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THE ARBITRATION OF DISCIPLINE AND DISCHARGE CASES INVOLVING CRIMINAL ACTIVITIES

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ABSTRACT

Employees involved in criminal activities while off-duty and off-workplace premises pose unique and difficult problems for employers. This article examines sixty-two published arbitration awards over the past ten years to determine arbitral guidelines concerning this important issue. Among other things, it reviews the conditions under which an employer may properly take disciplinary action when criminal activity takes place off-premises and on an employee's own time. It also reviews the requirements for suspending employees pending court resolution of the charges as well as employer liability for back pay should the charges be dismissed. The article further looks at whether or not a court determination of "not guilty" prevents further employer disciplinary action.

Employers covered by collective bargaining agreements may be especially troubled upon learning that an employee has been arrested and/or indicted for a criminal offense. Typically faced with the contractual requirement that it must discipline or discharge only for just cause, the employer may be uncertain as to what response to the situation is appropriate. Should it suspend an employee accused of criminal misbehavior pending court resolution of the matter? If this course of action is taken, is the business liable for back pay in the event the involved employee is subsequently cleared of the charges or is placed on probation? Should the employer immediately discharge an employee arrested for a serious offense? What will the impact likely be on the employee's coworkers or the employer's customers if such an employee is retained, or returned to work? Does the employer have an obligation to make a subjective assessment of

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employee guilt or innocence before taking any action? Can an employer properly discipline/discharge when the alleged crime has been committed off-premises and during the accused employee's own time?

These and many other questions may confront an employer who has an employee involved in a criminal offense. It is the purpose of this article to explore arbitral parameters that deal with discipline and discharge for employee criminal activities. All published arbitration awards dealing with this subject were reviewed from the Bureau of National Affairs' *Labor Arbitration Reports* and the Commerce Clearing House's *Labor Arbitration Awards* for the last ten years. A total of sixty-two cases was included in this study.

THE NEXUS TEST

Obviously, employee criminal acts may take place on the employer's premises or away from the workplace. If the misconduct occurs at the work site, an employer has greater discretion in its disciplinary response. However, arbitrator Stephens commented regarding such discretion when the misconduct has occurred off-premises and while an employee is not on duty:

> It is well established in industrial relations that the general rule is that employers have no right to discipline employees for off duty misconduct unrelated to work activities [1, p. 3976].

Nevertheless, Stephens and other arbitrators have recognized exceptions to this "general rule" regarding discipline for off-duty criminal behavior. These exceptions apply when a nexus exists between the off-duty misconduct and the employee's performance or when it has a deleterious effect on the employer's business. Arbitrator Murphy explained:

> . . . an employer may terminate an employee for off-duty conduct if the employer's business is adversely affected by that activity as when it harms the Company's reputation, product, or image, or renders the employee unable to perform his duties, or results in fellow employees refusing or being unable to work with the employee [2, p. 322].

Thus, in order to sustain a discharge or other disciplinary action for off-duty misconduct, there must be more than simple proof that a criminal behavior took place. There must also be a showing (nexus) that the misconduct has brought, or will bring, discredit to the employer if the employee is retained [3, p. 1212].

It is difficult to give a precise definition or measure of a minimum nexus. Nevertheless, the growing number of published arbitration awards provides some guidance in this regard. For example, arbitrator Lange had no trouble reaching a conclusion that discharge was appropriate for a service technician who had pled

guilty to an off-duty crime of a sexual nature involving a child. His job duties involved unsupervised soft-drink repair and service in areas frequented by children. Arbitrator Lange did not require absolute proof that the employer would be damaged by retaining the employee in question. Instead, he stated that "[i]t is sufficient that his conduct, is *likely* to impair his usefulness to the Company" [emphasis supplied; 4, p. 63].

Similarly, in another case, an employer was found to have just cause to terminate an employee who was convicted and who served time for off-duty cocaine delivery to an undercover police officer. There was no direct evidence the employee had used, possessed, or sold drugs on company premises or on company time. Nevertheless, arbitrator Reynolds concluded that when an employee is a drug dealer s/he presents a "very real" corrupting danger to the employer and other employees [5, p. 438].

In an interesting case, arbitrator Stoltenberg sustained the discharge of a union steward who was convicted of extorting money from extra employees hired through the union hiring hall. The steward claimed he was acting in his official role in assigning employees and that most of the illegal acts occurred off company property. There was a company rule forbidding employee dishonesty while on duty. Stoltenberg determined the nexus of his illegal acts and his relationship to the company was the fact that he could not have successfully carried out his scheme unless he was a company employee as well as a union steward [6].

Nevertheless, not all arbitrators will find a connection between criminal behavior and workplace performance. Arbitrator Odom reinstated an employee who was charged with off-duty, off-premises, drug possession with the intent to sell cocaine, but who pled guilty to three lesser drug charges. Odom claimed the company could not ". . . assume that every individual who has sold drugs in the past will continue to do so after arrest and conviction" [3, p. 1213; contrast this decision with that of arbitrator Reynolds [5] above]. Perhaps influencing Odom's judgment was the fact that the grievant had twenty-one years of service, there was no adverse publicity to the matter, the grievant's work did not put him in contact with the public, and there was no employee concern regarding his reinstatement [3].

Arbitrator Gallagher reinstated a deputy sheriff who had been convicted of illegally taking game fish, a misdemeanor. The employer had a rule that employees of the sheriff's department who are found guilty of crimes defined as felonies or gross misdemeanors shall be subject to immediate dismissal, but those found guilty of a misdemeanor shall be subject to disciplinary action compatible with the nature of the offense. Arbitrator Gallagher determined the deputy would not lose his effectiveness because of the illegal taking of fish nor would he "carry any direct threat to the security of [the] employer" [7, p. 689].

A review of the arbitration awards utilized in this study produced the following examples as to when nexus existed, as well as those situations when employers failed to establish a required nexus.

Cases When a Nexus was Established

- Hotel maintenance employee convicted of theft of tires. Employee had access to hotel rooms [8].
- School secretary convicted of grand theft where widespread publicity of the matter existed and the school required the highest standards of personal conduct when interacting with students [9].
- Flight attendant convicted of off-duty drug possession when company faced media coverage and a grand jury probe [10].
- Employee pled guilty to criminal possession and sale of cocaine and marijuana. Arrest reported in newspaper and employee identified as working for the employer; coworkers also expressed concern for working with him in hazardous occupational setting [11].
- Employee who worked in state division of criminal justice services convicted of sale of methadone to a state trooper [12].
- Employee convicted on four counts of delivery of a controlled substance and other charges. Adverse employee reaction and impact on the business [13].
- Employee pled guilty to lewd conduct with a twelve-year-old girl. The community was closely knit and few employees were willing to work with him [1].
- Employee arrested for violation of traffic laws. Arrest impeded work schedule and he had received progressive discipline six times for absenteeism [14].
- Employee suspended after his arrest in a drug raid. Employer had right to protect employees and lessen adverse publicity [15].
- Employee convicted of arson. He worked with flammable and explosive chemicals at the workplace [16].

Cases When No Nexus was Present

- No nexus existed between an employee conviction for possession of unregistered firearms at his home, and his job performance [17].
- Driver was convicted of intrafamily sexual misconduct. He was not absent due to incarceration an no nexus existed between the crime and his job [18].
- Employee pled guilty to delivery of a controlled substance and was placed on probation. No evidence of an adverse impact on company or employees [19].
- Customer serviceman arrested for patronizing a prostitute while on duty and while in company uniform. Case was dismissed and he did not actually commit an immoral act [20].
- Driver convicted of driving under the influence (DUI). His occupational driving privileges were not revoked. Management had never communicated its policy of termination for convictions of DUI [21].

- Ten-year employee pled guilty to misdemeanor charges of assault against his exwife and other people. Employee had no contact with customers, there was no adverse publicity, and he had limited contact with coworkers [2].
- School teacher convicted for driving while intoxicated and resisting arrest. Jail time coincided with school holidays and weekends. No adverse effect on students and no newspaper notoriety [22].
- Employee arrested for DUI while on leave recovering from alcoholism. Company suffered no loss as a result [23].

EMPLOYEE SUSPENSION PENDING OUTCOME OF CRIMINAL CHARGES

In cases of criminal conduct when an employee has pled guilty, or has been convicted, arbitrators show an increased willingness to find a nexus between the criminal conduct in question and the employer's interests [see e.g., 24, p. 281]. However, there are also those situations when an employee has been charged with a crime but has not yet been tried. While in our criminal justice system there is a presumption of innocence, arbitrators may be reluctant to force an employer to carry an indicted employee on its payroll. For example, arbitrator Draznin noted that:

> the employer . . . is entitled to protect itself, its business and its employees, and effecting a suspension of this grievant under the circumstances in this case [employee charged with the shooting death of his roommate] is not an act violative of the Collective Bargaining Agreement and is in keeping with its announced goals and purposes as set forth in the Contract's Managerial Clause . . . [25, pp. 736-737].

Two important prerequisites exist before an employer will be permitted to suspend an employee pending the outcome of criminal charges. First, arbitrators require that the employer investigate the nature and seriousness of the charges in question. This requirement may prompt the employer to consult the police, state's attorney, newspapers, or other appropriate sources including the grievant. Arbitrators may even require the employer to make a subjective determination of the probability of the employee's subsequent conviction, based on available information [26, p. 171]. The failure to conduct a proper investigation may result in disciplinary action being set aside. In *Times Mirror Cable Television of Springfield*, an employee was arrested at work in connection with a police crackdown on drug trafficking. The involved employee was suspended and told he would be reinstated with back pay if he were ultimately found not guilty. However, the employer made no effort to interview the employee or to investigate the alleged wrongdoing. The employee was not named publicly and no charges had been filed

against him one month after his arrest. Arbitrator Berns, in reinstating the employee with back pay, noted that:

> . . . I insist that we have not yet regressed to the point where the presumption of innocence until proven guilty is abandoned [27, p. 545].

Berns required that just cause must exist before a suspension is imposed [27]. However, to seriously credit this position would be effectively to deny the employer the right to suspend pending the outcome of a court determination of guilt. In some cases, the parties agree that just cause will be left to the determination of the court, i.e., a guilty verdict establishes just cause, a not-guilty verdict indicates no just cause.

Berns' comments notwithstanding, arbitrators also require employers to demonstrate a nexus between the crime for which an employee is accused and the welfare of the employer's business, before permitting a suspension pending the outcome of the trial. When a crime of a serious nature is involved, particularly one that would cause an employer to be concerned for its employees' safety, or one that may disrupt operations, or have a potential adverse effect on customer relations, arbitrators will likely find the suspension appropriate. Arbitrator Kubie concluded that a company properly suspended an employee based on the testimony of an agent of the state bureau of investigation who asserted he gave chase to a car driven by the grievant that contained stolen articles [24]. The employer, a newspaper delivery service, also relied on the hearsay declaration of a passenger in the grievant's vehicle, who indicated she and the grievant had just burglarized a home. The grievant had used information posted in the driver's room that showed which customers had requested suspension of delivery of their newspapers. He prepared maps from this information, showing which homes could be most easily burglarized. Under these circumstances, arbitrator Kubie had no difficulty establishing the link between the grievant's job and the nature of the crime for which he was accused [24]. In a related case, an employer was found to have properly suspended a grievant pending resolution of a charge of assault to commit murder [26]. The grievant's misconduct involved beating and holding a woman captive in his house. While the employer had no rule allowing for suspension for off-duty misconduct, arbitrator Abrams concluded that:

> Some forms of misconduct are so obviously wrong that employees must know that they cannot retain their jobs if they do those things [26, p. 172].

Abrams permitted the suspension even in the absence of a showing that just cause existed [26].

BACK PAY FOLLOWING A SUSPENSION FOR CRIMINAL ACTIVITIES

As noted in the previous section, arrangements are sometimes made between the parties for back pay when an employee is suspended pending the outcome of a court proceeding [see e.g., 27]. If the court subsequently reaches a not-guilty verdict, or otherwise dismisses the charges, the employee is reinstated with back pay. Nevertheless, in many instances, no provision or promise is made for back pay for such a suspension. Assuming that a court's finding is in favor of the employee, can s/he expect to be made whole by the employer? Arbitrator Allen was confronted with this issue in a case when an employee had been properly suspended following an indictment for off-duty possession of marijuana [28]. Allen concluded, after an extensive review of prior arbitration awards, that there is:

> . . . a strong proclivity among labor arbitrators not to grant back pay for suspension periods pending the outcome of felony charges [28, p. 412; see also 15; 29-32; 33 (undated case); 34].

The following factors may be determinative as to whether or not back pay, under the circumstances in question, will be awarded:

1. The charges are serious ones that could have an impact on the employer's workplace;
2. The employer had reasonable cause to believe the employee would be tried and convicted;
3. The employer acted fairly and reasonably after charges were dropped; and/or
4. There was nothing in the collective agreement requiring such back pay [28].

COMPANY RULES REGARDING OFF-DUTY MISCONDUCT

Employers appear to be on firmer disciplinary grounds when there exists a rule dealing with off-duty misconduct. Most such rules call for discipline and/or discharge following *conviction* for a felony. In some cases, however the rules require a criminal conviction for a *particular* offense such as drug possession or trafficking in drugs. For example, in one case, arbitrator Garrett upheld the dismissal of an employee who had pled guilty to criminal drug possession. The judgment was stayed and he (the employee) completed all the requirements of a first offender's diversionary program and was thus eligible for expungtion of his criminal record. A company rule provided for immediate termination for an off-duty criminal conviction for possession of illegal drugs. Arbitrator Garrett pointed out that the guilty plea established the conviction requirement of the rule

and the stay of judgment did not wipe out the employee's arrest and conviction [35]. (See also [10] for a similar case.)

Just cause also existed to discharge an otherwise good, long-term worker when the latter pled *nolo contendere* to avoid trial on charges of aggravated trafficking in drugs [36]. An existing plant rule provided discharge as the penalty for "violation of any law constituting a felony or involving criminal intention." Arbitrator Feldman also pointed out that the employee worked alone 75 percent of the time and could involve coworkers at the plant in the sale of drugs [36].

The exact wording of a company rule is, of course, a primary consideration for determining whether a rule violation has occurred. Arbitrator Statham reinstated a sixteen-year employee without back pay after the latter pled guilty to a charge of unlawful distribution of a controlled substance; the misconduct occurring off-site [37]. The company's substance abuse policy was concerned with impairment of job performance while an employee was at work, while an employer rule provided for termination of any employee upon conviction of civil or criminal law that would "reflect unfavorably on the Company." Statham could find no evidence of economic damage to the employer, nor could he find that damage had occurred to the company's reputation. Moreover, the employee's coworkers did not oppose his reinstatement [37]. (See also [38] for a public sector case when the employer failed to show that the grievant's dismissal promoted "the efficiency of the service.")

NOTIFICATION REQUIREMENTS WHEN AN EMPLOYEE IS ARRESTED OR INCARCERATED

Many employers also have rules regarding notification in the event of employee absence. It is probably a fair statement that the majority of employers having such rules did not contemplate the arrest or incarceration of an employee when they were promulgated. Nevertheless, an absent-without-leave employee may be subject to discipline or discharge for failure to properly inform the employer concerning the reasons for absence, regardless of the cause. For example, arbitrator Pribble was confronted with a case when an employee was arrested after drug paraphernalia and cocaine was found by police in his home [39]. A rule existed which provided that employees who fail to notify the employer concerning the reasons for their absence for three consecutive working days will lose their seniority. The employee was jailed for two days and released on the third day. Arbitrator Pribble, in sustaining the employee's discharge, pointed out that he had sufficient time to contact the employer, but failed to do so. Moreover, the grievant had a poor prior disciplinary record [39].

It would be a mistake, however, to assume that employee will automatically face dismissal for violations of notification rules. Arbitrator Marcus has noted that the employee's length of service, prior disciplinary record, his or her dependability while on the job, length of time that s/he is incarcerated, and the difficulty

of filling the open position with another employee on a temporary basis may be possible mitigating circumstances when an employee has not met notification requirements [40]. Marcus was faced with a case where the grievant was arrested for kidnapping and aggravated rape. The employee spent two months in jail before being cleared of all charges. While the employer was aware of the reasons why the grievant was absent, it expected him to call in each day, although the notification rule did not contain this requirement. Moreover, the company did not inform the employee that he must make daily notification. Arbitrator Marcus was reluctant to "stretch" the language of the company's rule to cover daily notification when it was aware that the employee's absences were beyond his control [40, p. 4003]. The employee was subsequently reinstated after Marcus determined there was no proof the reinstatement would cause damage to the company's relationship with its customers [40].

In a related case, a public-sector nurse coordinator was reinstated following his conviction and incarceration for an off-duty assault on a city employee [41]. The grievant's wife had informed the employer regarding the incarceration, and arbitrator Minni ruled the employer had no right to deny the grievant's request for vacation and sick leave to cover his time in jail. Minni pointed out that the grievant's absence did not impair employer operations or scheduling and there was no evidence to show that the public, or hospital patients, held the employer in a lesser light because of the grievant's conviction. In addition, there was no nexus between his work responsibilities and his conviction [41].

THE IMPACT OF RES JUDICATA ON ARBITRATION AWARDS

As previously noted, there are occasions when the parties will defer to a court determination of guilt or innocence as satisfying the just-cause requirements in a collective agreement. In the absence of such a prior deferral arrangement, can an arbitrator make a *de novo* determination of just cause for discipline or discharge, following a court dismissal of the charges in question? Would an arbitrator's finding of guilt (i.e., just cause) constitute a prohibition against double jeopardy (i.e., being tried twice for the same offense)? The answers to these two questions appear to be "yes" and "no," respectively. However, a critical precondition is that the employee's alleged crime occurred on, or directly emanated from, the workplace.

A number of arbitrators have confronted the questions posed above. In *Day & Zimmerman Inc.*, arbitrator Weisenberger sustained the discharge of an employee who had installed a hidden recording device on a company telephone and discussed taped conversations with other employees [42]. Interception and disclosure of wire communication is a federal felony, but the government did not prosecute, even though the employee admitted to the offense. Weisenberger, in upholding the discharge of the employee, observed:

> Arbitrators have long held that they were not bound by the actions [or inactions] of Government Officials where adequate evidence is presented to be convincing of the employee's guilt of misconduct [42, p. 1170].[1]

In an interesting case, arbitrator Feigenbaum sustained the discharge of a meter reader who worked for a public utility [43]. The employee had been stopped by the police for speeding, and drug paraphernalia and marijuana were found in the employee's car. Meter readers are reimbursed for use of their personal vehicles. Subsequently, the state's attorney *nolle prossed* (i.e., decided not to further prosecute the case) the matter. Nevertheless, the employer terminated the employee on the basis of a rule prohibiting on-duty possession of drugs on company property, and not his arrest. Arbitrator Feigenbaum concluded the reimbursement to the employee for the use of his personal vehicle rendered the car "company property" and consequently upheld the discharge based on possession of drugs on that property [43].

Arbitrator Odom sustained the discharge of a delivery driver who had moved boxes of groceries from the company truck and set them on the loading dock of a customer's store with the intention of picking them up later in his own personal truck [44]. Although the jury's verdict was "not guilty," arbitrator Odom ruled the verdict was not *res judicata* on an arbitration proceeding. He reasoned the employer was not a party to the criminal action, even though the arbitration hearing dealt with the same fact situation. Moreover, arbitrator Odom pointed out that double jeopardy was not a valid defense in the case because neither state laws nor the weight of arbitral precedent precludes an employee from a review of the same (criminal) issue [44, p. 264].[2]

The basic reason why arbitrators may review the facts in a case when a court has already found an employee not guilty, lies in the evidentiary standard of proof in the courts *vis a vis* arbitration. A court determines guilt or innocence by the

[1] Arbitrators may or may not be influenced by the granting of probation by a court, following a conviction. While probation normally allows an employee to return to work, the employer may resist reinstatement. Arbitrators typically apply the "nexus test" (previously discussed) if the conviction and subsequent probation developed from off-duty misconduct [see 1, 18, 19].

[2] Double jeopardy may exist, however, when an employer makes an offer of reinstatement and then withdraws it. Such a situation occurred in *Transit Management of Southeast Louisiana Inc.* [95 Lab. Arb. 74 (BNA) (Allen, arb.) [45], when a bus driver was arrested for pocketing one dollar. The driver indicated that he kept the dollar after unsuccessful attempts to insert it in the fare box. When the driver changed his plea from "not guilty" to "guilty," the employer withdrew its offer of reinstatement. Subsequently, the driver was convicted of theft, but the conviction was expunged by the court. The driver had a twenty-year record as a good employee and had passed a drug test and received a ten-day suspension for his theft. Under these circumstances, arbitrator Allen concluded the employee had been punished for the act (i.e., the ten-day suspension) and was entitled to regard that punishment as final [45]. See also Seidman for a case when the discharge of an employee was reversed. The latter had been promised reinstatement if he gave up his job as a meter reader and agreed to be relocated. The principle of promissory estoppel applied after the employer changed its mind following a guilty plea by the employee [46].

quantum of proof "beyond a reasonable doubt." If an individual is found to be guilty, criminal sanctions, including incarceration or even execution, may result. In an arbitration proceeding, the arbitrator must judge whether the employer has successfully proven just cause for discipline or discharge. The arbitrator is not bound to use the criminal standard of proof (i.e., proof beyond a reasonable doubt), but instead may apply a lesser standard of proof such as clear and convincing evidence or even a simple preponderance of the evidence. A preponderance of the evidence is an evidentiary standard employed in contract interpretation matters, and some arbitrators view the question of just cause to be a contract interpretation issue and not a criminal one [see e.g., 47, p. 589].

DISCUSSION

The sample arbitration cases included in this study strongly suggest employer caution when dealing with incidents of employee criminal activities. If such criminal misconduct occurs while an employee is off-duty and off-workplace premises, arbitrators will require that a nexus be shown linking the criminal conviction to some actual or strongly perceived harm to the employer. In particular, the employer must demonstrate that the employee's performance has been diminished as the result of the criminal activity in question, and/or that such behavior harms the employer's reputation, product or image, or that fellow employees refuse to work with the employee. In some cases the nexus is obvious such as conviction for theft by a hotel employee who has room access as part of his or her job. However, in other cases, the nexus may not be as clear, e.g., a conviction for selling drugs off-premises may or may not mean that an employee would be tempted to sell drugs to coworkers, thus establishing the required link between the criminal behavior and legitimate employer interests.

Employers may also wish to suspend an employee pending the results of a criminal trial. Even though an employee may be entitled to a presumption of innocence by the criminal justice system, employers may have the right to impose such a suspension provided that: 1) an investigation is conducted to determine the nature and seriousness of the alleged misconduct, as well as a subjective determination of the likelihood of future conviction; and/or 2) that there would be a realistic concern for employee safety, employer efficiency, and/or adverse public relations if the employee were retained on the job. An employer failure to conduct an appropriate investigation, or to make a proper showing of legitimate concern, may result in the recission of the suspension and a back pay award.

Nevertheless, back pay is not automatically granted by arbitrators following a suspension pending a court determination of employee innocence, unless, of course, an employer had previously made a promise of such back pay. Otherwise, back pay will ordinarily be denied provided there was a potential negative impact on the employer and/or the grievant's coworkers if the grievant were not

suspended, and the parties' collective bargaining agreement does not require back pay under the circumstances in question.

The presence of a company rule that specifically imposes discipline for an off-duty conviction of a felony or conviction of a particular offense such as drug possession, will materially strengthen the employer's ability to prove just cause. Even if the court's judgment is stayed, or probation granted, the penalty imposed by the rule will not be disturbed. Employers must be cautious that the language of their rule comports with the fact situation in a particular case.

Employer rules requiring notification of absence, even when the reason for the absence has been triggered by an arrest and incarceration, may still be applied. Arbitrators, when construing contractual requirements, may also take the employee's length of service, prior disciplinary record, dependability, length of time of incarceration, and the difficulty of filling the open position with another employee on a temporary basis, into account.

While the parties may defer to a court's determination of guilt to establish just cause, there are occasions when employers may seek to discharge an employee for whom there is an acquittal, *nolle prossed* charges, etc., in the absence of an agreement to be bound to the court's resolution of the criminal case. Normally, these situations occur when the alleged criminal activity has occurred on, or is directly related to, the workplace. Arbitrators are not bound to the legal concept of *res judicata*, particularly when there is an employer rule covering the workplace violation and/or there is adequate evidence of guilt produced at the arbitration hearing. The judicial quantum of proof, beyond a reasonable doubt, used in criminal cases, may not be applied in arbitration hearings because arbitrators are bound only to a contractual determination of just cause. They are not deciding whether a specific statute has been criminally violated.

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ENDNOTES

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2. F. J. Murphy, *Iowa Public Service Company*, 95 Lab. Arb. 319 (BNA) (Murphy, arb.) (1990). [Same case reported at 90-2 ARB ¶ 8530 (CCH).]
3. J. J. Odom, Jr., *W. R. Grace & Co*, 93 Lab. Arb. 1210 (BNA) (Odom, arb.) (1989).
4. B. A. Lange, III, *Pepsi-Cola San Joaquin Bottling Company*, 93 Lab. Arb. 58 (BNA) (Lange, arb.) (1989).
5. J. L. Reynolds, *Trane Company*, 96 Lab. Arb. 435 (BNA) (Reynolds, arb.) (1991).

6. C. F. Stoltenberg, *O.K. Grocery Company*, 92 Lab. Arb. 440 (BNA) (Stoltenberg, arb.) (1989). [Same case reported at 89-2 ARB. ¶8335 (CCH).]
7. T. Gallagher, *County of Cass, Minnesota*, 79 Lab. Arb. 686 (BNA) (Gallagher, arb.) (1982).
8. M. E. Zobrak, *CSX Hotels Inc., d/b/a The Greenbrier*, 93 Lab. Arb. 1037 (BNA) (Zobrak, arb.) (1989).
9. H. Graham, *Westlake City School District*, 90-2 ARB. ¶ 8485 (CCH) (Graham, arb.) (1990).
10. R. J. Ables, *USAIR Inc.*, 91 Lab. Arb. 6 (BNA) (Ables, arb.) (1988).
11. B. J. Baroni, *Alabama Power Company*, 88 Lab. Arb. 425 (BNA) (Baroni, arb.) (1987).
12. I. Sabghir, *N.Y. Division of Criminal Justice Services*, 79 Lab. Arb. 65 (BNA) (Sabghir, arb.) (1982).
13. L. J. Goulet, *Jersey Shore Steel Company*, 93-1 ARB. ¶ 3242 (CCH) (Goulet, arb.) (1992).
14. J. T. King, *Augusta Newsprint Company*, 89 Lab. Arb. 725 (BNA) (King, arb.) (1987).
15. J. R. Thornell, *Lanter Company*, 87 Lab. Arb. 1300 (BNA) (Thornell, arb.) (1986).
16. C. V. Duff, *Occidental Chemical Corp., Electrochemicals, Detergents & Specialty Products Group*, 97 Lab. Arb. 585 (BNA) (Duff, arb.) (1991).
17. F. E. Kindig, *Florida Power & Light Company*, 88 Lab. Arb. 1136 (BNA) (Kindig, arb.) (1987).
18. G. T. Roumell, Jr., *Gratiot County Road Commission*, 86-1 ARB. ¶ 8274 (CCH) (Roumell, arb.) (1986).
19. L. Mayer, *Brockway Pressed Metals, Inc.*, 98 Lab. Arb. 1211 (BNA) (Mayer, arb.) (1992).
20. L. R. Amis, *Citizens Gas & Coke Utility*, 89-2 ARB. ¶ 8413 (CCH) (Amis, arb.) (1989).
21. L. M. Oberdank, *J. F. Cassidy, Inc.*, 91-2 ARB. ¶ 8573 (CCH) (Oberdank, arb.) (1991). [Same case reported at 97 Lab. Arb. 801 (BNA).]
22. W. E. Eagle, *Michigan City Area School Corporation*, 89-1 Arb. ¶ 8169 (CCH) (Eagle, arb.) (1989).
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28. A. D. Allen, Jr., *Johnson & Johnson Patient Care*, 95 Lab. Arb. 409 (BNA) (Allen, arb.) (1990).
29. M. S. Ryder, *Pfeiffer Brewing Co.*, 26 Lab. Arb. 570 (BNA) (Ryder, arb.) (1956).
30. Charles Livengood, Jr., *The Great Atlantic & Pacific Tea Company, Inc.*, 65-2 ARB. ¶ 8753 (CCH) (Livengood, arb.) (undated). [Same case reported at 45 Lab. Arb. 498 (BNA).]

31. R. L. Howard, *Pearl Brewing Company*, 67-1 ARB. ¶ 8156 (CCH) (Howard, arb.) (1967). [Same case reported at 48 Lab. Arb. 379 (BNA).]
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