Judicial Review of Arbitration Awards under Federal Arbitration Act Limited to Grounds Authorized in the Act

By David L. Gordon and David E. Nagle

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The United States Supreme Court has ruled that when parties to arbitration agreements utilize the expedited review procedure provided by the Federal Arbitration Act (“FAA” or the “Act”), the judicial review available to them is limited to that which is provided for by the Act. Accordingly, parties to an arbitration agreement which contains a provision calling for expanded judicial review may not rely upon the FAA for enforcement of that provision. Hall Street Associates, LLC v. Mattel, Inc., No. 06-989, 552 U.S. ___ (March 25, 2008)

Congress enacted the FAA in 1925 in response to the hostility of American courts to the enforcement of arbitration agreements. The Act, in Section 2, provides that a written arbitration provision in a contract involving commerce is “valid, irrevocable and enforceable,” regardless of whether enforcement is sought in state or federal court. The Act provides mechanisms allowing a party to secure swiftly a stay of litigation (Section 3) and an affirmative order to proceed in arbitration (Section 4). The Court has previously recognized that these reflect Congress’ clear intent to move parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible.

In Hall Street Associates the Court was called upon to explain the Act’s provisions applicable to the other end of the process—the streamlined mechanisms for enforcing arbitration awards, which the Court referred to as “the FAA shortcut to confirm, vacate or modify an award.” Section 9 of the FAA provides for a vehicle for obtaining a judicial decree confirming an award. It states that upon application to the court for an order confirming an award, “the court must grant such an order unless the award is vacated, modified or corrected as prescribed in sections 10 and 11” of the Act. Section 10 lists grounds for vacating an award; Section 11 contains grounds for modifying or correcting an award.

The grounds enumerated in the statute for challenging an award are narrow. The Court acknowledged that Sections 10 and 11 of the Act “address egregious departures from the parties’ agreed-upon arbitration” but it held that such language cannot be stretched to encompass evidentiary and legal review generally. Arbitration awards may be set aside by a court, for example, where they were procured by fraud or corruption, or where the arbitrator was guilty of misconduct, misbehavior or evident partiality, or exceeded his authority. Similarly, courts may only correct arbitration awards where there is a showing of an evident material miscalculation, or material mistake, or where the arbitrator’s award is imperfect in form.

Over time, a split arose among the Courts of Appeals as to whether the grounds listed in the FAA for vacating or modifying an arbitration award were exclusive, or whether they merely were threshold provisions open to expansion by consent of the parties to an arbitration agreement. Although the case selected for review by the Supreme Court to decide this question was not an employment case, the Court’s interpretation of the FAA nevertheless is significant for employers, since the FAA is relied upon by employers to enforce agreements for the arbitration of workplace claims.

Hall Street Associates began as a lease dispute over a provision calling for a tenant to indemnify its landlord for certain costs incurred. After litigation commenced in federal court, the parties agreed to submit the matter to arbitration, but included in their agreement the following provision calling for judicial review: “The Court shall vacate, modify or correct any award: (i) where the arbitrator’s findings of fact are not supported by substantial evidence, or (ii) where the arbitrator’s conclusions of law are erroneous.” Such judicial scrutiny of an arbitral award goes far beyond that contained in Sections 10 and 11 of the FAA. The trial court, however, acquiesced and the court included that language in its
order directing arbitration. The case then embarked upon a dizzying, circuitous journey—to arbitration and award, after which the award was challenged as legally erroneous and vacated by the District Court, then back to the arbitrator, who reversed his original determination, an award which was contested by both parties in District Court, which left the arbitrator's second ruling substantively intact. The District Court's ruling, in turn, was appealed by both parties to the Ninth Circuit, which reversed and remanded the ruling to the District Court with instructions to confirm the original award, whereupon the District Court vacated the award on other grounds, which ruling was again appealed to the Ninth Circuit, and reversed.

The Supreme Court concluded that parties relying upon the FAA's expedited process may not alter the scope of review provided for by the statute. It held that the statutory grounds for prompt vacatur and modification of an arbitrator's award, set forth in Sections 10 and 11 of the FAA, are exclusive, and that they may not be expanded by contract.

The ruling reflects a strict construction of the FAA's provisions for enforcing arbitration awards, reflecting the Court's view that Sections 9 through 11 of the Act substantiate "a national policy favoring arbitration with just the limited review needed to maintain arbitration's essential virtue of resolving disputes straightaway." The Court acknowledged that the FAA "lets parties tailor some, even many, features of arbitration by contract, including the way arbitrators are chosen, what their qualifications should be, which issues are arbitrable, along with procedure and choice of substantive law." But it drew the line at judicial review, hewing to a literal interpretation of the Act. "Any other reading," it reasoned, "opens the door to full-bore legal and evidentiary appeals that can render informal arbitration merely a prelude to a more cumbersome and time-consuming judicial review process . . . and bring arbitration theory to grief in post-arbitration process."

It had been argued that language in the Court's 1953 decision, Wilko v. Swain, suggested that judicial review of an arbitrator's award may be appropriate when there had been a "manifest disregard of the law", and that if courts could add grounds to vacate or modify an arbitrator's award, then consenting contracting parties could do so as well. The Court, however, held that the Wilko language was vague, and perhaps no more than a collective reference to grounds listed in Section 10, concluding that the text of the Act is inconsistent with enforcing a contract to expand judicial review following arbitration.

The Court left open to the possibility of other avenues by which an arbitration award might be challenged. "In holding that §§ 10 and 11 provide exclusive regimes for the review provided by the statute, we do not purport to say that they exclude more searching review based on authority outside the statute as well. The FAA is not the only way into court for parties wanting review of arbitration awards: they may contemplate enforcement under state statutory or common law, for example, where judicial review of different scope is arguable." In this case, the Court vacated the Ninth Circuit's decision. It remanded the case, acknowledging that despite the parties' reliance upon the FAA, perhaps the agreement in the case at bar should have been viewed in a different light, e.g., as an exercise of the District Court's case management authority.

For those who believe that the members of the Court always line up along ideological fault lines, the Court's split on this decision is illuminating. The Court's ruling was written by Justice Souter, who was joined by Justice Ginsburg, and Justices Roberts, Thomas, Alito, and Scalia. Justice Stevens, joined by Justice Kennedy, and Justice Breyer wrote dissents, expressing the view that parties may supplement by contract the statutory grounds for review, and that the FAA does not preclude enforcement of such provisions.

Employers with programs calling for the mandatory arbitration of workplace claims, and employers which have incorporated arbitration provisions into individual agreements, should carefully evaluate any provisions which call for expanded judicial review of arbitration awards. While the Court's decision restricts the parties' rights to control review of awards, in light of the continued dramatic growth in employment litigation, arbitration often remains an attractive alternative to litigation. Management should continue to evaluate the use of agreements to arbitrate workplace legal claims as an effective risk management tool which offers considerable benefits to both employers and employees.

Jackson Lewis attorneys are available to answer inquiries about this decision and assist with the development, implementation and enforcement of workplace arbitration programs.
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