RIGHTS OF INDIVIDUAL WORKERS IN UNION-MANAGEMENT ARBITRATION PROCEEDINGS*

The individual worker can, in most instances, rely on the union to administer a collective bargaining contract to his best interest. Occasionally, however, conflicts between the union and individual may prevent the latter from receiving adequate representation. For example, in promoting the seniority claim of one worker, the union must reject the competing claim of another employee. While the worker not supported by the union may present his claim directly to the employer, the nearly universal rule is that he cannot invoke the arbitration machinery established by the collective agreement for the settlement of disputes. But what remedies are available to an employee when the union and employer have begun an arbitration affecting his interest is at present an unresolved question.

Employees may not be adequately represented at a union-management arbitration in several situations. Sometimes the interests of some employees are aligned with the employer rather than the union.

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3. In industries engaged in interstate commerce, direct access to the employer is guaranteed: "... any individual employee or group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative. ..." Labor Management Relations Act (Taft-Hartley Act) § 9(a), 61 Stat. 143 (1947), 29 U.S.C. § 159(a) (1952). For discussion of the history and possible interpretations of this clause, see Cox, supra note 2, at 622-24; Report on Individual Grievances, supra note 1, at 169-79 (1955).
5. E.g., Dillon v. American Brass Co., 10 Lab. Arb. 930 (Conn. 1948) (employer contracted to deduct union dues from pay of union members; arbitrating his refusal to
management may arbitrate a dispute over the meaning of the union shop provision of a collective agreement. In arguing that the union shop provision covers only subsequently hired employees and that non-union employees are thus entitled to hold their jobs, the employer represents the non-union employees' interests as well as his own. Nonetheless, separate representation of these employees may be necessary for effective protection of their interests. In a second type of situation, the union may purport to represent an employee, but not do so in good faith. For example, the union may not agree with an employee's view of a dispute, but rather than risk a charge of betrayal by rejecting the worker's claim, the union may submit the grievance to the arbitrator. Although the union may then offer only token representation of the worker's case, and indeed may even make its indifference known to the arbitrator, responsibility for a decision against the worker will rest on the arbitrator. In such situations the employee must present his own case, not merely to secure more effective representation but to obtain any representation at all. The individual employee's need for separate representation is most urgent, however, when his interest is opposed by both sides. For example, three employees may claim the same job by interpreting the seniority provision of a contract in three different ways. If the union supports one interpretation while the employer favors another, the claim of the third employee will not even be presented to the arbitrator. Yet the arbitration will award the very job that he seeks.

In these settings, individual employees have resorted to three different procedures to protect their interests. They have sought from courts and arbitrators to have their claims heard. In re Truscon Steel Co., 1 Lab. Arb. 196 (NWLB 1946) (employer defends refusal to deduct dues from salaries on ground that employees were coerced or intimidated into union membership during fifteen-day escape period); Weisler v. Burns, 303 N.Y. 657, 101 N.E.2d 764 (1951) (after signing a union shop contract, employer moved plant, offering all employees job in the new location; eventually all union employees quit; when entire working force consisted of non-union employees, union demanded that all non-union employees be fired under the union shop provision). See also Nord v. Griffin, 86 F.2d 481 (7th Cir. 1936), cert. denied, 300 U.S. 673 (1937) (seniority dispute); In the Matter of I. Miller & Sons, 195 Misc. 20, 88 N.Y.S.2d 573 (Sup. Ct. 1949).

6. E.g., Weisler v. Burns, supra note 5; In the Matter of I. Miller & Sons, supra note 5.
8. See ibid: "... In one discharge case the union officers made only the motions of protesting, apparently because the individual had criticized the laxity of union officers. The union even informed the arbitrator prior to the hearing that they 'wouldn't mind if they lost this one.'"
10. Cf. In the Matter of Iroquois Beverage Corp., 159 N.Y.S.2d 256 (Sup. Ct. 1955). Union and management submitted to arbitration a dispute over seniority rights. Since both sides opposed the intervention of certain individual employees, it is likely that both opposed the seniority claims of the intervenors.
trators the right to intervene in arbitration proceedings.11 Or, they have attempted to stay the proceedings—a procedure which would prevent union and management from utilizing arbitration to settle their disputes. And, after the arbitration has ended, they have sought to upset the award by either attempting to enjoin its enforcement, challenging a motion to confirm it,13 or bringing suit to vacate judgment on the award.14 All of these procedures, however, have faced the same doctrinal objections. The foundation of an arbitration proceeding is contract. Since the union and employer are the only parties to the arbitration contract, individual employees cannot claim any rights thereunder.16 Moreover, because they are strangers to the arbitration proceeding, the only parties to the arbitration contract, individual employees cannot claim any rights thereunder.16


Right to stay proceedings denied: see cases cited note 12 supra.

Right to attack the award denied: Dillon v. American Brass Co., 10 Lab. Arb. 930
contract, the individual employees are not legally bound by the decision of the arbitrator, and do not theoretically need protection against the proceedings. While most courts have found these doctrinal objections insurmountable, some recent cases hold that third parties possess rights in arbitration proceedings affecting their interest. A number of courts have refused to enforce arbitration awards or have enjoined their enforcement by union and management when individual employees adversely affected by the arbitration were not given notice of the proceedings or not allowed to participate in them. Of these cases, some have indicated merely that the arbitration award is unenforceable; others have denied enforcement of the award only until the arbitration proceedings are completed.


18. See cases cited note 16 supra.


In Dwellingham v. Thompson, supra, the court held that notice and participation of third parties were required in National Railroad Adjustment Board arbitrations but not in common law arbitrations. The court reasoned that the act allows one party to force the other to arbitrate a dispute, but expressly provides that all parties to the controversy must be given a "full and fair" hearing.

tion was reopened to allow the individual employees to present their views. In providing that the award may be so cured, courts have in effect given third parties the right to participate in arbitration proceedings. In addition, some courts have suggested in dictum that individual employees could petition courts for an order requiring their participation in arbitration. A recent New York Supreme Court decision, In the Matter of Iroquois Beverage Corp., apparently marks the first time that a court actually ordered the participation of individual employees in an arbitration proceeding.

Though culminating a trend towards ordering participation, the Iroquois case represents a far more significant inroad upon orthodox arbitration doctrine than the cases permitting an award to be challenged. Because the proceeding to enforce an arbitration award is judicial, the usual procedural rules of intervention should give interested third parties standing to protest court approval of the award. Moreover, courts commonly decline to enforce contracts that offend public policy. Consistent with this principle, a court may refuse to enforce an arbitration award rendered in a proceeding that was unfair to interested third parties. But when parties have not turned to the courts for the enforcement of their arbitration contract, these rationales cannot justify ordering participation of third parties. For the order of participation constitutes affirmative regulation of the terms of the contract. In Iroquois, however, the court did not take note of this distinction between a refusal to enforce an arbitration award and an order permitting participation. And the

519 (Sup. Ct. 1939). For cases arising under the Railway Labor Act, 44 Stat. 577 (1926), as amended, 45 U.S.C. §§ 151-88 (1952), see Brotherhood of Railroad Trainmen v. Templeton, 181 F.2d 527 (8th Cir. 1950); Hunter v. Atchison, T. & S.F. Ry., 171 F.2d 594 (7th Cir. 1948); Nord v. Griffin, 86 F.2d 481 (7th Cir. 1936), cert. denied, 300 U.S. 673 (1937).


23. 159 N.Y.S.2d 256 (Sup. Ct. 1955). The court ordered participation even over the objection of the union and the employer.


26. See, e.g., Gatliff Coal Co. v. Cox, 142 F.2d 876 (6th Cir. 1944) (arbitration contract held contrary to public policy and thus unenforceable). See, generally, 6 Corbin, Contracts §§ 1373-78 (1951).

27. In the Matter of Carolyn Laundry, 129 N.Y.L.J. 2035, col. 5 (N.Y. Sup. Ct. June 17, 1953); Estes v. Union Terminal Co., 89 F.2d 768 (5th Cir. 1937) (Railway Labor Act). See also Nord v. Griffin, 86 F.2d 481 (7th Cir. 1936) (enforcement of an arbitration award from an unfair proceeding under Railway Labor Act would be denial of due process).

While some courts have gone further and enjoined voluntary enforcement, note 19 supra, they have relied upon the provision of the Railway Labor Act giving a fair hearing to parties to the controversy. See Dwellingham v. Thompson, 91 F. Supp. 787 (E.D. Mo. 1950), aff'd sub nom. Rolfs v. Dwellingham, 198 F.2d 591 (8th Cir. 1952).
court largely ignored standard arbitration doctrine. In effecting this significant enlargement of third-party rights in arbitration, the judge relied principally on his view that the parties to the arbitration contract would not be prejudiced by the participation of the employees.

The indifference displayed in *Iroquois* to traditional strictures against third-party rights in arbitration is, however, proper. Although such rights could be derived from agency or third-party beneficiary doctrines, labor-management relations pose special problems that should be resolved with a view to the needs of contemporary labor policy. In short, whether employees are entitled to protection in union-management arbitration, and whether participation, a stay or an attack upon the award is the proper remedy should be viewed as questions of labor policy. Like the cases adhering to traditional arbitration doctrine, however, *Iroquois* and the decisions permitting attacks upon awards have not adequately considered the questions in this context.

In a labor setting the view that strangers to the arbitration contract are not bound by an award is a fiction which can only serve to obscure the need for protecting employees. Although not bound in law by the decision of the arbitrator, employees are bound in fact. For example, an arbitration that awards seniority rights, and thus job security or promotion to one employee, effectively disposes of the competing claims of other employees. Usually the employee's contract with his employer is a contract at will, so that the aggrieved employee has no right to damages for loss of employment.

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28. The court does mention that workers have been considered third party beneficiaries of labor contracts though not specifically of labor arbitration contracts. 159 N.Y.S.2d at 257. The opinion quotes a discussion of arbitration doctrine in Donato v. American Locomotive Co., 283 App. Div. 410, 127 N.Y.S.2d 709 (3d Dep't), *aff'd mem.*, 306 N.Y. 966, 120 N.E.2d 227 (1954). Yet scant effort is made to apply or distinguish standard principles in connection with the facts at hand.

29. 159 N.Y.S.2d at 259.


32. See, e.g., *Cox*, *supra* note 2, at 603-05; *Shulman*, *supra* note 9; Comment, 66 Yale L.J. 223, 241 (1956).

33. Only parties to the arbitration contract are legally bound by the arbitration award. See note 17 *supra*.


35. See, e.g., *Dwellingham v. Thompson*, *supra* note 34, at 794.
even if the collective agreement grants seniority rights to the employee, he probably will have no independent means of enforcing them. Since an arbitration clause is generally held to provide the exclusive mode for settling contract disputes, the employee may not resort to the courts for the enforcement of his rights. And a body of law, developed to meet the need for stability in labor relations, precludes the employee from initiating arbitration on his claim. Thus the employee whose job was awarded to another by an arbitration at which he was not present is without means of redress. The individual employee should not be so foreclosed unless some compelling policy demands this sacrifice.

Recognizing, in arbitration, individual employees' rights apart from their union, however, may jeopardize the stability of labor relations. Industrial stability is enhanced by allowing a union to speak authoritatively for all employees during both contract negotiations and subsequent administration of the agreement. If individual workers were allowed to bargain separately with the employer, the ability of the union to reach a collective agreement for all employees would be impaired. A similar rationale has been employed in forbidding individual employees to initiate arbitration. The success of a collective agreement in stabilizing relations depends on the ability of the parties to settle most of their disputes amicably without resort to arbitration. Exclusive control over initiating arbitration enables the union and the employer to agree to settlements that cannot be attacked by dissatisfied employees. In addition, exclusive control allows the union to filter employee grievances, and

36. See Cox, supra note 3, at 648 n.133, 649 n.138 (collecting cases).
37. See note 4 supra and accompanying text.
38. The Labor Management Relations Act of 1947 expresses a policy of permitting wide freedom of choice and action for individual employees while at the same time encouraging collective bargaining to maintain industrial stability. Taft-Hartley Act § 1; 61 Stat. 136 (1947), 29 U.S.C. § 141 (1952). In furtherance of this policy, § 9(a) gives individual employees the right to present grievances directly to their employer. See note 3 supra; Report on Individual Grievances, supra note 1, at 143.
40. See, e.g., Medo Photo Supply Corp. v. NLRB, 321 U.S. 678 (1944); J. I. Case Co. v. NLRB, 321 U.S. 332 (1944).
41. See cases cited note 4 supra; Cox, supra note 3, at 626-27.
43. If the individual is not allowed to initiate arbitration, see note 4 supra, and if the arbitration clause of the collective contract bars him from bringing suit, see text at note 36 supra, then the employee will have no way to challenge any settlement made by the union and employer. But see Elgin, J. & E. Ry. v. Burley, 325 U.S. 711 (1945). For discussions of this problem, see Cox, supra note 3; Report on Individual Grievances, supra note 1.
thus minimize disputes by eliminating claims of no merit without harassing the employer.\textsuperscript{44}

However, the right to intervene in pending arbitration proceedings will not disturb the stability of industrial relations. Once arbitration is initiated, the employer's attention is necessarily drawn to the dispute, and thus no opportunity remains for the union to eliminate frivolous claims. Moreover, a dispute reaches arbitration only when the parties have failed to achieve a voluntary settlement. Thus, the function of the arbitration procedure should be to facilitate a satisfactory decision by the arbitrator rather than to provide conditions conducive to settlements by the parties.\textsuperscript{45} Recognition of the right of individual employees to intervene will usually be consistent with this goal. Since participation of employees may evoke facts that might not otherwise emerge, the arbitrator's ability to render a just and well-considered decision is enhanced.\textsuperscript{46} However, when intervening employees present claims which neither employer nor union has advanced,\textsuperscript{47} it may be argued that intervention is tantamount to the initiation of proceedings. This argument, even if correct, should not bar intervention, for individuals are precluded from initiating arbitration to allow the union to select the disputes that are important enough to reach arbitration.\textsuperscript{48} But this reasoning clearly does not apply when arbitration has already been initiated by the union.

Some modification of the \textit{Iroquois} ruling may be desirable. Individual employees may attempt to intervene merely to harass the union and the employer. And under certain circumstances, the intervention of individual employees may unduly complicate a dispute. For these reasons, courts should give the arbitrator discretion to forbid frivolous intervention and should upset his decision only when it is shown to be clearly unreasonable. Judicial recognition of a right to intervene, even so qualified, would be a meaningful revision of traditional law. For arbitrators who under orthodox law feel powerless to allow participation by employees\textsuperscript{49} would gain freedom to do so. And employees, now unprotected during an arbitration, would be safeguarded from arbitrary exclusion.

While courts should follow \textit{Iroquois} and permit employees to participate in pending arbitration proceedings, they should not allow workers to stay arbitration permanently. To implement the right of participation, courts could delay enforcement of an award until employees are allowed to participate.\textsuperscript{50} Some courts, however, have suggested that employees could stay arbitration

\textsuperscript{44} See, \textit{e.g.}, \textit{Labor Relations and the Law} 427 (Mathews ed. 1953).

\textsuperscript{45} See, \textit{e.g.}, 4 BNA \textit{Labor Policy and Practice} 253:401 (1950).

\textsuperscript{46} Arbitrators have emphasized the need for widest investigation of the facts. See, \textit{e.g.}, Shulman, \textit{Reason, Contract, and Law in Labor Relations}, 68 \textit{Harv. L. Rev.} 999, 1017 (1955).

\textsuperscript{47} See example cited in text following note 10 \textit{supra}.

\textsuperscript{48} See note 44 \textit{supra}.

\textsuperscript{49} See, \textit{e.g.}, Cox, \textit{supra} note 3, at 629-30.

\textsuperscript{50} For cases following this procedure, see note 21 \textit{supra}.
Indefinitely. If the union and management are then unable to reach agreement, a permanent stay of arbitration would force their disputes into court—by and large an unsuitable forum for the settlement of labor controversies. Therefore, union and management should be encouraged to establish their own extra-judicial system for resolving disputes; and individual employees should not be permitted to frustrate their expectations, especially since participation in arbitration would just as adequately protect the interests of individuals. Of course intervening employees will have had no part in choosing the arbitrator. But they are safeguarded from abuse by the right to challenge the arbitration award if the arbitrator was biased or the procedure unfair.

The protection that Iroquois promises individual employees, however, should not be over-emphasized. Even if this right to participate is accepted, unions will still have absolute discretion to initiate arbitration proceedings. Aware that a rival faction will be able to prosecute an employee's claim once arbitration is begun, unions may be willing to sacrifice workers' interests rather than initiate proceedings. And an employer may be tempted to yield to a claim supported by the union rather than enter into an arbitration at which an even more unfavorable rival claim may be presented by an individual employee. Thus individual employees may never have the chance to protect their interests after all. But because voluntary settlement of disputes without resort to outside arbitrators achieves greater industrial stability, this curtailment of individual remedies seems, on balance, to be warranted. Moreover, the individual is not totally without recourse. If the individual's rights have been flagrantly disregarded by the union, it may be charged with a breach of duty. And in less extreme cases, the loss of prestige resulting from unfavorable concessions will often deter settlements motivated purely by union self-interest.

52. For discussion of the inadequacy of courts in this area, see, e.g., Shulman & Chamberlain, Cases on Labor Relations 4-6 (1949). See also Shulman, Reason, Contract, and Law in Labor Relations, 68 Harv. L. Rev. 999, 1024 (1955); Summers, Judicial Review of Labor Arbitration or Alice Through the Looking Glass, 3 Buffalo L. Rev. 1, 22-24 (1953).
53. The parties to the arbitration contract—the union and the employer—select the arbitrator. The individual employee, as a third party, would be excluded from participating in the selection. One commentator has suggested that individual non-union employees should pay for the expenses of their arbitration. See Cox, supra note 2, at 652. But see Hughes Tool Co., 104 N.L.R.B. 318 (1953).
54. 6 C.J.S., Arbitration & Award § 104(e) (1937).
56. See id. at 155-56.