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Case Comments

CLINCHFIELD COAL CO. V. DISTRICT 28, UNITED MINE WORKERS: A NEW STANDARD FOR JUDICIAL REVIEW OF LABOR ARBITRATION AWARDS?

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I. INTRODUCTION

Federal labor law has long left issues generated in the workplace to private resolution: a federal court should not substitute its judgment for that of an arbitrator.

The standards of judicial review have been identified by the United States Supreme Court in its famous Steelworkers Trilogy which established the fundamental rule that federal courts are without authority to review the merits of an arbitration award. One commentator has categorized the specific reasons to vacate an arbitrator's award as follows: (1) there was no agreement to arbitrate; (2) the award has exceeded the scope of the arbitrator's jurisdiction; (3) the arbitrator committed a gross error of law; (4) the arbitrator was guilty of fraud or corruption in making his decision; (5) the award was inconsistent with a decision of the National Labor Relations Board; or (6) the award violated public policy. While recognizing these reasons for vacation, the Fourth Circuit has routinely adhered to the Supreme Court's guideline that the arbitration award is legitimate only so long as it draws its essence from the collective bargaining agreement. "When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award."

The Fourth Circuit, however, may be expanding upon the narrow limitations of the Steelworkers Trilogy. The concurring opinion in Clinchfield Coal Co. v. District 28, United Mine Workers (Clinchfield I) strongly suggests that the majority opinion in that case has adopted a new standard which embraces the reasonableness of an arbitrator's legal interpretations. Moreover, the Court's close

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2 One author has defined merits as questions of law and fact such as errors in determining the credibility of witnesses, the weight to be given testimony at the hearing, and determination of factual issues. Britton, Judicial Review and Enforcement of the Arbitration Award, TRIAL, March 1980, at 22, 25.

3 Crowder, Overturning the Arbitration Award: Think Twice, 44 Texas Bar Journal 723 (July 1981).

4 Enterprise Wheel, 363 U.S. at 597. See also Monongahela Power Co. v. Local No. 2332, International Brotherhood of Electrical Workers, 566 F.2d 1196 (4th Cir. 1976).

examination of the facts before the arbitrator may well mean the appellate court has also embraced a strict scrutiny judicial review standard.

II. FACTS

Clinchfield Coal Company (Clinchfield) operated twelve large underground coal mines, three preparation plants, and four raw coal-loading facilities. Since the 1940s, Clinchfield had licensed out coal lands and at the time of the district court decision had fifty-four such licenses. The Fourth Circuit determined that in April 1982 the demand for coal had sharply declined which occasioned depressed coal prices. This event caused Clinchfield to shut down its least efficient mines, including the Camp Branch No. 1 Mine on May 22, 1982. This closure resulted in the layoff of United Mine Workers of America members. These employees filed a grievance on June 3, 1982 and alleged a violation of Article IA(h) of the National Bituminous Coal Wage Agreement of 1981 (the Wage Agreement) which provides in Paragraph 2: "Licensing out of coal mining operations on coal lands owned or held under lease or sublease by any signatory operator hereto shall not be permitted unless the licensing out does not cause or result in the layoff of Employees of the Employer."

The UMW won the arbitration held on October 30, 1982. The arbitrator found that Clinchfield had the burden of proving that its licenses did not cause the layoff at Camp Branch and that Clinchfield failed in its burden of proof through its "irrelevant" evidence concerning the decline in demand for coal and economic nonviability of Coal Branch. The remedy ordered by the arbitrator was for Clinchfield to give the grievants jobs, without determining whether such jobs existed, must be created, or resulted in some other person losing his job.

Clinchfield immediately filed an application to vacate the arbitration award which the district court granted on Clinchfield’s motion for summary judgment.

III. DISTRICT COURT

The district court held that the arbitrator’s award did not draw its essence from the Wage Agreement because the arbitrator (1) “ignored or overlooked and failed to interpret the words ‘coal mining operations’” as used in Paragraph 2 of Article IA(h); (2) improperly disregarded Clinchfield’s evidence of an economic cause for the layoffs; and (3) erroneously placed the burden on Clinchfield to show that the licenses did not cause the layoffs.


† Clinchfield, 720 F.2d at 1367.

‡ Clinchfield, 556 F. Supp. at 522.

§ Id. at 528-30.
The district court was disconcerted by the arbitrator’s award: “The award in this case, to put it mildly, is astounding and confusing.” The district court found it distressing that the arbitrator prefaced his finding that Clinchfield had licensed its coal properties by a lengthy discussion of past practice regarding leased mines—a topic wholly separate from licensing—without ever defining the terms license, lease, or coal property. Therefore, according to the district court, the arbitrator erroneously referred throughout his opinion to “leased mines.” The district court was also disturbed by the arbitrator’s failure to discuss in his opinion the distinction between “coal lands” and “coal mining operations.” Thus, owing to a misuse of terms, the court opined that the arbitration award was not drawn from the essence of the Wage Agreement.

In its opinion, the district court detailed the facts before the arbitrator, the applicable law, and the history of bargaining between the coal operators and the UMW over Article IA(h). Further, by reviewing the sixteen arbitration decisions which were submitted to the arbitrator by Clinchfield, the district court found that the UMW was unable to produce a single prior arbitrator’s decision which upheld the union’s position in the case. Essentially, the district court held that the arbitrator never decided the issue of whether Clinchfield had licensed out “coal mining operations.” Therefore, the award could not be final. Since the award was incomplete, the district court declined to enforce it. In its final attack on the arbitrator’s award, the district court stated that the proximate cause of the layoffs was the widespread economic conditions in the coal industry in 1982 and not the previous licensing out of coal lands. Thus, the district court vacated the arbitrator’s award.

IV. FOURTH CIRCUIT

The majority opinion of the Fourth Circuit agreed with the district court’s holding that the arbitrator neither discussed nor decided the issue of whether the licensed properties were “coal mining operations” or “coal lands.” Further, the Fourth Circuit affirmed the district court’s conclusion that the arbitrator improperly disregarded Clinchfield’s evidence of an economic cause for the layoffs.

The author of the concurring opinion was satisfied with the result the majority reached, but for different reasons. Judge Sprouse believed that the arbitrator’s decision did not draw its essence from the Wage Agreement because the arbitrator failed to recognize that the licensing of coal lands was not the proximate cause or result of the layoffs. The concurring opinion stated that the provision in the Wage Agreement could only be interpreted prospectively: “Clinchfield and the union can

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10 Id. at 525.
11 Id.
12 Id. at 530.
13 Clinchfield, 720 F.2d at 1368.
14 Id. at 1369.
only have intended to preclude future licensing out operations that proximately caused or resulted in lay-offs.\textsuperscript{5} The concurring opinion’s conclusion closely tracks the quote of a colloquy before the arbitrator which the district court included in its opinion. The discussion between the arbitrator and the president of the local union established that the union had not objected during the previous twenty years to Clinchfield’s contract mining operations.\textsuperscript{6}

V. What Standard of Review?

A. Reasonableness Standard

If a new standard of judicial review is articulated in Clinchfield, it is found in the majority opinion’s conclusion that the arbitrator failed to discuss critical terminology of the Wage Agreement. This proposition is supported by the concurring opinion’s citation of Justice Douglas in the Steelworkers Trilogy: “Arbitrators have no obligation to the court to give their reasons for an award.”\textsuperscript{7} In contrast to the majority, Judge Sprouse found that the failure to discuss the primary legal issue was fully within the arbitrator’s power and constituted part of the merits of his decision.\textsuperscript{8}

The concurring opinion stated that the majority should not substitute its judgment for that of the arbitrator. According to Judge Sprouse, it is not relevant to the Fourth Circuit decision that an arbitrator reached a different result than a circuit court judge would.\textsuperscript{9} The concurring opinion would argue that this entrenched maxim clearly precludes courts reviewing the reasonableness of the arbitrator’s legal interpretations.

Nevertheless, the concurring opinion recognized the dilemma of federal courts in simultaneously deciding whether a particular arbitral decision is drawn from the essence of the collective bargaining agreement while at the same time refraining from reviewing the merits of the decision.\textsuperscript{10} However, both the majority and concurring opinion recognized that the arbitrator ignored the plain meaning of the Wage Agreement, and the evidence presented to the arbitrator utterly failed to establish proximate cause. This flaw translated into a failure of the arbitrator’s decision to draw its essence from the Wage Agreement.

There are additional arguments, however, for finding that the Fourth Circuit did and should impose a standard for judicial review of the reasonableness of an arbitrator’s legal interpretation. It is sound judicial policy to recognize that the

\textsuperscript{5} Id. at 1372 (emphasis in original).
\textsuperscript{6} Clinchfield, 556 F. Supp. at 528.
\textsuperscript{7} Enterprise Wheel, 363 U.S. at 598.
\textsuperscript{8} Clinchfield, 720 F.2d at 1373.
\textsuperscript{9} Id.
\textsuperscript{10} Id. at 1372.
failure of an arbitrator to discuss controlling terms of a wage agreement must be remedied. Otherwise, the parties would be robbed of the benefits of their bargain if courts were unable to decide that the legal interpretation of the terms of a wage agreement could not possibly support an arbitrator's award. The basic precepts of industrial self-government (arbitration) recognize that if one side to the bargaining acquiesces for twenty years in a practice and custom it must make its challenges to that procedure at the bargaining table. Is the arbitration system really circumvented in Clinchfield where the award of the arbitrator is clearly so radical as to disrupt twenty years of behavior of the parties? Did the district court or the appellate court modify the Wage Agreement? Does federal labor policy reflect the realities in the coal industry where a multi-employer agreement is entered into with little chance for an individual operator to negotiate its own wage agreement? Should not economics be considered even when discarded as irrelevant by the arbitrator?

The reality of Clinchfield is that it was a bad arbitration award. Neither the majority nor concurring opinions differ on this conclusion. While the Fourth Circuit has not expressly announced a new judicial review standard of reasonableness, the majority opinion dictates that result. Moreover, the Fourth Circuit is not alone in expanding on the limitations of the Steelworkers Trilogy. The Tenth Circuit in Mistletoe Express Service v. Motor Expressmen's Union,21 expanded the judicial review standards in applying an express provision rule. The arbitrator cannot substitute his views for the express provisions of a contract. Normally, these cases occur where an arbitrator has varied the discipline imposed upon an employee by a company which follows the strict letter of the collective bargaining agreement.22 Likewise, the Sixth Circuit has expanded the judicial review standards in Storer Broadcasting v. American Federation of Television & Radio Artists.23 There, the court adopted an absolutely no evidentiary support24 test for an arbitrator's decision. The Sixth Circuit has also imposed a plain meaning25 rule for the review of arbitration awards.26

Moreover, the Fourth Circuit, as expressed in one dissent, continues to expand the judicial standards of the Steelworkers Trilogy. In Roy Stone Transfer Corp. v. Teamsters,27 an employee disputed the arbitrator's finding and alleged that he was entitled to back wages for a longer period of time than the district court allowed. The dispute concerned an offer of reinstatement and the date upon which the employee refused the offer. Judge Sprouse wrote in a dissenting opinion that the majority of the Fourth Circuit based its conclusion "on an erroneous standard

21 566 F.2d 692 (10th Cir. 1977).
22 This expansion was recently adhered to in International Union of Operating Engineers, Local No. 9 v. Shank v. Artukovich, 751 F.2d 364 (10th Cir. 1985).
23 600 F.2d 45 (6th Cir. 1979).
24 Id. at 48.
25 Id. at 47.
of review”28 and stated that the court has adopted still another standard of judicial review, which was characterized as a sound basis standard. The dissent stated, “[T]he test is not whether a district court has a ‘sound basis’ for its opinion.”29 The dissent argued that the majority overruled the arbitrator because their interpretation of the contract was different from the arbitrator’s view.30

B. **Strict Scrutiny Standard**

While the concurring opinion in *Clinchfield* accuses the majority of adopting a reasonableness standard of judicial review, the *Clinchfield* decision and the second appeal before the Fourth Circuit,31 also lead to the judgment that the Fourth Circuit has adopted a strict scrutiny standard of judicial review. The test of strict scrutiny is ordinarily applied to judicial review under the Equal Protection Clause if the legislation creates a suspect classification or infringes upon a fundamental right based on inherently suspect criteria.32 Applying this phrase in the context of labor arbitration awards, the Fourth Circuit and the district court have clearly indicated that courts will carefully and precisely analyze the facts presented to an arbitrator.

The majority and the concurring opinion in *Clinchfield* have one thing in common: both have examined the facts presented to the arbitrator in microscopic detail. This very exercise would tend to support a standard of judicial review of strict scrutiny, which would expand the scope of judicial review in the Steelworkers Trilogy.

While the majority and concurring opinions necessarily predicate their conclusions of law on the facts, much of the factual discussion in *Clinchfield* is dicta. For example, the concurring opinion greatly detailed the relationship between Clinchfield and its contract operators.33 The concurring opinion already had found that the union had not presented any evidence that Clinchfield closed its Camp Branch Mine and later licensed out coal operations to independent contractors. The concurring opinion even stated that the evidence was to the contrary. However, the concurring opinion engaged in an extensive discussion about Clinchfield’s involvement with the contractor: Clinchfield provided engineering services; Clinchfield held

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28 Id. at 952 (Sprouse, J., dissenting).
29 Id.
30 Id.
32 Zablocki v. Redhail, 434 U.S. 374, 383 (1978). The author acknowledges that his analogy to Equal Protection “strict scrutiny” is perhaps subject to the criticism of being oversimplistic. While a more pointed examination of the facts is undoubtedly one of the aspects of strict scrutiny analysis, the crux of the doctrine is its requirement of a demonstration of a “compelling state interest” in order to validate the discriminatory conduct in question; see, e.g. City of Cleburne, Tex. v. Cleburne Living Center, 105 S. Ct. 3249 (1985).
33 *Clinchfield*, 720 F.2d at 1372.
title to the coal mined; Clinchfield had exclusive purchase rights to the coal; Clinchfield constructed haulage and access roads; Clinchfield faced-up the mine operations for the contractors; Clinchfield ran the power line and supplies for the operators; Clinchfield set the price to be paid to the operator for delivery of the coal; Clinchfield reserved the right to audit the operator's books; Clinchfield took the depletion allowances; Clinchfield paid royalties to the UMW Health and Retirement Fund; and Clinchfield had the right to cancel the operator. Similarly, the district court dissected the arbitrator's decision.

There is some foundation in the *Steelworkers Trilogy* for such close scrutiny wherein the common law of the shop can be taken into consideration. However, the review process in the *Steelworkers Trilogy* for examination of the plant's common law is not as probing as either the Fourth Circuit or district court's process in *Clinchfield*.

In the second of the *Clinchfield* cases, the same district court overturned an arbitration award because the arbitrator did not follow the common law of the shop. In *Clinchfield Coal Co. v. District 28, United Mine Workers,* (Clinchfield II), there was a second grievance based upon the same circumstances as *Clinchfield I.* Here, there was a different arbitrator, and the union prevailed again. In contrast to the first arbitration, the arbitrator did not rule out economic considerations in construing the labor agreement. However, the district court found that the arbitrator failed to find that the proximate cause for the layoffs was the licensing out of coal properties. Again, there was a close inquiry of the facts before the arbitrator.

The district court pointed out several problems with arbitration with which the coal industry will have to come to grips. The district court surprisingly stated that under the Wage Agreement an arbitrator does not have final arbitration authority. Before the 1981 Wage Agreement, the coal operators and UMW had a Chief Umpire and an Arbitration Review Board (ARB). The ARB normally interpreted questions of law under the wage agreement and would not accept cases wherein the conclusion turned on the credibility of witnesses as determined by an arbitrator. Without the ARB, there have been numerous occasions where identical factual situations are submitted to two different arbitrators with those arbitrators reaching opposite conclusions. The district court in the second *Clinchfield* case found that one of the arbitration decisions could not draw its essence from the contract:

In such a situation, there is no place for the parties to turn, so they must turn to the court assuring that everyone will be treated equally and fairly and not be subject to opposite opinions based upon the whims of the arbitrators. In this case, literally thousands of people are affected by opposite decisions and the companies

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34 *Id.*
35 See *Warrior & Gulf Co.*, 363 U.S. 574 (1960); *Norfolk Shipbuilding and Drydock Corp. v. Local No. 684, 671 F.2d 797 (4th Cir. 1982).*
36 *Clinchfield II*, 736 F.2d 998.
37 *Id.* at 1432.
38 *Id.* at 1433.
have no standard by which to determine their own policies and the future of their operations. This situation cries out for an answer which is uniform. 

The Fourth Circuit, in *Clinchfield II* affirmed the district court's reversal of the second arbitration decision; however, the Fourth Circuit in a footnote disapproved the district court's view that, when two arbitral decisions on the identical factual situation are in direct conflict, both cannot be found to draw their essence from the Wage Agreement. This ruling creates an anomaly. The Fourth Circuit recognizes that there is little or no *stare decisis* for arbitration under the 1981 Wage Agreement; however, there is *stare decisis* in that a reviewing court will defer to a prior, authoritative judicial decision about an arbitration award.

Without adoption of some vehicle for determination of final and binding arbitration and interpretation of legal problems in the wage agreement, arbitration will continue to be the first step to the courthouse. Equally important, both sides to the wage agreement will experience frustration in attempting to tailor their conduct in their labor relations.

VI. CONCLUSION

Before the losers in an arbitration rush into federal court, they should heed the signal in the concurring opinion in *Clinchfield I* that the coal industry will have to live with the arbitrators it selects. "The parties to the collective bargaining agreement—not the courts—must shoulder the responsibility for the quality of their arbitrators." If there are new standards of judicial review of labor arbitration decisions evolving, that may be a sign that the theory of industrial self government is not working. While the Fourth Circuit has ably responded in *Clinchfield I* by decrying the omission of a legal interpretation of critical terms of the collective bargaining agreement, such may not always be the case. If the courts become the Chief Umpire or the Arbitration Review Board, the parties to the Wage Agreement may find the influence of the courts on the workings of the coal industry to be too influential. The industry may be saddled with judicial *stare decisis* which could, in the long term, be more onerous than the isolated arbitration decision.

There are hard policy decisions ahead for the courts and the coal industry: Will the reviewing courts promote industrial self-government by adopting a hands-off policy on arbitrators' awards, or will the courts continue to correct obviously bad decisions by giving interpretations of the legal conclusions of the arbitrators and holding the arbitration decisions to strict scrutiny? Will the coal industry opt for another ARB and correct the ARB's unpopular decisions through collective bargaining or is the industry content to accept continuous federal court review of inapposite arbitration decisions? These questions should be answered through the collective bargaining process and necessitate attention.

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39 *Clinchfield II*, 736 F.2d 998.
40 *Id.* at 999.
41 *Clinchfield*, 720 F.2d at 1372.