RESOLVING THE DISPUTE: THE NINTH CIRCUIT BRINGS SIDE AGREEMENTS INTO SCOPE IN THE CONFLICTS OVER ARBITRATION IN INLANDBOATMENS UNION V. DUTRA GROUP

INTRODUCTION

Pursuant to § 301 of the Labor Management Relations Act ("LMRA")\(^1\), parties to a labor contract such as a collective bargaining agreement ("CBA") may bring a breach of contract action in federal district court.\(^2\) Section 301 of the LMRA grants original jurisdiction to federal courts in cases involving CBAs.\(^3\) Regardless of the amount in controversy or diversity of citizenship, § 301 allows parties to enforce labor contracts in federal district courts having proper jurisdiction.\(^4\) However, when a CBA contains an arbitration clause, federal courts will give deference to the arbitration clause.\(^5\) Section 301 acts as an alternative for parties facing bargaining issues when the CBA fails to contain an arbitration clause or when parties have exhausted their non-judicial remedies.\(^6\)

Presently, federal courts use two different approaches to determine whether a side agreement dispute is arbitrable pursuant to the arbitration clause in a CBA.\(^7\) The first approach (the "Similarity Approach") compares the subject matter of the CBA to the subject matter of the side agreement.\(^8\) The second approach (the "Scope Approach") compares the scope of the CBA's arbitration clause to the subject matter of the side agreement but allows parties to except side agreement disputes in the CBA.\(^9\)

Current federal labor law policy, as noted by the United States Supreme Court, encourages parties to arbitrate grievance disputes in the interest of maintaining industrial peace.\(^10\) Labor law policy man-

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\(^3\) 29 U.S.C. § 185(a). See also Hamburger, 16 Pac. L.J. at 1143 (discussing original jurisdiction in federal court).
\(^5\) Id. at 1157.
\(^6\) Hamburger, 16 Pac. L.J. at 1157-58.
\(^7\) Dutra, 279 F.3d at 1079.
\(^8\) Id.
\(^9\) Id. at 1080.
dates that federal courts shape federal substantive law according to federal policy. Congressional policy prefers settlement of labor-management disputes through arbitration. However, while parties cannot be forced to submit disputes to arbitration when they have not agreed to arbitration, a preference of arbitration exists when the parties' CBA provides a broad arbitration clause that covers all disputes, unless the parties specifically excluded the dispute from arbitration in the CBA.

In *Inlandboatmens Union v. Dutra Group*, the United States Court of Appeals for the Ninth Circuit relied on federal labor law policy in requiring parties to arbitrate a side agreement dispute pursuant to the arbitration clause contained in the CBA. In doing so, the Ninth Circuit followed the approach used to resolve disputes over settlement agreements by the United States Courts of Appeals for the Third and Seventh Circuits, rather than the approach used by the United States Courts of Appeals for the Second and Fourth Circuits. In *Dutra*, the Ninth Circuit held that a side agreement dispute was arbitrable under a CBA if the scope of the arbitration clause covered the subject matter of the side agreement. Thus, the court determined that the scope of an arbitration clause governed whether a side agreement was arbitrable under a CBA.

This Note will first review the facts and holding of *Dutra*. Next, this Note will examine the federal statutory language regulating labor-management agreements as well as cases involving such language. In addition, this Note will discuss cases establishing federal labor law policy as noted by the United States Supreme Court. This Note will also discuss prior cases involving the circuit split on the issue of whether a side agreement is arbitrable under the arbitration clause of a CBA. Finally, this Note will examine the court's decision

13. *Warrior & Gulf*, 363 U.S. at 582-85 (stating that while parties cannot be forced to arbitrate disputes, where a collective bargaining agreement contains a broad arbitration clause, there is a presumption of arbitrability because arbitration should not be denied unless parties specifically excluded the dispute from arbitration); *Dutra*, 279 F.3d at 1078-79 (noting that labor law policy as declared by the Supreme Court provides a strong preference for the arbitration of labor-management disputes).
14. 279 F.3d 1075 (9th Cir. 2002).
15. *Inlandboatmens Union v. Dutra Group*, 279 F.3d 1075, 1080-81 (9th Cir. 2002).
17. Id.
18. Id.
19. See infra notes 26-82 and accompanying text.
20. See infra notes 93-145 and accompanying text.
21. See infra notes 146-241 and accompanying text.
22. See infra notes 242-311 and accompanying text.
in *Dutra* and will agree with the court's holding, which required the parties to arbitrate a side agreement dispute under the broad scope of the arbitration clause contained in the CBA.23 This Note will commend the court for 1) correctly determining that a court lacks jurisdiction over a side agreement dispute when the parties' CBA contains an arbitration clause covering the dispute; 2) following labor law policy as noted by the United States Supreme Court; and 3) deciding to follow and apply the correct approach in the *Dutra* case.24 This Note will conclude that the Scope Approach, rather than the Similarity Approach, should apply to situations where parties form a side agreement separate from a CBA because the Scope Approach maintains industrial relationships by allowing parties to decide to include or exclude side agreement disputes through the scope of an arbitration clause in the CBA.25

FACTS AND HOLDING

In *Inlandboatmens Union v. Dutra Group*,26 the Dutra Group ("Dutra"), a marine construction company, employed deck-hands belonging to the Inlandboatmens' Union of the Pacific ("IBU").27 The IBU, a labor organization, had historically represented Dutra's deck-hand employees.28 The deck-hands performed services on Dutra's tugboats and barges in the San Francisco Bay area.29 In 1994, IBU and Dutra formed a collective bargaining agreement ("CBA") to govern their relationship.30 The CBA provided that only IBU workers could perform services on Dutra barges.31 Grievance procedure mechanisms in the CBA provided that arbitration would be the final stage of the grievance procedure process.32

In 1997, a dispute arose between the parties when Dutra formed an agreement with a subcontractor to perform services on Dutra's barges.33 Because the subcontractor failed to employ IBU members, IBU filed a grievance complaint in November 1997, stating that Du-

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23. See infra notes 312-483 and accompanying text.
24. See infra notes 312-483 and accompanying text.
25. See infra CONCLUSION.
26. 279 F.3d 1075 (9th Cir. 2002).
27. *Inlandboatmens Union v. Dutra Group*, 279 F.3d 1075, 1077 (9th Cir. 2002).
29. *Dutra*, 279 F.3d at 1077.
32. Brief for Appellant at 4, 6, *Dutra*, 279 F.3d 1075.
33. *Dutra*, 279 F.3d at 1077.
tra's actions breached the CBA. After two years of attempting to apply the grievance mechanisms in the CBA, the parties agreed to arbitrate the dispute in accordance with the CBA. However, on August 23, 1999, before beginning the arbitration process, the parties resolved the complaint through a settlement agreement, or "side agreement." Dutra and IBU formed the settlement agreement to protect IBU members in subcontracting agreements. The parties formed the settlement agreement separate from their pre-existing CBA. Shortly thereafter, IBU claimed that Dutra had violated the settlement agreement when Dutra's subcontractor had failed to employ IBU members on a Dutra subcontracting work project.

In the United States District Court for the Northern District of California, IBU sought to enforce the settlement agreement and collect damages. IBU filed an action under § 301 of the Labor Management Relations Act ("LMRA") to enforce the settlement agreement. Section 301(a) of the LMRA provided that parties having a labor-management relationship could bring an action regarding a contractual dispute in federal district court. In response to IBU's action, Dutra filed a motion to dismiss, claiming the district court lacked subject matter jurisdiction because the arbitration clause in the CBA governed the conflict over the settlement agreement. The district court granted Dutra's motion, dismissing the action under

34. Id. IBU claimed that when the non-union employer controlled Dutra’s barge through the subcontracting agreement, the employer failed to use IBU workers and laid off three IBU workers. Id.
35. Brief for Appellant at 4, Dutra, 279 F.3d 1075.
36. Dutra, 279 F.3d at 1077. The court noted that the term "side agreement" is used to refer to the term "settlement agreement." Id. at 1079. The court used both terms to refer to the settlement agreement formed between IBU and Dutra. Id.
37. Dutra, 279 F.3d at 1077. The settlement agreement between IBU and Dutra contained five elements involving Dutra's responsibilities to IBU member workers performing subcontracting projects. Id. The relevant elements of the settlement agreement provided that Dutra would subcontract work projects to the subcontractor only if the subcontractor employed IBU members on the projects. Id.
38. Dutra, 279 F.3d at 1079.
39. Id.
40. Id. at 1075, 1077-78.
42. Dutra, 279 F.3d at 1077-78.
43. 29 U.S.C. § 185(a). The statute states:
Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.
44. Dutra, 279 F.3d at 1078.
Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction.\textsuperscript{45} The district court determined it lacked jurisdiction because IBU had failed to exhaust the grievance procedure mechanisms in the CBA.\textsuperscript{46} Thereafter, IBU appealed the district court’s decision to the United States Court of Appeals for the Ninth Circuit.\textsuperscript{47}

On appeal, the Ninth Circuit affirmed the district court’s decision, which stated that IBU had failed to exhaust the non-judicial remedies provided in the CBA.\textsuperscript{48} The Ninth Circuit determined that the settlement agreement dispute between Dutra and IBU was arbitrable under the CBA.\textsuperscript{49} Further, the Ninth Circuit noted that IBU failed to arbitrate the settlement agreement dispute pursuant to the CBA.\textsuperscript{50}

IBU argued that the settlement agreement was not arbitrable because the agreement did not contain a provision allowing for arbitration.\textsuperscript{51} IBU also argued that the settlement agreement was enforceable in federal court and that the parties were not required to return to the same dispute resolution procedures that had resulted in the settlement agreement.\textsuperscript{52} Dutra, on the other hand, argued that the settlement agreement dispute was arbitrable because the arbitration clause in the CBA covered the dispute.\textsuperscript{53} Specifically, Dutra argued that when a CBA contained a broad arbitration clause, the party challenging arbitration was required to exhaust grievance procedures prior to initiating a civil suit.\textsuperscript{54} The Ninth Circuit agreed with Dutra, stating that a side agreement dispute was arbitrable under a CBA where the scope of the arbitration clause in the CBA covered the subject matter found in the side agreement.\textsuperscript{55}

In determining that the side agreement was arbitrable under a CBA, the Ninth Circuit examined two rules prevalent from federal labor cases.\textsuperscript{56} The Ninth Circuit explained that the first rule demonstrated a preference for arbitration based on labor law policy in cases of uncertainty regarding arbitration.\textsuperscript{57} The Ninth Circuit stated that pursuant to this policy, if the arbitration clause in a CBA was broad in scope, then a presumption of arbitration existed.\textsuperscript{58} The Ninth Circuit

\textsuperscript{45} Id.
\textsuperscript{46} Brief for Appellant at 5, Dutra, 279 F.3d 1075.
\textsuperscript{47} Dutra, 279 F.3d at 1078.
\textsuperscript{48} Id. at 1084.
\textsuperscript{49} Id.
\textsuperscript{50} Id.
\textsuperscript{51} Id. at 1078.
\textsuperscript{52} Brief for Appellant at 13, Dutra, 279 F.3d 1075.
\textsuperscript{53} Dutra, 279 F.3d at 1078.
\textsuperscript{54} Answering Brief for Appellee at 7-10, Dutra, 279 F.3d 1075.
\textsuperscript{55} Dutra, 279 F.3d at 1080.
\textsuperscript{56} Id. at 1078-80.
\textsuperscript{57} Id. at 1078-79.
\textsuperscript{58} Id.
also determined that the second rule provided that a CBA should encompass the parties' entire relationship, not only provisions expressed in writing.\textsuperscript{59} Based on this reasoning, the Ninth Circuit decided that a CBA may include side agreements not expressed in a CBA.\textsuperscript{60} The Ninth Circuit explained that such side agreements must follow arbitration provisions of the CBA when the side agreement contains subject matter expressed in the CBA.\textsuperscript{61}

After examining federal labor law rules, the Ninth Circuit examined two approaches applied to the issue of whether a dispute over a side agreement provision not expressed in a CBA was arbitrable under a CBA.\textsuperscript{62} The Ninth Circuit noted that the first approach (the "Similarity Approach"), used by the Second and Fourth Circuits, compared the subject matter of the CBA to the subject matter of the side agreement.\textsuperscript{63} The Ninth Circuit commented that the Similarity Approach provided that if a similar subject matter existed in a CBA and a side agreement, then the side agreement was arbitrable under the CBA's arbitration clause.\textsuperscript{64} The Ninth Circuit observed that the Similarity Approach also provided that if the side agreement and CBA lacked a similar subject matter, then the side agreement was not arbitrable under the CBA's arbitration clause.\textsuperscript{65} The Ninth Circuit noted that the second approach (the "Scope Approach"), used by the Third and Seventh Circuits, compared the scope of the CBA's arbitration clause with the side agreement's subject matter.\textsuperscript{66} The Ninth Circuit stated that the Scope Approach provided that if the scope of the CBA's arbitration clause covered the side agreement's subject matter, then the side agreement dispute was arbitrable under the arbitration clause.\textsuperscript{67} The Ninth Circuit observed that the Scope Approach allowed parties to except side agreement disputes from arbitration under the CBA's arbitration clause.\textsuperscript{68}

The Ninth Circuit agreed with the Third and Seventh Circuits, which used the Scope Approach in determining that the scope of an arbitration clause governed whether a side agreement dispute was arbitrable under a CBA.\textsuperscript{69} The Ninth Circuit noted that if an arbitration clause in a CBA had a narrow scope, then a side agreement
dispute was not arbitrable when the subject matter of the side agreement was not related to the arbitration clause. Further, the Ninth Circuit reasoned that the Scope Approach followed precedent and promoted industrial peace. The Ninth Circuit also noted that if a CBA contained an arbitration clause with a broad scope, then there was a preference for arbitration of the side agreement dispute under the arbitration clause.

The Ninth Circuit held that the arbitration clause in the CBA encompassed the dispute between Dutra and IBU. In reaching this holding, the Ninth Circuit examined the arbitration clause contained in the CBA. The Ninth Circuit noted that the arbitration clause did not except side agreement disputes. The Ninth Circuit also stated that the arbitration clause was broad in scope, based on the language found in the arbitration clause contained in the CBA. Specifically, the Ninth Circuit reasoned that the arbitration clause was broad in scope because the clause covered "any dispute concerning ... wages, working conditions, or any other matters referred to in this CBA."

Thereafter, the Ninth Circuit examined the subject matter of the side agreement. The court noted that the CBA specifically discussed subcontracting, which was the subject matter of the side agreement. The Ninth Circuit determined that the arbitration clause covered the subject of subcontracting because the CBA discussed subcontracting. Based on this determination, the Ninth Circuit decided that the arbitration clause in the CBA covered the side agreement dispute between Dutra and IBU. The Ninth Circuit therefore declared that a side agreement dispute was arbitrable under a CBA where the scope of the arbitration clause in the CBA covered the subject matter found in the side agreement.

70. Id. The Ninth Circuit limited its discussion to side agreement disputes that may relate to a collective bargaining agreement's "grievance arbitration" clause, rather than "interest arbitration." Id.
71. Dutra, 279 F.3d at 1081.
72. Id. at 1078-80.
73. Id. at 1080.
74. Id.
75. Id.
76. Id. at 1077.
77. Id. The trial court judge, United States District Court Judge Charles A. Legge, had commented that "the underlying collective bargaining agreement contains a very, very broad arbitration clause, one of the broadest I've ever seen." Answering Brief for Appellee at 6, Dutra, 279 F.3d at 1075.
78. Dutra, 279 F.3d at 1080.
79. Id.
80. Id.
81. Id. The court discussed the subcontracting provision in the collective bargaining agreement. Id.
82. Dutra, 279 F.3d at 1080.
BACKGROUND

When parties to labor-management agreements dispute over contractual terms, § 301 of the Labor Management Relations Act ("LMRA") allows the parties to litigate disputes in federal district court. In cases involving labor-management disputes, the United States Supreme Court has construed § 301 of the LMRA to include collective bargaining agreements ("CBA") as well as contracts such as settlement agreements, or side agreements, which were formed by labor organizations and employers. In addition, the Court has determined that when a CBA provides an arbitration clause, an employee must exhaust arbitration procedures before pursuing an action under § 301 of the LMRA pursuant to congressional policy that favors arbitration of labor-management disputes.

The Supreme Court has also commented on labor law policy through cases involving labor-management disputes. The Court has explained that federal policy encourages parties to arbitrate grievance disputes in the interest of maintaining industrial peace and that federal courts must shape federal substantive law according to federal policy. In addition, the Court has determined that while parties cannot be forced to submit to arbitration when they have not agreed to arbitration, a preference of arbitration exists when the parties' CBA provides a broad arbitration clause that covers disputes, unless the parties expressly excluded the dispute from arbitration.

Presently, a circuit split exists in labor-management dispute cases on the issue of whether a side agreement is arbitrable pursuant to § 301 of the LMRA. See cases involving labor-management disputes.

84. 29 U.S.C. § 185(a).
87. See Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 452-59 (1957) (noting that federal policy encourages parties to arbitrate grievance disputes in the interest of maintaining industrial peace and that federal courts must shape federal substantive law according to federal policy); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 577-79 (1960) (commenting that the present federal policy is to promote industrial stabilization through a collective bargaining agreement and a major factor in achieving industrial peace is the inclusion of a provision for arbitration of grievances in the collective bargaining agreement).
89. Warrior & Gulf, 363 U.S. at 582-85 (stating that while parties cannot be forced to arbitrate disputes, where a collective bargaining agreement contains a broad arbitration clause, there is a presumption of arbitrability because arbitration should not be denied unless parties specifically excluded the dispute from arbitration); Inlandboatmen's Union v. Dutra Group, 279 F.3d 1075, 1078-79 (9th Cir. 2002) (noting that labor law policy as declared by the Supreme Court provides a strong preference for the arbitration of labor-management disputes).
to the arbitration clause of a CBA. The United States Courts of Appeals for the Third and Seventh Circuits have determined that a side agreement is arbitrable under an arbitration clause in a CBA when the scope of the arbitration clause covers the subject matter of a side agreement. In contrast, the United States Courts of Appeals for the Second and Fourth Circuits have decided that a side agreement is arbitrable under an arbitration clause in a CBA when the subject matter of the side agreement is similar to the subject matter of the CBA.

A. SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT

In the early twentieth century, Congress decided to intervene in labor relations to benefit industrial society. Congress enacted the National Labor Relations Act ("NLRA") in 1935 in an attempt to manage labor relations. In 1947, Congress amended the NLRA and enacted the Labor Management Relations Act. Section 301 of the LMRA currently provides that:

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Section 301 of the LMRA grants original jurisdiction to federal courts in cases involving CBA violations. Regardless of the amount in controversy or diversity of citizenship, § 301 allows parties to enforce labor contracts in federal district courts having proper jurisdiction. Therefore, parties to a labor contract such as a CBA may bring a breach of contract action in federal district court. However, federal courts lack jurisdiction pursuant to § 301 when a CBA contains an arbitration clause. Section 301 is an alternative for parties fac-

90. Dutra, 279 F.3d at 1079-80.
91. Id. at 1080.
92. Id. at 1079.
95. Hamburger, 16 Pac. L.J. at 1143.
98. Hamburger, 16 Pac. L.J. at 1143.
100. Hamburger, 16 Pac. L.J. at 1146.
101. Id. at 1157-58.
ing bargaining issues when their CBA fails to contain an arbitration clause.\textsuperscript{102}

B. \textbf{United States Supreme Court Decisions Involving § 301 of the LMRA}

In \textit{Retail Clerks International Ass'n, Local Unions Nos. 128 & 633 v. Lion Dry Goods, Inc.},\textsuperscript{103} the United States Supreme Court decided that the scope of § 301 of the LMRA included CBAs as well as contracts such as settlement agreements, or side agreements, formed by labor organizations and employers.\textsuperscript{104} In \textit{Retail Clerks}, the Retail Clerks International Association, Local Unions No. 128 and 633 ("Retail Clerks") brought an action against Lion Dry Goods, Incorporated ("Lion") under § 301 of the LMRA in the United States District Court for the Northern District of Ohio for violating a strike settlement agreement between the parties.\textsuperscript{105} Retail Clerks alleged that the settlement agreement constituted a contract as contemplated by § 301(a) of the LMRA.\textsuperscript{106} Lion claimed that the settlement agreement did not constitute a contract as contemplated by § 301(a) of the LMRA because the scope of § 301(a) was limited to CBAs and other agreements formed through the collective bargaining process.\textsuperscript{107}

The district court dismissed the action, concluding that the settlement agreement was not a contract as contemplated by § 301(a) of the LMRA.\textsuperscript{108} The district court reasoned that because the settlement agreement was not a contract, § 301 did not govern the settlement agreement and the court lacked subject matter jurisdiction.\textsuperscript{109} The district court commented that only CBAs between an employer and a union could be actionable under § 301(a) of the LMRA.\textsuperscript{110} The district court therefore determined that Retail Clerks could not bring an action under § 301 of the LMRA based on the settlement agreement between Retail Clerks and Lion.\textsuperscript{111}

\begin{footnotesize}
\begin{enumerate}
\item[102.] \textit{Id.} at 1157.
\item[103.] 369 U.S. 17 (1962).
\item[104.] \textit{Retail Clerks}, 369 U.S. 17, 18, 27-28 (1962).
\item[106.] \textit{Retail Clerks}, 179 F. Supp. at 564, 567-68.
\item[107.] \textit{Id.}
\item[108.] \textit{Id.} at 567, 568-69.
\item[109.] \textit{Id.} at 567.
\item[110.] \textit{Id.} at 568.
\item[111.] \textit{Id.}
\end{enumerate}
\end{footnotesize}
Retail Clerks appealed the decision of the district court to the United States Court of Appeals for the Sixth Circuit.\textsuperscript{112} The Sixth Circuit affirmed the district court’s opinion, deciding that the district court correctly interpreted § 301 of the LMRA and correctly held that it lacked subject matter jurisdiction.\textsuperscript{113} The Sixth Circuit reasoned that the settlement agreement between Retail Clerks and Lion was not a CBA between a union and an employer.\textsuperscript{114} The Sixth Circuit noted that the district court correctly concluded that only CBAs between an employer and a union could be actionable under § 301(a) of the LMRA.\textsuperscript{115} Retail Clerks filed a petition for a writ of certiorari with the United States Supreme Court, which granted certiorari to determine whether the settlement agreement was considered a contract as contemplated by the scope of § 301 of the LMRA.\textsuperscript{116}

The Supreme Court reversed and remanded the decision of the Sixth Circuit, deciding that the alleged violation of the settlement agreement fell under § 301(a) of the LMRA.\textsuperscript{117} Justice William J. Brennan, writing for the majority, reasoned that the term “contracts” in § 301(a) did not encompass only CBAs.\textsuperscript{118} The Court noted that if Congress had intended to restrict the scope of § 301(a) to include only CBAs, Congress would have used the term “collective bargaining agreements” rather than the term “contracts.”\textsuperscript{119} The Court commented that the strike settlement agreement was a contract as contemplated by § 301(a) because it was an agreement created to maintain a labor relationship between a union and an employer.\textsuperscript{120} The Court therefore decided that the scope of § 301 of the LMRA included CBAs, as well as contracts such as settlement agreements formed by labor organizations and employers.\textsuperscript{121}

In \textit{Hines v. Anchor Motor Freight, Inc.},\textsuperscript{122} the United States Supreme Court determined that when a CBA provides an arbitration clause, an employee must exhaust arbitration procedures before pursuing an action under § 301 of the LMRA pursuant to congressional policy favoring arbitration of labor management disputes.\textsuperscript{123} In

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\item \textsuperscript{113} \textit{Retail Clerks}, 286 F.2d at 235.
\item \textsuperscript{114} \textit{Id.} at 235.
\item \textsuperscript{115} \textit{Id.}.
\item \textsuperscript{116} \textit{Retail Clerks}, 369 U.S. 17, 18-19 (1962).
\item \textsuperscript{117} \textit{Retail Clerks}, 369 U.S. at 29-30.
\item \textsuperscript{118} \textit{Id.} at 18, 25.
\item \textsuperscript{119} \textit{Id.} at 25.
\item \textsuperscript{120} \textit{Id.} at 28.
\item \textsuperscript{121} \textit{Id.} at 18, 28.
\item \textsuperscript{122} 424 U.S. 554 (1976).
\item \textsuperscript{123} \textit{Hines v. Anchor Motor Freight, Inc.}, 424 U.S. 554, 562-63 (1976).
\end{itemize}
Hines, former employees of Anchor Motor Freight ("Anchor") filed suit against Anchor for wrongful discharge, and filed against Local 377, International Brotherhood of Teamsters ("Union") and Union's International ("International") for breach of the duty of fair representation under § 301 of the LMRA in the United States District Court for the Northern District of Ohio. Anchor discharged eight employees for falsifying motel receipts. The parties processed the discharges through a grievance procedure under a CBA between Anchor and Union that prohibited discharge without just cause. During the grievance process at a meeting between Anchor and Union, the employees claimed their innocence and Anchor presented evidence against the employees. Eventually, the parties agreed to arbitrate the dispute under the CBA, which allowed for arbitration of unresolved grievances. At the arbitration proceedings, Union represented the employees and the arbitration committee decided to uphold the discharges. The employees sought a rehearing of the grievance based on new evidence, but the requests were unanimously denied because the employees lacked sufficient evidence.

The district court granted Anchor's, International's and Union's motions for summary judgment. The district court held that the union did not breach the duty of fair representation. Further, the district court reasoned that the decision of the arbitration committee was binding and final. In addition, the district court noted that the decision reached through arbitration was binding and final unless the union acted in bad faith.

The employees appealed the decision of the district court to the United States Court of Appeals for the Sixth Circuit, arguing that Union acted in bad faith in representing the employees and that Anchor lacked just cause to discharge the employees based on new evidence favoring the employees. The Sixth Circuit reversed and

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125. Hines, 506 F.2d at 1155.
126. Id. (noting that the discharges were processed through the parties collective bargaining agreement); Hines, 424 U.S. at 556 (commenting that the collective bargaining agreement prohibited discharges without just cause).
127. Hines, 506 F.2d at 1155.
129. Hines, 506 F.2d at 1155.
130. Id. at 1155.
132. Hines, 506 F.2d at 1156.
133. Hines, 424 U.S. at 554.
134. Id. at 554.
135. Hines, 506 F.2d at 1154, 1157.
remanded the district court's opinion in part and affirmed in part, holding that the district court improperly granted Union's summary judgment motion, but correctly granted the summary judgment motions made by Anchor and International.\textsuperscript{136} The Sixth Circuit reasoned that the district court could have inferred Union's bad faith based on sufficient evidence and that the employees should have been given the opportunity to prove bad faith.\textsuperscript{137} The Sixth Circuit noted that the finality provisions in the CBA were enforceable because of a lack of evidence showing conspiracy between Anchor and Union.\textsuperscript{138} The employees filed a writ of certiorari with the United States Supreme Court, which granted certiorari to consider whether the Sixth Circuit properly dismissed the employee's action against Anchor for breach of the CBA.\textsuperscript{139}

The Supreme Court reversed the decision of the Sixth Circuit, deciding that the circuit court improperly affirmed the district court's dismissal of the action against Anchor.\textsuperscript{140} Justice Byron R. White, writing for the majority, reasoned that if the employees could prove they were wrongfully discharged and that Union breached the duty of representation, the employees would be entitled to a proper remedy against both Union and Anchor.\textsuperscript{141} The Court noted that the desirable method for settling grievances between parties was the method agreed to by parties for final determination of disputes.\textsuperscript{142} The Court commented that generally CBAs contain arbitration provisions designed to settle disputes, which could be enforced under § 301 of the LMRA.\textsuperscript{143} The Court noted that an employee could not bring an action under § 301 of the LMRA unless the employee exhausted the contractual provisions used to settle disputes with the employer.\textsuperscript{144} The Court therefore determined that when a CBA provides an arbitration clause, an employee must exhaust arbitration procedures before pursuing an action under § 301 of the LMRA pursuant to congressional policy favoring arbitration of labor management disputes.\textsuperscript{145}

\textsuperscript{136} Id. at 1157-58. \\
\textsuperscript{137} Id. at 1156-57. \\
\textsuperscript{138} Id. at 1157-58. \\
\textsuperscript{139} Hines v. Anchor Motor Freight, Inc., 421 U.S. 928, 928-29 (1975). \\
\textsuperscript{140} Hines, 424 U.S. at 572. \\
\textsuperscript{141} Id. at 556, 572. \\
\textsuperscript{142} Id. at 562. \\
\textsuperscript{143} Id. \\
\textsuperscript{144} Id. at 563. \\
\textsuperscript{145} Id. at 562-63.
C. THE UNITED STATES SUPREME COURT EXAMINED LABOR LAW POLICY IN LINCOLN MILLS AND THE STEELWORKERS TRILOGY

The United States Supreme Court examined labor law principles in *Textile Workers Union of America v. Lincoln Mills of Alabama*.146 In addition, the Supreme Court further explored labor law principles in *United Steelworkers of America v. American Manufacturing Co.*,147 *United Steelworkers of America v. Warrior & Gulf Navigation Co.*,148 and *United Steelworkers of America v. Enterprise Wheel & Car Corp.*149 (the “Steelworkers Trilogy”).150 The Supreme Court has explained that federal policy encourages parties to arbitrate grievance disputes in the interest of maintaining industrial peace and that federal courts must shape federal substantive law according to federal policy.151 Further, the Supreme Court has determined that while parties cannot be forced to submit to arbitration when they have not agreed to arbitration, a preference of arbitration exists when the parties’ CBA provides a broad arbitration clause that covers disputes, unless the parties expressly excluded the dispute from arbitration.152

In *Textile Workers Union of America v. Lincoln Mills*,153 the United States Supreme Court decided that federal policy encourages parties to arbitrate grievance disputes in the interest of maintaining industrial peace and that federal courts must shape federal substantive law according to federal policy.154 In *Lincoln Mills*, Textile Workers Union of America (“Textile”) brought suit under § 301 of the LMRA against the Lincoln Mills Corporation (“Lincoln Mills”) to compel arbitration of grievance disputes in the United States District Court for the Northern District of Alabama.155 Textile and Lincoln Mills formed a CBA containing a grievance procedure that provided for arbi-

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146. 353 U.S. 448 (1957).
149. 363 U.S. 593 (1960).
150. See infra notes 173-241 and accompanying text.
152. Warrior & Gulf, 363 U.S. at 582-85 (stating that while parties cannot be forced to arbitrate disputes, where a collective bargaining agreement contains a broad arbitration clause, there is a presumption of arbitrability because arbitration should not be denied unless parties specifically excluded the dispute from arbitration); Dutra, 279 F.3d at 1075, 1078-79 (noting that labor law policy as declared by the United States Supreme Court provides a strong preference for the arbitration of labor-management disputes).
Textile filed several grievances and processed them through the grievance procedure. Lincoln Mills denied the grievances and Textile requested arbitration as provided by the CBA. Lincoln Mills refused to arbitrate the grievances.

The district court found for Textile, concluding that the court had proper subject matter jurisdiction and that Lincoln Mills must arbitrate the grievance. In addition, the district court explained that the grievance procedure in the CBA provided for arbitration. Further, the district court concluded that Lincoln Mills must comply with the arbitration provision in the grievance procedure of the CBA.

Lincoln Mills appealed the decision of the district court to the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit reversed the district court's opinion, holding that Textile lacked a legal right to compel Lincoln Mills to arbitrate the grievance. The Fifth Circuit reasoned that Textile had no right under federal or state law that required or permitted enforcing the arbitration provision in the grievance procedure of the CBA. The Fifth Circuit concluded that § 301 of the LMRA failed to provide Textile with a right to enforce the arbitration provision. Textile filed a petition for a writ of certiorari with the United States Supreme Court, which granted certiorari to consider whether a party has a right under either federal or state law to enforce arbitration provisions in a CBA.

The Supreme Court reversed the decision of the Fifth Circuit, deciding that § 301 of the LMRA permitted enforcement of arbitration provisions in the grievance procedure of the CBA and that federal labor law policy promoted enforcing arbitration. Justice William O. Douglas, writing for the majority, reasoned that federal labor law policy promoted stabilizing industry through CBAs. The Court commented that § 301 promoted responsibility among parties to CBAs. The Court noted that grievance arbitration provisions in CBAs aid in-

156. *Lincoln Mills*, 230 F.2d at 82-83.
157. *Id.* at 83.
158. *Id.*
159. *Id.*
161. *Id.* at 449.
162. *Id.*
164. *Id.* at 88-89.
165. *Id.* at 88.
166. *Id.*
169. *Id.* at 449, 453-54.
170. *Id.* at 454.
The Court therefore decided that federal policy encourages parties to arbitrate grievance disputes in the interest of maintaining industrial peace and that federal courts must shape federal substantive law according to federal policy.\textsuperscript{172}

In \textit{United Steelworkers of America v. American Mfg. Co.},\textsuperscript{173} the United States Supreme Court determined that when parties have an agreement to submit disputes to arbitration, a court must not decide the merits of the dispute because a court is limited to determining whether the dispute is arbitrable under the agreement.\textsuperscript{174} In \textit{American Mfg. Co.}, a union, United Steelworkers of America ("Steelworkers"), brought an action under § 301 of the LMRA against the employer of a union member, American Manufacturing Company ("American"), to compel American to arbitrate a grievance as provided in the parties' CBA in the United States District Court for the Eastern District of Tennessee.\textsuperscript{175} In 1957, a union member employee sustained work-related injuries and received a workers' compensation settlement award from American.\textsuperscript{176} After receiving the settlement award, the employee applied for his former position with American.\textsuperscript{177} Steelworkers filed a grievance with American requesting that American return the employee to his former position as required by the CBA.\textsuperscript{178} The CBA between the parties provided a grievance process with an arbitration clause.\textsuperscript{179} American refused to arbitrate the grievance claiming that the grievance was not arbitrable.\textsuperscript{180}

The district court granted American's motion for summary judgment, holding that when the employee accepted the settlement award, the employee was estopped from claiming any employment rights with American.\textsuperscript{181} The district court reasoned that American was not required to hire or return any employee to a former position when the employee had received a workers' compensation settlement award resulting from injuries sustained in the former position.\textsuperscript{182} Therefore, the district court granted American's summary judgment motion.\textsuperscript{183}

\textsuperscript{171} Id. at 455.
\textsuperscript{172} Id. at 454-59.
\textsuperscript{173} 363 U.S. 564 (1960).
\textsuperscript{176} American Mfg. Co., 264 F.2d at 625.
\textsuperscript{177} Id.
\textsuperscript{178} American Mfg. Co., 264 F.2d at 625.
\textsuperscript{179} Id. at 566.
\textsuperscript{180} American Mfg. Co., 264 F.2d at 625.
\textsuperscript{181} American Mfg. Co., 363 U.S. at 566.
\textsuperscript{182} American Mfg. Co., 264 F.2d at 625.
Steelworkers appealed the decision of the district court to the United States Court of Appeals for the Sixth Circuit, arguing that the CBA did not grant the district court jurisdiction, nor did it grant authority to bar the employee from returning to the former position. The Sixth Circuit affirmed the district court’s opinion, concluding that the employee’s grievance was not arbitrable under the parties’ CBA. The Sixth Circuit reasoned that the employee’s grievance was frivolous because the employee could no longer perform the functions required by his former position. Steelworkers filed a petition for a writ of certiorari with the United States Supreme Court, which granted certiorari to consider whether the dispute between Steelworkers and American was subject to arbitration under the parties’ CBA.

The Supreme Court reversed the decision of the Sixth Circuit, deciding that the dispute between Steelworkers and American should have been arbitrated. Justice William O. Douglas, writing for the majority, reasoned that because there was a dispute between the parties involving the CBA, the dispute should have been arbitrated. The Court noted that a court is limited to determine whether a dispute is arbitrable when parties have agreed to arbitrate disputes under a CBA. The Court observed that arbitrators, rather than a court, decide questions of contract interpretation. The Court commented that courts undermine the function of arbitration when courts decide the merits of a grievance because an arbitrator decides the merits of a grievance. The Court therefore determined that when parties have an agreement to submit disputes to arbitration, a court must not decide the merits of the dispute because a court is limited to determining whether the dispute is arbitrable under the agreement.

184. Id. at 624, 626.
185. Id. at 627.
186. Id. at 628.
187. Id.
190. Id. at 564, 569.
191. Id. at 567-68.
192. Id. at 568.
193. Id. at 569.
194. Id. at 567-69.
Then, in *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, the United States Supreme Court determined that while parties cannot be forced to submit disputes to arbitration when they have not agreed to arbitration, a preference of arbitration exists when the parties’ CBA provides a broad arbitration clause that covers disputes, unless the parties specifically excluded the dispute from arbitration. In *Warrior & Gulf*, a union, United Steelworkers of America ("Steelworkers"), brought an action under § 301 of the LMRA against Warrior & Gulf Navigation Company ("Warrior & Gulf") to compel Warrior & Gulf to arbitrate a subcontracting dispute under the parties' CBA in the United States District Court for the Southern District of Alabama, Southern Division. Steelworkers represented union member employees of Warrior & Gulf. In 1956, Steelworkers and Warrior & Gulf entered into a CBA that contained an arbitration clause. Through Steelworkers, several Warrior & Gulf employees filed a grievance protesting the company's subcontracting practices. Steelworkers claimed that the broad scope of the arbitration clause in the CBA required the parties to arbitrate the subcontracting dispute. Steelworkers asserted that the district court had the duty to determine if the dispute was arbitrable.

The district court dismissed the action against Warrior & Gulf, reasoning that Warrior & Gulf was not required to arbitrate the subcontracting dispute and could refuse to arbitrate because Steelworkers had no right to arbitrate the dispute under the CBA. The district court explained that the CBA did not prohibit Warrior & Gulf from subcontracting. Further, the district court noted that the CBA did not give Warrior & Gulf employees or Steelworkers the right to arbitrate a subcontracting dispute. In addition, the district court commented that Warrior & Gulf had the right to subcontract and that a subcontracting issue was not subject to arbitration under the parties' CBA.
Steelworkers appealed the decision of the district court to the United States Court of Appeals for the Fifth Circuit, arguing that subcontracting was an act of discrimination toward union members.\textsuperscript{207} Steelworkers argued that the discriminatory treatment resulted in a lockout, and as a result, the subcontracting dispute was a matter for arbitration as comprehended by the CBA.\textsuperscript{208} The Fifth Circuit affirmed the district court’s opinion, concluding that the district court had correctly dismissed Steelworkers’ action.\textsuperscript{209} The Fifth Circuit reasoned that subcontracting was not an arbitrable subject under the parties’ CBA.\textsuperscript{210} The Fifth Circuit noted that characterizing Warrior & Gulf’s conduct as discriminatory or as a lockout of union members did not make Steelworkers’ grievance arbitrable under the CBA.\textsuperscript{211} Steelworkers filed a petition for a writ of certiorari with the United States Supreme Court, which granted certiorari to consider whether the subcontracting dispute was arbitrable under the CBA between Steelworkers and Warrior & Gulf.\textsuperscript{212}

The Supreme Court reversed the decision of the Fifth Circuit, determining that the CBA contemplated that the dispute between Steelworkers and Warrior & Gulf was arbitrable.\textsuperscript{213} Justice William O. Douglas, writing for the majority, reasoned that when a CBA contains a broad arbitration clause, a party must not exclude a grievance from arbitration in the absence of an express exclusion of the particular grievance in the CBA.\textsuperscript{214} The Court noted that while Congress favors settlement of labor-management disputes through arbitration, a party cannot be forced to arbitrate a dispute when the party has not agreed to arbitrate the dispute.\textsuperscript{215} The Court commented that a dispute should be arbitrated unless the dispute has been excluded from the scope of the arbitration clause.\textsuperscript{216} The Court noted that if a doubt exists regarding the arbitrability of a dispute, then the dispute should be submitted to arbitration.\textsuperscript{217} The Court commented that a CBA encompasses the entire relationship of the parties, creates common law, and serves as an internal governing system for industry.\textsuperscript{218} The Court noted that arbitration not only substitutes litigation, but it re-

\textsuperscript{208} Warrior & Gulf, 269 F.2d at 637.
\textsuperscript{209} Id.
\textsuperscript{210} Id. at 636-37.
\textsuperscript{211} Id. at 637.
\textsuperscript{213} Warrior & Gulf, 363 U.S. 574, 584-85 (1960).
\textsuperscript{214} Warrior & Gulf, 363 U.S. at 575, 584-85.
\textsuperscript{215} Id. at 582.
\textsuperscript{216} Id. at 582-83.
\textsuperscript{217} Id.
\textsuperscript{218} Id. at 578-80.
solves industrial strife. The Court therefore determined that while parties cannot be forced to submit disputes to arbitration when parties have not agreed to arbitration, a preference of arbitration exists when the parties' CBA provides a broad arbitration clause that covers disputes, unless the parties specifically excluded the dispute from arbitration.

In *United Steelworkers of America v. Enterprise Wheel & Car Corp.* the United States Supreme Court decided that courts must not review the merits of an arbitration judgment because federal policy favors settling labor-management disputes through arbitrating disputes under a CBA. In *Enterprise*, a union, United Steelworkers of America ("Steelworkers"), brought an action under § 301 of the LMRA against Enterprise Wheel and Car Corporation ("Enterprise") to enforce an arbitration award determined pursuant to an arbitration clause in the parties' CBA. Steelworkers and Enterprise were parties to a CBA that contained grievance procedures providing for arbitration if the parties failed to settle a grievance. In 1957, eleven Enterprise workers walked off the job and Enterprise discharged each employee. Steelworkers filed a grievance under the CBA, but the parties failed to settle the grievance. Steelworkers attempted to arbitrate the grievance as provided by the CBA, but Enterprise refused arbitration. Steelworkers initiated the suit to compel arbitration and the district court ordered Enterprise to arbitrate the grievance under the CBA. After arbitrating the grievance according to the terms of the CBA, the arbitrator decided that Enterprise was required to reinstate the workers to their former positions. Enterprise refused to reinstate the workers as required by the arbitrator's decision.

The district court found for Steelworkers, reasoning that Enterprise was required to follow the arbitrator's decision of reinstating the...
workers.\textsuperscript{231} In addition, the district court further reasoned that requiring Enterprise to reinstate the workers followed federal labor law policy.\textsuperscript{232} Further, the district court noted that under § 301 of the LMRA, the district court had proper subject matter jurisdiction to determine that Steelworkers could enforce its rights under the CBA because the action involved a labor controversy between a union and employer.\textsuperscript{233}

Enterprise appealed the decision of the district court to the United States Court of Appeals for the Fourth Circuit, arguing that the district court lacked subject matter jurisdiction and that the arbitrator failed to follow the terms of the CBA involving arbitration.\textsuperscript{234} The Fourth Circuit affirmed in part and modified in part the district court’s opinion, determining that the district court had subject matter jurisdiction to require arbitration, but determining that Enterprise should not have been forced to reinstate the discharged workers.\textsuperscript{235} The Fourth Circuit reasoned that the workers no longer possessed rights under the CBA because the agreement expired before Steelworkers initiated the suit.\textsuperscript{236} Steelworkers filed a petition for a writ of certiorari with the United States Supreme Court, which granted certiorari to consider whether a court could review the merits of a decision reached through arbitration according to an arbitration clause in a CBA.\textsuperscript{237}

The Supreme Court reversed and remanded the decision of the Fourth Circuit, determining that a court must not overrule an arbitrator’s decision involving the interpretation of a CBA when the parties have bargained for a decision through arbitration.\textsuperscript{238} Justice William O. Douglas, writing for the majority, reasoned that if courts could review the merits of decisions reached through arbitration, then arbitrators’ decisions would not be considered final decisions as required by arbitration provisions in CBAs.\textsuperscript{239} The Court noted that providing courts with the opportunity to review the merits of arbitration decisions would oppose federal labor law policy favoring the settlement of labor-management disputes through arbitration because arbitrators are necessary agencies in the collective bargaining process.\textsuperscript{240} The Court therefore decided that courts must not review the merits of an

\begin{itemize}
\item \textsuperscript{231} Id. at 313.
\item \textsuperscript{232} Id.
\item \textsuperscript{233} Id. at 311, 313.
\item \textsuperscript{234} Enterprise, 269 F.2d at 328, 329-30.
\item \textsuperscript{235} Id. at 332.
\item \textsuperscript{236} Id. at 331.
\item \textsuperscript{237} United Steelworkers v. Enterprise Wheel & Car Corp., 361 U.S. 929 (1960).
\item \textsuperscript{238} Enterprise, 363 U.S. at 599.
\item \textsuperscript{239} Enterprise, 363 U.S. at 594, 598-99.
\item \textsuperscript{240} Id. at 596.
\end{itemize}
arbitration judgment because federal policy favors settling labor-man-
agement disputes through arbitrating the dispute under a CBA.241

D. THE CIRCUIT SPLIT ON THE APPROACHES IN DETERMINING
WHETHER A SIDE AGREEMENT IS ARBITRABLE PURSUANT
TO THE ARBITRATION CLAUSE IN A COLLECTIVE
BARGAINING AGREEMENT

1. Decisions of the United States Courts of Appeals for the Third
and Seventh Circuits

In L.O. Koven & Bro., Inc. v. Local Union No. 5767, United Steel-
workers242 the United States Court of Appeals for the Third Circuit
determined that when the subject matter of a side agreement was one
normally considered under a CBA, a side agreement claim was arbi-
trable under the arbitration clause in the CBA.243 In Koven, L. O.
Koven & Brother, Incorporated (“Koven”) sought a declaratory judg-
ment and injunction against Local Union No. 5767, United Steelwork-
ers, AFL-CIO, (“Union”) in the United States District Court for the
District of New Jersey.244 Koven claimed that prior settlement agree-
ments between the parties discharged Union’s complaint and sought
to bar Union from arbitrating the complaint.245 Union filed a counter-
claim and answer seeking to arbitrate the complaint.246 In 1960, the
parties formed a CBA that contained an arbitration clause.247 Union
filed a grievance with Koven as required by the arbitration clause in
the CBA for failing to pay benefits to Union members.248 In response,
Koven claimed that Union had released Koven from such obligations
under settlement agreements formed as a result of Koven’s bank-
ruptcy.249 Thereafter, Union requested arbitration of the grievance.250

The district court found for Koven, declaring that Union’s request
for arbitration should be denied.251 The district court reasoned that
Union had released Koven from obligations under the settlement
agreements.252 Further, the district court noted that when a party is

241. Id.
242. 381 F.2d 196 (3d Cir. 1967).
243. L.O. Koven & Bro., Inc. v. Local Union No. 5767, 381 F.2d 196, 204-05 (3d Cir.
1967).
244. Koven, 381 F.2d at 196, 200.
245. Id. at 200.
246. Id.
247. Id. at 198-99.
248. Id. at 199.
249. Id. at 198-99.
250. Id. at 199.
251. Id. at 200.
252. Id.
attempting to arbitrate a claim, arbitration is denied when the claim has been discharged.\textsuperscript{253} The district court decided that the prior agreements barred and discharged Union's claim.\textsuperscript{254}

Union appealed the decision of the district court to the United States Court of Appeals for the Third Circuit, arguing that the impact of Koven's bankruptcy as it related to the discharge of obligations was subject to arbitration.\textsuperscript{255} The Third Circuit affirmed in part, reversed in part, and remanded the district court's opinion, determining that the settlement agreement claims were arbitrable under the CBA.\textsuperscript{256} The Third Circuit reasoned that a release contained in a settlement agreement was arbitrable under a CBA unless the release excluded claims under the CBA.\textsuperscript{257} The Third Circuit noted that interpreting the terms of a settlement agreement included the relationship and circumstances surrounding claims involving settlement agreements.\textsuperscript{258} The Third Circuit observed that an arbitrator's role in interpreting a CBA included examining events and negotiations surrounding a settlement agreement dispute.\textsuperscript{259} The Third Circuit therefore determined that when the subject matter of a settlement agreement was one normally considered under a CBA, a settlement agreement claim was arbitrable under the arbitration clause in the CBA.\textsuperscript{260}

In \textit{Niro v. Fearn Int'l, Inc.},\textsuperscript{261} the United States Court of Appeals for the Seventh Circuit concluded that a settlement agreement was arbitrable if the dispute under the settlement agreement was arbitrable, unless the parties have stated a desire to except the settlement agreement from arbitration.\textsuperscript{262} In \textit{Niro}, in the United States District Court for the Northern District of Illinois, Dominic Niro ("Niro") brought suit against Fearn International, Incorporated ("Fearn") alleging Fearn breached a CBA due to termination of Niro's employment.\textsuperscript{263} In 1984, Fearn terminated Niro's employment.\textsuperscript{264} In response to Niro's termination, Local 744, International Brotherhood of Teamsters ("Local 744") filed a grievance with Fearn under the CBA.\textsuperscript{265} Thereafter, the parties formed a settlement agreement and

\textsuperscript{253} Id.
\textsuperscript{254} Id.
\textsuperscript{255} Id. at 198, 201-02.
\textsuperscript{256} Id. at 198-99, 204-05, 208-09.
\textsuperscript{257} Id. at 205.
\textsuperscript{258} Id. at 204.
\textsuperscript{259} Id. at 204-05.
\textsuperscript{260} Id.
\textsuperscript{261} 827 F.2d 173 (7th Cir. 1987).
\textsuperscript{262} Niro v. Fearn Int'l, Inc., 827 F.2d 173, 175 (7th Cir. 1987).
\textsuperscript{263} Id., 827 F.2d at 173-74.
\textsuperscript{264} Id. at 174.
\textsuperscript{265} Id.
Fearn reinstated Niro. Shortly after forming the settlement agreement, Fearn terminated Niro for allegedly violating the settlement agreement.

The district court found for Niro, through Local 744, concluding that the first termination was not arbitrable, while the second termination was arbitrable. Further, the district court noted that the second termination concerned the dispute over the settlement agreement. Therefore, the district court granted and denied in part Local 744's cross-claim in declaring that the settlement dispute was arbitrable.

Fearn appealed the decision of the district court to the United States Court of Appeals for the Seventh Circuit, arguing that the violation of a settlement agreement was not arbitrable because it was not subject to the CBA. The Seventh Circuit affirmed the district court's opinion, concluding that a settlement agreement was arbitrable if a settlement agreement dispute was arbitrable, unless the parties have stated a desire to except the settlement agreement from arbitration. The Seventh Circuit reasoned that the parties intended to arbitrate claims concerning a breach of the settlement agreement. The Seventh Circuit noted that the parties were free to agree beforehand that the side agreements were not arbitrable. The Seventh Circuit observed that a presumption of arbitrability existed in questions of uncertainty concerning arbitration. The Seventh Circuit therefore concluded that a settlement agreement was arbitrable if the dispute under the settlement agreement was arbitrable, unless the parties have stated a desire to except the settlement agreement from arbitration.

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266. Id.
267. Id.
268. Id. In 1985, Niro added Local 744 as a defendant because Local 744 failed to file a grievance with Fearn over Niro's second termination. Id. After being added as a defendant, Local 744 sought arbitration over the settlement agreement and Niro's first termination by filing a cross-claim. Id.
269. Id.
270. Id.
271. Id. at 173, 174-75.
272. Id. at 175, 179.
273. Id. at 176.
274. Id. at 175.
275. Id.
276. Id.
2. Decisions of the United States Courts of Appeals for the Second and Fourth Circuits

In Adkins v. Times-World Corp., the United States Court of Appeals for the Fourth Circuit concluded that an addendum was arbitrable under a CBA because the addendum was "part of the collective bargaining agreement." In Adkins, Lonnie Adkins and fifteen co-employees ("Adkins") brought suit against Times-World Corporation ("Times-World"), Roanoke Typographical Union Local No. 60 ("Local"), and International Typographical Union, ("International"), alleging Times-World breached their employment agreement, and claiming Local and International committed unfair representation in the United States District Court for the Western District of Virginia. In 1975, Times-World and Local added an addendum to their CBA to protect employment positions for certain employees. In 1983, Times-World laid off Adkins and two other employees. Thereafter, Local filed a complaint with Times-World claiming breach of the addendum and sought to arbitrate the complaint under the CBA. After failing to resolve the complaint through negotiations, Times-World and Local agreed to arbitrate under the CBA. After filing suit, Adkins sought an order to stay arbitration of the complaint. The district court found for Adkins, ordering to stay arbitration and denied Times-World's motion to dismiss.

Times-World, Local, and International appealed the decision of the district court to the United States Court of Appeals for the Fourth Circuit, arguing that the addendum was a part of the CBA. Times-World and the unions argued that any complaint concerning the addendum required arbitration under the CBA's arbitration clause. The Fourth Circuit reversed and remanded the district court's opin-
ion, concluding that disputes covered under the addendum were covered under the arbitration clause in the CBA. The Fourth Circuit reasoned that the addendum was part of the CBA; therefore, the addendum was covered under the arbitration clause. The Fourth Circuit observed that when a CBA provides an arbitration clause, an employee must exhaust arbitration procedures before pursuing an action pursuant to § 301 of the LMRA. The Fourth Circuit therefore concluded that an addendum was arbitrable under a CBA because the addendum was "part of the collective bargaining agreement." 

In Cornell University v. UAW Local 2300, the United States Court of Appeals for the Second Circuit concluded that a letter of understanding that was not part of a CBA was "collateral" and not arbitrable under the arbitration clause of the CBA. In Cornell, UAW Local 2300 ("Local 2300") sued Cornell University ("Cornell") claiming Cornell violated the parties' CBA by failing to arbitrate a dispute in the United States District Court for the Northern District of New York. In 1988, Cornell and Local 2300 formed a CBA that contained an arbitration clause to resolve disputes under the agreement. During negotiations involving the CBA, Local 2300 made many proposals that Cornell did not approve. Local 2300 incorporated the proposals into a "letter of understanding" ("Letter"). After Cornell made certain changes involving employee benefits, Local 2300 claimed Cornell breached the Letter and sought to arbitrate the claim under the arbitration clause in the CBA. Thereafter, Cornell obtained an order to stay arbitration of the claim under the Letter from the New York State Supreme Court. Local 2300 successfully obtained removal to federal court.

The district court found for Cornell in granting Cornell's motion for summary judgment. Local 2300 claimed that Cornell violated

290. Id. at 832.
291. Id. at 831-32.
292. Id. at 832.
293. Id. at 831-32.
294. 942 F.2d 138 (2d Cir. 1991).
296. Cornell, 942 F.2d at 139-40. Cornell originally filed a claim to stay arbitration in state court. Id. Thereafter, Local 2300 successfully removed the suit to federal court. Id.
297. Id. at 139.
298. Id.
299. Id.
300. Id.
301. Id. at 140.
302. Id.
303. Id.
the CBA by failing to arbitrate the claim under the Letter.\textsuperscript{304} The district court dismissed Local 2300's claim for arbitration and granted Cornell's motion for summary judgment.\textsuperscript{305}

Local 2300 appealed the decision of the district court to the United States Court of Appeals for the Second Circuit, arguing that the Letter supplemented the CBA, and that therefore the arbitration clause in the CBA covered the Letter.\textsuperscript{306} Cornell argued that because it did not agree to the Letter, the Letter was not subject to the arbitration clause in the CBA.\textsuperscript{307} The Second Circuit affirmed the district court's opinion, concluding that the claim under the Letter was not arbitrable under the arbitration clause in the CBA because the Letter was collateral to the CBA.\textsuperscript{308} The Second Circuit reasoned that the Letter was collateral to the CBA because the Letter was not part of the CBA.\textsuperscript{309} The Second Circuit further reasoned that the Letter established a separate duty entirely different from the CBA because the CBA did not contemplate certain terms the Letter created.\textsuperscript{310} The Second Circuit therefore concluded that because the Letter was not part of the CBA, the Letter was "collateral" and not arbitrable under the arbitration clause of the CBA.\textsuperscript{311}

ANALYSIS

While § 301 of the Labor Management Relations Act ("LMRA")\textsuperscript{312} grants original jurisdiction to federal courts in cases involving collective bargaining agreements ("CBA"), federal courts lack subject matter jurisdiction pursuant to § 301 when a CBA contains an arbitration clause.\textsuperscript{313} Pursuant to § 301, parties to a labor contract such as a CBA may bring a breach of contract action in federal district court.\textsuperscript{314} However, § 301 acts only as an alternative for parties facing bargain-
In cases involving labor-management disputes, federal courts use two different approaches to determine whether a side agreement dispute is arbitrable pursuant to the CBA's arbitration clause. The first approach (the “Similarity Approach”) compares the subject matter of the CBA to the subject matter of the side agreement. The second approach (the “Scope Approach”) compares the scope of the CBA's arbitration clause to the subject matter of the side agreement but allows parties to except side agreement disputes in their CBA.

Federal labor law policy encourages parties to arbitrate grievance disputes in the interest of maintaining industrial peace in labor-management dispute cases. Labor law policy mandates that federal courts must shape federal substantive law according to federal policy. Likewise, federal labor law policy states that while parties cannot be forced to submit disputes to arbitration when parties have not agreed to arbitration, a preference of arbitration exists when the parties' CBA provides a broad arbitration clause that covers disputes, unless the parties specifically excluded the dispute from arbitration in the agreement.

In Inlandboatmens Union v. Dutra Group, the United States Court of Appeals for the Ninth Circuit relied on congressional policy in requiring parties to arbitrate pursuant to an arbitration clause contained in a CBA. In doing so, the Ninth Circuit applied the Scope Approach rather than the Similarity Approach in the dispute over the settlement agreement. In Dutra, the court concluded that a side agreement dispute was arbitrable under a CBA when the scope of the arbitration clause in the CBA covered the subject matter of the side agreement. In so concluding, the court determined that the scope of an arbitration clause governed whether a side agreement was arbitrable under a CBA.

315. Hamburger, 16 PAC. L.J. at 1157.
316. Inlandboatmens Union v. Dutra Group, 279 F.3d 1075, 1079-80 (9th Cir. 2002).
317. Dutra, 279 F.3d at 1079.
318. Id. at 1080.
322. 279 F.3d 1075 (9th Cir. 2002).
323. Dutra, 279 F.3d 1075, 1080-81 (9th Cir. 2002).
324. Dutra, 279 F.3d at 1080.
325. Id.
326. Id.
By declaring that the scope of the arbitration clause governed, the Dutra court correctly analyzed the labor-management dispute between the parties. First, the court correctly determined that a federal court lacks subject matter jurisdiction over a side agreement dispute when the parties’ CBA contains an arbitration clause covering the dispute. The court also correctly determined that a federal court lacks jurisdiction because parties must exhaust non-judicial procedures before initiating an action under § 301 of the LMRA. Furthermore, when provisions in a CBA cover a side agreement dispute, § 301 of the LMRA does not govern the dispute. Second, the court correctly followed labor law principles as noted by the United States Supreme Court. The court correctly followed labor law policy because labor law principles are satisfied when a court determines that the broad scope of an arbitration clause in a CBA covers a side agreement. In addition, the court correctly adhered to policy because the Scope Approach satisfies labor law principles by promoting arbitration of side agreement disputes when an arbitration clause in a CBA has a broad scope. Third, the court correctly decided to follow the Scope Approach rather than the Similarity Approach. The court correctly decided to follow the Scope Approach because the Scope Approach applies to a situation where parties form a side agreement separate and independent of a CBA.

A. THE NINTH CIRCUIT IN DUTRA CORRECTLY DETERMINED THAT A COURT LACKS JURISDICTION OVER A SIDE AGREEMENT DISPUTE WHEN A COLLECTIVE BARGAINING AGREEMENT CONTAINS AN ARBITRATION CLAUSE COVERING THE DISPUTE

1. Parties Must Exhaust Non-Judicial Procedures Before Initiating An Action Under § 301 of the LMRA

The Ninth Circuit in Dutra correctly determined that the district court lacked subject matter jurisdiction over Inlandboatmen's Union of the Pacific's (“IBU”) § 301 action because IBU had failed to exhaust the non-judicial procedures provided in the CBA prior to initiating the

327. See infra notes 336-483 and accompanying text.
328. See infra notes 336-366 and accompanying text.
329. Id.
330. Id.
331. See infra notes 367-419 and accompanying text.
332. Id.
333. Id.
334. See infra notes 420-480 and accompanying text.
335. Id.
action in federal district court.\textsuperscript{336} Section 301 of the LMRA allows parties to initiate an action in federal district court for violations of labor-management contracts.\textsuperscript{337} Regardless of the amount in controversy or diversity of citizenship, § 301 allows parties to enforce labor contracts in federal district courts having proper jurisdiction.\textsuperscript{338}

However, in \textit{Hines v. Anchor Motor Freight, Inc.},\textsuperscript{339} the United States Supreme Court determined that when a CBA provides an arbitration clause, a party must exhaust arbitration procedures before pursuing an action under § 301 pursuant to policy favoring arbitration of labor management disputes.\textsuperscript{340} In \textit{Hines}, the Supreme Court noted that the desirable method for settling grievances between parties was the method agreed upon by parties for final determination of disputes.\textsuperscript{341} In \textit{Hines}, the Court commented that a party could not bring an action under § 301 of the LMRA unless a party had exhausted the non-judicial procedures set forth in the CBA used to settle disputes with the other party.\textsuperscript{342}

In \textit{Hines}, the parties' CBA contained grievance procedures that allowed for arbitration of unresolved disputes.\textsuperscript{343} Likewise, in \textit{Dutra}, the CBA between IBU and Dutra contained grievance procedure mechanisms that provided for arbitration of disputes.\textsuperscript{344} The CBA between Dutra and IBU provided for arbitration of disputes in the grievance procedure process.\textsuperscript{345} A subcontracting dispute arose between the parties and IBU filed a grievance complaint claiming that Dutra had violated the parties' CBA.\textsuperscript{346} IBU and Dutra resolved the grievance complaint through a settlement agreement prior to beginning arbitration proceedings as provided in the CBA.\textsuperscript{347} The Ninth Circuit determined that IBU had failed to exhaust the non-judicial remedies provided in the CBA.\textsuperscript{348} The court reasoned that the settlement

\footnotesize{\textsuperscript{336} See infra notes 337-352 and accompanying text.}
\textsuperscript{337} 29 U.S.C. § 185(a).
\textsuperscript{338} Id.
\textsuperscript{339} 424 U.S. 554 (1976).
\textsuperscript{341} Hines, 424 U.S. at 562.
\textsuperscript{342} Id. at 563.
\textsuperscript{343} Id. at 557.

\textsuperscript{344} Compare \textit{Hines v. Anchor Motor Freight, Inc.}, 506 F.2d at 1153, 1155 (1974), cert. granted, 421 U.S. 928 (1975), \textit{rev'd}, 424 U.S. 554 (1976) (noting that Union processed Hines discharge through the grievance procedure pursuant to the collective bargaining agreement between Union and Anchor Motor Freight), \textit{with} Brief for Appellant at 4, \textit{Inlandboatmens Union v. Dutra Group}, 279 F.3d 1075 (9th Cir. 2002) (No. 00-15522) (commenting that the collective bargaining agreement between IBU and Dutra contained grievance procedures that allowed the parties to arbitrate disputes).

\textsuperscript{345} Brief for Appellant at 6, \textit{Dutra}, 279 F.3d at 1075.
\textsuperscript{346} \textit{Dutra}, 279 F.3d at 1077.
\textsuperscript{347} Id.
\textsuperscript{348} \textit{Dutra}, 279 F.3d at 1084.
agreement dispute could be arbitrated under the CBA and that IBU had failed to arbitrate the dispute under the CBA.\textsuperscript{349}

Although § 301 allows parties to initiate an action in federal district court for violations of labor-management contracts, in \textit{Hines}, the United States Supreme Court determined that when a CBA provides an arbitration clause, a party must exhaust arbitration procedures before pursuing an action under § 301.\textsuperscript{350} Similarly, in \textit{Dutra}, the Ninth Circuit required arbitration of the side agreement dispute under the arbitration clause in the CBA because IBU had failed to arbitrate the dispute.\textsuperscript{351} Therefore, the Ninth Circuit correctly determined that the district court lacked subject matter jurisdiction over IBU's § 301 action because IBU had failed to exhaust the non-judicial procedures provided in the CBA as required in cases involving a § 301 action.\textsuperscript{352}

2. \textit{When Arbitration Provisions in a Collective Bargaining Agreement Cover a Side Agreement Dispute, § 301 of the LMRA Does Not Govern the Dispute}

In \textit{Dutra}, the Ninth Circuit correctly determined that the district court lacked subject matter jurisdiction over IBU's § 301 action because the arbitration clause in the CBA between IBU and Dutra covered the settlement agreement dispute.\textsuperscript{353} In \textit{Retail Clerks Int'l Ass'n, Local Unions Nos. 128 & 633 v. Lion Dry Goods, Inc.},\textsuperscript{354} the Supreme Court decided that the scope of § 301 of the LMRA included CBAs as well as settlement agreements, or side agreements, between labor organizations and employers.\textsuperscript{355} However, in \textit{Hines}, the Supreme Court determined that when a CBA provides for arbitration of disputes, a party must exhaust arbitration procedures before pursuing an action under § 301 of the LMRA pursuant to policy favoring arbitration of

\textsuperscript{349} Id.

\textsuperscript{350} Compare 29 U.S.C. § 185(a) (providing that parties to a labor-management contract may bring a breach of contract action in federal district court), \textit{with Hines}, 424 U.S. at 562-63 (determining that parties must exhaust arbitration procedures in their collective bargaining agreements prior to bringing a § 301 action in federal district court).

\textsuperscript{351} Compare \textit{Hines}, 424 U.S. at 562-63 (determining that parties must exhaust arbitration procedures contained in the collective bargaining agreements prior to bringing a § 301 action in federal district court), \textit{with Dutra}, 279 F.3d at 1084 (deciding that IBU failed to arbitrate as required by the parties collective bargaining agreement before bringing a § 301 action in federal district court).

\textsuperscript{352} See supra notes 336-351 and accompanying text.

\textsuperscript{353} See infra notes 354-366 and accompanying text.

\textsuperscript{354} 369 U.S. 17 (1962).

\textsuperscript{355} \textit{Retail Clerks Int'l Ass'n, Local Unions Nos. 128 & 633 v. Lion Dry Goods, Inc.}, 369 U.S. 17, 28 (1962).
labor management disputes.\textsuperscript{356} The Supreme Court commented that the desirable method for settling grievances between parties was the method agreed upon by the parties for the final determination of disputes.\textsuperscript{357}

In \textit{Hines}, the parties' CBA contained grievance procedures that provided for arbitration of unresolved disputes.\textsuperscript{358} Similarly, in \textit{Dutra}, the CBA between IBU and Dutra contained grievance procedure mechanisms that provided for arbitration of disputes.\textsuperscript{359} In \textit{Dutra}, IBU argued that the settlement agreement in dispute did not contain arbitration provisions; therefore the settlement agreement was enforceable in federal district court.\textsuperscript{360} However, the Ninth Circuit held that a side agreement dispute was arbitrable under a CBA where the scope of the arbitration clause in the CBA covered the subject matter found in the side agreement.\textsuperscript{361} The \textit{Dutra} court noted that the arbitration clause in the CBA covered subcontracting, the subject matter of the settlement agreement dispute, because the CBA specifically discussed subcontracting.\textsuperscript{362} The court commented that because the arbitration clause covered the subject of subcontracting, the CBA covered the settlement agreement dispute.\textsuperscript{363}

Although in \textit{Retail Clerks} the Supreme Court decided that the scope of § 301 included CBAs as well as settlement agreements or side agreements between labor organizations and employers, in \textit{Hines}, the Court determined that when a CBA provides an arbitration clause, a party must exhaust arbitration procedures before pursuing an action under § 301.\textsuperscript{364} Similar to \textit{Hines}, in \textit{Dutra}, the Ninth Circuit decided that a side agreement dispute is arbitrable under a CBA when the scope of the arbitration clause covers the subject matter in the side

\textsuperscript{356} \textit{Hines}, 424 U.S. at 562-63.
\textsuperscript{357} \textit{Id.} at 562.
\textsuperscript{358} \textit{Hines}, 424 U.S. at 557.
\textsuperscript{359} Brief for Appellant at 4, \textit{Dutra}, 279 F.3d 1075.
\textsuperscript{360} \textit{Dutra}, 279 F.3d at 1078 (noting that IBU argued that because the settlement agreement does not expressly require arbitration within the terms of the settlement agreement, the union should be allowed to enforce rights under the settlement agreement in federal court pursuant to § 301 of the LMRA); Brief for Appellant at 13, \textit{Dutra}, 279 F.3d 1075 (stating that the settlement agreement is independently enforceable in federal court).
\textsuperscript{361} \textit{Dutra}, 279 F.3d at 1080.
\textsuperscript{362} \textit{Id.}
\textsuperscript{363} \textit{Id.}
\textsuperscript{364} Compare \textit{Retail Clerks}, 369 U.S. at 28 (explaining that the scope of § 301 of the LMRA included collective bargaining agreements and other labor-management agreements), \textit{with Hines}, 424 U.S. at 562-63 (providing that parties must exhaust arbitration procedures in a collective bargaining agreement before pursuing a § 301 action in federal district court).
agreement. Therefore, the Ninth Circuit in Dutra correctly determined that the district court lacked jurisdiction over IBU's § 301 action because the arbitration clause in the CBA between IBU and Dutra covered the settlement agreement dispute.

B. THE NINTH CIRCUIT IN DUTRA CORRECTLY FOLLOWED LABOR LAW PRINCIPLES AS NOTED BY THE SUPREME COURT IN LINCOLN MILLS AND THE STEELWORKERS TRILOGY

1. Labor Law Principles Are Satisfied When a Court Determines that the Broad Scope of an Arbitration Clause in a Collective Bargaining Agreement Covers a Side Agreement

The Ninth Circuit correctly followed labor law principles as noted by the Supreme Court in determining that a settlement agreement dispute was arbitrable under an arbitration clause in a CBA when the scope of an arbitration clause covers the settlement agreement.

The Supreme Court examined labor law principles in Textile Workers Union v. Lincoln Mills. In addition, the Supreme Court further explored labor law principles in United Steelworkers v. American Manufacturing Co., United Steelworkers v. Warrior & Gulf Navigation Co., and United Steelworkers v. Enterprise Wheel & Car Corp. (the "Steelworkers Trilogy"). In Lincoln Mills, the Supreme Court decided that federal policy encourages parties to arbitrate grievance disputes in the interest of maintaining industrial peace and that federal courts must shape federal substantive law according to federal policy. In Lincoln Mills, the Court noted that federal labor law policy promoted enforcing arbitration. The Court reasoned that federal labor law policy promoted stabilizing industry through CBAs.

365. Compare Hines, 424 U.S. at 562-63 (providing that parties must exhaust arbitration procedures in a collective bargaining agreement before pursuing a § 301 action in federal district court), with Dutra, 279 F.3d at 1080 (determining that when the scope of an arbitration clause covers the subject matter in a side agreement, a side agreement dispute is arbitrable under the arbitration clause in the collective bargaining agreement).

366. See supra notes 353-365 and accompanying text.

367. See infra notes 368-405 and accompanying text.

368. 353 U.S. 448 (1957).


372. See supra notes 146-241 and accompanying text.


375. Id. at 453-54.
Further, the Court noted that grievance arbitration provisions in CBAs aid industrial stabilization.376

In United Steelworkers v. American Manufacturing Co., the Supreme Court determined that when parties have an agreement to submit disputes to arbitration, a court must not decide the merits of the dispute because a court is limited to determining whether the dispute is arbitrable under the agreement.377 In addition, in American Manufacturing Co., the Court reasoned that because there was a dispute between the parties that involved the CBA, the dispute should have been arbitrated.378 Further, the Court noted that a court is limited to determining whether a dispute is arbitrable when parties have agreed to arbitrate disputes under a CBA.379

In United Steelworkers v. Warrior & Gulf Navigation Co., the Supreme Court determined that while parties cannot be forced to submit disputes to arbitration when parties have not previously agreed to arbitration, a preference of arbitration exists when the parties' CBA provides a broad arbitration clause that covers disputes unless the parties excluded the dispute from arbitration.380 In Warrior & Gulf, the Court reasoned that when a collective bargaining agreement contains a broad arbitration clause, a party must not exclude a grievance from arbitration in the absence of an express exclusion of the particular grievance in the CBA.381 The Court noted that a dispute should be arbitrated unless the dispute had been excluded from the scope of the arbitration clause and that if doubt exists over the arbitrability of a dispute, then the dispute should be submitted to arbitration.382 Further, the Court commented that a CBA encompasses the entire relationship of the parties, creates common law, and serves as an internal governing system for industry.383 The Court noted that arbitration not only substitutes litigation, but also resolves industrial strife.384

Then, in United Steelworkers of America v. Enterprise Wheel & Car Corp., the Supreme Court decided that courts must not review the merits of an arbitration judgment because federal policy favors settling labor-management disputes through arbitrating the dispute under a CBA.385 In Enterprise, the Court reasoned that if courts could

376. Id. at 454-55.
379. Id. at 567.
381. Warrior & Gulf, 363 U.S. at 584-85.
382. Id. at 582-85.
383. Id. at 578-80.
384. Id. at 578.
review the merits of decisions reached through arbitration, then arbitrators' decisions would not be considered final decisions as required by arbitration provisions in CBAs.\textsuperscript{386} Further, the Court noted that providing courts with the opportunity to review the merits of arbitration decisions would oppose federal labor law policy favoring the settlement of labor-management disputes through arbitration.\textsuperscript{387}

In \textit{Dutra}, the Ninth Circuit held that a side agreement dispute was arbitrable under a CBA when the scope of the arbitration clause in the CBA covered the subject matter of the side agreement.\textsuperscript{388} The Ninth Circuit examined the arbitration clause in the CBA, noting that the arbitration clause did not except side agreement disputes and that the arbitration clause had a broad scope based on its language.\textsuperscript{389} Specifically, the court reasoned that the arbitration clause was broad in scope because the clause covered "any dispute concerning . . . wages, working conditions, or any other matters referred to in this CBA."\textsuperscript{390} In addition, the Ninth Circuit examined the subject matter of the side agreement.\textsuperscript{391} The court noted that the side agreement's subject matter, subcontracting, was specifically discussed in the collective bargaining agreement.\textsuperscript{392} The court determined that the arbitration clause covered the subject of subcontracting because the CBA discussed subcontracting.\textsuperscript{393} Based on this determination, the court reasoned that the arbitration clause in the CBA covered the side agreement dispute between Dutra and IBU.\textsuperscript{394}

In \textit{Dutra}, the Ninth Circuit correctly followed the labor law principles as noted by the Supreme Court in deciding that the settlement agreement dispute was arbitrable under the arbitration clause in the CBA between IBU and Dutra because the broad scope of the arbitration clause covered the subject matter of the settlement agreement.\textsuperscript{395} The United States Supreme Court had previously examined labor law principles in \textit{Lincoln Mills} and the \textit{Steelworkers Trilogy}.\textsuperscript{396} In \textit{Lincoln Mills}, the United States Supreme Court decided that federal policy encourages parties to arbitrate grievance disputes in the interest of promoting industrial peace and that federal courts must shape fed-

\textsuperscript{386} \textit{Enterprise}, 363 U.S. at 598-99.
\textsuperscript{387} \textit{Id.} at 596.
\textsuperscript{388} \textit{Dutra}, 279 F.3d at 1080.
\textsuperscript{389} \textit{Id.} at 1080.
\textsuperscript{390} \textit{Id.} at 1077.
\textsuperscript{391} \textit{Dutra}, 279 F.3d at 1080.
\textsuperscript{392} \textit{Id.}
\textsuperscript{393} \textit{Id.}
\textsuperscript{394} \textit{Id.}
\textsuperscript{395} \textit{See infra} notes 396-405 and accompanying text.
\textsuperscript{396} \textit{See supra} notes 146-241 and accompanying text.
eral substantive law according to federal policy.\footnote{Lincoln Mills, 363 U.S. at 454-59.} Similarly, in Dutra, the Ninth Circuit determined that arbitrating the side agreement dispute under the arbitration clause in the CBA promoted industrial peace.\footnote{Compare Lincoln Mills, 353 U.S. at 454-59 (providing that federal policy encourages parties to arbitrate grievance disputes in the interest of promoting industrial peace), with Dutra, 279 F.3d at 1080-81 (determining that arbitrating the side agreement dispute between IBU and Dutra promoted industrial peace).}

In addition, in Enterprise, the Supreme Court decided that courts must not review the merits of an arbitration judgment because federal labor law policy favors settling labor-management disputes through arbitrating disputes under CBAs.\footnote{Enterprise, 363 U.S. at 596.} Likewise, in American Manufacturing Co., the Court determined that when parties have an agreement to submit disputes to arbitration, a court must not decide the merits of the dispute because the court is limited in its power to determining whether the dispute is arbitrable under the agreement.\footnote{Compare Enterprise, 363 U.S. at 596 (deciding that a court must not review the merits of an arbitration judgment), with American Mfg. Co., 363 U.S. 567-68 (determining that a court is limited to determining the arbitrability of disputes when parties have an agreement to submit disputes to arbitration).} Similarly, in Dutra, the Ninth Circuit concluded that the parties' side agreement dispute was arbitrable pursuant to the arbitration clause in the CBA and affirmed the district court's decision to dismiss IBU's complaint because IBU failed to exhaust non-judicial remedies.\footnote{Compare Enterprise, 363 U.S. at 596 (declaring that federal labor law policy favors settling labor-management disputes through arbitrating disputes under a collective bargaining agreement), with American Mfg. Co., 363 U.S. 567-68 (determining that a court is limited to determining the arbitrability of disputes when parties have an agreement to submit disputes to arbitration), and Dutra, 279 F.3d at 1084 (deciding to affirm the district court's decision to dismiss IBU's complaint for failing to exhaust non-judicial remedies because the side agreement dispute was arbitrable under the arbitration clause in the collective bargaining agreement).}

Further, in Warrior & Gulf, the Court determined that while parties cannot be forced to submit disputes to arbitration when parties have not previously agreed to arbitration, a preference of arbitration exists when the parties' CBA provides a broad arbitration clause that covers disputes unless the parties excluded the dispute from arbitration.\footnote{Warrior & Gulf, 363 U.S. at 582-85.} Accordingly, in Warrior & Gulf, the Court decided that a dispute was arbitrable under the arbitration clause in a collective bargaining agreement because the dispute was not excepted from arbitration and the arbitration clause had a broad scope.\footnote{Id.} Likewise, in Dutra, the Ninth Circuit determined that a side agreement dispute was arbitrable under a CBA because the broad scope of the arbitration
clause in the CBA covered the subject matter of the side agreement and did not except side agreement disputes. Therefore, the Ninth Circuit in Dutra correctly followed labor law principles in determining that the settlement agreement dispute was arbitrable under an arbitration clause in a CBA when the scope of an arbitration clause covers the settlement agreement.


The Ninth Circuit in Dutra correctly followed labor law principles by applying the Scope Approach because the arbitration clause in the CBA between IBU and Dutra was broad in scope. The Scope Approach compares the scope of a CBA's arbitration clause with the side agreement's subject matter and provides that the scope of the arbitration clause governs the arbitrability of side agreement disputes under a CBA. In Lincoln Mills, the Supreme Court determined that labor law policy encourages parties to arbitrate grievance disputes in the interest of promoting industrial peace and mandates that federal courts must shape federal substantive law accordingly. In addition, in Warrior & Gulf, the Supreme Court declared that a preference of arbitration exists when parties' CBA contained a broad arbitration clause that covered disputes, unless the parties excluded the dispute from arbitration. The Court reasoned that when a CBA contains a broad arbitration clause, a party must not exclude a grievance from arbitration in the absence of an express exclusion of the particular grievance in the CBA. The Court further reasoned that if a doubt exists over the arbitrability of a dispute, then the dispute should be submitted to arbitration.

Similarly, the Scope Approach provides that if the scope of the CBA's arbitration clause covers the side agreement's subject matter,

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404. Compare Warrior & Gulf, 363 U.S. at 582-85 (declaring that a preference of arbitration exists when a collective bargaining agreement provides a broad arbitration clause that covers the dispute, unless parties specifically excluded the dispute from arbitration), with Dutra, 279 F.3d at 1077, 1080 (deciding that the parties must arbitrate because the arbitration clause in the collective bargaining agreement did not except side agreement disputes and had a broad scope).
405. See supra notes 395-404 and accompanying text.
406. See infra notes 407-419 and accompanying text.
407. Dutra, 279 F.3d at 1080.
408. Lincoln Mills, 353 U.S. at 454-59.
409. Warrior & Gulf, 363 U.S. at 582-85.
410. Id.
411. Id. at 582-83.
then the side agreement dispute is arbitrable under the arbitration clause unless the parties choose beforehand to except side agreement disputes from arbitration under the CBA. Applying the Scope Approach to the *Dutra* case, the Ninth Circuit held that if a CBA contained an arbitration clause with a broad scope, then a side agreement dispute should be arbitrated pursuant to the arbitration clause in the CBA. In so holding, the court determined that a side agreement dispute was arbitrable under a CBA when the broad scope of an arbitration clause in the CBA covered the subject matter of the side agreement.

In *Dutra*, the Ninth Circuit correctly followed labor law principles by applying the Scope Approach. In *Warrior & Gulf*, the Court declared that a preference of arbitration existed when the parties' CBA contained a broad arbitration clause that covered disputes, unless the parties excluded the dispute from arbitration. Likewise, the Scope Approach provides that if the scope of the CBA's arbitration clause covers the side agreement's subject matter, then the side agreement dispute is arbitrable under the arbitration clause, unless the parties choose beforehand to except side agreement disputes from arbitration under the CBA. The Ninth Circuit in *Dutra* applied the Scope Approach and determined that the side agreement dispute was arbitrable under the CBA because the arbitration clause was broad in scope and did not except side agreement disputes from arbitration. Therefore, the Ninth Circuit correctly followed labor law principles by applying the Scope Approach to determine that a side agreement dispute was arbitrable under the broad scope of the arbitration clause in the CBA.

C. **The Ninth Circuit Correctly Applied the Scope Approach in *Dutra***

In federal labor law cases, courts apply two different approaches to the question of whether side agreement disputes are arbitrable
under an arbitration clause in a CBA: the Similarity Approach and the Scope Approach. In determining whether a side agreement dispute is arbitrable under an arbitration clause in a CBA, the United States Courts of Appeals for the Second and Fourth Circuits follow the Similarity Approach, which compares the subject matter of the CBA to the subject matter of the side agreement. The Similarity Approach provides that if a similar subject matter exists between a CBA and a side agreement, then the side agreement is arbitrable under the CBA's arbitration clause. On the other hand, the Similarity Approach also provides that if the side agreement and CBA lack a similar subject matter, then the side agreement is not arbitrable under the CBA's arbitration clause. However, in Dutra, the Ninth Circuit correctly decided to apply the Scope Approach rather than the Similarity Approach because the broad scope of the arbitration clause in the CBA between Dutra and IBU encompassed the side agreement dispute. By applying the Scope Approach, the Ninth Circuit correctly decided to focus on the scope of the arbitration clause in the CBA rather than focusing on whether a side agreement was part of a CBA in determining a side agreement's arbitrability.

In Adkins v. Times-World Corp., the Fourth Circuit followed the Similarity Approach and concluded that an addendum was arbitrable under a CBA's arbitration clause when the addendum was part of the CBA. The Fourth Circuit concluded that a dispute involving an addendum was arbitrable because the addendum was a part of the CBA, not separate from the CBA. The Fourth Circuit determined that the addendum was part of the CBA because the documents represented a single group of duties. Likewise, in Cornell University v. UAW Local 2300, the Second Circuit followed the Similarity Approach and concluded that because the letter of understanding did not supplement the CBA, the letter of understanding was "collateral" and was not arbitrable under the CBA's arbitration clause. The Second Circuit concluded that the letter of understanding was "collateral" because the CBA did not contemplate the subject matter of the letter.

420. See infra notes 421-442 and accompanying text.
421. Dutra, 279 F.3d at 1079.
422. Id.
423. Id.
424. See infra notes 425-445 and accompanying text.
425. See infra notes 426-445 and accompanying text.
426. 771 F.2d 829 (4th Cir. 1985).
429. Id. at 831-32.
430. 942 F.2d 138 (2d Cir. 1991).
432. Cornell, 942 F.2d at 140.
However, in *Dutra*, the Ninth Circuit followed the Scope Approach rather than the Similarity Approach because the court decided that the scope of the arbitration clause in the CBA should determine a side agreement's arbitrability.\(^3\) In determining whether a side agreement dispute is arbitrable under an arbitration clause in a CBA, the United States Courts of Appeals for the Third and Seventh Circuits have followed the Scope Approach, which compares the scope of the CBA's arbitration clause with the side agreement's subject matter.\(^3\) The Scope Approach provides that if the scope of the CBA's arbitration clause covers the side agreement's subject matter, then the side agreement dispute is arbitrable under the arbitration clause.\(^3\) However, the Scope Approach allows parties to except side agreement disputes from arbitration under the CBA's arbitration clause.\(^3\)

In *L.O. Koven & Brother, Inc. v. Local Union No. 5767, United Steelworkers*,\(^3\) the Third Circuit followed the Scope Approach and stated that where the subject matter of a side agreement was one normally considered under a CBA, the side agreement claim was arbitrable under the CBA.\(^3\) The Third Circuit concluded that the settlement agreement's subject matter, bankruptcy releases, was arbitrable because it was a subject normally considered under the parties' CBA.\(^3\) Similarly, in *Niro v. Fearn Int'l, Inc.*\(^3\) the Seventh Circuit followed the Scope Approach and determined that a settlement agreement was arbitrable when the dispute under the settlement agreement was arbitrable, unless the parties expressed a desire to except the settlement agreement from arbitration.\(^3\) The Seventh Circuit concluded that the settlement agreement was arbitrable because the parties intended to arbitrate the dispute and did not express a desire to except settlement agreements from arbitration.\(^3\)

Likewise, in *Dutra*, the Ninth Circuit followed the Scope Approach and declared that a side agreement dispute was arbitrable under a CBA where the scope of the arbitration clause in the CBA covered the subject matter found in the side agreement.\(^3\) Similar to

\(^3\) *Dutra*, 279 F.3d at 1080.
\(^3\) *Id.*
\(^3\) *Id.*
\(^3\) *Id.*
\(^3\) 381 F.2d 196 (3d Cir. 1967).
\(^3\) *L.O. Koven & Bro., Inc. v. Local Union No. 5767*, 381 F.2d 196, 204-05 (3d Cir. 1967).
\(^3\) *Koven*, 381 F.2d at 204.
\(^3\) 827 F.2d 173 (7th Cir. 1987).
\(^3\) *Niro v. Fearn Int'l, Inc.*, 827 F.2d 173, 175 (7th Cir. 1987).
\(^3\) *Niro*, 827 F.2d at 175.
\(^3\) *Compare Koven*, 381 F.2d at 204-05 (deciding that the where the subject matter of a side agreement was one normally considered under a collective bargaining agreement, the side agreement claim was arbitrable under the collective bargaining agree-
the Third and Seventh Circuits, the Ninth Circuit held that the side agreement dispute was arbitrable under the broad scope of the arbitration clause in the CBA because the CBA mentioned the side agreement's subject matter and the arbitration clause did not except side agreement disputes. The Ninth Circuit correctly decided to follow the Scope Approach because the Scope Approach applies to a situation where parties for a side agreement separate and independent of a CBA.

By stating that a side agreement was arbitrable under the scope of the arbitration clause, the Dutra court correctly applied the Scope Approach rather than the Similarity Approach to a situation where a side agreement was formed separate and independent of a CBA. In cases applying the Scope Approach, the parties to a side agreement formed the agreement separate and independent of a pre-existing CBA. In Koven, Koven and Union formed a settlement agreement independent of a CBA, and the Third Circuit determined that the settlement agreement was arbitrable under the scope of the arbitration clause in the CBA. In Niro, Fearn and Union formed a settlement agreement separate and independent of a CBA. In Niro, the Seventh Circuit concluded that the settlement agreement was arbitrable under the scope of the arbitration clause in the CBA.

In Dutra, Dutra and IBU formed a settlement agreement separate and independent of a pre-existing CBA. Similar to Koven and Niro, the Dutra court concluded that the scope of the arbitration clause in the CBA covered the subject matter of a side agreement that

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444. Compare Koven, 381 F.2d at 204-05 (concluding that the settlement agreement's subject matter was arbitrable because the subject was normally considered under the collective bargaining agreement), with Niro, 827 F.2d at 175 (concluding that the parties' settlement agreement was arbitrable because the parties intended to arbitrate the dispute and did not express a desire to except settlement agreements from arbitration), and Dutra, 279 F.3d at 1080 (holding that the parties' settlement agreement dispute was arbitrable under the broad scope of the arbitration clause in the collective bargaining agreement because the collective bargaining agreement specifically discussed the settlement agreement's subject matter and the arbitration clause did not except side agreement disputes from arbitration).

445. See infra notes 446-480 and accompanying text.

446. See infra notes 447-480 and accompanying text.

447. See infra notes 448-453 and accompanying text.

448. Koven, 381 F.2d at 198-99, 204-05.

449. Niro, 827 F.2d at 174.

450. Id. at 175-76.

451. Dutra, 279 F.3d at 1077.
was formed separate and independent of a CBA. Therefore, the Dutra court correctly applied the Scope Approach to the situation where parties formed a side agreement separate and independent of a CBA by concluding that the side agreement was arbitrable under the scope of the arbitration clause.

Similarly, the Dutra court properly determined that the subject matter in the settlement agreement between Dutra and IBU was an arbitrable subject under the CBA's arbitration clause in applying the Scope Approach. In Koven, the Third Circuit stated that where the subject matter of a settlement agreement, bankruptcy releases, was one normally considered under a CBA, the settlement agreement claim was arbitrable under the CBA. The Koven court determined that the settlement agreement's subject matter was arbitrable because it was a subject normally considered under the CBA. In Dutra, the settlement agreement dispute between Dutra and IBU involved subcontracting. The CBA between Dutra and IBU expressly discussed the subject of subcontracting. Similar to Koven, the Dutra court declared that the CBA's arbitration clause covered subcontracting, the subject matter of the settlement agreement dispute between Dutra and IBU. Therefore, the Dutra court properly determined that the subject matter of the settlement agreement dispute was an arbitrable subject under the CBA's arbitration clause in applying the Scope Approach.

Likewise, by applying the Scope Approach, the Dutra court appropriately concluded that the side agreement dispute between Dutra and IBU was arbitrable under the CBA's arbitration clause. In

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452. Compare Koven, 381 F.2d at 198-99, 204-05 (determining that a settlement agreement was arbitrable under the scope of the arbitration clause in the collective bargaining agreement where the settlement agreement was separate from the collective bargaining agreement), and Niro, 827 F.2d at 174 (deciding a settlement agreement was arbitrable under a collective bargaining agreement's arbitration clause although the collective bargaining agreement was separate from the settlement agreement), with Dutra, 279 F.3d at 1077, 1080 (declaring that the scope of the arbitration clause in the collective bargaining agreement covered the subject matter of a side agreement that was formed separate and independent of the collective bargaining agreement).

453. See supra notes 447-452 and accompanying text.

454. See infra notes 455-460 and accompanying text.

455. Koven, 381 F.2d 204-05.

456. Id.

457. Dutra, 279 F.3d at 1077.

458. Id. at 1080.

459. Compare Koven, 381 F.2d at 204-05 (providing that a settlement agreement is arbitrable under the scope of the arbitration clause in the collective bargaining agreement based on the subject matter of the settlement agreement), with Dutra, 279 F.3d at 1080 (declaring that a side agreement's subject matter may be arbitrable under the scope of the arbitration clause in the collective bargaining agreement).

460. See supra notes 454-459 and accompanying text.

461. See infra notes 462-467 and accompanying text.
Niro, the Seventh Circuit concluded that a settlement agreement was arbitrable when the dispute under the settlement agreement was arbitrable, unless the parties expressed a desire to except the settlement agreement from arbitration.\(^{462}\) The Niro court concluded that the settlement agreement was arbitrable because the parties intended to arbitrate the dispute and did not express a desire to except settlement agreements from arbitration.\(^{463}\) In Dutra, the side agreement dispute between Dutra and IBU concerned subcontracting, a subject mentioned in the CBA.\(^{464}\) Similar to Niro, the parties in Dutra did not exclude the side agreement from arbitration under the arbitration clause in the CBA.\(^{465}\) Likewise, the Dutra court noted that the side agreement dispute concerning subcontracting was arbitrable because the parties did not exclude side agreement disputes from arbitration.\(^{466}\) Therefore, the Dutra court appropriately determined that the side agreement dispute between Dutra and IBU was arbitrable under the CBA's arbitration clause by applying the Scope Approach.\(^{467}\)

In contrast to the Scope Approach, the Similarity Approach provides that if a similar subject matter exists between a CBA and a side agreement, then the side agreement is arbitrable under the CBA's arbitration clause.\(^{468}\) However, the Dutra court properly determined that the scope of the arbitration clause in the CBA governed whether the side agreement between Dutra and IBU was arbitrable under the CBA, rather than examining whether the side agreement was part of the CBA.\(^{469}\) In Adkins, the United States Court of Appeals for the Fourth Circuit concluded that an addendum was arbitrable under a CBA's arbitration clause when the addendum was part of the CBA.\(^{470}\) The Adkins court concluded that the addendum was arbitrable because the addendum was a part of the CBA, not separate from the

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462. Niro, 827 F.2d at 175.
463. Id. at 175-76.
464. Dutra, 279 F.3d at 1077, 1080.
465. Compare Niro, 827 F.2d at 175-76 (determining that parties to a collective bargaining agreement did not exclude the side agreement from arbitration under the arbitration clause in the collective bargaining agreement), with Dutra, 279 F.3d at 1077, 1080 (providing that the parties to a collective bargaining agreement did not exclude the side agreement from arbitration under the collective bargaining agreement's arbitration clause).
466. Compare Niro, 827 F.2d at 175 (noting that the settlement agreement was arbitrable under the arbitration clause in the collective bargaining agreement because the settlement agreement was not excepted from arbitration), with Dutra, 279 F.3d at 1080 (declaring that the side agreement was not excluded from the arbitration clause in the collective bargaining agreement, therefore the side agreement was arbitrable).
467. See supra notes 461-466 and accompanying text.
468. Dutra, 279 F.3d at 1079.
469. See infra notes 470-474 and accompanying text.
Unlike Adkins, in Dutra, the side agreement dispute between Dutra and IBU involved a settlement agreement instrument entirely distinct from the CBA formed by the parties. Unlike Adkins, the Dutra court determined that a side agreement was arbitrable under the scope of the CBA's arbitration clause in a situation where a side agreement was independent of a CBA. Therefore, the Dutra court correctly determined that in a situation where a side agreement was independent of the CBA, the scope of the arbitration clause governed the side agreement's arbitrability, rather than examining whether the side agreement formed part of the CBA.

The Dutra court also appropriately determined that the scope of the arbitration clause in the CBA governed whether the side agreement between Dutra and IBU was arbitrable under the CBA, rather than examining whether the side agreement was "collateral" to the CBA between the parties. In Cornell, the United States Court of Appeals for the Second Circuit declared that if a side agreement did not supplement a CBA, then the side agreement was "collateral" and was not arbitrable under the CBA's arbitration clause. The Cornell court concluded that the "letter of understanding" was "collateral" because the CBA did not contemplate the subject matter of the letter.

Unlike Cornell, in Dutra, the settlement agreement between Dutra and IBU was formed separately from the CBA, but the subject matter of the settlement agreement, subcontracting, was mentioned in the CBA. In addition, the Dutra court determined that where the CBA mentioned the subject matter of an independent side agreement, the subject matter was arbitrable under the scope of the arbi-

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471. Id.
472. Compare Adkins, 771 F.2d at 830 (noting that the addendum between Times-World and Local was a part of their collective bargaining agreement), with Dutra, 279 F.3d at 1077 (providing that Dutra and IBU formed the settlement agreement separate and independent from the collective bargaining agreement).
473. Compare Adkins, 771 F.2d at 831 (determining that the side agreement was arbitrable under the arbitration clause in the collective bargaining agreement because the side agreement was a part of the collective bargaining agreement), with Dutra, 279 F.3d at 1077, 1080 (concluding that a side agreement that was formed separate and independent of a collective bargaining agreement was arbitrable under the scope of the arbitration clause in a collective bargaining agreement).
474. See supra notes 469-473 and accompanying text.
475. See infra notes 476-480 and accompanying text.
476. Cornell, 942 F.2d at 140.
477. Id.
478. Compare Cornell, 942 F.2d at 140 (noting that the "letter of understanding" was never intended to be considered under the collective bargaining agreement between Cornell and Local 2300), with Dutra, 279 F.3d at 1077, 1080 (providing that the collective bargaining agreement mentioned subcontracting, the subject matter of the settlement agreement between Dutra and IBU).
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tration clause in the CBA.\textsuperscript{479} Therefore, the \textit{Dutra} court appropriately determined that the scope of the arbitration clause governed when a side agreement was independent from a CBA, rather than determining whether the side agreement was "collateral" to the CBA.\textsuperscript{480}

In holding that a side agreement dispute is arbitrable under a CBA when the scope of the arbitration clause in the CBA covered the subject matter of the side agreement, the \textit{Dutra} court determined that the scope of an arbitration clause governed whether a side agreement was arbitrable under a CBA.\textsuperscript{481} By declaring that the scope of the arbitration clause governed, the \textit{Dutra} court correctly analyzed the labor-management dispute between Dutra and IBU.\textsuperscript{482} The \textit{Dutra} court correctly determined that the federal district court lacked subject matter jurisdiction over the labor-management dispute, followed labor law principles, and decided to follow the Scope Approach rather than the Similarity Approach.\textsuperscript{483}

CONCLUSION

In \textit{Inlandboatmens Union v. Dutra Group},\textsuperscript{484} the Ninth Circuit held that side agreement disputes were arbitrable under a collective bargaining agreement ("CBA") if the scope of the arbitration clause covered the side agreement's subject matter.\textsuperscript{485} In \textit{Dutra}, the court faced conflicts over labor law theories in determining arbitrability of side agreements pursuant to a CBA's arbitration clause.\textsuperscript{486} The issue in \textit{Dutra} involved the right to litigate labor-management disputes and the right of parties to agree to arbitrate disputes.\textsuperscript{487} The court evaluated the different approaches federal courts use in determining arbitrability of side agreement disputes: the Scope Approach and Similarity Approach.\textsuperscript{488} The Similarity Approach compared similarities between a side agreement and CBA, while the Scope Approach

\textsuperscript{479} Compare Cornell, 942 F.2d at 140 (declaring that the "letter of understanding" was not arbitrable under the collective bargaining agreement because the collective bargaining agreement did not contemplate the letter, making it collateral to the collective bargaining agreement), with \textit{Dutra}, 279 F.3d at 1077, 1080 (determining that a side agreement that was independent of a collective bargaining agreement was arbitrable under the collective bargaining agreement's arbitration clause).

\textsuperscript{480} See supra notes 475-479 and accompanying text.

\textsuperscript{481} \textit{Dutra}, 279 F.3d at 1079-80.

\textsuperscript{482} See supra notes 312-480 and accompanying text.

\textsuperscript{483} See supra notes 312-480 and accompanying text.

\textsuperscript{484} 279 F.3d 1075 (9th Cir. 2002).

\textsuperscript{485} Inlandboatmens Union v. Dutra Group, 279 F.3d 1075, 1080 (9th Cir. 2002).

\textsuperscript{486} See supra notes 26-82 and accompanying text.

\textsuperscript{487} Id.

\textsuperscript{488} \textit{Dutra}, 279 F.3d at 1079-80.
compared the subject matter of a side agreement with the scope of the arbitration clause in CBA.\textsuperscript{489}

In resolving whether a side agreement was arbitrable under a CBA's arbitration clause, the \textit{Dutra} court relied on federal labor law policy as noted by the United States Supreme Court and required the parties to arbitrate a side agreement pursuant to the arbitration clause in the CBA.\textsuperscript{490} In doing so, the \textit{Dutra} court followed the Scope Approach rather than the Similarity Approach.\textsuperscript{491} By determining that a side agreement dispute was arbitrable under a CBA if the scope of the arbitration clause covered the subject matter of the side agreement, the \textit{Dutra} court correctly determined that the federal district court lacked subject matter jurisdiction over the side agreement dispute, followed labor law principles, and decided to follow the Scope Approach rather than the Similarity Approach.\textsuperscript{492}

Labor law policy as noted by the Supreme Court favors arbitrating labor-management disputes pursuant to arbitration clauses in CBAs.\textsuperscript{493} The \textit{Dutra} court's decision to require the parties to arbitrate a side agreement dispute pursuant to the broad scope of an arbitration clause in a CBA promotes labor law policy. The \textit{Dutra} court's decision promotes such policy because the decision honors the parties' pre-existing agreement to arbitrate disputes pursuant to broad language in an arbitration clause. Parties to a CBA have the freedom to agree to the scope of an arbitration clause when drafting the CBA and are free to limit or restrict the scope of an arbitration clause. If the parties fail to restrict the scope of an arbitration clause in their CBA, then courts should presume that the parties intended to arbitrate disputes pursuant to the arbitration clause as preferred by labor law policy. Arbitrating labor-management disputes under a CBA focuses on maintaining industrial relationships, while litigating disputes destroys a pre-existing agreement intended to benefit labor-management relationships. The Scope Approach follows established labor law policy and promotes maintaining industrial relationships by allowing federal courts to focus on the scope of the arbitration clause as predetermined by the parties to a CBA. On the other hand, the Similarity Approach is more likely to confuse federal courts by forcing the courts to focus on whether a side agreement is collateral or integral to a CBA. This could lead to arbitrary decisions that prevent parties from arbitrating labor-management disputes and destroy industrial relationships. In the interest of preserving industrial relationships,

\textsuperscript{489} Id. at 1079.
\textsuperscript{490} See supra notes 336-366 and accompanying text.
\textsuperscript{491} \textit{Dutra}, 279 F.3d at 1080.
\textsuperscript{492} See supra notes 312-483 and accompanying text.
\textsuperscript{493} See supra notes 146-241 and accompanying text.
the Scope Approach promotes arbitration of side agreements where parties form a side agreement separate from a CBA pursuant to the broad scope of the CBA's arbitration clause. Therefore, federal courts should apply the Scope Approach rather than the Similarity Approach to promote maintaining labor-management relationships.

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