

ADR Watch



**Keeping an Eye on
Developments and Trends
in Alternative Dispute
Resolution (ADR)**

Mansfield, Tanick & Cohen, P.A.

Attorneys at Law

Winter, 2003

PRE-ARBITRATION CHALLENGE FOR BIAS DISALLOWED

Minnesota Appellate Court Prohibits Football Coaches From Removing Commissioner as Arbitrator

It is extremely difficult to successfully challenge an arbitrational ruling. One of the few grounds to do so is for bias of the arbitrator.

But bias cannot be grounds for removing an arbitrator before the arbitration proceeding is conducted, according to a recent ruling of the Minnesota Court of Appeals. In *Alexander v. Minnesota Vikings Football Club LLC*, 649 N.W.2d 464, (Minn. App. 2002) (unpublished), the Minnesota Court of Appeals rejected a claim by a group of six former assistant coaches of the Minnesota Vikings football team. They claimed they were entitled under their employment agreements to bonus pay. Under the contracts, they are obligated to arbitrate their disputes with Paul Tagliabue, Commissioner of National Football League (NFL) named as the designated arbitrator.

The coaches brought a lawsuit seeking to remove the Commissioner as arbitrator. They claimed that he was biased because he was serving the interests of the league and his teams and also because he previously had been the general counsel for the league before being appointed commissioner.

The Hennepin County District Court rejected that challenge and, the Appellate Court agreed.

Conflicting Cases

The Court examined conflicting cases concerning similar issues. A New York court had allowed a similar challenge removing the Commissioner as the arbitrator. However, the Minnesota court found that decision "unpersuasive," relying instead upon a ruling of the Second Circuit Court of Appeals, which rejected a previous arbitration challenge to an arbitrator on the grounds of bias.

The court pointed out that coaches were all aware of Tagliabue's "relationship" with the league and the Vikings. Because of their awareness of that pre-existing relationship, they are not entitled to remove the arbitrator, at least before the proceeding is conducted.

The Court also rejected the contention by the coaches that the arbitration clause was invalid because it was a "contract of adhesion," which meant that it was not freely negotiated between the parties. While the Court left open the possibility that coaches could bring a post-arbitration challenge on grounds of bias after the arbitrator makes his decision, it seemed to foreclose the viability of such a claim because of its reference to the coaches' knowledge of the Commissioner's relationship with the league and the Vikings before the arbitration took place.

Adverse Appeals

Parties challenging arbitration decisions generally face adversity. The Courts usually follow the rule of confirming arbitration decisions, even if the arbitrator makes an erroneous ruling.

Under the law in Minnesota, an arbitrator is deemed the final judge of both fact and law, and an arbitration decision will be upheld, even if it is considered

(continued on reverse)

ADR Watch Fact

Why Vikings Coaches Cannot Claim Bias

"... when they entered into their employment contracts, they knew [NFL] Commissioner Tagliabue was the designated arbitrator of any disputes under the contracts and that they knew about [his] relationship with the Vikings. In fact, the contracts were subject to [his] approval."

Alexander v. Minnesota Vikings Football Club LLC,
649 N.W.2d 464 (Minn. App. 2002)

Mansfield, Tanick & Cohen, P.A.

West Suburban Office
700 Park Place East
5775 Wayzata Boulevard
St. Louis Park, MN 55416
(952) 525-2200

Main Office
1700 Pillsbury Center South
220 Sixth Street South
Minneapolis, MN 55402-4511
(612) 339-4295

St. Paul Office
226 Bandana Square Bldg.
1021 Bandana Boulevard East
St. Paul, MN 55108
(651) 645-7746

...Pre-Arbitration Challenge For Bias Disallowed *(continued from page 1)*

incorrect. A post-arbitrational challenge on the grounds of bias also is difficult to pursue. Generally, the party must show that the arbitrator had exhibited "evident partiality" under the Uniform Arbitration Act. Most challenges on grounds of bias fail.

As a result of the ruling in the *Alexander* case, parties will find it extremely difficult to prevail on challenges based upon arbitrational bias. The ruling underscores the importance of the process of selecting arbitrators to minimize potential bias. In this case, however, the claimants had no choice since the standard contracts all designated the Commissioner as the arbitrator.

Some courts have held that arbitration clauses that designate a person chosen only by the employer are invalid. The Minnesota Appellate Court, however, did not follow that ruling and, as a result, made it even more difficult for the claimants to prevail in arbitration cases.

SCHOOL AIDE CANNOT PURSUE ARBITRATION CLAIM

Most collective bargaining agreements contain grievance-arbitration clauses that allow union members to seek arbitration of disputes in the workplace.

However, the Minnesota Court of Appeals recently rejected an attempt by union members to pursue a grievance when the subject of the grievance was not covered by the bargaining agreement.

In *School Service Employees Local 284 v. Independent School District No. 281, Chisolm*, 2002 Minn. App. LEXIS 552, a teacher's aide who was a member of the labor union claimed that she was actually performing the duties of a technician, which should have resulted in

additional pay. The School District refused to proceed with arbitration on her claim under the bargaining agreement. The union sued, seeking to compel arbitration.

The Itasca County District Court rejected the claim, and the Appellate Court agreed. It ruled that the subject of the duties of teacher precede technicians and their pay scale was not covered by the labor union contract. Accordingly, there was "no agreement to arbitrate," which left the employee without a remedy.

The decision underscores the importance of the terms of a contract, whether in a labor union agreement or otherwise, for purposes of arbitration. If a subject is not mentioned in the contract, it probably will not be subject to an arbitration provision.

ATTORNEY ASSISTS AS ARBITRATOR

Marshall H. Tanick of the law firm of MANSFIELD, TANICK & COHEN, P.A., listened to lawyers and parties presenting their cases in a recent arbitration proceeding as part of the Hennepin County District Court Arbitration process. *Mr. Tanick* serves as an arbitrator for the program, and makes non-binding determinations in cases referred by Hennepin County Judges to the system. The program, which has been used by Hennepin County for more than a decade, attempts to provide efficient, economical and equitable resolutions. When an arbitration decision is rendered, either party may appeal the decision to the District Court within 20 days. If not appealed within the time period, the decision becomes final. The arbitral process results in resolution of about two-thirds of the cases that are referred to the system. "I am pleased to be able to help reduce the heavy caseload within the court system by participating in the program," said *Mr. Tanick*, who has arbitrated several dozen disputes.



ADR Watch is a publication of the law firm of MANSFIELD, TANICK & COHEN, P.A. and is provided as a complimentary service to parties interested in legal matters concerning alternative dispute resolution. Further information about the subject is available by contacting the law firm at (612) 339-4295, or by faxing communications to (612) 339-3161.

© MANSFIELD, TANICK & COHEN, P.A. 2003

PRSRST STD
U.S. POSTAGE
PAID
PERMIT #4229
MPLS., MN

Mansfield, Tanick & Cohen, P.A.
1700 Pillsbury Center South
220 South Sixth Street
Minneapolis, MN 55402-4511