

DEFLATEGATE: LIMITED ABILITY TO APPEAL ARBITRATION AWARDS

By Michael C. Harrington

Nearly all collective bargaining agreements have an arbitration clause for deciding any disputes under the agreement. Beyond the labor arena, employers have increasingly mandated arbitration as the designated forum for resolving employment disputes. With the recent Deflategate decision, we are reminded of the limitations of appealing an arbitrator's decision.

Undoubtedly, arbitration provides many benefits over traditional litigation within the state or federal court system. Arbitration reaches a decision far more expeditiously than the court system. Arbitration is also less costly than court based litigation. Not only does arbitration limit discovery, which decreases costs, but the hearing process is also more streamlined, which requires less resources.

These benefits, however, must be balanced against an appreciation for the limitations of arbitration. For example, with limited discovery, parties have less access to the other party's information prior to going into an arbitration hearing. Furthermore, as Tom Brady learned, a party unhappy with an arbitrator's decision has very limited grounds for challenging that decision.

In deciding against Tom Brady, the Court of Appeals for the Second Circuit reminded us that the Court's review of a labor arbitration award is narrowly circumscribed and highly deferential to the arbitrator - amongst the most deferential in the law. A court is only to determine "whether the arbitration proceedings and award met the minimum legal standards established by the Labor Management Relations Act." Put another way, the Court is only to ensure that "the arbitrator was even arguably construing or applying the contract and acting within the scope of his authority and did not ignore the plain language of the contract." Accordingly, even if the arbitrator makes a mistake of law or fact, a court is not to disturb that award so long as the arbitrator acted within the bounds of his "bargained for authority."

In confirming the arbitrator's award against Tom Brady, the Court of Appeals held that the parties had agreed that the Commissioner could serve as the arbitrator and, therefore, the Football Union could not quibble about the agreement they made. Furthermore, in applying its very limited review, the Court of Appeals found that the Commissioner's decision drew its essence from the collective bargaining agreement and, therefore, must be confirmed.

Parties are still wise to consider arbitration as a means for resolving their disputes. However, that agreement should not be undertaken without full consideration and appreciation of the limitations and possible negotiation over the parameters of arbitration in order to mitigate those limitations.

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