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Arbitration—Power of Arbitrator to Award Damages for Breach of Collective Bargaining Agreement

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mention the 1952 agreement. Although the Court of Appeals opinion does not bring out these facts, the per curiam opinion by the Appellate Division does.[42]

Bd.

POWER OF ARBITRATOR TO AWARD DAMAGES FOR BREACH OF COLLECTIVE BARGAINING AGREEMENT

In *Publishers' Ass'n v. New York Stereo. U. No. 1*,[43] the Court of Appeals was called upon to determine whether an arbitration provision, embodied in a collective bargaining agreement between the parties, authorized the arbitrators to settle the question of damages. The provision in question provided that: " 'To this Committee [arbitration committee] shall be referred for settlement *any matter arising from the application of this agreement. . . .*' "[44] (Emphasis added.)

Although the defendant union concedes that the Committee has the power to determine whether a work stoppage engaged in by sixty stereotypes employed by plaintiff was a violation of the collective bargaining agreement between the parties, it challenges the further power of the arbitrators to decide the question of damages. The Court of Appeals expressed little hesitancy in affirming both the Special Term and the Appellate Division,[45] which had granted the plaintiff's motion to direct the union to proceed to an arbitration of the whole matter.

There is little doubt in New York today that the courts will, when faced with an arbitration clause of such general language as the present case, submit the question of damages to arbitration. For, as stated by the Court in the landmark case of *In re Marchant v. Mead-Morrison Mfg. Co.*:[46]

> Parties to a contract may agree, if they will, that any and all controversies growing out of it in any way shall be submitted to arbitration. If they do, the Courts of New York will give effect to their intention. A submission so phrased, *or in form substantially equivalent*, does not limit the authority of the arbitrators to an adjudication of the breach. It is authority to assess the damages against the party in default (*Matter of Gen. Footwear Co. v. Lawrence Leather Co.*, 252 N.Y. 577).[47] (Emphasis added.)

In an attempt to stamp a restrictive intent upon the general language used in the arbitration clause, the defendant reminded this Court of the substantive rule that an unincorporated association cannot be held liable except on proof which would make all the members liable individually. "The union says that, with this statutory immunity in existence, the intent of this agreement could not have been to authorize an award of damages for a violation which involved only about 60 of the union's 1,100 members."[48]

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42. Bronston v. Glassman, supra note 36 at 487, 212 N.Y.S.2d at 240.
43. 8 N.Y.2d 414, 208 N.Y.S.2d 981 (1960).
44. Id. at 416, 208 N.Y.S.2d at 982.
45. 10 A.D.2d 557, 197 N.Y.S.2d 402 (1st Dep't 1960).
46. 252 N.Y. 284, 169 N.E. 386 (1929).
47. Id. at 298-299, 169 N.E. at 391.
48. Publishers' Ass'n v. New York Stereo. U. No. 1, supra note 43 at 418, 208 N.Y.S.2d at 984.

The Court refuted the agreement by stating that an arbitrator, when given jurisdiction and authority by the voluntary agreement of the parties themselves, may do that which a court may otherwise be unable to do by reason of the same legal restriction. For example, in *In re Ruppert (Egelhofer)*,[49] the Court held that arbitrators, under appropriate language in an agreement, could order an injunction even though a regular court of law could have been prevented by Section 876-a of the New York Civil Practice Act from issuing an injunction on the same facts. The more general answer is that if the intent of the defendant was to restrict the Committee from

> exercising the customary function of fixing damages, they probably would have said so, especially since, under an earlier but apparently identical form of arbitration agreement between these same parties, the association had sought damages and the question of damages had been tried out before arbitrators with no complaint from the union . . . .[50]

The draftsman of an arbitration clause who wishes to place some restriction upon the jurisdiction and/or authority of the arbitrators should be careful to articulate such limitation. Although the language in the present case was certainly general enough to warrant the Court in finding within its intent a mutual agreement to arbitrate the question of damages; this writer feels that the Court would have decided the same way even with less persuasive language. It appears that the present Court, or at least a majority of the present judges, has committeed itself to a definite policy of increasing the jurisdiction of arbitrators. In support of this contention, the writer cites such recent cases as *De Laurentiis v. Cinematografica, Etc.*[51] and *Exercycle Corp. v. Maratta.*[52]

Bd.

CIVIL PROCEDURE

DUE PROCESS REQUIREMENT OF ACTUAL NOTICE TO COMMENCE PERIOD OF LIMITATION IN WHICH TO DEMAND A JURY TRIAL

It has uniformly been held that where immediate action is necessary, a state, in the exercise of its police power, may temporarily confine an alleged mentally ill person.[1] The confinement may be had upon an application for an *ex parte* order with no notice being given to the person to be confined, and such a procedure is not in violation of the due process clauses of the Federal

49. 3 N.Y.2d 576, 170 N.Y.S.2d 785 (1958).
50. Publishers' Ass'n v. New York Stereo. U. No. 1, supra note 43 at 418, 208 N.Y.S.2d at 984. For a reference to the earlier case between these same parties, see In re Publishers' Ass'n of New York City (New York Stereotypers' Union), 1 A.D.2d 941, 150 N.Y.S.2d 918 (1st Dep't 1956).
51. 9 N.Y.2d 356, 214 N.Y.S.2d 374 (1961).
52. 9 N.Y.2d 329, 214 N.Y.S.2d 353 (1961).

1. Sporza v. German Savings Bank, 192 N.Y. 8, 84 N.E. 406 (1908); Matter of Andrews, 126 App. Div. 794, 111 N.Y. Supp. 417 (1st Dep't 1908).