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NON-ATTORNEY REPRESENTATIVES IN LABOR ARBITRATION: UNAUTHORIZED PRACTICE OF LAW?

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It is not uncommon for one or both parties at labor arbitration, more often the union but sometimes the employer, to have a representative who is not a lawyer. For the union, it may well be a full-time staff member with various duties in support of several locals. For the company, it may be a member of the human resources staff.

Does this practice violate state legal codes that define the practice of law and prohibit individuals engage in it if they are not licensed as an attorney? If so, the opposing side has the opportunity to raise a challenge before or after the arbitration in terms of arbitrability, and/or vacatur.[1] Even without such a challenge, the opposing side or members of the state bar may initiate prosecution to enforce the integrity of their profession as a protection for the public.[2]

The purpose of this article is to address this question via an impartial, concise, and systematic analysis of the pertinent law. The specific scope of the answer is limited to grievance arbitration under a collective bargaining agreement. Thus, it does not extend to other forms of arbitration, such as non-unionized employment arbitration[3]

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[1] For example, state vacatur laws based on the Uniform Arbitration Act of 2000 typically have the following as one of the specified grounds: "the award was procured by corruption, fraud, *or other undue means*" (emphasis added). Uniform Arbitration Act of 2000, § 23(a)(1), http://www.uniformlaws.org/shared/docs/arbitration/arbitration _final_00.pdf

[2] See, e.g., Sarah Rudolph Cole, *Blurred Lines: Are Non-Attorneys Who Represent Parties in Arbitrations Involving Statutory Claims Practicing Law*, 48 U.C. DAVIS L. REV. 921, 966 (2014) ("To discourage non-lawyers from engaging in the unauthorized practice of law, bar associations and local prosecutors typically select one of the following approaches to punish and discourage the person from continuing to engage in the unauthorized practice of law: injunction, criminal prosecution, or criminal contempt."). For an overview of the prevailing rationales for the proscription and its enforcement, see, e.g., Committee on Professional Responsibility Association of the Bar of City of New York, Prohibitions of Nonlawyer Practice 7-10 (1995), *available at* http://www2.nycbar.org/pdf/report/uploads/95033-ProhibitionsonNon-LawyerPractice.pdf

[3] See, e.g., *id*. at 928.

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and securities arbitration.[4] Similarly, the scope is limited to non-attorney representation exclusive of other related issues, such as whether arbitrators (or mediators) who are not attorneys[5] or, being represented by out-of-state attorneys,[6] constitutes unauthorized practice of law.

I. LABOR ARBITRATION: LEGAL BACKDROP AND REPRESENTATION PRACTICE

The legal context and character of labor arbitration has gradually and cumulatively changed during the modern era, which started in 1960. Yet the practice of non-attorney representation has continued at a notable level. This backdrop sets the stage for the intersecting issue of unauthorized practice of law.

A. Gradual Legalization of Labor Arbitration

In 1960, the Steelworkers Trilogy established a national policy that favored labor arbitration in the private sector and, indirectly via state laws patterned on the federal collective bargaining legislation, in the public sector. For example, in *United Steelworkers of America v. Warrior & Gulf Navigation Company*, the Supreme Court endorsed labor arbitration in terms of its distinctiveness from the judicial forum as follow:

> The labor arbitrator is usually chosen because of the parties' confidence in his knowledge of the common law of the shop and their trust in his personal judgment to bring to bear considerations [that] are not expressed in the contract as criteria for judgment. The parties expect that his judgment of a particular grievance will reflect not only what the

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[4] See, e.g., Sande L. Buhai, *Act Like a Lawyer, Be Judged Like a Lawyer; The Standard of Care for the Unlicensed Practice of Law*, 2007 UTAH L. REV. 87, 125–27.

[5] See, e.g., John Cooley, *Shifting Paradigms: The Unauthorized Practice of Law or the Unauthorized Practice of ADR*, 55 DISP. RESOL. J. 72 (2000).

[6] See, e.g., Kristen M. Blankley, Emily E. Root, & John Minter, *Multijurisdictional ADR Practice: Lessons for Litigators*, 11 CARDOZO ONLINE J. CONFLICT RESOL. 29, 45–52 (2009); Cole, *supra* note 2, at 956–60; Ann C. Hodges, *Trilogy Redux: Using Arbitration to Rebuild the Labor Movement*, 98 MINN. L. REV. 1681, 1707–10 (2014); D. Ryan Nyar, *Unauthorized Practice of Law in Private Arbitral Proceedings: A Jurisdictional Survey,* 6 J. AM. ARB. 1 (2007); Erin O'Hara O'Connor & Peter B. Rutledge, *Arbitration, the Law Market, and the Law of Lawyering*, 38 INT'L. REV. L. & ECON. 87 (2014).

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> contract says but, insofar as the collective bargaining agreement permits, such factors as the effect upon productivity of a particular result, its consequence to the morale of the shop, his judgment whether tensions will be heightened or diminished . . . . The ablest judge cannot be expected to bring the same experience and competence to bear upon the determination of a grievance, because he cannot be similarly informed.[7]

In its 1974 decision in *Alexander v. Gardner-Denver Co*., the Court repeated this distinction in rejecting deferral to labor arbitration for Title VII employment discrimination claims, characterizing the focus of labor arbitration as "primarily . . . the law of the shop, not the law of the land."[8]

However, this *Gardner-Denver* separation of external law from labor arbitration is not at all determinative for several reasons. First, the *Gardner-Denver* Court, like its *Warrior & Gulf* predecessor, was addressing "the special role of the arbitrator,"[9] not the less distinctive role of the parties. Second, this Court's qualification of "primarily"[10] did not at all exclude the role of law. Third, subsequent Supreme Court jurisprudence changed rather radically changed the direction.[11] For example, in a 2009 decision, the Court observed that the *Gardner-Denver* skepticism of the capacity of arbitrators to resolve legal issues "rested on a misconceived view of arbitration that this Court has since abandoned."[12] Finally, the historic debate about the role of external law in labor arbitration[13] is now passé in light of the

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[7] United Steelworkers of Am. v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582 (1960)).

[8] Alexander v. Gardner-Denver Co, 415 U.S. 36, 57 (1978).

[9] *Id*. at 56.

[10] See *supra* text accompanying note 8.

[11] See, e.g., 14 Penn Plaza LLC v. Pyett, 556 U.S. 247 (2009) (ruling that collective bargaining agreement provision that clearly and unmistakably required union members to arbitrate ADEA claims is enforceable as matter of federal law); Gilmer v. Interstate/Johnson Lane Corp., 400 U.S. 20 (1991) (ruling that the Age Discrimination in Employment Act does not preclude grievance arbitration).

[12] *14 Penn Plaza LLC v. Pyett*, 556 U.S. at 265.

[13] See, e.g., David Feller, *Arbitration and External Law Revisited*, 37 ST. LOUIS UNIV. L.J. 973 (1993); Perry A. Zirkel, *The Use of External Law in Labor Arbitration*, 1985 DETROIT C. L. REV. 31.

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increasing legalization of not only the process[14] but also the content of this forum,[15] especially but not exclusively in public sector grievance arbitrations.[16] Indeed, although referring to arbitration across contexts, a commentator recently characterized it as "the new litigation."[17]

B. Continuing Practice of Non-Attorney Representation

Although not legally binding in terms of the unauthorized practice of law, the rules of the various administering agencies, such as the American Arbitration Association (AAA),[18] expressly allow for non-attorney representation. Although the data are limited particularly for recent years, it appears rather clear and consistent that the union and, to a lesser extent, the employer have non-attorney representation in a notable proportion of labor arbitration hearings. In an early study, Block and Stieber found that, for a sample of unpublished and published grievance arbitration awards for 1979–82, the union and employer representatives were not attorneys in approximately 48% and 30% of the cases, respectively.[19] For approximately the same period, Zirkel's analysis of a random sample of 396 AAA case report forms found that the union and employer had non-attorney representation in 57% and 29% of the cases, respectively.[20] Moreover, for the rest of the 1980s, Zirkel and Krahmal reported AAA figures averaging 47% and 24%, respectively, for union and

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[14] See, e.g., Barry M. Rubin & Richard S. Rubin, *Creeping Legalism in Public Sector Grievance Arbitration: A National Perspective*, 30 J. COLLECTIVE NEGS. 3 (2003); Perry A. Zirkel & Andriy Krahmal, *Creeping Legalism in Grievance Arbitration: Fact or Fiction?* 16 OHIO. ST. J. DISP. RESOL. 243 (2001).

[15] The legal issues include federal statutes, state laws, and common law not only specific to but also extending beyond collective bargaining.

[16] Perry A. Zirkel, Judicial Review of Teacher-Board Grievance Arbitration: An Empirical Analysis (unpublished paper currently under review for publication).

[17] Thomas J. Stipanowich, *Arbitration: The "New Litigation,"* 2010 U. ILL. L. REV. 1.

[18] AAA, Labor Arbitration Rules 12 (2013) ("Any party may be represented by counsel or other authorized representative"), https://www.adr.org/aaa/faces/aoe/lee/labor/laborarbitration? afrLoop=608994922956960&_afrWindowMode=0&_afrWindowId=null #%40%3F_afrWindowId%3Dnull%26_afrLoop%3D608994922956960%26_afrWindowMode%3D0%26_adf.ctrl-state%3Dj4ztt4y2m_4

[19] Richard N. Block & Jack Stieber, *The Impact of Attorneys and Arbitrators on Arbitration Awards*, 40 INDUS. & LAB. REL. REV. 543, 547 (1987). The 454 unpublished awards were American AAA discharge cases in Michigan, and the remaining 759 awards, which were not limited to discharge cases or any particular part of the U.S., were published by the Bureau of National Affairs and/or Commerce Clearing House. *Id.* at 544.

[20] Perry A. Zirkel, *A Profile of Grievance Arbitration Cases*, 38 ARB. J. 35, 36 (1983).

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employer non-attorney representation.[21] Subsequently, Sherr found that, for a national sample of 351 unpublished grievance arbitration awards in the public sector for 1990–93, the union and employer representatives were not attorneys in approximately 48% and 16% of the cases, respectively.[22] The most recent published analysis found that, for a sample of unpublished grievance arbitration awards for discharge cases in Minnesota from 1982 to 2005, the union and employer representatives were not attorneys in approximately 45% and 29% of the cases, respectively [23]

II. PERTINENT SOURCES OF LEGAL GUIDANCE

The issue of whether non-attorney representation in labor arbitration constitutes unauthorized practice of law has a state-by-state answer. The federal laws specific to labor arbitration and the correlative judicial interpretations do not address this matter. Conversely, the definition of the practice of law varies from state to state in terms of both source and scope. These sources range from state statutes to advisory opinions. Those that specifically and directly address this question are relatively few, culminating in a recent Rhode Island Supreme Court decision.

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[21] Zirkel & Krahmal, *supra* note 14, at 248 n.25.

[22] Mitchell A. Sherr, *Legal Representation of Public Sector Employers and Unions in Grievance Arbitration*, 23 J. COLLECTIVE NEGS. 203 (1994). The awards were AAA-administered cases. *Id*. at 204. The found the disparity most pronounced for the union side in contract interpretation (54%) as compared with discharge (33%) cases. *Id*. at 206. Another analysis for the overlapping period of 1989 to 1998 found a comparable proportion for the employer side (13%) but a much higher proportion for the union side (70%), but its scope was limited to published awards in the K–12 education subsector. Perry A. Zirkel & Chad C. Miller, *Grievance Arbitration in K–12 Education Cases*, 38 J. COLLECTIVE NEGS. 295, 299 (1999).

[23] Mario F. Bognanno, Jonathan E. Booth, Thomas J. Norman, Laura J. Cooper, & Stephen F. Befort, *The Conventional Wisdom of Discharge Arbitration Outcomes and Remedies: Fact or Fiction?* 16 CARDOZO ONLINE J. CONFLICT RESOL. 153, 170 (2014). The sample included both private and public sector cases, but it may have been skewed in favor of public sector cases because private sector parties have the option under the Minnesota arbitration agencies' rules to refuse release of the award. *Id*. at 165. The percentages are only estimated extrapolations here because, while stating that "the omitted group includes awards where an attorney represented neither the union nor the employer" (*id*. at 166), the authors did not specify the number of cases in this group where the information was missing for one party and/or the other.

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A. State Laws

The Uniform Arbitration Act of 2000, which is the revised version of the 1955 state model law that is generic to arbitration in various contexts,[24] expressly provides that "a party … may be represented by a lawyer,"[25] but it does not address the obverse situation. The comments to this model act report that the drafting committee rejected a proposal to add "or any other person" after "lawyer" based on "concern about incompetent and unscrupulous individuals, especially in securities arbitration, who hold themselves out as advocates." However, the comments disavowed the intent to preclude non-attorney representation "where authorized by law" and also observed that another section of the act allows for mutual waiver of this right to attorney representation.[26]

In the absence of more direct and uniform resolution, very few states address the matter via legislation demarcating the scope of the practice of law. As the leading and only obvious example, California's civil procedure statute specifies "any party to an arbitration arising under collective bargaining agreements in industries and provisions subject to either state or federal law may be represented in the course of, and in connection with, those proceedings by any person, regardless of whether that person is licensed to practice law in this state."[27]

B. Court Rules

More often but still only limited to small minority, some states resolve the issue via court rules. For example, Nebraska's court rules expressly exempt from the practice of law "non-lawyers participating in labor . . . arbitrations . . . arising under collective bargaining . . . agreement" as long as the state or federal evidence rules do not

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[24] See, e.g., Uniform Law Commission, Arbitration Act (2000), http://www.uniformlaws.org/Act.aspx?title=Arbitration%20Act%20%282000%29. This model law has been adopted in several states, where it has default status in relation to individual or collective contract. *Id*.

[25] Uniform Arbitration Act, § 16 (2000), http://www.uniformlaws.org/shared/docs/arbitration/arbitration_final_00.pdf

[26] *Id. §* 16 comments (citing § 4(b)(4)).

[27] CAL. CIV. PROC. CODE §§ 1282.4(h) (West 2014), *amended by* S.B. 1304, 2013-2014 Leg., Reg. Sess. (Cal. 2014).

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apply.[28] Reaching the same result via a different direction, Utah's court rules provide as follows: "Whether or not it constitutes the practice of law, the following activity by a non lawyer, who is not otherwise claiming to be a lawyer or to be able to practice law, is permitted: . . . Participating in labor... arbitrations... arising under collective bargaining rights or agreements as otherwise allowed by law."[29] Similarly, the court rules in Connecticut, Washington state, Wisconsin, and Wyoming provide an overriding exclusion for "participation in . . . arbitrations . . . arising under collective bargaining rights or agreements."[30]

C. Advisory Sources

An occasional state has provided guidance of much more limited strength and scope. Ohio's Supreme Court addressed the matter solely as an advisory opinion, which was narrow in terms of the party and the activity. More specifically, the court concluded that a non-attorney may represent a union in an arbitration proceeding "as long as he/she do[es] not engage in those activities that equate to the practice of law."[31] The exception comes close to swallowing the rule based on the following delineation of the equating activities, especially the final one: "giv[ing] legal advice to the [union] or its members about their respective legal rights and duties, engag[ing] in legal argument, or engag[ing] in the direct or cross-examination of witnesses."[32] Moreover, the opinion was expressly limited to the public sector collective bargaining context "due to federal preemption issues involving private sector unions and employers."[33]

Although stronger in its factual scope, the applicable source in New York appears to be the weakest in terms of legal strength.

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[28] NEB. CT. R. §3-1004(E) (2014).

[29] UTAH SPECIAL PRACTICE R. 14-802 (2013). Although not a model of draftsmanship, the ending phrase "as otherwise allowed by law" would appear to refer to "agreements" beyond those authorized under collective bargaining laws.

[30] CONN. PRACTICE BOOK 1998 § 2-44A(b)(4) (2014); WASH. R. CT. GEN. R. 24(B)(5) (2014); WIS. ST. CT. R. 23.02(2)(3) (2014); WYOMING ST. BAR & AUTHORIZED PRACTICE OF LAWS R. 7 (2014).

[31] Bd. on the Unauthorized Practice of Law of The Sup. Ct. of Ohio, Advisory Op. 2008-01, at 3 (2008), http://www.supremecourtofohio.gov/Boards/UPL/advisory_opinions/UPLAdvOp_08_01.pdf.

[32] *Id*. at 5.

[33] *Id*. at 3 n.4.

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Specifically, a 1975 report of the New York Committee on Labor and Social Security Legislation of the Association of the Bar of the City of New York concluded "that representation of a party in an arbitration proceeding by a nonlawyer . . . is not the unauthorized practice of law."[34]

D. Case Law

For the many remaining states**,** a recent Rhode Island Supreme Court decision is of culminating and critical interest. Being the only major case law on point, *In re Town of Little Compton*,[35] provides a carefully limited answer that requires careful consideration by individuals and organizations interested in labor arbitration in the various states that mandate or permit collective bargaining, including grievance arbitration, in the private and/or public sectors and that do not resolve the matter by state statute or court rules.

In this case, the issue arose in response to the firefighters union filing a pair of grievance on February 9, 2009 that promptly proceeded though the pre-arbitration steps in the collective bargaining agreement with the town without resolution. When the union filed for arbitration via its non-attorney staff representative, the town promptly filed a motion in state court to enjoin the union's representation, claiming that it constituted the unauthorized practice of law, as defined in state law. The definition of the practice of law in Rhode Island, similar to many other states, includes (1) appearing or acting as the party representative before any "body authorized or constituted by law to determine any question of law or fact" and (2) "giving or tendering to another person for a consideration, direct or indirect, of any advice or counsel pertaining to a law question."[36] Moreover, unlike the aforementioned[37] relatively few states, Rhode Island does not provide any exception or exclusion for non-attorney representation in labor arbitration. In early November 2009, the state court summarily denied the request, treating it as a motion for a preliminary injunction, and the state supreme court denied certiorari.

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[34] Committee Report, Labor Arbitration and the Unauthorized Practice of Law, 30 Record of the Association of the Bar of the City of New York, 422, 428 (1975) (cited in various decisions including Williamson v. John D. Quinn Constr. Co., 537 F. Supp. 613 (S.D.N.Y. 1982)).

[35] In re Town of Little Compton, 37 A.3d 85 (R.I. 2012).

[36] *Id*. at 91 n.15 (citing R.I. GEN LAWS § 11-27-2(1)).

[37] See *supra* notes 27–30 and accompanying text.

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With the union's non-attorney representation, the grievances promptly proceeded with to arbitration, which resulted in an award in favor of the town. Based on the respective subsequent filings by the town and the union, the state court confirmed the award and dismissed the original motion as moot.

However, prior to the issuance of the arbitration award, the town filed a formal complaint with the Rhode Island Bar's Unauthorized Practice of Law Committee. The committee's report to the state supreme court concluded that the union's non-attorney representation was a "technical violation" but, in light of the common practice in labor arbitrations in the state, deferred to the court on how to proceed.[38]

After hearing oral arguments and receiving amicus curiae briefs from several organizations, including the AAA, the Professors of Legal Ethics, and the Rhode Island Bar Association, the state supreme court held that "we decline to limit this particular practice at this time."[39] The decision was narrow for several reasons. First, the court was careful to limit its ruling to public sector grievance arbitration under a collective bargaining agreement.[40] Second, after providing an overview of the history of labor arbitration, including the Steelworkers Trilogy; the small minority of states that have addressed this specific issue[41]; the common practice of non-attorney representation in labor arbitration in Rhode Island; and the various policy factors on both sides of this issue,[42] the court concluded that the case was "exquisitely close"[43] and, thus, that it was "reluctant to

[38] Neither the town nor the committee sought criminal prosecution or disciplinary action against the union's representative. *In re Town of Little Compton*, 37 A.3d at 87 n.9.

[39] *Id*. at 86.

[40] *Id*. at 88.

[41] The court enumerated the aforementioned (*supra* notes 26–33 and accompanying text) states except Nebraska, Wisconsin, and Wyoming. *Id*. at 90–91. The court also mentioned the aforementioned (*supra* note 18) AAA labor arbitration rules as "noteworthy." *Id*. at 91 n.14.

[42] Among the various factors, the court mentioned the allowance of non-attorney representation in state's worker compensation and unfair labor practice hearings (*id*. at 93–94) and the absence of labor arbitration in the enumerated exceptions in Rhode Island's practice of law statute (*id*. at 94). Notably absent in the entire overview, including but not limited to these factors, was any limitation to the public sector, suggesting that—despite its opening caveat—that the otherwise narrow ruling likely applies as well to private sector labor arbitration in Rhode Island.

[43] *Id*. at 95.

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disturb the status quo at this time."[44] Reinforcing this temporal limitation and recognizing that its consideration represented only three judges of the state supreme court, "as a judicial triumvirate we much prefer to review this issue with the full Court."[45]

III. IMPLICATIONS AND RECOMMENDATIONS

For labor arbitration in the several states that authorize labor arbitration but do not provide an exception under state law for non-attorney representation, this issue presents a potential problem that merits consideration. One basic alternative is political action to establish a clear exception for labor arbitration, warranting the organizational collaboration of the various role groups who enjoy the economic benefits of this approach to dispute resolution.

The opposite alternative is assessing the risks of continuing the use of non-attorneys in grievance arbitrations. One type of risk is the possibility of challenge or prosecution. For these possibilities, Rhode Island's *Little Compton* case illustrates the unlikely judicial receptivity to an arbitrability and/or vacatur challenge and the much closer question upon prosecution with the balance favoring qualified continuation the status quo.

The other type of risk is the odds of an adverse outcome, including judicial modification or reversal. More specifically, each party upon initially preparing the case should carefully assess the extent and effect of external law in relation to the outcome at the arbitral stage and, if appealed,[46] at the judicial stage. As explained above,[47] in recent decades, the odds of such legal content have increased significantly, especially but not at all exclusively in the public sector.

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[44] *Id*.

[45] *Id*. The court reinforced this warning at the conclusion of its opinion: "We may in the future . . . under the supervisory powers of the Court and with the full Court participating, decide the generic issue of nonlawyers participating in public grievance arbitrations." *Id*.

[46] The odds of appeal are generally low. For example, one analysis estimated a .8% ratio of federal court decisions to arbitration awards in the private sector for the period 1981–85. Peter Feuille & Michael LeRoy, *Grievance Arbitration Appeals in the Federal Courts: Facts and Figures*, 45 ARB. J. 35, 41–42 (Mar. 1990). The similarly found a high enforcement rate upon appeal. Michael H. LeRoy & Peter Feuille, *As the Enterprise Wheel Turns: New Evidence on the Finality of Labor Arbitration Awards*, 18 STANFORD L. & POL'Y REV. 191, 203–233 (2007). However, for the subset of cases that have significant legal content, the odds of both appeal and vacatur are higher.

[47] See *supra* 11–17 and accompanying text.

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However, as Malin observed, despite the seeming "flood of public law into the labor arbitration process," many cases continue to depend entirely on "the arbitral common law of the workplace rather than the common law."[48] For the cases that appear to have significant legal content, the cost-benefit ratio in terms of a favorable and final[49] may well shift the risk assessment in favor of arranging for attorney representation.[50]

A third, intermediate alternative is to consider arranging a joint waiver. This option requires careful legal assessment and, if deemed potentially effective,[51] proper drafting, which obviously requires the use of attorneys to effectuate non-attorney representation. Moreover, depending on the local relationship between the union and the employer, especially in the context of a grievance that has reached the arbitration stage, this option may not be feasible.

In any event, this relatively brief and focused analysis leaves other related matters for both scholarly and practical attention. For example, labor arbitrators in these cases who are attorneys should examine the bar's ethical code in their state and, if it contains a prohibition against assisting a non-lawyer in the unauthorized practice of law,[52] its possible application to what the arbitrator says and does in relation to non-attorney representation for either party or both parties.[53] Similarly, other forms of arbitration, such as commercial,

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[48] Martin Malin, *The Evolving Schizophrenic Nature of Labor Arbitration*, 2010 J. DISP. RESOL. 57, 85–86–87.

[49] "Final" here refers to an arbitral award extra unlikely to be judicially appealed based on its legally cogent analysis.

[50] Although not conclusive, the limited research to date does not generally show a positive powerful difference between attorney and non-attorney representation in labor arbitration outcomes. *Compare* Block & Steiber, *supra* note 19, at 547–48 (significant difference in 1979–82 sample), *with* Bognanno et al., *supra* note 23, at 173 (mixed, including negative, results for Minnesota discharge cases during 1982–2005), *with* Zirkel & Miller, *supra* note 22, at 301 (no significant difference for school district cases during 1989–1998). However, the result may be different for the legally laden cases.

[51] See *supra* note 26 and accompanying text.

[52] Although focusing on multijurisdictional practice, the ABA's model code provision concerning unauthorized practice of law prohibits attorneys from assisting others in practicing law "in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction." American Bar Association, Model Code of Professional Practice R. 5.5(a) (2005), http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_5_5_unauthorized_practice_of_law_multijurisdictional_practice_of_law.html

[53] See, e.g., R.I. Code of Professional Responsibility 5.5:300 ("A lawyer must not assist a non-lawyer in activities that constitute the unauthorized practice of law"); Carter v.

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securities, or employment, and other representatives, such as out-of-state attorneys, warrant similar but separate attention.[54]

The bottom line is that labor arbitration remains a relatively economical and expedited form of adjudication, but the process is undergoing gradual but increasing legalization that warrants careful, well-balanced consideration. Among the issues that might otherwise escape notice is the unauthorized practice of law. Yet, prudent policymaking and practice can minimize a negative answer to whether non-attorney representation in labor arbitration constitutes a nontechnical, nontheoretical violation.

Berberian, 434 A.2d 255 (R.I. 1981) (upholding discipline of attorney for violating the corresponding provision in the earlier version of this code). For a semi-humorous article that raises this issue, see Ernest G. Mayo, *Arbitration and the Unauthorized Practice of Law: A Legal Drama in Two Acts*, 60 R.I. B.J. 13 (2012).

[54] See, e.g., Birbrower, Montalbano, Condon & Frank v Superior Court, 949 P.2d 1 (Cal. 1998) (ruling that out-of-state law firm engaged in unauthorized practice of law by conducting preliminary arrangements for commercial arbitration, which ended in settlement); Colmar, Ltd. v. Freemantlemedia N. Am., Inc., 801 N.E.2d 1017 (Ill. Ct. App. 2003) (refusing to vacate commercial arbitration award on the basis that a part's representative was an attorney not licensed to practice in the state).

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