EXTERNAL LAW IN LABOR ARBITRATION: WAIT — THERE'S MORE THAN THE COLLECTIVE BARGAINING AGREEMENT TO CONSIDER?

Vol. 100, No. 3 May/June 2026 Pg 30 Heidi B. Parker and Christopher M. Shulman Featured Article

As even the casual observer will note, arbitration of labor and employment matters is here to stay. Many readers of this article, including members of The Florida Bar Labor and Employment Law Section, are familiar with arbitration of employment claims, typically arising out of predispute agreements between individual employees and their employers to arbitrate statutory and contractual claims. In the unionized setting, collective bargaining agreements between employers and the union(s) representing some or all of the (typically) non-management employees who have designated the union(s) as their bargaining agent(s),[1] govern the terms and conditions of such employees' employment. Essentially, every collective bargaining agreement (CBA) provides a grievance process,[2] by which the union, a covered employee, or both may enter into discussions with the employer about a decision with which the grieving party takes issue, and an arbitration clause will apply, requiring arbitration of unresolved grievances upon request of at least one of the parties (typically the union)[3] to the grievance process.

In the individual arbitration setting, most disputes fall into one of two categories. First, there is arbitration of contractual claims often involving disagreements regarding compensation or, if the contract contains language limiting the at-will nature of the employment relationship, discipline claims regarding whether the employer had sufficient cause to discharge the employee. Second — and this comprises the largest portion of employment arbitration the authors do — is the arbitration of statutory claims, *i.e.*, decisions on alleged violations of various federal or state statutes governing the employment relationship, such as, by way of non-exclusive examples, equal employment opportunity (non-discrimination) laws, whistleblower protections, and state and federal minimum wage and overtime laws. Thus, it is expected in the individual arbitration setting, that the claims submitted will *often* involve interpretation and application of laws other than those governing contracts.

In contrast, while employment arbitration is considered an alternative to litigation of the same issues (just in a different forum and, perhaps, under different rules), labor arbitration is a substitute for strike, lock-out, or other coercion that threatens to cause substantial interruption of commerce.[4] Collective bargaining and other conciliation services recognize the ongoing and continuous relationship between the employer and the union. The law of the shop is developed through labor negotiations and practices accepted by management and labor over time. Thus, a labor arbitrator's decision and award is often viewed as an extension of the bargaining relationship. Moreover, in the collective bargaining setting — what we refer to as labor arbitration — while *every* dispute necessarily involves some element of contract interpretation or application, there are many times when external law, that is, statutory or (non-contract) common law, may also be a part of what the arbitrator is asked to decide.

This article explores many of the ways in which external law plays a role in labor arbitration. To start, a short overview of the jurisdictional background and bases for application of external law. Then, a discussion of various applications of external law, considering the external law's impact on both the merits of the grievances arbitrated and the remedies an arbitrator may (and in some cases, must) award, in the event a grievance is sustained.

Background and How External Law May Sneak Into Labor Arbitration

External law inserts itself into the labor arbitration context in one of four main ways. First, when the parties to a collective bargaining agreement disagree on whether a dispute is something that may be submitted to labor arbitration, *i.e.*, whether the dispute is substantively arbitrable. Second, there are times when a collective bargaining agreement expressly imports reference to external law, such as agreements prohibiting discrimination on the bases of race, sex, disability, religion, or other classifications, in both disparate impact and disparate treatment claims. Third, external law is referenced, either in the collectively bargained contract language or by the parties in a grievance arbitration, as a minimum requirement. For example, where the agreement gives the employer certain discretion in determining employee entitlement to pay for time spent in "stand by" status, the Fair Labor Standards Act would consider some portion of the time as "compensable." Fourth, as we discuss below, there are even other times when, despite the lack of an express reference to external law by the parties, it may impinge upon or guide arbitral decisionmaking with respect to a subject that is otherwise clearly within the ambit of the collective bargaining agreement.[5] We discuss the first two topics in their own sections; we discuss the latter two topics in a discussion of applications of external law in labor arbitration.

• *Substantive Arbitrability* — In employment arbitration, there is often significant discussion between the parties about whether a dispute is either procedurally or substantively arbitrable.[6] In labor arbitration, these questions also arise, but procedural arbitrability questions are the more frequently raised, bread-and-butter issues in many labor arbitrations. They typically run the

gamut from questions of timeliness and format of the grievance. Substantive arbitrability, *i.e.*, whether the grieved dispute is one that is cognizable under the collective bargaining agreement,[7] are more rare.

Because, fundamentally, labor arbitration typically involves issues about whether the employer has violated the agreement, questions over application of external law to a labor arbitration grievance fall into the latter category. In such cases, a party claims that the nature of the dispute presented (or the remedy requested) by the grievance is not substantively arbitrable — a version of the venerated contract interpretation rule: "If it ain't in there, it ain't in there." Indeed, in the so-called "Steelworkers' Trilogy,"[8] the U.S. Supreme Court made it clear that parties to a collective bargaining agreement, requiring arbitration of labor grievances, will be required to arbitrate, and courts cannot set aside the eventual arbitrator's award so long as the award "draws its essence from the collective bargaining agreement."[9]

For example, an employee who suffers an on-the-job injury will typically be entitled to statutory workers' compensation. The merits of the employee's entitlement to such compensation, the medical indemnity and treatment to be provided, the amount and duration thereof are not within the purview of the collective bargaining agreement and are, therefore, not substantively arbitrable. However, other collectively-bargained benefits that are related to the employee's on-the-job injury, *e.g.*, maintenance of health insurance, usage and accrual of sick leave, or vacation or holiday leave, and seniority, *are* substantively arbitrable.

• *Express Incorporation* — Another way in which external law is imported into the collective bargaining arena is when the collective bargaining agreement contains a non-discrimination clause, such as the following:

> *The Employer and the Union agree there shall be no discrimination, retaliation or harassment with respect to any employee or applicant for employment because of an individual's race, color, religion, sex, pregnancy, national origin, age, handicap or marital status.*[10]

An employee in a bargaining unit represented by a certified bargaining organization is generally entitled to file a grievance alleging a violation of a non-discrimination clause. In *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974), the Supreme Court distinguished between the vindication of contractual rights under a collective bargaining agreement and individual bargaining unit members' independent statutory rights accorded by Congress. Rejecting application of the election of remedies and waiver doctrines, *Gardner-Denver* allowed the bargaining unit employee to pursue both (through the union) his contractual right (*i.e.*, only to be fired for just cause) through the grievance-arbitration process contained in the CBA and to pursue his individual statutory rights through the statutory process and eventual individual lawsuit against the company.[11] A key factor in that case was that, while the union and employee raised as an argument against just cause discharge, the arbitrator ruled the employee (who had already filed a charge of discrimination with the relevant EEO agency) had been discharged for just cause but "made no reference to [the individual's] claim of racial discrimination."[12]

The Court reached the opposite conclusion in *14 Penn Plaza v. Pyett*, 556 U.S. 247 (2009), in which the collective bargaining agreement contained a clear and unmistakable waiver of bargaining unit employees' rights to pursue employment claims individually. The agreement's non-discrimination clause prohibited discrimination on various statutory bases but also provided that "[a]ll such [individual discrimination] claims shall be subject to the grievance and arbitration procedures…as the sole and exclusive remedy for violations. Arbitrators shall apply appropriate law in rendering decisions based upon claims of discrimination."[13] Because this clear, unmistakable waiver, was collectively bargained under the National Labor Relations Act (NLRA), the Court held that, unless the underlying statute that provides individual employment rights "removes this particular class of grievances from the NLRA's broad sweep," such contract provisions were proper, and the employees no longer had a right to pursue their discrimination claims outside the collective bargaining agreement's grievance arbitration process.[14] In so ruling, the Court made it clear that a collective bargaining agreement may not waive substantive individual rights bestowed by external laws, but the agreement may limit the forum in which employees seek to vindicate those individual rights (assuming that forum allows for *effective* vindication thereof).[15]

While decisions of the 11th Circuit Court of Appeals and U.S. district courts in Florida that follow *Gardner-Denver* and *Pyett* are legion, the only case the authors could find of a Florida court dealing with the interplay between individual vindication of Florida statutory rights in the collective bargaining context is *Selim v. Pan American Airways Corp.*, 889 So. 2d 149 (Fla. 4th DCA 2004). *Selim* dealt with an airline pilot who was subject to a collective bargaining agreement.[16] He filed grievances under the agreement for certain treatment he claimed violated his contractual rights and he filed claims in state court alleging that the same conduct at issue in the grievances also constituted violations of his rights under the Florida Civil Rights Act and the Florida (private) Whistleblower Act. Ultimately, the Fourth DCA applied *Gardner-Denver* to hold Selim's union "could not waive [his] statutory rights in the CBA, Selim did not independently enter into an arbitration agreement independent of the CBA, and the CBA did not

specifically prohibit legal action under Florida›s statutory discrimination and whistleblower schemes."[17] Thus, it appears that *Gardner-Denver* applies to solely Florida statutory rights in the collective bargaining context; we expect *Pyett* would likely apply as well, although the authors are unaware of any CBAs in Florida that contain the *Pyett* exclusive forum language.

Applications

We turn now to several specific areas of labor arbitration where external law serves either as minimum standards for employer conduct or otherwise supplements the collective bargaining agreement.

• *Discipline* — As discussed above, collective bargaining agreements typically provide that employers may only discipline bargaining unit employees for just cause. The concept of "just cause" embodies arbitral examination of the quality and quantity of the evidence that the employee actually engaged in the misconduct, and affords several procedural protections as well, such as ensuring the employee had due prior notice that the conduct could lead to discipline, that management's rule was reasonable, that management conducted a fair investigation before imposing discipline, and that the discipline imposed was suitable in light of all aggravating and mitigating circumstances.[18]

External laws can impinge upon the decision of whether the employer had such just cause. One of the elements of just cause is an examination of whether the employer treated other employees accused of the same misconduct (and with the same disciplinary and work history) substantially the same as the employee whose discipline is before the arbitrator. A factor often considered in that portion of the just cause analysis is when the employee asserts that the employer treated employees differently on account of an equal employment opportunity (EEO) protected basis. A classic instance is when two workers of different races are involved in a fist fight, but only one of them is disciplined, or if the fight was provoked by racial epithets or taunting. Another example is when union membership appears to have motivated an employer's disciplinary decision. External law — whether the NLRA, Railway Labor Act (RLA), or Florida Public Employees Relations Act (FPERA) — would likely be applied by the arbitrator, even independent of an unfair labor practice charge, to determine whether there was contractual just cause.

EEO laws may also be cited by employers as a basis for discipline of an employee alleged to have engaged in sexual harassment in the workplace, for example. In *Conagra Frozen Foods*, 113 BNA LA 129 (1999) (Baroni, Arb.), an employee was disciplined for sexually harassing a coworker. The arbitrator stated that the strong public policy against sexual harassment, in the absence of an employer policy, was sufficient to put employees on notice of the legal prohibition against sexual harassment.[19] However, an employer's decision to terminate a sexual harasser may not always be upheld. In *City of Oklahoma City*, 05-2 ARB (CCH) ¶3301 (2005) (Shieber, Arb.), termination was reduced to a suspension, the arbitrator reasoning, "While it is certainly true that there is a public policy against sexual harassment…there is no public policy that every harasser must be fired."

Likewise, when an employer has fired or otherwise disciplined an employee for poor attendance, external law may have some limiting effect. For example, if the reason for an employee's absence is protected under the Family and Medical Leave Act, 29 U.S.C. §§2601, *et seq.*, the arbitrator will typically decide whether the employer properly omitted such statutorily protected absences in determining whether to fire the employee — even under a so-called "no fault" or "occurrence" attendance system.[20]

Another area of external law/labor arbitration overlap in the discipline context arises out of Florida laws relating to drug-free workplaces and drug-related misconduct.[21] The various Florida Drug-Free Workplace provisions provide bases for termination or exclusion from statutory benefits if an employee fails a properly administered drug or alcohol test.[22] Thus, arbitrators often find that failure of such drug or alcohol tests — when properly administered — can constitute just cause for a bargaining unit employee's discharge;[23] so can employee misconduct related to the drug testing process.[24] The key, of course, is whether the employer — who bears the burden of proof in labor arbitration of discipline cases[25] — can prove compliance with the Florida Drug-Free Workplace laws' (or similar rules') requirements concerning proper administration, including proper collection, chain of custody, and confirmation of the positive result by a medical review officer.[26]

Some arbitrators have found that drug-related conduct other than failure of a drug test, prohibited only by external law, can likewise constitute just cause for discharge. Thus, in *Wiltech of Florida Corporation, Inc. and International Association of Machinists and Aerospace Workers, Local Lodge 2061*, 12-2 ARB (CCH) ¶5591 (2012) (Smith, Arb.), the arbitrator held the employer had just cause to terminate an employee immediately following his arrest on company property for possession of trace amounts of marijuana and drug paraphernalia. Arbitrator Smith held that the employer's failure to provide the employee with a pre-discharge interview did not run afoul of just cause because the CBA did not prohibit discharge without a pre-discharge interview.[27]

• *Seniority and Work Assignments* — Another area where external law is involved in labor arbitration occurs when an employer seeks to make reasonable accommodation for an employee with a disability under the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§12101-12117 (ADA), or corollary state law, such as the Florida Civil Rights Act of 1992 (FCRA), as amended, F.S. §§760.01, *et seq*. Even when the CBA does not directly address the accommodation process, these external laws may apply.

Thus, a union may be required to accept a modification (temporary or otherwise) in the duties of a bargaining unit position as an accommodation for a disability. However, if a bargaining unit employee can no longer perform the essential functions of the assigned bargaining unit job with or without accommodation, and there is no other vacant position (for which the employee is qualified and the essential functions of which the employee can perform) to reassign the employee, then the employer may discharge the employee. Moreover, the employer is not required to make reasonable accommodation for the employee that would pose an undue burden, nor is an employer allowed to override a collectively bargained seniority system to make a position vacant. [28]

Employer return-to-work policies following the COVID-19 pandemic shutdown were met with an influx of employee requests for "reasonable accommodations," as defined by the ADA, to work from home.[29] Issues to expect at the arbitration hearing include whether working on site was an essential function of the job; whether the employee had a reported disability before the COVID-19 shutdown and, if not, whether their current health condition was a disability; or whether working from home caused the employer an undue burden.[30]

Remedies

If an arbitrator sustains a grievance (*i.e.*, finds in favor of the union/grievant), the arbitrator must then determine what remedy, if any, is appropriate to redress the violation of the CBA. Labor arbitrators have broad authority to fashion a remedy. The arbitrator's authority, however, is limited by the terms of the parties' CBA and relevant statutes.

For example, in the case of a discharged employee (or employee suspended without pay), it is common for labor arbitrators to order the employer to reinstate the employee, usually also requiring the employer to make the employee whole for lost pay, benefits, seniority, and the like.[31] When doing so, the arbitrator occasionally must take into account external law. For example, if an arbitrator orders reinstatement of an employee but, either before the challenged termination or thereafter, the employee has applied for a public disability pension[32] or Social Security disability benefits,[33] the employee's award of backpay may be limited solely to cover the period prior to the application because, to make such application, they often had to certify under penalty of perjury that they were, as of the time of the application, unable to work. If they were unable to work for a period of time, they would not have been able to work for the employer during that same period.

In one Florida arbitration decision, the arbitrator reinstated a teacher in a new school year, beyond the term of the annual contract during which he had been fired. The court set aside the arbitrator's award for exceeding his remedial authority.[34] In Florida, public school teachers are appointed on an annual contract basis, and an annual contract may be awarded only if the employee "[h]as been recommended by the district school superintendent…and approved by the district school board."[35] In the underlying arbitration, the grievant was a teacher on an annual contract for the 2017-2018 school year who was fired during that school year. The discharge was grieved and proceeded to arbitration. Following a hearing held in the next school year, the arbitrator's award reduced the discipline to a suspension and ordered the teacher reinstated at the beginning of the 2019-2020 school year. The employer argued the award required the school board to interfere with its statutory mandate. The employer asked the court to set aside the remedy ordered by the arbitrator, asserting the remedy violated F.S. §1012.335(2)(c), because it interfered with the superintendent's and the school board's statutory discretion regarding whether to offer the teacher a contract for 2019-2020. The court agreed with the employer, vacated the award, and remanded the matter to arbitration to determine the appropriate remedy. [36] In the absence of limiting language in a CBA on the remedies that may be awarded, the remedy must draw its essence from the agreement. In *Orange County Sch. Bd. v. Orange County Classroom Teachers Ass'n*, slip op., Case No. 2019-CA-13129-O (9th Jud. Cir. Jun. 4, 2020), the employer cited language in the underlying CBA stating that the arbitrator had no power to rule on the substantive reason of the school board not to reemploy an annual contract teacher.[37]

Emotional distress damages generally are not awarded in labor arbitration. If it can be reasonably concluded that during negotiations, the parties contemplated an award of emotional damages, an arbitrator may see fit to award them. In *Union Camp Corp.*, 104 BNA LA 295 (1995) (Nolan, Arb.), the arbitrator declined to award emotional distress damages despite finding a supervisor sexually harassed several employees. The non-discrimination clause in the CBA was deemed insufficient to fully incorporate statutory relief, including compensatory and punitive damages.[38] In the absence of a CBA provision granting such relief, punitive damages and pre-award interest are rarely awarded — and then, typically only in cases involving substantial bad faith, unconscionable delay, or misconduct.[39]

While attorneys' fees are not typically awarded in private-sector or Florida-public-sector labor arbitrations, they often are in the federal sector, *i.e.*, in labor arbitrations involving disputes between federal employees and their employing agencies.[40] This is because federal employees, individually, have many procedural and substantive protections, which are not limited by the Federal

Service Labor-Management Relations Statute, 5 U.S.C. §§7101-7135 (FSLRS), or the fact that they may be part of a bargaining unit represented by a union. One external law provides federal employees a right to attorneys' fees in labor arbitration: the Back Pay Act, 5 U.S.C. §5596.

The Back Pay Act provides that, upon an employee prevailing in (among other fora) a labor arbitration that alleged an unwarranted personnel action (read: is disciplined or discharged or otherwise improperly denied pay), the employee is entitled, "on correction of the personnel action,...to receive [back pay] and reasonable attorney fees related to the personnel action."[41] The Federal Labor Relations Authority[42] has held there are three elements to the determination of an award of attorneys' fees under the Back Pay Act, that the requesting party: 1) has prevailed in the underlying arbitration; 2) has requested compensation for a reasonable number of hours expended on the matter; and 3) has requested compensation at a reasonable hourly rate for such hours.[43]

Conclusion

While labor arbitration generally involves questions of contract law, *i.e.*, interpretation and application of a collective bargaining agreement, this article has discussed some of the ways in which external law may come into play: in determining substantive arbitrability; the parties' express inclusion (whether in a CBA or by a grievance-specific request that the arbitrator consider it); and by implication. We hope readers have a greater appreciation of this nuance of the law of labor arbitration, understanding that the process sometimes involves more than simply what the contract says.

For employees involved in interstate commerce, the certification of bargaining units and designation of bargaining agents (unions representing the bargaining units) is governed by the National Labor Relations Act, as amended, 29 U.S.C. §§151-169, which is enforced by the National Labor Relations Board. For Florida public employees (including both state and local government employees), this process is governed by Fla. Const. art. I, §6 and Florida Public Employees Relations Act (FPERA), Ch. 447, Part II, Fla. Stat. §§447.201-447.609, and overseen by the Florida Public Employees Relations Commission.

[2] FPERA requires that collective bargaining agreements include not only a grievance process, but also that the grievance process "shall have as its terminal step a final and binding disposition by an impartial neutral, mutually selected by the parties." Fla. Stat. §447.401.

[3] In both NLRA and FPERA settings, all employees within the designated bargaining unit are bound by the terms of any collective bargaining agreement covering their bargaining unit, irrespective of whether the employee is a member of the union. In Florida, public employees who are not members of the union still have the right to bring grievances and, at their expense, to invoke the collectively bargained arbitration process, with certain limitations. Fla. Stat. §§447.301(4), 447.401. This is not a right generally enjoyed by non-union members in NLRA-covered unionized settings.

[4] Labor Management Relations Act, 29 U.S.C. §§171, *et seq*.

[5] The extent to which labor arbitrators can and should apply such external law is one of frequent debate amongst the labor arbitrator cadre. One view is that, unless the parties specifically limit the powers of the arbitrator, it is presumed the parties intend the arbitrator to decide all questions deemed necessary to dispose of the issue raised by the grievance. Other arbitrators, in the absence of clear direction from the parties or the CBA to apply applicable law, disregard external law reasoning that parties have tasked them with only interpreting the CBA, but the consensus seems to be leaning toward inclusion of such external law. *See, e.g.*, Martin H. Malin, *Revisiting the Meltzer-Howlett Debate on External Law in Labor Arbitration: Is It Time for Courts to Declare Howlett the Winner?* 24 Lab. Law 1 (2008); Ted St. Antoine, *ADR in Labor and Employment Law During the First Quarter Century,* 25 ABA J. Lab. & Emp. Law 411, 440 (2010) ("Instances where there is an irreconcilable conflict between the provisions of a labor contract and the dictates of the law are probably quite rare."). Readers are also referred to the arbitrator's discussion of these articles in *Boston Fire Department and IAFF, Local 718*, 128 Lab. Arb. (BNA) 1441 (2011).

[6] A discussion of this expansive topic is beyond the scope of this article. For good (if older) Florida-based articles on these issues, *see* Michael A. Hanzman, *Arbitration Agreements: Analyzing Threshold Choice of Law and Arbitrability Questions: An Often Overlooked Task*, 70 Fla. B. J. 14 (Dec. 1996), and H. Michael Muniz, *Compelling Arbitration of Disputes — The Florida v. Federal Law Quagmire*, 80 Fla. B. J. 30 (Dec. 2006). *See also* Dennis R. Nolan, *Employment Arbitration After Circuit City*, 41 Brandeis L. J. 853 (2003).

[7] *See Id.* at 863. For a good overall discussion of the substantive and procedural arbitrability in the labor arbitration context, *see* the blog on the topic by labor arbitrator (and National Academy of Arbitrators member) Andrea Dooley, https://andreadooleyarbitration.com/tag/arbitrability/.

[8] *United Steelworkers v. American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

[9] *Id.* at 597.

[10] For labor arbitrations where this or similar language was present, *see, e.g.*, *Walt Disney World Company and United Food and Commercial Workers, Local 1625*, 11-1 ARB (CCH) ¶5231(Arb. Hoffman Dec. 10, 2010); *Federal Bureau of Prisons, Federal Correctional Institution, Miami, Florida and American Federation of Government Employees, Local 3690*, 20-1 ARB (CCH) ¶7521(Arb. Whelan Oct. 1, 2019); *see also*, *Central Texas Veterans Health Care System, Temple, Texas and American Federation of Government Employees (AFGE), Local Union No. 2109*, 15-1 ARB (CCH) ¶6384 (Arb. Wayland May 31, 2012); *Seattle School District and International Union of Operating Engineers, Local 609*, 04-2 ARB (CCH) ¶3928 (Arb. Elinski Apr. 28, 2004); *United States Department of the Navy, Norfolk Naval Shipyard and National Association of Government Employees, Local R4-19*, 93-2 ARB (CCH) ¶3509 (Arb. Nolan Jun. 30, 1993); *Compass Transportation and Teamster Local 853*, 22-1 ARB (CCH) ¶7932 (Arb. Boltuch Apr. 18, 2019).

[11] *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 50-52 (1974).

[12] *Id*. at 42.

[13] *14 Penn Plaza v. Pyett*, 556 U.S. 247, 252 (2009).

[14] *Id.* at 257-258, 260.

[15] *Id.* at 273-274 (citing *Green Tree Financial Corp.-Ala. v. Randolph*, 531 U.S. 79, 90 (2000)).

[16] Airline pilots are subject to a different over-arching labor law, the Railway Labor Act, 45 U.S.C. §§151-188, which has different provisions from the NLRA with respect to strikes, lockout, and the like, although the provisions relating to scope of the CBA and its grievance and arbitrations processes are, for our purposes, substantially identical.

[17] *Selim v. Pan American Airways Corp.*, 889 So. 2d 149, 161-162 (Fla. 4th DCA 2004) (rejecting other arguments).

[18] *See, generally, In re Barton Center and UFCW, Local 1425*, 121 Lab. Arb. (BNA) 249 (Kravit, Arb. 2005); *Atlantic Richfield Co.*, 70 Lab. Arb. (BNA) 707, 715-16 (1978) (Fox, Arb.).

[19] *Conagra Frozen Foods*, 113 BNA LA 129, 133 (1999) (Baroni, Arb.). See also *Dep't of Veterans Affairs*, 113 BNA LA 961 (1999) (Gangle, Arb.) (finding sexual harassment so egregious, it is generally known to be prohibited in all workplaces).

[20] *See, e.g., International Brotherhood of Teamsters, Local 117 and Safeway, Inc.*, 08-2 ARB (CCH) ¶4277 (2008) (Williams, Arb.).

[21] For excellent discussions of the impact of legalized medical marijuana on Florida employment generally, *see* Gregory A. Hearing and Michael A. Balducci, *Medical Marijuana's Effect on Employment Law: The Highs, the Lows, and the Unanswered Questions*, 91 Fla. B. J. 22 (Mar. 2017); Suhaill Morales, *It's High Time We Talk About Medical Marijuana Use by Employees*, The Checkoff, Vol. LIX No.1, at 4 (Florida Bar Labor and Employment Law Section, Aug. 2019).

[22] *See*, Fla. Stat. §112.0455 (Public Sector), §§440.101-440.102 (workers' compensation), and §443.101 (reemployment benefits, formerly called "unemployment benefits").

[23] *See, e.g., City of Hialeah, Florida and AFSCME Florida Council 79*, 04-1 ARB (CCH) ¶3693 (2003) (Smith, Arb.); *see also*, *Broward County (Florida) Sheriff's Office and Federation of Public Employees*, 91-1 ARB (CCH) ¶8265 (1991) (Baroni, Arb.).

[24] *See, e.g., City of St. Petersburg, Florida, and Florida Public Services Union (FPSU) Service Employees (SEIU)*, 15-2 ARB (CCH) ¶6454 (2015) (Baroni, Arb.) (employee properly fired for providing adulterated drug test specimen); *Lon Coleman/Jones and International Brotherhood of Electrical Workers, Local 177, AFL-CIO*, 01-2 ARB (CCH) ¶3885 (2001) (Yancy, Arb.) (same).

[25] *See, e.g.,* Elkouri & Elkouri, How Arbitration Works 15-25 n.18 (8th Ed. May (2016)).

[26] *Orange County, Florida and International Association of Firefighters, Local 2057*, 07-2 ARB (CCH) ¶3929 (2007) (Smith, Arb.) (discharged firefighter reinstated because employer's medical review officer failed to comply with applicable federal and state regulations, 49 CFR §40.139 and Fla. Admin. Code §59A-24.008(4), by failing 1) to conduct independent investigation to whether employee's use of validly prescribed Tylenol 3 led to the positive drug result, or 2) to examine the firefighter for physical signs of the use of morphine, such as needle tracks).

[27] Note, many arbitrators might disagree with this decision, as they might hold a failure to hear from the employee prior to discipline could violate the "fair investigation" element of just cause.

[28] *See, e.g., International Paper Company and United Steel Workers Local 9-738*, 25-2 ARB (CCH) ¶8709 (2024) (Creo, Arb.) (citing, inter alia, *U.S. Airways v. Barnett* 531 U.S. 391 (2002)); *see also International Association of Machinists and Aerospace Workers District Lodge No. W24*, *Local 1005 and Daimler Trucks North America*, 17-2 ARB (CCH) ¶6916 (2017) (Latsch, Arb.).

[29] There are varied reasons for the increase in reasonable accommodation requests post-COVID. *See* D'Andra Shu, *Lessons Learned? Covid's Continued Impact on Remote Work Disability Accommodations*, 2026 Wis. L. Rev. (2025); Rob Gould, Courtney Mullin, & Sarah Parker Harris, *Teleworking and the ADA: An ADA Knowledge Translation Center Research Brief*, National Network (2021), *available at* **https://adata.org/research_brief/research-brief-teleworking-and-ada**.

[30] *See, e.g., Everett School Committee and Everett Teachers Association*, 23-2 ARB (CCH) ¶8279 (2023) (Hatfield, Arb.); *International Paper Company and United Steel Workers, Local 264*, 23-2 ARB (CCH) ¶8261 (2023) (Befort, Arb.).

[31] The degree of such relief varies. Sometimes, complete make-whole relief is ordered; sometimes, especially when, *e.g.*, an employee is reinstated due to a procedural flaw rather than due to a finding the employee did not engage in the accused misconduct, an arbitrator might order reinstatement but without some or all of the interim backpay that the employee might otherwise have earned.

[32] *See, e.g.*, Fla. Stat. §§175.191 (local government fire pension plans); 185.18 (local government police pension plans).

[33] *See, e.g.*, Social Security Administration, Disability Benefits, https://www.ssa.gov/benefits/disability/qualify.html#anchor2.

[34] *Orange County Sch. Bd. v. Orange County Classroom Teachers Ass'n*, slip op., Case No. 2019-CA-13129-O (9th Jud. Cir. Jun. 4, 2020).

[35] Fla. Stat. §1012.335(2)(c).

[36] *Orange County Sch. Bd. v. Orange County Classroom Teachers Ass'n*, slip op., Case No. 2019-CA-13129-O (9th Jud. Cir. Jun. 4, 2020), *available at* https://myeclerk.myorangeclerk.com/DocView/Doc?eCode=qYBaZpW%2B08FdTHn7ClC%2F3lGn3HNFAmPq2hdK8EFB31MIJ3sEgA5dUjqK4g4Yx%2Bd93NT8Do2mkEznqYnME3YpwpgTwXt

[37] *Id*.

[38] *Union Camp Corp.*, 104 BNA LA 295, 301 (1995) (Nolan, Arb.).

[39] Elkouri, How Arbitration Works at 18-29, and cases cited in n.182; *id.* 18-31 to 18-32.

[40] 5 U.S.C. §§7101-7135 (the federal service labor-management relations statute or FSLRS); note the NLRA applies to such federal sector labor arbitrations.

[41] 5 U.S.C. §5596(b)(1).

[42] The FLRA is the federal-sector corollary to the private-sector National Labor Relations Board.

[43] *U.S. Department of Defense Dependents Schools and Federal Education Association*, 54 FLRA No. 79 (54 FLRA 773 (Aug. 28, 1998)).

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