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The arbitration of labor-management disputes is today "part and parcel" of the collective bargaining process—at least in the private sector. Nearly every private sector collective bargaining agreement provides for the arbitration of some or all contract disputes.[1] Contractural promises to arbitrate disputes arising under private sector collective bargaining agreements are specifically enforceable in federal courts. *Textile Workers Union v. Lincoln Mills,* 353 U.S. 448 (1957). In 1947, when Congress passed the Labor Management Relations Act, it stated that:

> "Final adjustment by the method agreed upon by the parties is declared to be the desirable method for the settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement."[2]

The United States Supreme Court has said that arbitration of disputes arising under collective bargaining agreements serves the national interest by offering an alternative to strikes and other forms of economic coercion.[3]

Thus, it is now well-settled that public policy favors the arbitration of labor-management disputes arising over the meaning and application of collective bargaining agreements in the private sector. It is likewise well-settled that courts will refuse to enforce an arbitration award only in the most extraordinary circumstances. A court's disagreement with the findings and conclusions of an arbitrator may not be the basis of vacating an arbitration award which draws its "essence" from a private sector collective bargaining agreement. *Steelworkers v. Enterprise Wheel and Car Corp.,* 363 U.S. 593 (1960).

The institution of collective bargaining, of course, is much older and more firmly established in the private sector than in the public sector. Nevertheless,

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[1] Statistical reports issued annually by the Bureau of Labor Statistics, U.S. Department of Labor show that nearly 98% of all private sector collective bargaining agreements provide for a grievance procedure ending in arbitration.

[2] Taft-Hartley Act of 1974, Section 203; 29 U.S. Code §173.

[3] For a thorough discussion of arbitration as an alternative to economic warfare, see: Clyde Summers, *Labor Arbitration: A Private Process with a Public Function,* 34 Rev. Jur. University of Puerto Rico 447 (1965).

while some craft unions may have collective bargaining histories nearly as old as the Republic, most scholars date the emergence of collective bargaining as a meaningful economic institution to the Railway Labor Act of 1926, for the railway industry, and to the National Labor Relations Act of 1935, for the rest of the private sector. By contrast, collective bargaining did not become a significant phenomenon in the public sector until the mid-1960s.

This article examines whether "grievance arbitration" in the public sector has attained the same degree of acceptability (i.e., as "part and parcel" of the collective bargaining process) as it has in the private sector.

Common Law Hostility to Arbitration

It is useful to remember that arbitration was *not* a favored instrument of the law until relatively recent times.

At common law an agreement to arbitrate future disputes, whether contained in a contract involving other matters or set forth in a separate written instrument, could be revoked or abrogated at will by either party at any time before an award was made. This hostility was not limited to agreements to arbitrate disputes arising over the meaning and application of collective bargaining agreements, it extended to all forms of arbitration agreements. 5 ALR 2d *Arbitration and Award* §36 *et seq.*

The reasons generally given by the common law courts for declaring agreements to arbitrate future disputes to be unenforceable were that such agreements were contrary to public policy or that they improperly sought to deprive common law magistrates of their jurisdiction. The rule emerged that the parties to a contractual dispute could not "oust the jurisdiction" of a court to decide a dispute over the meaning of their contract by virtue of an arbitration agreement. *Kill v. Hollister,* 1 Wils. 129 (1746).

Less charitable observers have suggested that the common law's hostility to arbitration had more to do with the economic well-being of common law judges than with august notions of public policy. At the time the doctrine developed, judicial income was derived solely from the fees assessed against litigants. Arbitration posed a very real threat of loss of income. *Kulukundis Shipping Co. v. Amtorg Trading Corp.,* 126 F2d 978 (2nd Cir. 1942).

In most jurisdictions, the common law's hostility to agreements to arbitrate has been overcome by a specific statute. For example, Congress in 1925 passed the Federal Arbitration Act which makes written agreements to arbitrate disputes involving maritime transactions and transactions involving interstate commerce "valid, irrevocable and enforceable." 9 U.S. Code §1 *et seq.* Similarly, many states have enacted the Uniform Arbitration Act to achieve the same objective in cases arising under state law.

In 1957, the United States Supreme Court ruled that future dispute clauses in collective bargaining agreements in the private sector could be enforced in the federal courts through Section 301(a) of the Labor Management Relations Act. Writing for the majority, Justice William O. Douglas said that the agreement to arbitrate grievance disputes "is the *quid pro quo* for an agreement not to strike." *Textile Workers Union v. Lincoln Mills, supra,* at 494.

Of course, neither the Labor Management Relations Act nor the Federal Arbitration Act cover agreements to arbitrate found in public sector collective

bargaining agreements. Such agreements, if they are to be enforced, must be enforced on the basis of state law. In some jurisdictions it remains the rule that in the absence of a statute authorizing arbitration (such as the Uniform Arbitration Act) or, in the alternative, a statute specifically authorizing public employers to enter into collective bargaining agreements, courts will not enforce agreements to arbitrate disputes arising over the meaning and application of public sector collective bargaining agreements.[4]

Steelworkers Trilogy: The Law of Arbitration in the Private Sector

The basic substantive law of arbitration governing private sector collective bargaining agreements was promulgated by the United States Supreme Court in three decisions issued on the same day in 1960. These decisions are known collectively as the "Steelworkers Trilogy." *Steelworkers v. American Manufacturing Co.,* 363 U.S. 564 (1960); *Steelworkers v. Warrior and Gulf Navigation Co.,* 363 U.S. 574 (1960); and *Steelworkers v. Enterprise Wheel and Car Corp.,* 363 U.S. 593 (1960).

Two of these cases, *American Manufacturing* and *Warrior Navigation,* involved actions to enforce an agreement to arbitrate. In such situations, the Supreme Court said that the only function of a court is to determine whether the parties have entered into an agreement to arbitrate:

> "The courts . . . have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim. The agreement is to submit all grievances to arbitration, not merely those the court will deem meritorious . . . " *American Manufacturing Co. supra,* at 568.
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> "An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the asserted dispute. *Doubts should be resolved in favor of coverage." Warrior and Gulf Navigation, supra,* at 580.

Enterprise Wheel and Car Corp. involved an action to enforce an arbitration award. In those circumstances, the Supreme Court stated that a court may not modify or refuse to enforce an arbitration award merely because it disagrees with an arbitrator's determination:

> "The refusal of courts to review the merits of an arbitration award is the proper approach under collective bargaining . . . " *Enterprise Wheel and Car Corp., supra,* at 596.
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> "It is the arbitrator's construction which was bargained for; insofar as the arbitrator's decision concerns construction of a contract, the courts have no business overruling him because their interpretation of the contract is different from his." *Enterprise Wheel and Car Corp., supra,* at 599.

In subsequent cases, the Supreme Court stated that the rule of law announced in the *Steelworkers Trilogy* also means that a losing party may not

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[4] For example, see *Washington Teachers Union v. District of Columbia,* Civil Action No. 1120-77 (August 1977); and *Commonwealth of Virginia v. Arlington County,* 232 S.E.2d 30 (1977) c.f. *Local 226, Rhinelander City Employees, AFSCME, AFL-CIO v. City of Rhinelander,* 151 N.W. 2d 30 (Wisc. 1967).

relitigate before a court "procedural questions" relating to whether a party has complied with the technical requirements of the grievance procedure or whether its non-compliance was excused or waived. Such "procedural questions" ordinarily are intertwined with the merits of the disputes, and the arbitrator should be left with the task of determining "procedural questions" which bear on the final disposition of the grievance. *John Wiley and Sons, Inc. v. Livingston,* 376 U.S. 543 (1964).

The Supreme Court's endorsement of arbitration as an indispensable element of the collective bargaining process in the private sector reached its highest point when the Court proclaimed that the labor arbitrator's knowledge of the "common law of the shop" provides him with an expertise in matters of industrial relations which is "superior to that of the ablest judge." *Warrior and Gulf Navigation Co., supra,* at 582.

The practical consequences of the rule of law fashioned in the *Steelworkers Trilogy* have been to "shut the courthouse doors" to private sector litigants seeking to avoid arbitration over the meaning and application of a collective bargaining agreement. For example, employers are no longer able to delay arbitration proceedings by obtaining stays of arbitration and then engaging in protracted litigation over whether some particular grievance comes within the scope of the contractual clause. The proscription that "doubts are to be resolved in favor of coverage" means that, except in the rarest of cases, basic questions of arbitrability are to be decided in the first instance by the arbitrator. Similarly, the very narrow scope of judicial review, means that the losing party's chances of modifying or vacating an arbitration award are minimal.

Public Sector Developments

As can be seen from the foregoing, one of the most significant accomplishments of labor law in the private sector has been the development of a system of industrial jurisprudence in which employers and labor organizations have been permitted to establish the machinery for the resolution of their day-to-day disputes over the interpretation and application of their collective bargaining agreements. With the arrival of collective bargaining in the public sector, the issue naturally arose as to whether public employers and public employee unions would be permitted to establish a similar mechanism for the resolution of day-to-day disputes over the meaning and application of their collective bargaining agreements.

In addition to the natural resistance which employers (whether public or private) have to sharing decision-making with third parties, there are at least two reasons unique to the public sector which have retarded the full acceptance of grievance arbitration as exemplified in the *Steelworkers Trilogy.* First, the sovereignty doctrine led many public employers to conclude that they were powerless to negotiate any kind of procedure which would result in the transfer of their decision-making authority to a third party. While this doctrine has been discarded in most if not all states which have enacted comprehensive statutes providing for collective bargaining by public employees, the notion that governmental sovereignty might be impermissibly interfered with by a

system of grievance arbitration remains alive in some states, particularly in the South.

Second is the argument that a negotiated grievance procedure ending in binding arbitration is superfluous, in that most public employers already had a civil service appeal procedure available for resolving employee grievances. This came to be known as the problem of the "multiple forum." Reconciling an employee's right under a civil service system with rights which may be available under a negotiated collective bargaining agreement have been dealt with differently in different jurisdictions. In some, the rule is that the employee has the option of choosing the route through which his claim will be heard, while in others the rule is that if there is a statutory procedure available, the procedure must be followed. For example, the Federal Government's labor relations program precludes an employee from raising through the negotiated grievance procedure any matter for which there is a statutory review procedure available. See Executive Order 11491, as amended.

Thus, courts often face a two-fold problem when confronted with actions seeking enforcement of arbitration agreements and awards. First is the broad question, beyond the scope of this article, as to whether the law of that jurisdication authorizes public employers to enter into agreements to arbitrate. The second is, assuming that such authority exists, what standard of judicial supervision should be applied to the public sector arbitral process. It is this second question that we are concerned with here.

In recent years, most states which have considered the issue of judicial review have adopted the rule of law set forth in the *Steelworkers Trilogy*. For example, the Wisconsin Supreme Court recently stated:

> "When the court determines arbitrability it must exercise great caution. The court has no business weighing the merits of the grievance. It is the arbitrator's decision for which the parties bargain . . . this court [has] adopted the *Steelworkers Trilogy* teachings of the court's limited function." *Joint School District v. Jefferson Education Association,* 253 N.W. 2d 536, 95 LRRM 3117 (1977).

In *Minnesota v. Berthiaume,* 96 LRRM 3240 (1977), the Minnesota Supreme Court applied the private sector standard to public sector arbitration awards holding that "an arbitrator, in the absence of any agreement limiting his authority, is the final judge of both law and fact, including the interpretation of the terms of any contract." In holding that Minnesota's Uniform Arbitration Act applied to public sector arbitration agreements, the Court stated that an arbitration award could be vacated "only where it is established that an arbitrator has clearly exceeded his powers under the agreement to submit a dispute to arbitration." In this case under a contract limiting the arbitration procedure to disputes of "permanent employees", the court refused to vacate an award which applied the contract clause requiring "just cause for discharge" to unclassified monthly laborers without civil service tenure.

In *Beaver County Community College v. Community College Society of the Faculty,* 96 LRRM 2375 (1977), the Pennsylvania Supreme Court held that a pre-existing law, the Pennsylvania Arbitration Act of 1927, applied to the review of arbitrations conducted pursuant to the contracts negotiated under the Pennsylvania Employee Relations Act. The 1927 Arbitration Act permits

courts to set aside arbitration awards on typical grounds of evident partiality, corruption, misconduct, or the arbitrator's exceeding his powers. It also provides for the modification or correction of an award where it "is against the law, and is such that had it been the verdict of the jury the court would have entered a different or other judgment n.o.v."

Prior to the *Beaver County* case, there was uncertainty in Pennsylvania as to whether the "against the law" provision in the 1927 Act meant that public sector arbitration awards would be subject to a stricter standard of judicial review than the private sector standard fashioned by the U.S. Supreme Court in the *Steelworkers Trilogy.* The Pennsylvania Supreme Court found no essential difference. It concluded that an arbitration award should not be disturbed if "the interpretation can in any rational way be derived from the agreement, viewed in the light of its language, its context, and any other indicia of the parties' intention . . . " *Beaver County, supra,* at 2378.

At issue in the *Beaver County* case was a lower court's vacation of an arbitrator's award determining that full-time faculty members, properly "retrenched" pursuant to a cut-back in the overall size of full-time faculty, have a preferred position with respect to subsequently created part-time positions. While the contract did not expressly cover the issue, the Pennsylvania Supreme Court characterized the views of both the employer and the union as "reasonable, i.e., can be rationally derived from the agreement." The court held that since "neither [view] can be said to be 'against the law' within the meaning of the [1927] . . . Arbitration Act", the arbitrator's construction of the contract may not be vacated.

See, also, *School Committee of West Springfield v. Korbut,* 369 N.E. 2d 1148, 97 LRRM 2447 (1977) "If any arbitrator has committed an error of law or fact in arriving at his decision, a court will not upset the finding unless there is fraud involved." *Ferndale Educ. Assn. v. Ferndale School Dist. (#2),* 242 N.W. 2d 481, 92 LRRM 3543 (1976). *Waterbury Bd. of Ed. v. Teachers Assn.,* 97 LRRM 2401 (1977); *Policeman's Assn. v. City of Glendale,* 98 LRRM 67 (1978); and *Binghamton Civil Service Forum v. City of Binghamton,* 44 N.Y. 2d 23, 97 LRRM 3070 (1978) citing *Rochester City School Dist. v. Rochester Teachers Assn.,* 41 N.Y. 2d 578, 95 LRRM 2118 (1977) discussed *infra.*

Courts continue to hold the party who claims lack of impartiality by the arbitrator to a strict standard of proof. A New York trial court in *Yonkers Federation of Teachers v. Board of Education,* 395 N.Y.S. 2d 487, 95 LRRM 2171 (1977) held that any claim of partiality by the arbitrator must be "clearly established" before an award can be set aside. There, the school board's attempt to prove bias from "reading the award as a whole . . . " was insufficient. See also *City of Hartford v. International Brotherhood of Police Officers,* 93 LRRM 2321 (1977).

The Washington Supreme Court reversed a lower court which had set aside an arbitration award on a theory that the conduct of an arbitrator did not measure up to the "appearance of fairness." (The arbitration panel chairman had had several drinks with a union official.) The Court held that the relevant statute was the state collective bargaining statute which provided for judicial reversal of arbitration awards only on the limited grounds of arbitrary and

capricious decision-making by arbitrators. Since the lower court had made no such finding, its ruling was reversed. *Lodge 1296, UAFF v. City of Kennewick,* 542P.2d 1252, 92 LRRM 2118 (1975).

Problems sometimes arise in those states which have authorized public employee collective bargaining by statute, but have not moved to amend or modify other statutes relating to the setting of public employee terms and conditions of employment. In these situations, the task of reconciliation falls to the judiciary. The question often arises in the context of staying or vacating arbitration awards.

As a general rule, courts try to harmonize conflicting statutes whenever possible. See Policeman's *Association v. the City of Glendale, Wisc.,* 98 LRRM 2362 (1978) in which the court reconciled a contractual provision requiring promotion of the most senior qualified applicant with a charter provision giving the chief of police power to designate subordinates for promotion subject to the approval of the Board of Police and Fire Commissioners by giving effect to the contract.

When irreconcilable conflicts exist, the question of whether the collective bargaining agreement supercedes the preexisting law has been decided differently in different states. Most hold, though, that when a provision of a collective bargaining agreement specifically conflicts with a pre-existing law, a dispute over the provision is not arbitrable, regardless of whether or not the parties have agreed to arbitrate.

Thus, a number of state courts have held that the decision on granting or denying tenure to teachers is a nondelegable function granted by statue to school employers, and that disputes over the tenure decision are not arbitrable. *Dennis-Yarmouth School Committee v. Dennis Teachers Assn.,* 98 LRRM 3186 (1977); *Board of Trustees v. Cook County Teachers Union Local 1600,* 92 LRRM 2380 (1976); *Matter of Candor Central School Dist. and Candor Teachers Assn.,* 42 N.Y. 2d 266, 366 N.E. 2d 826, 95 LRRM 2985 (1977); *Matter of Cohoes City School Dist. v. Cohoes Teachers Assn.,* 40 N.Y. 2d 774, 94 LRRM 2192 (1976).

On the other hand, many of the courts which hold that tenure decisions may not be subject to arbitration also hold that procedural steps prior to a teacher's termination are bargainable, arbitrable and remediable. *Dennis Yarmouth v. Candor School Dist., supra.* And, in *School Committee of West Springfield v. Korbut;* 369 N.E. 2d 1148, 97 LRRM 2447 (1977), the Massachusetts Supreme Court upheld an award reinstating a teacher after determining that the school committee violated the notice and hearing requirements applicable to reappointment decisions.

Where courts have declined to follow the teachings of the *Steelworkers Trilogy,* they sometimes state that there are public policy considerations unique to the public sector which require that different standards be applied.

One recent case illustrates this problem. *In the Matter of the Acting Superintendent of Liverpool Central District and the United Liverpool Faculty Association,* 42 N.Y. 2d 509, 96 LRRM 2779 (1977), the New York Court of Appeals was presented with the issue of whether a particular grievance came within the scope of the arbitration clause. In resolving that issue, the

Court questioned whether "public policy" favors the arbitration of labor-management disputes in the public sector to the same extent that it favors arbitration in the private sector. The Court said:

> "In the field of public employment, as distinguished from labor relations in the private sector, the public policy favoring arbitration—of recent origin—does not yet carry the same historical or general acceptance, nor as evidenced in part by some of the litigation in our Court, has there been a similar demonstration of the efficacy of arbitration as a means of resolving controversies in governmental employment. Accordingly, it can not be inferred as a practical matter that the parties to collective bargaining agreements in the public sector always intend to adopt the broadest permissible arbitration clauses."

From this, the New York Court of Appeals reasoned that because the same broad endorsement of grievance arbitration had not yet evolved in the public sector, it would be inappropriate to presume that the mere presence of an arbitration clause means that such a clause should be given the broadest possible interpretation. In what on the surface would appear to be a direct conflict with the *Steelworkers Trilogy,* the Court announced that when the issue before it concerned whether or not the subject matter of the dispute comes within the scope of the arbitration clause, the pary asserting that it does must be able to show that the "dispute falls clearly and unequivocally within the class of claims assigned to arbitration," and that unless it is able to do so, the arbitration clause cannot be said to have been intended to cover such a dispute.

This rule, of course, is exactly the opposite of the rule announced in *Warrior and Gulf Navigation* when the U.S. Supreme Court said that when the issue involves whether a particular dispute falls within an arbitration clause "doubts should be resolved in favor of coverage."

At least one observer has described the *Liverpool* case as being a "dramatic break" with the teachings of the *Steelworkers Trilogy.*[5]

The authors disagree.

We suggest that at most the *Liverpool* decision should be viewed as a temporary pause in judicial acceptance of grievance arbitration as a "favored means for resolving controversies in government employment." Support for the view that the *Liverpool* decision is an anomaly can be found in looking at the facts of that case and by examining other recent decisions of the New York Court of Appeals.

Liverpool involved the referral to arbitration of a grievance by a female teacher who was disciplined by her employer for refusing, following sick leave, to submit to a complete medical examination by the school district's male physician. The Court of Appeals found the matter to be non-arbitrable. In its decision, it observed that some "responsibilities of the elected representatives of the tax-paying public are overreaching and fundamentally non-delegable." Because of this, the Court reasoned that it would not hold that a particular dispute comes within the coverage of an arbitration clause, unless it could be

[5] See: W. H. Englander, "The *Liverpool* Decision and Public Sector Arbitration: A Question of Non-Delegable Responsibilities," 33 *Arbitration Journal,* 25 (1978).

"clearly and unequivocally" shown that the parties intended the dispute to be within the class of claims which could be referred to arbitration. The Court further noted that the collective bargaining agreement in this case expressly removed from arbitration matters involving "disciplinary proceedings." In the face of this provision, the Court was unwilling to permit the matter to be subjected to arbitration.

However, there is nothing in the *Liverpool* decision which states that the arbitration of this particular claim would be inherently contrary to public policy. The Court pointed out that it "had no difficulty ... concluding that there is nothing in statute, decisional law, or public policy [of New York] which would preclude the Board of Education ... and the Association ... from referring [such] disputes ... to arbitration."

It should be remembered that in *Liverpool,* the Court had before it a collective bargaining agreement in which the parties had specifically agreed to exclude certain items from arbitration. The Court examined the subject matter of the proffered grievance and determined that it fell within the class which the parties had agreed to exclude from arbitration. While it perhaps would have been preferable for the Court to have permitted an arbitrator to have decided this issue in the first instance, the Court's decision should not be construed as a complete rejection of the teachings of the *Steelworkers Trilogy.*

Other recent decisions of the New York Court of Appeals make it clear that New York has not abandoned the *Steelworkers Trilogy.*

Five weeks after *Liverpool,* the New York Court of Appeals rejected a public employer's argument that public policy barred the arbitration of a dispute over whether under a contractual no-reprisal contract clause, an employee *who was not in the unit* could be discharged for honoring the picket lines. *South Colonie School Dist. v. Longo,* 97 LRRM 2015 (1977). Finding no statutory interdiction to the arbitration, the Court reviewed possible objectives of the parties in negotiating the no-reprisal clause, concluded that application of the clause to a non-unit employee was in the legitimate interest of the parties, and held that under all of the circumstances there was no public policy prohibition in the school district's agreeing to arbitrate in this situation.

In an even more recent case not involving the schools, *Binghamton, supra,* the Court seemed to signal that it will not easily find public policy limitations on arbitration—especially in proceedings to vacate awards. In *Binghamton,* a public employee had admitted under grant of immunity that he had received bribes from a salesman convicted of bribery. The employee was discharged for "bribe-receiving" based upon the admissions made by him at the trial of a salesman. The union filed a grievance under the contract provision providing that "no employee shall be disciplined or discharged without just cause." The arbitrator's award found for the employee, reduced the penalty imposed (i.e., discharge) to a six-month suspension without pay. The Appellate Division reversed a lower court's confirmation of the award holding it violative of "public policy" on the ground that "municipal authorities [may] not be restricted in their power to discharge employees who participate in criminal acts in the absence of a clear and express waiver of that power." Over a strong dissent, the Court of Appeals reinstated the award. It stated that "disputes

relating to whether the necessary predicate exists for taking disciplinary action ... and [if so] the proper penalty to be imposed ... are terms and conditions of employment ... " and properly subject to bargaining and arbitration. *Binghamton, supra* at 3072.

The Court of Appeals when on to hold that the public policy of New York, as evidenced by statutory and decisional law, does not bar an imposition of a lesser sanction than an outright discharge for a bribe-receiving employee not convicted of a crime. In what appears to be a warning to those who would cry "public policy violation," the Court stated that there are only "a small number of areas interlaced with strong governmental or societal interest, [which] restrict the power of the arbitrator to render an otherwise proper award." *Id.*

In *Binghamton,* the New York Court of Appeals also specifically reaffirmed the traditional very limited scope of judicial review of the merits of an arbitration award. It said, "once the issue is properly before an arbitrator, questions of law and fact are merged in the award and not within the power of the judiciary to resolve." *Id.* citing *Rochester City School Dist. v. Rochester Teachers Assn.,* 41 N.Y.2d 578, 582–583, 95 LRRM 2118 (1977).

In the *Rochester* case, the New York Court of Appeals expressed in very strong terms its view that if a matter is properly before an arbitrator, the decision of the arbitrator will be accorded the greatest possible deference. It embraced a *very limited* standard of review which may be construed as holding that an arbitration award may be set aside only if it is "completely irrational". The Court said:

> "Courts may not set aside an award because they feel the arbitrator's interpretation disregards the apparent, or even the plain, meaning of the words or resulted from a misapplication of settled legal principles. In other words, a court may not vacate an award because the arbitrator has exceeded the power the court would have, or would have had if the parties had chosen to litigate, rather than arbitrate the dispute. Those who have chosen arbitration as their forum should recognize that arbitration prodecures and awards often differ from what may be expected in the courts of law."

Conclusion

Public policy like "beauty" is a concept that varies in the eye of the beholder.

To the authors, grievance arbitration is "part and parcel" of the collective bargaining process in the public sector in the same manner as in the private sector. And, it furthers the same basic public policy considerations.

First and foremost, grievance arbitration is a relatively speedy and inexpensive means of settling contract disputes. Second, it gives employees the security of knowing that the ultimate recourse for the resolution of their grievances is with an impartial third party, not with their employer. Third, grievance arbitration helps to conserve judicial resources by providing a means to settle contractual disputes without resort to the courts. Finally, grievance arbitration serves the public interest by providing a readily available mechanism by which day-to-day disputes can be resolved without the resort to strikes or other forms of economic warfare.

It is self evident that these considerations apply to collective bargaining, whether it be in the private or public sector. If public employers and public employee unions are to be permitted to engage in collective bargaining, then the conclusion necessarily must follow that they should be allowed to construct mechanisms for resolving disputes arising over the meaning and application of their agreements.

Realistically, there is no practical alternative. The New York Court of Appeals decision in *Liverpool* notwithstanding the courts are not likely to be receptive to continued claims that public policy requires close judicial scrutiny of the arbitration process. Just as the courts learned to accept and embrace the legitimacy of arbitration when private contracts were involved, so too will they come to accept and embrace the legitimacy of grievance arbitration in the public sector.