Court review of labor arbitration awards after the Supreme Court's Eastern Coal decision

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COURT REVIEW OF LABOR ARBITRATION AWARDS AFTER THE SUPREME COURT'S *EASTERN COAL* DECISION

by DAVID P. TWOMEY

I. INTRODUCTION

Judges may become involved in the arbitration process prior to arbitration hearings on the merits of cases, as well as after arbitrators' decisions are rendered. This article discusses the legal context in which the federal courts get involved in the arbitration process between representatives of employees and employers governed by the National Labor Relations Act; and then addresses the law concerning judicial review of arbitrators' decisions. Judicial review of arbitrators' decisions was addressed by the U. S. Supreme Court in its1987 *Paperworkers v. Misco, Inc.*[1] decision with mixed success. In this paper post-*Misco, Inc.* federal court cases are analyzed, and the Supreme Court's recent *Eastern Associated Coal Corporation v. Mine Workers* (*Eastern Coal*)[2] decision is presented.

II. GENERAL PRINCIPLES CONTROLLING COURT INTERVENTION IN THE ARBITRATION PROCESS

The courts may become involved in the arbitration process at various stages of the process. It is the responsibility of a court to determine whether a union and employer have agreed to arbitration.[3] Once it is

[1] 484 U.S. 29 (1987).
[2] 121 S. Ct. 462 (2000).
[3] Atkinson v. Sinclair Refining Co., 370 U.S. 238, 241 (1962).

determined that the parties are obligated to submit the subject matter of a dispute to arbitration, "procedural" questions which grow out of the dispute and bear on its final disposition--such as did the union follow the steps of the contractual grievance procedure--are left to the arbitrator.[4] Unions may go to court under Section 301 of the Labor Management Relations Act and compel performance of an arbitration provision in a collective bargaining contract[5]; and employers may obtain injunctive relief against a strike in violation of a no-strike clause in a collective bargaining agreement when the underlying dispute is over an issue that the parties are obligated to arbitrate.[6] Reference to the doctrines found in the famous *Steelworkers Trilogy*[7] will commonly provide the answers to disputes involving the courts and arbitration. In *Steelworkers v. American Manufacturing,*[8] the Court held that the function of the courts is limited to ascertaining whether the party seeking arbitration is making a claim that on its face is governed by the contract. In *Steelworkers v. Warrior Gulf,*[9] the Court announced a strong presumption in favor of arbitrability as follows:

> To be consistent with the congressional policy in favor of settlement of disputes by the parties through the machinery of arbitration...(a)norder to arbitrate the 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.[10]

In *Steelworkers v. Enterprise Wheel & Car Co.*[11] the Supreme Court set forth the guiding principles regarding court review of arbitration decisions. In *Enterprise Wheel* the Court held that the courts have no authority to substitute their interpretations of contractual provisions for interpretations rendered by arbitrators where the authority to interpret has been granted to arbitrators. The Court stated:

[4] John Wiley & Sons v. Livingston, 376 U.S. 543 (1964).

[5] Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957).

[6] Boys Market, Inc. v. Retail Clerks Union, Local 770, 398 U.S. 235 (1970).

[7] United Steelworkers v. American Mfg. Co. 363 U.S. 561 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).

[8] 363 U.S. 561, 563 (1960).

[9] 363 U.S. 574 (1960).

[10] *Id.* at 582. *See also* AT&T Technologies Inc. v. Communication Workers of America, 475 U.S. 643 (1986), where the Supreme Court reaffirmed the *American Manufacturing and Warrior & Gulf* decisions holding that it was for the court, not an arbitrator, to decide in the first instance whether the underlying dispute was to be resolved through arbitration.

[11] 363 U.S. 593 (1960).

> 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.[12]

III. GROUNDS FOR JUDICIAL REVIEW OF ARBITRATION DECISIONS

Arbitration offers employers and unions a relatively fast and inexpensive method of resolving disputes that may arise under their collective bargaining agreements. Since the parties themselves select the arbitrator, who is usually an expert on the issue in dispute, there is usually prompt compliance with the arbitrator's award. Were the parties able to challenge the award through the courts on a wide range of theories, the advantage of low cost and the finality of the arbitration process would be lost.[13] The courts have been keenly aware of this reality and allow challenges to arbitrators' decisions only on very narrow grounds. The three established bases for setting aside an arbitrator's decision are discussed below.

A. Ignoring the Plain Language of the Contract

As set forth in the *Enterprise Wheel*[14] decision of the *Steelworkers Trilogy*, the courts shall not overrule an arbitrator merely because their interpretation of the contract is different from that of the arbitrator. However, the arbitrator may not ignore the plain language of the contract. Should an arbitrator do so, the award may be successfully challenged in court. Thus, should a union and employer agree in their collective bargaining contract in clear and unambiguous language that possession of illegal drugs on company property is grounds for immediate termination and an arbitrator later reinstated a person found to have possessed illegal drugs on company property, the decision of the arbitrator may be vacated by the courts.[15] It should be pointed out that it is a most infrequent occurrence for an arbitrator to ignore the clear and unambiguous language of the contract. Usually, there is some ambiguity in the contract. Even where the arbitrator is even arguably construing the contract but the court is convinced the arbitrator has

[12] *Id.* at 599.

[13] It is common to find language in collective bargaining agreements setting forth the contractual authority of the arbitrator, such as: "The parties agree that the decision of the arbitrator shall be final and binding on the parties and that the arbitrator shall have no authority to add to, subtract from, or modify this agreement.

[14] United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 599 (1960).

[15] S. D. Warren Co. v. UPIU, 845 F.2d 128 (1st Cir. 1988).

made a serious error, the court may not overturn the arbitrator's decision.[16]

B. Fraud and Dishonesty.

A decision procured by a party through fraud or through an arbitrator's dishonesty need not be enforced by the courts.[17] Such cases are not common, however.

C. Contrary to Public Policy.

In recent years, suits have been filed in the courts to vacate arbitrators' awards on the theory that to reinstate certain discharged employees would be "contrary to public policy."

In *Paperworkers v. Misco, Inc.*[18] the Supreme Court held that the lower courts were in error in vacating an arbitrator's award on asserted public policy grounds. The Supreme Court pointed out that the Court of Appeals made no attempt to review existing laws and legal precedents in order to demonstrate that they had established a "well defined and dominant" public policy.[19] Only under the narrow circumstances of the existence of a well defined public policy and a clear showing that the policy was violated may a court vacate an award.[20] In *Misco Inc.*, the Supreme Court permitted the enforcement of an arbitration award requiring a private employer to reinstate an individual charged with possession of marijuana, stating:

> Two points follow from our decision in *W. R. Grace*. First a court may refuse to enforce a collective-bargaining agreement when the specific terms contained in that agreement violate public policy. Second, it is

[16] *Enterprise Wheel, supra* Fn.12 at 596; Paperworkers v. Misco, Inc., 484 U.S. 29, 38 (1987); Eastern Associated Coal Corp. v. UMW, District 17, 121 S. Ct. 462 (2000).

[17] An example of a court setting aside an arbitration award for constructive fraud is set forth in the Pacific & Artic Railway v. UTU decision of the Ninth Circuit Court of Appeals, 952 F.2d 1144, (9th Cir. 1991). Under the Railway Labor Act minor disputes over discipline and rules may be resolved by three-member arbitration panels consisting of a union member, a carrier member, and a neutral member. On the evening before a hearing on a grievance before the arbitration panel, the neutral member was observed having dinner with the union member; and the union member paid for dinner. After objecting to this *ex parte* contact the railroad withdrew from the hearing. A second hearing was held at another time in Skagway Alaska on another grievance. The railroad again refused to participate. After a short hearing the neutral member and the union member of the arbitration panel stayed in the area for several days and went on fishing trips together and took their meals together. The neutral member ruled in favor of the union in both disputes. The decisions of this arbitration panel were set aside because the conduct of the neutral member amounted to the fundamental equivalent of fraud. *Id.* at 1149.

[18] 484 U.S. 29 (1987).

[19] *Id.* at 44.

[20] *Id.* at 43.

> apparent that our decision in that case does not otherwise sanction a broad judicial power to set aside arbitration awards as against public policy. Although we discussed the effect of that award on two broad areas of public policy, our decision turned on our examination of whether the award created any explicit conflict with other "laws and legal precedents" rather than an assessment of "general interests." At the very least, an alleged public policy must be properly framed under the approach set out in *W. R. Grace*, and the violation of such a policy must be clearly shown if an award is not to be enforced.[21]

As a hypothetical example, were an arbitrator to foolishly reinstate an individual to a truck driver position when the individual's license to drive has been suspended for a two-year period, an employer could successfully seek to vacate that award in court. There is a well defined and dominant public policy set forth in the law that only those with valid licenses may drive trucks, and this policy would be violated were the arbitrator to reinstate the individual to the truck driver position.

IV. SELECTED POST-*PAPERWORKERS V. MISCO, INC.* COURT DECISIONS

Following its *Misco, Inc.* decision, the U. S. Supreme Court agreed to review an appeal by the U. S. Postal Service claiming that an arbitrator's reinstatement of a letter carrier who failed to deliver more than 3,500 pieces of mail (some letters containing checks) over a one-year period was contrary to public policy.[22] The letter carrier received an 18-month probation sentence after pleading guilty to the charge of unlawful delay of the mail. The Postal Service discharged the employee; and the union filed a grievance and progressed the matter to arbitration. The arbitrator reinstated the individual without back pay provided he successfully complete a 60-day medical leave of absence to attend Gamblers' Anonymous meetings for his compulsive gambling problem. The U.S. District Court, however, vacated the arbitrator's award as contrary to the public policy interest in an efficient and reliable postal service.[23] The U.S. Court of Appeals for the District of Columbia reversed, holding that there was no basis for the district court to invoke the "extremely narrow" public policy exception in the case, since no legal proscription against the reinstatement of the letter carrier existed.[24] On April 27, 1988, the Supreme Court issued an order dismissing the *writ of certiorari* as improvidently granted, thus allowing the Court of Appeals decision to stand.[25] In effect the Supreme Court declined an

[21] *Id.*
[22] 484 U.S. 984 (1987).
[23] 631 F.Supp. 599 (D.C.C. 1986).
[24] 810 F.2d 1239 (D.C.Cir. 1987).
[25] 485 U.S. 680 (1988).

opportunity to further clarify its *Misco, Inc.* decision, consciously letting *Misco, Inc.* policy govern.

Numerous federal courts were able to understand the scope and rationale of the *W.R. Grace* and *Misco, Inc.* decisions and rejected invitations by employers to impose their own brand of justice in determining applicable public policy, especially regarding arbitration awards dealing with the reinstatement of employees in drug and alcohol use and in cases involving safety issues. However, other federal courts continued to set aside arbitration awards involving such matters based on perceived public policy violations. It was in this context, to settle ongoing disagreements among the federal circuits, that the U.S. Supreme Court recently decided to revisit the issue of the role of the courts in reviewing arbitration awards.[26] The following court of appeals decisions endeavoring to apply the *Misco* decision illustrate the diversity of approaches used.

In *S.D. Warren Co. v. UPIU, Local 1069,*[27] the Supreme Court remanded a "contrary to a public policy" refusal to enforce an arbitration award case to the First Circuit Court of Appeals for reconsideration in light of *Misco, Inc.*[28] The Court of Appeals assumed that *Misco, Inc.* foreclosed its prior ruling that the reinstatement without back pay of the three paperworkers whom the arbitrator had found to have violated a mill rule against possession, use or sale of marijuana on company property, was an award that violated public policy.[29] The Court of Appeals instead held that the arbitrator had ignored the plain and unambiguous language of the collective bargaining agreement which, according to the court, contained the negotiated penalty for a proven violation of the no drug rule, that penalty being discharge.[30] And, under

[26] Eastern Associated Coal Corp. v. UMW, District 17, 121 S. Ct. 462, 466 (2000).

[27] 484 U.S. 983 (1987).

[28] S.D. Warren Co. v. UPIU, 815 F.2d 178 (1st Cir 1987) (*Warren I*); *vacated* 484 U.S. 983 (1987*); on remand* 845 F.2d 3(1st Cir. 1988)(*Warren II*).

[29] *Warren II*, 845 F.2d 3, 7 (1st Cir. 1988).

[30] *Id.* at 8. The language in question concerned the applicability of Article 4 of the Collective Bargaining Agreement and Mill Rule 7. Article 4, entitled Management Rights," provided:

> The Company reserves the sole right to manage the business of the Company and its Cumberland Mills operation and to direct the working force. This right includes...the right to ...discipline, suspend or discharge employees for proper cause...

Mill Rule 7, entitled "Causes for Discharge," provided:

> In any organization, certain rules of conduct must be observed by the members for the good of all. Violation of prescribed rules are cause for disciplinary action of varying degrees of severity. Violations of the following rules are considered causes for discharge.
>
> a) Possession, use or sale on Mill property of intoxicants, marijuana, narcotics or other drugs...

this "ignoring the plain language of the contract" exception, the court ruled that the arbitrator had exceeded her authority, and it refused to enforce the award.[31] In *U.S. Postal Service v. Letter Carriers,*[32] the Third Circuit Court of Appeals determined that a federal district court should not have vacated an arbitration award reinstating a postal employee as contrary to the public policy against physical violence towards supervisors, where the employee, who had an excellent record for 13 years, had fired a gun at his postmaster's unoccupied car causing damage to the windshield and dashboard. The Court held that *Misco, Inc.* specifically rejected the technique used by the district court in

b) Smoking upon Company's premises except in authorized smoking areas, as provided under "Smoking."
c) Unauthorized destruction or removal of the Company's property.
d) Refusal to comply with Company rules.
e) Willful disobedience or insubordination.
f) Neglect of duty.
g) Disorderly conduct.
h) Dishonesty.
i) Obvious sleeping on duty.
j) Deliberate waste of Company time and/or material.
k) Leaving the Mill while on duty except by permission of Foreman...
l) Violation of certain rules specifically noted in the Mill Safety Rules.
m) Incarceration after being sentenced.
n) Giving or taking a bribe of any form to obtain work, retain a position, or obtain any preferential treatment whatsoever.

[31] *Id.* It is interesting to note that the arbitrator who decided this dispute and was overturned by the First Circuit in *Warren I* on public policy grounds, and was overturned in *Warren II* on the basis of on ignoring the plain language of the contract grounds, believed that the court was biased against her. The arbitrator recently expressed the belief that the appeals court "implied that she, as a female arbitrator, had personally identified with the female grievants." The arbitrator also deduced that her address in a community with a reputation for liberal thinkers and her gender had convinced the panel she was soft on drugs and biased in favor of women. As a result she no longer puts her address on awards and uses initials rather than her first name. See "Overturned," reported by Bonnie Bogue, *The Chronicle,* National Academy of Arbitrators, p. 30 (Winter 2000-2001). In *Warren* I the Court observed:

> There are laws against the sale and use of drugs enacted by all states, ... and the sale and use of drugs is a serious offense under federal laws. [citations omitted]. Furthermore, the nation has focused on the corrosive consequences of drug sale and use and has devoted itself to their eradication.
>
> In particular, the work shop is a place where such usage is abominable not only because of the health hazard it creates, but also because it creates an unsafe atmosphere and is deteriorative of production, the quality of the products, and competition. 815 F.2d at 186.
>
> This language is the Court's indication and articulation of a well defined and dominant public policy. No language in the decision itself supports the arbitrator's claim of bias.

[32] U.S. Postal Service v. National Association of Letter Carriers, 839 F.2d 146. (3rd Cir. 1988).

asserting a public policy without substantiating its existence within existing laws and legal precedents.[33]

In *Delta Air Lines v. Air Line Pilots Association,*[34] the U.S. Court of Appeals for the Eleventh Circuit set aside an arbitration award reinstating a pilot who had been fired for operating an aircraft while intoxicated, where the pilot had successfully undergone rehabilitation for alcohol abuse after his discharge. The Court held that the award was contrary to the clearly established public policy which condemns the operation of passenger airlines by pilots under the influence of alcohol.[35] The Court stated that this public policy is well defined and dominant and ascertained by reference to laws and legal precedents.[36]

In *Gulf Coast Industrial Workers Union v. Exxon,*[37] the Fifth Circuit Court of Appeals set aside an arbitration award which reinstated an employee to a safety sensitive position where the employee tested positive for cocaine use in violation of the employer's drug abuse policy. The court held that such an award would eviscerate the "well defined and dominate" public policy underlying the nations efforts to promote a work place free of drugs and alcohol.[38]

In *Exxon Corporation v. Esso Workers' Union Inc.,*[39] the First Circuit Court of Appeals refused to enforce an arbitrator's decision reinstating a fuel delivery driver, Albert Smith, who failed a random drug test, which decision was conditional on the employee passing a new drug test. The court found a dominant public policy set forth in certain court of appeals decisions outlawing the performance of safety-sensitive tasks by individuals impaired by drugs;[40] and found further evidence of this public policy in Congress' enactment of the Omnibus Employee Testing Act of 1991.[41] Accordingly, the court refused to enforce the arbitration award.

[33] *Id.* at 149.

[34] 861 F.2d 665 (11th Cir. 1988).

[35] *Id.* at 670.

[36] *Id.* at 673. See however the pre-*Misco* decision of Northwest Airlines Inc. v. Air Line Pilots Ass'n, 808 F.2d 76 (D.C. Cir 1987) where the District of Columbia Circuit Court of Appeals refused to set aside the conditional reinstatement of a pilot charged with violating the Carrier's no alcohol within 24 hours of flying rule, on a violation of public policy basis. All disciplinary actions, including safety rule violations were subject to arbitration and the arbitration board's decision required the carrier to reinstate the pilot only if he was recertified by the FAA.

[37] 991 F.2d 244 (5th Cir. 1993).

[38] *Id.* at 257

[39] 118 F.3d 841 at 852 (1st Cir. 1997).

[40] *Id.* at 847.

[41] *Id.* at 848.

V. THE *EASTERN COAL* DECISION

In *Eastern Associated Coal Corp. v. United Mine Workers of America, District 17,*[42] the Supreme Court again addressed the parameters of judicial power to set aside arbitration awards as against public policy. In *Eastern Coal,* a labor arbitrator returned a heavy truck operator, James Smith, to service with specified stringent conditions, after the operator had failed a second random drug test within a fifteen month interval by testing positive for marijuana use.[43] The employer sought to have the arbitrator's award vacated in federal court on the basis that the award contravened the public policy against the operation of dangerous machinery by workers who test positive for drugs.[44] The federal district court, while recognizing a strong, regulation-based public policy against drug use by workers who perform safety sensitive functions, held that the employee's conditional reinstatement did not violate that policy, and ordered the enforcement of the arbitration award.[45] The Court of Appeals for the Fourth Circuit affirmed on the reasoning of the district court.[46]

Before the U.S. Supreme Court the employer contended that a public policy against reinstatement of transportation workers in safety sensitive positions who use drugs can be discerned from examination of the Omnibus Transportation Employee Testing Act of 1991 and the Department of Transportation's implementing regulations.[47] The Court rejected this position, pointing out that the employer's argument did not take into account Section 2(7) of the Testing Act which provides that "rehabilitation is a critical component of any testing program" and that rehabilitation "should be made available to individuals, as appropriate."[48] The Testing Act also provides that the Department of Transportation must promulgate regulations for "rehabilitation programs."[49] The Court concluded that where Congress has enacted a detailed statute and has delegated authority to the Secretary of Transportation to issue further detailed regulations and the Secretary has done so, and neither Congress nor the Secretary has seen fit to mandate the discharge of a worker who twice tests positive for drugs, then the Court will not infer a public policy that goes beyond the scheme Congress and the Secretary have created.[50]

[42] 121 S. Ct. 462 (2000).
[43] *Id.* at 466.
[44] *Id.*
[45] 66 F. Supp. 2d 296 (S.D.W.V. 1998).
[46] 188 F.3d 501(4th Cir. 1999).
[47] 121 S. Ct., at 467.
[48] *Id.* at 468.
[49] *Id. See* 49 U.S.C. §31306(e).
[50] *Id.* at 469.

The Supreme Court recognized that the Secretary of Transportation in promulgating regulations, did not chose to set forth specific remedies regarding rehabilitation or job preservation for employees found to be in violation of the Testing Act, and left such decisions up to management/union negotiations.[51] That is, the Court recognized that it is our nation's longstanding labor policy to give employers and employees the freedom through collective bargaining to establish conditions of employment.[52] In *Eastern Coal* the parties negotiated a collective bargaining agreement which specified that in order to discharge an employee, the employer must prove it had "just cause."[53] And the parties agreed that the arbitrator's decision would be final and binding. While the Court believed that reasonable people can differ as to whether reinstatement or discharge was the more appropriate remedy in the case of James Smith, both the employer and the union agreed, as a matter of contract, to entrust this remedial decision to an arbitrator. And it is the arbitrator's decision that should be controlling, the *Eastern Coal* Court stated, unless it falls within the legal exception set forth in the Court's *W. R. Grace Co. v. Rubber Workers* decision, which makes unenforceable "a collective bargaining agreement that is contrary to public policy."[54] Applying the *W. R. Grace* and *Misco, Inc.* precedents, whereby an award may only be set aside by a court when the arbitrator's award "runs contrary" to "public policy" that is "explicit," "well defined" and "dominant," the Court concluded that it could not find in the Testing Act, the regulations, or any other law or legal precedent an "explicit," "well defended," "dominant" public policy to which the arbitrator's decision was contrary.[55]

The concurring opinion of Justice Scalia, joined by Justice Thomas, criticizes the majority's statement that "[w]e agree, in principle, that courts' authority to invoke the public policy exception is not limited solely to instances where the arbitrator's award itself violates positive law."[56] Justice Scalia complained that this dictum opens the door to "fluid public policy arguments of the sort presented by the petitioner, [Eastern Coal]."[57] Justice Scalia believes that it is hard to imagine how an arbitration award could violate public policy as identified in *W. R.*

[51] *Id.* at 468; 59 Fed. Reg. 7502 (1994).
[52] *Id.*
[53] *Id.* at 465
[54] 121 S. Ct. at 467.
[55] *Id.* at 469.
[56] *Id.*
[57] *Id.* at 470.

Grace, MiscInc., and *Eastern Coal* without actually conflicting with positive law.[58] In sum, he believes the dictum "is not worth the candle."[59]

VI. CONCLUSION

A judge reviewing a decision of an arbitrator in the context of the breadth of cases before federal district courts or the United States courts of appeals may believe the arbitrator's award to be outrageous, and may desire to correct the perceived error.[60] Under a loose and expansive view of *W.R. Grace v. Rubber Workers*[61] some judges had refused to enforce arbitrators' awards which varied from the judges' notions of public policy. The Supreme Court's *Misco, Inc.* decision sought with just limited success to restrict such judicial intervention by reasserting the narrowness of the precedent cases and holding that refusal to enforce an award for contravention of public policy is only justified when such a policy is well defined, dominant, and ascertained by reference to laws and legal precedents rather than general considerations of supposed public interests.[62] Judicial deference to arbitration awards, but for the narrow exceptions set forth in Part II of this paper, is of critical importance to the institution of arbitration. The parties need the relatively inexpensive, relatively speedy, final and expert justice provided by arbitration. The erosion of the concept of finality and the expense of judicial appeals is contrary to the principles of the *Steelworkers Trilogy* and the national labor policy of our country. Where employers desire to restrict arbitrators' discretion in areas such as drug possession and use, or intentional safety violations, the proper approach is to narrow the arbitrators' authority by specific contract language in the collective bargaining agreement when negotiating new collective bargaining contracts. The *Eastern Coal* decision validates the *Steelworkers Trilogy* upon which the law of arbitration has been structured over the past forty years and sets forth a blueprint for a narrow application of the public policy exception so as to insulate arbitration awards from nearly all public policy challenges.

[58] *Id.*

[59] *Id.*

[60] *See* Northwest Airlines v. ALPA, 808 F.2d 76, at 83 (D.C. Cir. 1987) where the Court recognizes that there is something called "judicial chutzpah": and the Court declined the employer's invitation to impose its own brand of justice in determining applicable public policy.

[61] 461 U.S. 757, 766 (1983).

[62] UPIU v. Misco, Inc., 484 U.S. 29,43, 44, (1987).