsuperscript{7} in the event full exercise of the grievance procedures failed to resolve the dispute.\textsuperscript{8} Critical to the issue in \textit{Groves}, both CBAs were silent as to judicial remedies.\textsuperscript{9}

Application of the grievance machinery did not result in the reinstatement of Groves or Evans.\textsuperscript{10} At the conclusion of the procedures, Ring Screw refused to rehire the petitioners and declined the union’s offer for binding arbitration. In response, however, the union chose not to exercise its right to strike.\textsuperscript{11} Instead, the petitioners, each joined by their union, filed civil actions in state court, citing their rights under section 301 of the Labor Management Relations Act (hereinafter “LMRA”).\textsuperscript{12} Asserting wrongful discharge,

\textsuperscript{7} Id at 502. The Court refers to “economic warfare” by means of strike, lockout or similar work stoppage or interference. Id.

\textsuperscript{8} Id at 500. Both CBAs required that parties make “an earnest effort” to settle every dispute that may arise under the agreement, but neither mandated arbitration. Id. Grievance procedures were:

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  \item Section 1. Should a difference arise between the Company and the Union or its members employed by the Company, as to the meaning and application of the provisions of the agreement, an earnest effort will be made to settle it as follows:
  \begin{itemize}
    \item Step 1. Between the employee, his steward and the foreman of his department. If a satisfactory settlement is not reached, then
    \item Step 2. Between the Shop Committee, with or without the employee, and the Company management. If a satisfactory settlement is not reached, then
    \item Step 3. The Shop Committee and/or the Company may call the local Union president and/or the International representative to arrange a meeting in an attempt to resolve the grievance. If a satisfactory settlement is not reached, then
    \item Step 4. The Shop Committee and the Company may call in an outside representative to assist in settling the difficulty. This may include arbitration by mutual agreement in discharge cases only.
  \end{itemize}
\end{itemize}

Id at 500 n.3.

Parties, under both CBAs, were required to exhaust a multi-step grievance procedure prior to taking economic measures. Id at 500. In addition, “[u]nresolved grievances (except arbitration decisions) shall be handled as set forth in Article XVI, section 7[,]” which stated:

The Union will not cause or permit its members to cause, nor will any member of the Union take part in any strike . . . or other interference . . . during the terms of this agreement until all negotiations have failed through the grievance procedure set forth herein. Neither will the Company engage in any lockout until the same grievance procedure has been carried out.

Id at 501 n.4.

\textsuperscript{9} Id at 500.

\textsuperscript{10} Id at 501 n.6. There was no dispute that the grievance procedures were properly followed and that the union fairly represented the petitioners. Id.

\textsuperscript{11} Id at 501 n.7. In the \textit{Evans} case, at the conclusion of the grievance procedures, a strike vote was authorized and taken by the unit members at the plant at which he worked, but the issue did not receive the required two-thirds majority. Id. In the \textit{Groves} case, at the conclusion of the grievance procedures, representatives of Local 771 met and determined a strike vote should not be authorized. Id.

\textsuperscript{12} Section 301 of the Labor Management Relations Act (hereinafter “the LMRA”),
both petitioners claimed Ring Screw violated the "just cause" provisions of their respective CBAs.\textsuperscript{13}

Ring Screw subsequently removed both cases to federal district court,\textsuperscript{14} responding to the complaints with successful Motions for Summary Judgement.\textsuperscript{15} First, in the case of Groves, the district court agreed with Ring Screw's argument that the petitioners had no cause of action under section 301 of the LMRA because the union had negotiated a mechanism for final dispute resolution in the CBA, namely the right to strike.\textsuperscript{16} The court stated that to rule otherwise would not only circumvent the presumed contractual intent of the parties, but would have the effect of nullifying, in part, the bargaining process engaged in by both parties.\textsuperscript{17} Less than two months later, with consistent reasoning, the district court followed suit in its disposition of the Evans case.\textsuperscript{18}

\begin{footnotes}
\item[13] Groves, 882 F2d 1081. A contract provision prohibiting dismissal without "just cause" requires "[a] cause outside legal cause, which must be based on reasonable grounds, and there must be a fair and honest cause or reason, regulated by good faith . . . [flair, adequate, reasonable cause". \textit{Black's Law Dictionary} 775 (West 5th ed 1979).
\item[14] Groves, 882 F2d at 1082. Here, Ring Screw was a defendant in a civil action brought in a state court in which the complaints alleged a violation of federal labor law. Id. The Judicial Code allows for the removal of matters to which the courts of the United States have original jurisdiction to the federal district court which geographically encompasses the place where the action is pending. 28 USC § 1441 (1988). Both cases were removed to the United States District Court for the Eastern District of Michigan, Southern Division. Groves, 882 F2d at 1082.
\item[15] Id. FRCP 56 permits any party to a civil action to move for summary judgment on a claim when he believes that there is no genuine issue of material fact and that he is entitled to prevail as a matter of law. FRCP 56.
\item[16] Groves, No 88-CV-2988 (ED Mich, April 5, 1988). Reproduced in Petition for a Writ of Certiorari at App 16a-29a, Groves, 882 F2d 1081. Pursuant to FRCP 56, Ring Screw filed a Motion for Summary Judgement to which Groves filed pleadings in opposition. Id. The United States District Court for the Eastern District of Michigan, Southern Division, granted the defendant's motion which asserted, "Groves may not obtain a judicial remedy for his alleged wrongful discharge because he has not claimed his union breached its duty of fair representation and cannot upset the finality of his contractual grievance procedure." Id. See also note 2.
\item[17] See notes 21, 70, 71 and accompanying text for a discussion of the cases focusing on a requisite union violation of its duty of fair representation in order to establish a cause of action under section 301 of the LMRA.
\item[18] Evans v Ring Screw Works, No 88-CV-72989, (ED Mich, May 23, 1988). Reproduced in Petition for Writ of Certiorari at App 16a-29a, Groves, 882 F2d 1081. In a bench opinion granting Ring Screw's Motion for Summary Judgment, the court stated that "the grievance procedure has terminated, as it was negotiated to do, with the strike vote . . . [and] the court must \textit{presume} that the members of this unit got something else instead of
\end{footnotes}
The two cases were consolidated on appeal to the United States Court of Appeals for the Sixth Circuit. In review of the district court's dismissal of the petitioners' claims under section 301 of the LMRA, the issue the court considered was whether the negotiated grievance procedures contained in the CBAs offered the exclusive means of dispute resolution when the agreements were silent as to judicial remedies. To decide affirmatively would preclude Groves and Evans from bringing an action for breach of contract against Ring Screw without an allegation that the union breached its duty of fair representation. The court, cognizant of conflicts in the circuits, expressed reservations regarding the "presumption" that the lack of language permitting judicial recourse was evidence of negotiated finality barring any judicial review. Nevertheless, bound by precedent, the court affirmed the district court's deci-

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19. Groves, 882 F2d 1081. The relevant facts were not disputed. Id at 1082.
20. Id.
21. Id. The union acts as the employee's agent in negotiating and administering a CBA and is thereby bound by the duty of fair representation. Humphrey v Moore, 373 US 335 (1964). Because the union alone is empowered under the CBA to represent the employee during grievance proceedings, the employee can seek judicial enforcement of the CBA under § 301 of the LMRA only if the union wrongfully represents his interests under the agreement. Vaca v Sipes, 386 US 171 (1967). Humphrey and Vaca will be discussed subsequently in greater detail.
22. Groves, 882 F2d at 1085. The court cited Dickeson v DAW Forest Prods. Co., 827 F2d 627 (9th Cir 1987), as being contrary to Fortune v National Twist Drill and Tool Div., 684 F2d 374 (6th Cir 1982), which was the controlling precedent in the Sixth Circuit. Groves, 882 F2d at 1085. In Dickeson, the Ninth Circuit refused to conclude that CBAs, silent as to judicial remedies, evidenced a negotiated forfeiture of rights to judicial review. Dickeson, 827 F2d at 629. The Sixth Circuit, in Fortune, presumed the opposite. Fortune, 684 F2d at 375. Also see notes 84 through 88 and 101 through 103 and accompanying text.
23. Groves, 882 F2d at 1085, 1086. See notes 16 through 18 and accompanying text summarizing the district court's reasoning that the right to strike was presumed to be bargained for by the union in its negotiation of the grievance procedures set forth in the CBAs. For additional discussion concerning the precedent for the "bargained for" presumption, see Amanda J. Berlowe, Judicial Deference to Grievance Arbitration in the Private Sector: Saving Grace in the Search for a Well Defined Public Policy Exception, 42 U Miami L Rev 767, 773 (1988).
24. Groves, 882 F2d at 1086. Were we deciding the issue with a clean slate, we might be disposed to adopt the rationale of Dickeson. . . . While we may question the wisdom of foreclosing judicial review of contracts which fail to provide for either 'final' or 'binding' peaceful resolution via arbitration, since the absence of such a provision cannot be taken to infer that the union (and thereby its employees) gained anything in its contract negotiations as a result, it is nevertheless well established in this circuit that a panel of this court is bound by the prior decisions of another panel of the same issue. Id (emphasis added). See also note 27.
25. Fortune, 684 F2d 374 (6th Cir 1982). The Sixth Circuit in Fortune held that the employee, unless able to prove bad faith representation by his collective bargaining agent,
sion noting that even a liberal reading of section 301 does not extend the parties’ rights to remedies beyond those negotiated in the CBA. Encouraged by the court’s reluctance to affirm the district court’s decision, Groves, Evans and the union petitioned the Sixth Circuit for a rehearing en banc. Upon denial, the petitioners filed a writ of certiorari to the Supreme Court of the United States.

To resolve the conflict in the circuits, the Supreme Court of the United States granted certiorari. After assessing whether CBAs that are silent as to judicial remedies should be construed, after grievance procedures fail, to bar recourse to the courts under section 301 of the LMRA, the Court reversed and remanded the decision.

was limited exclusively to the grievance mechanism negotiated in the CBA. If such procedures did not prescribe for the arbitration of deadlocked disputes, no federal law conveyed the power to the courts to so provide. Id at 375. See also note 28 for reference to Sixth Circuit precedents.

26. The court of appeals cited Smith, 371 US at 199, noting section 301 of the LMRA “is not to be given a narrow reading.” Groves, 882 F2d at 1084.

27. Id. The court of appeals cited the following line of cases in which the courts have consistently favored the resolution of labor disputes through arbitration so long as the CBA so provides: United Steelworkers of Am. v American Mfg. Co., 363 US 564 (1960); United Steelworkers v Warrior & Gulf Navigation Co., 363 US 574 (1960); United Steelworkers v Enterprise Wheel and Car Corp., 363 US 593 (1960). Groves, 882 F2d at 1084. These cases will be discussed more fully in the body of this note.

28. Groves, 882 F2d at 1086. The petitioners were responding to the court’s statement, “The only means to reexamine this policy would be by en banc consideration of the Fortune holding and rationale.” Id at 1087. Here, en banc refers to consideration by the entire membership of the court, or a number sufficient for a quorum, rather than the usual panel of judges that preside over circuit courts of appeal. FRAP 35. In its opinion, the court cited the following Sixth Circuit decisions which had previously applied the Fortune rationale: Mochko v Acme-Cleveland Corp., 826 F2d 1064 (6th Cir 1987); Agate v General Motors Corp., 798 F2d 1413 (6th Cir 1986); United Furniture Workers v National Bedding, 718 F2d 1101 (6th Cir 1983). Groves, 882 F2d at 1086. All of the aforementioned cases were unpublished per curiam decisions of the Sixth Circuit. Id. Finally, per curiam is a phrase used to distinguish an opinion of the whole court from an opinion written by any one judge. Black's Law Dictionary 1023 (West, 5th ed 1979).

29. Groves v Ring Screw Works, 1989 US App LEXIS 16633, *1 (6th Cir). The petition for rehearing was circulated not only to the original panel members but also to all other active judges of the Sixth Circuit. Id. No judge requested a vote on the suggestion of rehearing and the original panel, to which the petition was referred, considered that the issues raised in the petition were fully considered in the original decision of the case. Id.

Writing for a unanimous Court, Justice Stevens acknowledged that section 301 of the LMRA had been interpreted to promote judicial enforcement of CBAs in order to reflect the interest of Congress in placing a “higher degree of responsibility on the negotiating parties to such agreements.” Conceding Ring Screw was correct in its argument that the judicial forum can be precluded if the parties agree to other methods of dispute resolution, the Court concluded, however, that aggregate federal policies resulted in a stronger presumption favoring access to a neutral forum for the peaceful resolution of labor disputes. To interpret otherwise, the Court indicated, would cloud the merits of a dispute (here, whether there was “just cause” for the discharge of Groves and Evans) with the comparative strength of the opposing parties.

The opinion preserved the right of parties to expressly bargain away their rights to mediation, arbitration, or judicial review in exchange for their rights to resort to economic warfare. Because such forfeitures conflict with federal legislation, the Court instead adopted the law promulgated in the Seventh Circuit decision Associated Gen. Contractors of Ill. v Illinois Conference of Teamsters, in which the same issues were presented. The Seventh Circuit opinion honored the rights of parties to negotiate final procedures for the settlement of disputes. However, in the absence of express language forbidding judicial participation in the resolution of important disputes or language compelling the parties to use force instead of reason to resolve their differences, the court declined to construe the CBA as requiring economic warfare as the

31. Groves, 111 S Ct at 500, 501 n.8. The Court concluded, “[g]iven the expressed doubt about the correctness of the Circuit precedent that it was following, together with the fact that there was a square conflict in the Circuits, it might have been appropriate for the panel to request a rehearing en banc.” Id.

32. Id at 502, citing S Rep No 105, 80th Cong, 1st Sess 17 (1947). See also note 42 and accompanying text.

33. Groves, 111 S Ct at 502. Respondent argued § 203(d) of the Taft-Hartley Act which declares the CBA procedures negotiated as the desirable method for settling labor disputes (see also note 58 and accompanying text). Id. The Court countered by referencing unfair labor practices suits under the jurisdiction of the National Labor Relations Board, as well as actions brought before the judiciary under § 301 of the LMRA, as stronger indicia of national labor policies in favor of peaceful dispute resolution. Id.

34. Id.

35. Id.

36. Id at 503. “Such a method is the antithesis of the peaceful methods of dispute resolution envisaged by Congress when it passed the Taft-Hartley Act.” Id.

37. 486 F2d 972 (1973).

38. Groves, 111 S Ct at 503.
exclusive or desirable method\textsuperscript{39} for settling deadlocked grievances.\textsuperscript{40}

In adopting the view of the Seventh Circuit, the Court made a final note to clarify that CBAs which were silent as to judicial remedies would not be construed against either party, union or employer, to divest the courts of jurisdiction under section 301 of the LMRA.\textsuperscript{41}

The 1947 amendments to the National Labor Relations Act were enacted to augment the traditional means of mediating labor disputes and to encourage responsible negotiation of collective bargaining contracts by both employer and union.\textsuperscript{42} The amendments, known as the LMRA,\textsuperscript{43} relay policy underpinnings designed to "provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other...",\textsuperscript{44} and to "encourag[e] practice fundamental to the friendly adjustment of industrial disputes arising out of differences..."\textsuperscript{45} To such ends, section 301 of the LMRA\textsuperscript{46} conferred a federal venue for suits, by

\begin{itemize}
  \item \textsuperscript{39} Id. "Desirable method" for settlement of grievance disputes involves Ring Screw's interpretation of section 203(d) of the Taft-Hartley Act which will be discussed subsequently in the text.
  \item \textsuperscript{40} Id, citing \textit{Associated Gen. Contractors of Ill.}, 486 F2d 972 (1973).
  \item \textsuperscript{41} \textit{Groves}, 111 S Ct at 503.
  \item \textsuperscript{42} LMRA, 61 Stat 136 (1947). Pub L 101, HR 3020, 80th Cong, 1st Sess (June 23, 1947). See also S Rep No 105, 80th Cong, 1st Sess 17 (1947).
  \item \textsuperscript{43} LMRA § 1(a), 61 Stat 136 (1947). Pub L 101, HR 3020, 80th Cong, 1st Sess (June 23, 1947).
  \item \textsuperscript{44} LMRA § 1(b), 61 Stat 136 (1947). Pub L 101, HR 3020, 80th Cong, 1st Sess (June 23, 1947).
  \item \textsuperscript{45} LMRA, Title I, § 101, 61 Stat 137 (1947). Pub L 101, HR 3020, 80th Cong, 1st Sess (June 23, 1947).
  \item \textsuperscript{46} LMRA, Title III, § 301, 61 Stat 156 (1947), codified at 29 USC § 185. \textit{Suits by and against Labor Organizations} reads:
  \begin{itemize}
    \item \textsuperscript{(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.}
    \item \textsuperscript{(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Chapter and any employer whose activities affect commerce as defined in this Chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member of his assets.}
    \item \textsuperscript{(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains
and against labor unions, for violation of CBAs regardless of the amount of the controversy or the citizenship of the litigants.\textsuperscript{47} Furthermore, the LMRA rendered inapplicable a provision in the Norris-LaGuardia Act\textsuperscript{48} which stated that in such suits, no employer or labor organization participating or interested in a labor dispute could be held responsible for the unlawful acts of their agents without clear proof of authorization or ratification with prior knowledge.\textsuperscript{49}

Section 301 inspired considerable litigation among the circuit courts, frequently with inconsistent results. Early decisions were at odds as to whether section 301 created substantive rights in the litigants\textsuperscript{50} or merely granted federal district courts jurisdiction.\textsuperscript{51}

The United States Supreme Court subsequently offered guidance in 1957 with \textit{Textile Workers Union of Am. v Lincoln Mills of Ala.},\textsuperscript{52} in which the Court affirmed a Fifth Circuit decree for

\begin{itemize}
\item its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.
\item (d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.
\item (e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.
\end{itemize}

Id.

\textsuperscript{47} LMRA § 301(a), 61 Stat 157 (1947), codified at 29 USC § 185 (1947).


\textsuperscript{49} LMRA § 301(e), 61 Stat 157 (1947), codified at 29 USC § 185 (1947).

\textsuperscript{50} Shirley-Herman Co. v International Hod Carriers Laborers Union, 182 F2d 806, 809 (2d Cir 1950); Rock Drilling Union v Mason & Hanger Co., 217 F2d 687, 691-92 (2d Cir 1954); Signal-Stat Corp. v Local 475, 235 F2d 298, 300 (2d Cir 1956); Association of Westinghouse Employees v Westinghouse Elec. Corp., 210 F2d 623, 625 (3d Cir 1954), aff'd on other grounds, 348 US 437; Textile Workers Union v Arista Mills, 193 F2d 529, 533 (4th Cir 1951); Hamilton Foundry v International Molders & Foundry Union, 193 F2d 209, 215 (6th Cir 1952); American Federation of Labor v Western Union, 179 F2d 535 (6th Cir 1950); Milk & Ice Cream Drivers v Gillespie Milk Prod. Corp., 203 F2d 650, 651 (6th Cir 1953); United Electrical R & M Workers v Oliver Corp., 205 F2d 376, 384-85 (8th Cir 1953); Schatte v International Alliance, 182 F2d 158, 164 (9th Cir 1950), as cited in Textile Workers Union of Am. v Lincoln Mills of Ala., 353 US 448, 501 (1957).

\textsuperscript{51} International Ladies' Garment Workers' Union v Jay-Ann Co., 228 F2d 632 (5th Cir 1956); Mercury Oil Refining Co. v Oil Workers Union, 187 F2d 980, 983 (10th Cir 1951), as cited in Textile Workers Union of Am., 353 US at 450.

\textsuperscript{52} 353 US 448 (1957). In Textile Workers Union of Am., the CBA provided for arbitration at the conclusion of grievance procedures in lieu of strikes or work stoppages. Textile Workers Union of Am., 353 US at 449. The dispute at issue concerned work loads and work assignments. Id. When the union's demands were finally denied by the employer, the
specific performance against an employer. Ordering arbitration of a labor dispute as negotiated in the CBA. Section 301(a) was specifically interpreted to confer power to the federal courts "to fashion a body of federal common law" from the national labor laws to enforce the terms of the CBA.54

Less than three years later, in a trio of cases decided on the same day, the Court refined its construction of the powers conveyed to the federal courts by section 301.55 In the first of the "Steelworkers Trilogy", United Steelworkers of Am. v American Mfg. Co.,56 the Court limited the function of the judiciary under section 301 to ascertaining whether the remedy sought by the claimant was governed by the CBA.57 The Court held that section 301 did not extend to judicial examination of the merits of the grievance or the equity of the dispute.58

union, exercising the procedures outlined in the CBA, called for arbitration. Id. The employer refused and, in response, the union sued in federal district court to compel arbitration. Id.

53. Id at 456. The Textile Workers Union of Am.'s construction of § 301 as a congressional mandate to the federal courts to create a body of federal common law to address labor disputes has, over the years, generated pre-emption issues that were not raised in Groves v Ring Screw Works. Groves, 111 S Ct 498. Authoritative cases dealing with preemptive effects of § 301 include: Local 174, Teamsters v Lucas Flour Co., 369 US 95, 103 (1962); Smith, 371 US at 197-201; Charles Dowd Box Co. v Courtney, 368 US 502, 506-14 (1962); Republic Steel Corp. v Maddox, 379 US 650, 657 (1965); Bowen v United States Postal Serv., 459 US 212, 224-25 (1983); Allis-Chalmers Corp. v Lueck, 471 US 202, 208-21 (1985); Lingle v Norge Div. of Magic Chef, Inc., 486 US 399, 403-13 (1988).

54. Textile Workers Union of Am., 353 US at 455. Plainly the agreement to arbitrate grievance disputes is the 'quid pro quo' for the agreement not to strike. Viewed in this light, the legislation (§ 301 of the LMRA) does more than confer jurisdiction in the federal courts over labor organizations. It expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only in that way. Id.

55. For a discussion of these kindred opinions, commonly known as the "Steelworkers Trilogy," and the restrictions they imposed to instill judicial deference to the CBA and arbitrators decision, see Berlowe, 42 U Miami L Rev at 767 (cited in note 23).

56. 363 US 564 (1960). American Mfg. Co. involved a CBA which provided for the arbitration of all disputes, and a "no-strike" provision contingent on the employer's acceptance of the decision of the arbitrator. American Mfg. Co., 363 US at 565. The dispute involved an employee who accepted a disability settlement, then sought reinstatement to his job by virtue of the seniority provisions of the CBA. Id at 566. The Sixth Circuit affirmed the district court's decision to grant summary judgment because the evidence disclosed the grievance to be "frivolous, patently baseless . . . [and] not subject to arbitration under the collective bargaining agreement." Id. The Supreme Court, critical of the appellate court's evaluation of the merits of the dispute, reversed. Id at 569.

57. Id at 568. The CBA required the submission of all grievances, including those concerning the interpretation or application of the CBA, to arbitration. Id. Therefore, whether the grievance could be supported by the language of the contract was a matter for the arbitrator, not the Court, to decide. Id at 569.

58. Id at 566. The Court in American Mfg. Co. relied on § 203(d) of the LMRA which
“quid pro quo” for negotiating away the right to strike, the Court in United Steelworkers of Am. v Warrior and Gulf Navigation Co., held that in the absence of any express language excluding a particular dispute from arbitration, only the most “forceful evidence” to deny arbitration under the CBA could prevail. Judicial inquiry under section 301 was again restricted to whether the claim was governed by the negotiated grievance procedures rather than the merits of the dispute. Finally, in United Steelworkers of Am. v Enterprise Wheel and Car Corp., the Court went one step further to hold that whether the results of arbitration were in fact meritorious was not an appropriate issue under section 301 for the federal courts to review.

states, “[f]inal [dispute] adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement[.]” LMRA § 203(d), 61 Stat 154 (1947), codified at 29 USC § 173(d) (1947) (emphasis added). In order to effectuate the legislative policy, the Court concluded that the grievance procedures negotiated by the parties for settlement of their differences under “the collective-bargaining agreement must be given full play.” American Mfg. Co., 363 US at 566 (emphasis added).

59. United Steelworkers of America v Warrior and Gulf Navigation Co., 363 US 574, 578 (1960), citing Textile Workers of Am. In discussing the “function of management” exception the Court noted that when an absolute no-strike clause is included in the CBA, “quid pro quo” subjects virtually everything that management does to the agreement, unless language expressly designates otherwise. Warrior and Gulf Navigation Co., 363 US at 583-84. See also Berlowe, 42 U Miami L Rev at 767 (cited in note 23), for a discussion of the “quid pro quo” negotiations typical of collective bargaining process.

60. 363 US 574 (1960). The CBA in Warrior and Gulf Navigation Co. also contained a “no-strike/no lockout” clause, and the prescribed grievance procedures culminated in arbitration, except for matters which were strictly a “function of management,” unless differences arose as to the meaning and application of the provisions of the CBA, or in the event any local trouble should arise. Warrior and Gulf Navigation Co., 363 US at 576. The dispute involved employee layoffs while union work was contracted out to independent laborers. Id at 575. At the unsuccessful conclusion of the grievance procedures the employer refused arbitration. Id at 577. The lower court’s decision affirming the dismissal of the complaint based on the “function of management” exception to arbitration was reversed. Id at 577, 585.

61. Id at 585. Also, the Court made note that a vague exclusion clause must bend in the face of a sweeping arbitration clause. Id. “Doubts should be resolved in favor of coverage [by the CBA].” Id at 583.

62. Id, citing American Mfg. Co. See discussion at notes 56 through 58 and accompanying text.

63. 363 US 593 (1960). In Enterprise Wheel and Car Corp., a dispute over wrongful discharge was submitted to arbitration in accordance with the CBA then in effect. Enterprise Wheel and Car Corp., 363 US at 595. The arbitrator subsequently made an award determination, with which the district court ordered the respondent employer to comply. Id. The Fourth Circuit subsequently reversed, holding that the awards were not enforceable. Id at 596. The Supreme Court reversed, criticizing the appellate court’s review of the arbitrator’s decision. Id at 599.

64. Id at 596. Mere ambiguity in the arbitrator’s opinion was insufficient cause for
Later, in 1962, even in the absence of a no-strike clause, the Court held in *Local 174, Teamsters v Lucas Flour Co.*, that a strike to address grievances was a violation of a CBA which provided exclusively for compulsory, final and binding arbitration to settle disputes. The Court emphasized that federal labor policy encouraged peaceful arbitration of grievances. The Court similarly promoted arbitration as a means of dispute resolution in cases decided later that year. Also in 1962, the Court extended coverage under section 301 to individual employees seeking judicial redress for violations of a CBA.

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the lower court's refusal to enforce the award. Id at 598. "It is the arbitrator's construction [of the CBA] that was bargained for; and so far as the arbitrator's decision concerns the construction of the CBA, the courts have no business overruling him because their interpretation of the CBA is different from his." Id at 599.


66. *Lucas Flour Co.*, 369 US 95 (1962). In *Lucas Flour Co.*, the CBA called for binding arbitration for the settlement of all disputes. Id at 96. The grievance involved the discharge of an employee, to which the union responded with an eight day strike calling for reinstatement. Id at 97. The employer sought and obtained damages for business losses caused by the strike. Id. The Supreme Court affirmed the award to the employer. Id at 106.

67. Id at 105. "[T]he basic policy of national labor legislation [is] to promote the arbitral process as a substitute for economic warfare." Id, referring to *Warrior and Gulf Navigation Co.*

68. *Atkinson v Sinclair Refining Co.*, 370 US 238 (1962). "[W]hether or not the company was bound to arbitrate, as well as what issues it must arbitrate, is a matter to be determined by the court on the basis of the contract CBA entered into by the parties[.]" Atkinson, 370 US at 241, citing *Warrior and Gulf Navigation Co.* and *American Mfg. Co.*

On the same day, however, the Court distinguished *Dra ke Bakeries Inc. v Local 50, American Bakery & Confectionery Workers Int'l*, 370 US 254 (1962). Like Atkinson, the employer in *Dra ke Bakeries Inc.* sued the union for damages caused by a strike in violation of the CBA. *Dra ke Bakeries Inc.*, 370 US at 256. The union in *Dra ke Bakeries Inc.*, however, successfully contended that whether there actually was a one-day strike in violation of the CBA was a dispute requiring arbitration under the contracted grievance procedures. Id at 252-63. Finding that the CBA's arbitration procedures had not been exhausted, the Supreme Court enforced the employer's duty to arbitrate the consequences of the alleged one-day strike, again referencing the enforcement duties assigned by § 301 as interpreted in the "Steelworker Trilogy" precedents discussed in notes 55 through 64. Id at 263-66.

69. *Smith*, 371 US 195 (1962). "... congress has directed the courts to formulate and apply federal law to suits for violations of collective-bargaining agreements. There is no constitutional difficulty and § 301 is not to be given a narrow reading." Id at 199 (emphasis added). The Court acknowledged that its decision in *Association of Westinghouse Salaried Employees v Westinghouse Corp.*, 348 US 437 (1955), denying federal jurisdiction under § 301 to enforce a single employee's rights, had not survived the "individual" nature of the grievances addressed in *Textile Workers Union of Am., Enterprise Wheel and Car Corp.*, and *Atkinson* (pay rates, working hours, wrongful discharge, and back pay). *Smith*, 371 US at 199-200.

Subsequently, in *Truck Drivers Union v Riss & Co.*, 372 US 517 (1963), the Court re-
Individual access to a federal jurisdiction under section 301 led to the 1964 decision, *Humphrey v Moore,*\(^70\) in which the Court ruled that, absent a breach of a union's duty of fair representation,\(^71\) the employee is bound by the results of proceedings between the union and his employer as authorized by the CBA. Following *Humphrey,* the Court, in *Republic Steel Corp. v Maddox,*\(^72\) held that negotiated grievance procedures must be exhausted before the judiciary can avail itself to the employee under section 301. To rule otherwise, reasoned the Court, would inhibit the ability of the employer and union to negotiate an effective method for peaceful settlement of disputes and thereby circumvent national labor policy.\(^73\) In 1981, however, to resolve conflicts between the circuits,\(^74\) the Court clarified the *Republic Steel Corp.* "exhaus-

versed and remanded the court of appeals' decision which relied heavily on *Association of Westinghouse Salaried Employees,* repeating that the case was no longer authoritative as precedent. *Truck Drivers Union,* 372 US at 518.

\(^70\) 375 US 335 (1964). The CBA in *Humphrey* provided for a joint employer-union committee to settle certain disputes. *Humphrey,* 375 US at 336. The grievance was for wrongful discharge based on the committee's determination of the relative seniority of the claimants. Id at 337. The Court cited authorities establishing the union as the "exclusive bargaining agent in the negotiation and administration of a collective bargaining contract . . . accompanied by . . . the responsibility and duty of fair representation." Id at 342.

\(^71\) See *Vaca v Sipes,* 386 US 171 (1967), in which the Court later elaborated that a union does not breach its duty of fair representation merely because it settles a dispute prior to final grievance procedures allowing arbitration as provided in the CBA. *Vaca,* 386 US at 191-92. Because the union has the sole power under the CBA to invoke the final stages of the grievance procedures, the employee may seek judicial enforcement of the CBA only if the union wrongfully refused to exhaust the methods for dispute resolution outlined in the CBA. Id at 185.

Following *Vaca* and *Republic Steel Corp. v Maddox,* 379 US 650 (1965) (see note 72 and accompanying text), in *Hines v Anchor Motor Freight Inc.,* 424 US 554 (1976), the Court held that when a union's breach of fair representation is established, the CBA mechanism is tainted. *Hines,* 424 US at 561. Therefore, failure to fully engage the negotiated grievance procedures, "express or implied," cannot be used to bar employee actions under § 301 against his employer. Id at 567-69.

\(^72\) 379 US 650 (1965). In *Republic Steel Corp.,* the Court reversed judgment in favor of a terminated employee who, rather than engage in the CBA procedures to obtain severance, successfully obtained relief from a state court. *Republic Steel Corp.,* 379 US at 651.

\(^73\) Id at 653. "Congress has expressly approved contract grievance procedures as a preferred method for settling disputes and stabilizing the 'common law' of the plant. LMRA § 203(d), 29 USC § 173(d); § 201(c), 29 USC § 171(c) (1958 ed.)." Id. The opinion also cited the principles of *Textiles Workers Union of Am.* Id at 655. See notes 52 through 54 and accompanying text.

\(^74\) As cited in *Clayton v UAW,* 451 US 679 (1981). The following cases held that an employee's failure to exhaust internal union appeals precluded a § 301 action against his union or employer: *Johnson v General Motors,* 641 F2d 1075, 1085 (2d Cir 1981); *Geddes v Chrysler Corp.,* 608 F2d 261, 264 (6th Cir 1979); *Petersen v Rath Packing Co.,* 461 F2d 312, 315 (8th Cir 1972); *Retana v Apartment, Motel, Hotel and Elevator Operators Union,* 453 F2d 1018, 1027 n.16. (9th Cir 1972). *Clayton,* 451 US at 684. Those circuits of the view that
tion” requirement for a section 301 action filed by an employee against his union and employer by distinguishing *Clayton v Automobile Workers.* In *Clayton,* the Court held that an employee’s exhaustion of the *internal union appeals process* was excused with respect to both the suit against the employer and the suit against his union, when such procedures could not reactivate the employee’s grievance or obtain the complete relief sought by the employee in an action under section 301.

The evolution of section 301 decisions has resulted in a relatively recent conflict among the circuits. Whether the recitals of a CBA provide the exclusive means for resolving labor disputes, and thus preclude a section 301 cause of action when the CBA grievance procedures are exhausted without reaching a settlement, has caused considerable discord. As to the finality of the CBA grievance procedures, decisions from the Fifth and Sixth Circuit courts directly conflict with those of the Seventh, Ninth, and Tenth Circuits regarding the availability of recourse under the LMRA.

The Fifth Circuit has consistently ruled in accordance with its 1966 opinion in *Haynes v United States Pipe & Foundry Co.*

exhaustion of the internal union appeals process is necessary if the procedures could reactivate the grievance are: *Varra v Dillon Co.,* 615 F2d 1315, 1317-18 (10th Cir 1980); *Baldini v Local Union No. 1095,* 581 F2d 145, 150 (7th Cir 1978); *Winter v Local Union No. 639,* 569 F2d 146, 150-51 (DC Cir 1977); *Harrison v Chrysler Corp.,* 558 F2d 1273, 1278 (7th Cir 1977). *Clayton,* 451 US at 685. Some circuits held that failure to exhaust is excused if union officials would be prohibitively hostile: *Fizer v Safeway Stores, Inc.,* 586 F2d 182, 183-84 (10th Cir 1978); *Winter v Local Union No. 639,* 569 F2d 146, 150-51 (DC Cir 1977); *Imel v Zohn Mfg. Co.,* 481 F2d 181, 184 (10th Cir 1973). *Clayton,* 451 US at 685. Circuits that excused failure to exhaust if substantive relief afforded by the internal procedures is less than that offered by a § 301 action against the union are: *Tinsley v United Parcel Serv., Inc.,* 635 F2d 1288, 1290 (7th Cir 1980); *Geddes v Chrysler Corp.,* 608 F2d 261, 264 (6th Cir 1979); *Baldini v Local Union No. 1095,* 581 F2d 145, 149 (7th Cir 1978); *Buzzard v Local Lodge 1040,* 480 F2d 35, 41 (9th Cir 1973). *Clayton,* 451 US at 685.

75. *Clayton,* 451 US at 687. The dispute in *Clayton* involved wrongful discharge. Id at 682. The union proceeded according to the steps provided by the CBA, falling short of calling for binding arbitration. Id. Because Clayton was notified of the union’s refusal to arbitrate after the call to arbitration deadline under the CBA had expired, he ignored the UAW appellate procedures and sought relief against the union for breach of duty of fair representation and against his employer for breach of the CBA. Id at 682-83.

76. Id at 685. In *Clayton* the court distinguished between the exhaustion of the *internal union procedures* and grievance procedures provided in a CBA. Id. The former, explained the Court, were not bargained for by the employer and union nor were they mentioned in the CBA. Id. The Court rejected the argument that UAW-created procedures were consistent with the national labor policy and therefore should receive similar “full play” prior to judicial interference. Id at 687-88.

77. *Groves,* 111 S Ct at 500. For a listing of conflicting cases, see note 30.

78. *Groves,* 111 S Ct at 500.

79. 362 F2d 414 (5th Cir 1966). Haynes, through his union, followed the grievance
The court in *Haynes* denied an employee the right to bring an action against his employer for wrongful discharge because the employee, through his union, had negotiated with his employer for the resolution of such a dispute exclusively as outlined in the CBA. The court inquired whether, after the employee exhausted the grievance procedures under the CBA, he could then contest their finality in court if dissatisfied with the outcome. The answer in *Haynes* was, in accordance with reigning authority, not without a contention that the union breached its duty of faithful representation.

Even before *Republic Steel Corp.*, the Sixth Circuit ruled with a similar perspective in *Union News Co. v Hildreth*. In *Hildreth*, the court concluded it was within the authority of the union to concur with the employer as to the “just cause” discharge of the employee. Such a decision by the union, absent bad faith bargaining, barred the employee from seeking judicial review of its merits. Twenty years later, *Fortune v National Twist Drill & Tool* solidified the Sixth Circuit’s position by aligning with the Fifth Circuit decisions *Haynes, Boone, and Harris*. The employees in *procedure as outlined in the CBA. Haynes, 362 F2d at 415. At the conclusion of the procedures, the employer refused to reinstate. Id. In response, however, the final step which would have required a directive from the union president to strike, was not taken by the union. Id at 416. The employee sought relief from the Alabama state courts and the employer removed the suit to the federal district court invoking jurisdiction under § 301 of the LMRA. Id at 415-16. Boone v Armstrong Cork Co., 384 F2d 285, 291-92 (5th Cir 1967), Harris v Chemical Leaman Tank Lines, Inc., 437 F2d 167, 172 (5th Cir 1971), and Hart v National Homes Corp., 668 F2d 791, 793-94 (5th Cir 1982), followed. All were wrongful discharge suits brought by employees in which the Fifth Circuit followed *Haynes* by noting that judicial review was available to an employee only if the union had breached its duty of fair representation or if the employer refused to comply with the CBA grievance procedures. *Haynes*, 362 F2d at 418. “Final” disposition in accordance with the CBA could not be challenged on its merits. Id.

80. *Haynes*, 362 F2d at 417. The employee filed a motion for rehearing which was denied on the authority of *Republic Steel Corp.*, which had been decided in the interim. Id at 415. See also notes 72 and 73.


82. 295 F2d 658 (6th Cir 1961). Here the dispute involved the discharge of Hildreth. *Union News Co.*, 295 F2d at 659. The union, in negotiations with the employer, agreed that the employee was terminated for “just cause” as provided in the CBA. Id at 661. Admitting the lack of precedent, the court reversed the district court’s judgment on behalf of the employee and concluded that the union was the authoritative bargaining agent for the employee; therefore, an employer who bargains in good faith should be entitled to rely on the union’s representations. Id at 667. Otherwise, the entire collective-bargaining process is of “doubtful worth.” Id.

83. Id.

84. 684 F2d 374 (6th Cir 1982).

85. *Fortune*, 684 F2d at 375. See also note 79.
Fortune did not allege misrepresentation by the union in processing their wrongful discharge disputes. At the conclusion of the four-step grievance procedure, the union and employer were deadlocked on the issue of reinstatement. At that point, the union declined to exercise its right to strike under the CBA. The CBA in Fortune provided no method to arbitrate a deadlocked dispute; the only course bargained for by the union was the right to strike. In so noting, the court denied the employees a judicial review of their discharges, reasoning that federal courts were not authorized by section 301 to reform a CBA on behalf of a dissatisfied party.

Of the opposing view, the law in the Tenth Circuit was established in 1967 by United Brotherhood of Carpenters & Joiners of Am. v Hensel Phelps Constr. Co. In Hensel Phelps Constr. Co., the court promoted section 301 claims as an option to labor and management when negotiated CBA grievance procedures failed to resolve a dispute. Citing Warrior & Gulf Navigation Co. and Lucas Flour Co., the court held that seeking a judicial determination in the event the CBA does not provide for binding arbitration was not only a proper course, but consistent with the federal policy favoring arbitration.

In 1968, in Ford v General Elec. Co., the Seventh Circuit questioned whether the Haynes decision was consistent with congressional policy “since it either leaves the settlement of disputed contract rights to a test of economic strength, or makes a strike the price of an opportunity for impartial adjudication of the dispute.” Five years later, in Associated Gen. Contractors of Ill. v Illinois Conference of Teamsters, the Seventh Circuit answered by asserting that enforcing a negotiated arbitration clause was clearly distinguishable from interpreting a right-to-strike provision as an agreement to forfeit any rights to the peaceful adjudication

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86. Fortune, 684 F2d at 375.
87. Id.
88. Id.
89. 376 F2d 731 (10th Cir 1967). Hensel Phelps Constr. Co. involved a dispute regarding alleged misapplication of differing wage scales attached to various classes of work. Hensel Phelps Constr. Co., 376 F2d at 733.
90. Id at 737.
91. Id. See note 67 and accompanying text.
92. 395 F2d 157 (7th Cir 1968).
93. Ford, 395 F2d at 159. After inquiring “aloud,” the court declined to answer, as the issues in Ford provided for resolution within the CBA. Id.
94. 486 F2d 972 (7th Cir 1973). Like Ford, the dispute in Associated Gen. Contractors of Ill. arose over the wage scale applicable to certain work performed under the CBA. Associated Gen. Contractors of Ill., 486 F2d at 973.
of disputes. In the absence of express language to the contrary, the court refused to construe a CBA reserving the parties’ rights to “economic warfare” as the exclusive or “desirable” method of settling deadlocked disputes. Continuity prevailed until 1985 when, in Huffman v Westinghouse Elec. Corp., the Seventh Circuit seemingly reevaluated its previous criticism of Haynes. Huffman and similarly situated employees were denied judicial review under section 301 pursuant to a traditional Haynes argument, which included the prerequisites of exhaustion of grievance procedures and union misrepresentation, as well as the inability of the federal courts under section 301 to judge labor disputes on their merits.

In 1987, the Ninth Circuit was heard on the issue of whether parties to a CBA intended the grievance procedures to be final. In Dickeson v DAW Forest Prods. Co., the court cited Associated Gen. Contractors of Ill. and S. J. Groves & Sons and following suit, refused to conclude, without express language in the CBA, that the union’s exclusive remedy for dispute resolution was to strike. Mirroring the pre-Huffman reasoning of the Seventh Circuit, “economic warfare” was once again criticized as a method for resolving differences. Dickeson was allowed access to the federal

95. Id at 976.
96. Id. Here, the Seventh Circuit challenged the policy interpretations of § 203(d) of the LMRA which declares “[f]inal adjustment by a method agreed upon by the parties . . . to be the desirable method.” LMRA § 203(d), 61 Stat 154 (1947), codified at 29 USC § 173(d) (1947) (emphasis added). See note 58 and accompanying text. Associated Gen. Contractors of Ill., 486 F2d at 976.
97. 752 F2d 1221 (7th Cir 1985).
98. Huffman, 752 F2d at 1225. Prior to Huffman, in 1978, the court cited and ruled consistently with Associated Gen. Contractors of Ill., in S. J. Groves & Sons Co. v International Brotherhood of Teamsters, 581 F2d 1241, 1243 (7th Cir 1978).
99. Huffman, 752 F2d at 1225.
100. Id at 1224-26. Although the court did not overrule its prior decisions in Associated Gen. Contractors of Ill. and S. J. Groves & Sons Co., the distinguishing factors were, in this author’s opinion, finite. Far more similarities than differences were present in the facts. The dispute in Huffman also involved job classifications and related wage rates. Id at 1222. Again, when grievance procedures were exhausted without resolution, the union could not invoke arbitration but chose not to strike. Id at 1223. In distinguishing Huffman the court focused on a “finality provision” of the CBA, which was exercised when the union did not respond to the employer’s denial of the grievance with notice of their intention to strike. Id at 1224. This provision for “final” resolution barred the employee action under § 301. Id at 1226.
101. 827 F2d 627 (9th Cir 1987). The CBA in Dickeson provided for a four-level grievance procedure that culminated in a hearing before union and employer representatives. Dickeson, 827 F2d at 629. The union had the right to strike if the results of the final hearing were deemed unsatisfactory. Id. The dispute was alleged wrongful discharge. Id at 628.
102. Id at 629.
courts under section 301 of the LMRA.\textsuperscript{103}

The Supreme Court has attempted to settle the obvious, but understandable confusion among the circuits with a unanimous opinion in *Groves v Ring Screw Works.*\textsuperscript{104} The Court, charged with the interpretation of federal labor policy, has been hard pressed to reconcile the practical needs of an economically volatile labor-management relationship with the judicial responsibilities of establishing a consistent framework of decisions. In *Textile Workers Union of Am.*, the Court firmly and expansively established the jurisdictional purview of the federal courts to enforce CBAs under section 301 of the LMRA.\textsuperscript{105} In so doing, the Court heavily credited the negotiating process between union and employer and established the presumption of "quid pro quo" bargaining for the right to strike.\textsuperscript{106} In contrast, opinions since *Textile Workers Union of Am.*, with the exception of *Smith v Evening News Ass'n*,\textsuperscript{107} have sought to mitigate judicial interference by prohibiting a review of the merits of the dispute, requiring the exhaustion of contracted grievance procedures, and upholding the good faith representation of the collective bargaining agent. Throughout, the Court has firmly enforced grievance procedures requiring arbitration, candidly celebrating peaceful recourse to labor disputes as prescribed by federal labor policy.

The Fifth and Sixth Circuits have focused on the Court's trend of judicial restraint. Undeniably the Court has frequently been in strong voice regarding the impropriety of judicial evaluation of the merits of a dispute, enforceability of an award, or equity of the CBA itself. Such opinions found statutory basis in section 203(d) of the LMRA,\textsuperscript{108} the legislated preference for dispute resolution was to be found in the CBA and judicial review was to be limited to the extent of the contract negotiated by the parties. A difference of opinion was not grounds for judicial intervention.

The Seventh, Ninth and Tenth Circuits agree that, assuming fair representation, exhaustion of negotiated grievance procedures is a prerequisite to judicial review. However, mindful of the many deci-

\textsuperscript{103} Id at 629-30.
\textsuperscript{104} 111 S Ct 498 (1990).
\textsuperscript{105} *Textile Workers Union of Am.*, 353 US at 455-56. See notes 52-54.
\textsuperscript{106} *Textile Workers Union of Am.*, 353 US at 455. See note 59.
\textsuperscript{107} 371 US 195 (1962). *Smith* extended judicial audience under the LMRA to individual claimants. See note 69 and accompanying text.
\textsuperscript{108} LMRA § 203(d), 51 Stat 154 (1947), codified at 29 USC § 173(d) (1947). See also notes 58, 73 and 96.
sions extolling the virtues of arbitration and cognizant of the regularly cited legislative motives towards commercial harmony, these circuits have been justifiably reluctant to enforce "economic warfare" as an appropriate means of dispute resolution. Whether it was "desirable" to effect a CBA, which contrary to federal labor policy did not offer a peaceful means of dispute resolution, was the heart of the controversy in Groves.

The long-standing "quid pro quo" presumption was shattered by the impact of Groves. Without reservation for effect on court dockets, the decision opened the door to judicial review unless the CBA expressly precluded such an action. Recognizing the dilemma of the individual claimant with a valid grievance for whom the CBA does not provide a method for peaceful settlement, the judiciary was availed to obtain equitable resolution to offset any imbalance in the comparative strength of the parties. Uncharacteristically, the Court concerned itself with the merits of the dispute. In Groves, "desirable" under the federal labor law was construed to mean peaceful method of settlement; if not provided or prohibited by the CBA, then provided by the courts.

The message sent by the unanimous decision in Groves is aimed at fine-tuning a CBA. The courts will not infer forfeiture of judicial remedy and will not favor economic recourse, such as a strike or lockout, as an implied exclusive means of resolving a labor dispute. Clearly, peaceful methods of dispute resolution are preferred by the Court. In order to balance the rights of parties to freely contract, with the public policy against forceful dispute resolution, the Court refrained, however, from holding that the parties' right to judicial remedy under the LMRA could not be expressly negotiated away.

Although placing the responsibility of concise drafting on the negotiating parties is consistent with legislative intent, the success or failure of Groves in promoting harmony between labor and management will, as always, depend on the parties' willingness to

109. It is interesting to note that the circuits, in substantiating their opposing views, both find a basis of authority in the "Steelworkers Trilogy." The confusion over what these decisions mean, and whether peaceful dispute resolution and autonomous collective bargaining are in reality mutually exclusive terms, are also addressed in 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, 467 (1989).
110. Groves, 111 S Ct at 503.
111. Id.
112. Id at 502. Also see note 34 and accompanying text.
adopt the "friendly" philosophy purported by the LMRA. The obvious difficulty lies in the essence of negotiations, which are inherently governed by the relative strength of the parties at the bargaining table. Educating representatives as to the pitfalls of an agreement, absent a clause for binding arbitration, will not change the adversarial nature of the negotiating process or relieve the economically disruptive hostility that inequity in bargaining power breeds.

This is not to say that Groves will not impact the negotiating process. Although the "Steelworkers Trilogy" and their progeny were not expressly overruled, the Court in Groves flirts dangerously with an evaluation of the merits of the labor dispute. In an effort to force equity into the bargaining process, Groves has made the courts labor arbitrators. The distinction between the role of the arbitrator and the role of the judiciary has been blurred, particularly with regard to wrongful discharge suits brought by individual employees. For example, less than a month later, citing Groves as precedent, the Supreme Court reversed an Ohio court of appeals decision upholding the dismissal of a wrongful discharge suit in Ledsome v U-Brand Corp.

In Ledsome, the negotiated grievance procedures did not result in resolution of the dispute. The trial court dismissed the complaint stating that, without establishing breach of fair representation by his union, Ledsome had no cause of action because the negotiated grievance procedures were presumptively the final and exclusive means of dispute resolution unless the CBA expressly stated otherwise. The dismissal was vacated and upon remand, the courts will also decide whether Ledsome was wrongfully discharged. If, in the wake of Groves, the merits of labor disputes

113. See note 45 and accompanying text.
114. See notes 55 through 64 and accompanying text discussing American Mfg. Co., Warrior & Gulf Navigation Co. and Enterprise Wheel and Car Corp.
116. Ledsome v U-Brand Corp., 1989 Ohio App LEXIS 2727; 134 Labor Rel Ref Man 3061 (1989). The employee in Ledsome was discharged for alleged possession and abuse of marijuana and alcohol on company property. Id. The CBA provided for a four-step grievance procedure which culminated in binding arbitration at the election of both parties. Id. Within its rights under the procedures, management refused to submit the grievance to arbitration. Id. Thereafter, Ledsome filed a breach of CBA action claiming wrongful discharge in the Court of Common Pleas, Ashland County, Ohio. Id. In affirming the lower court's dismissal, the Court of Appeals of Ohio cited Fortune. Id. See notes 84 through 88 and accompanying text for a discussion of Fortune.
118. Ledsome, 111 S Ct 663.
will ultimately be measured by the courts, labor and management may perceive relief from their responsibilities as negotiators. In addition, too ready an access to the courts may undermine the collective bargaining process with constant challenges of enforceability. Such a result the legislators of the Taft-Hartley Act did not envision.

It is the opinion of this author that Groves will require judicial or legislative refinement because of the potential abuses of adjudicating labor disputes on the merits. Such judicial dilution of the parties' right to freely contract will foster economic evils commensurate with those the enforcement powers of the LMRA were enacted to combat. In the continuing struggles to identify the elusive balancing point between labor and management, the courts will find little relief from a public policy that has proven powerless to inject into negotiations an attitude that the parties are unable, or unwilling, to contemplate in the pursuit of their individual economic objectives at the bargaining table.

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