Nos. 05-2574/05-3553/06-4256

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

AMERITECH CORPORATION d/b/a SBC MIDWEST,	)	
	)	Appeal from the
	)	United States District Court
Plaintiff-Appellant, Cross-Appellee	)	Northern District of Illinois
	)	Eastern Division
v.	)	
	)	No. 04 C 6149
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 21, AFL-CIO	)	Hon. Samuel Der-Yeghiayan
	)	
Defendant-Appellee, Cross-Appellant.	)	

REPLY BRIEF FOR PLAINTIFF-APPELLANT AND BRIEF FOR CROSS-APPELLEE AMERITECH CORPORATION

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SUMMARY OF ARGUMENT

The Union contends (at 4) that this Court should decide "whether the District Court was in error in enforcing an arbitration award issued by arbitrator Richard Kasher interpreting and applying provisions of the collective bargaining agreement between the parties." This is the Union's first—but by no means only—effort to sidestep the question raised by this appeal: whether arbitrator Kasher did in fact "interpret and apply" the governing provisions of the parties' collective bargaining agreement.

As the Company's opening brief explained, the Kasher award disregards key provisions of the Agreement and thus should not have been enforced by the district court. In contrast, the Perkovich award, which the Company and Union agreed was to be "a final resolution of the proper interpretation and application of [paragraph] 1.03," *does* address those provisions, holding that the causation requirement of paragraph 1.03 must be satisfied before the review and allotment process is triggered and that the Union's failure to do so means that review and allotment "is not in play." SA73, SA96.

Unable to rebut the Company's position, the Union mischaracterizes it as resting primarily on *res judicata* principles, relies heavily on its misguided view that the limited judicial review accorded to arbitration awards means no review at all, and disregards its own agreement that the Perkovich award would finally resolve the meaning of

paragraph 1.03 and of its applicability to the parties' dispute. In short, the Union offers no valid reason why, under established review standards, the Kasher award should not be vacated.

The Union's cross-appeal should be rejected. Even if the Union did not waive its cross-appeal, the district court did not abuse its discretion by denying the Union's motion to enforce the court's prior judgment and impose contempt sanctions on the Company. The Union effectively sought a disfavored labor injunction, relying on general and imprecise language from the Kasher award, and the district court's ruling was supported by evidence from the Company that it was complying with the Kasher award.

ARGUMENT

I. The District Court Failed To Apply The Proper Standard Of Review In Upholding The Kasher Award.

When an arbitrator fails to interpret and apply the terms of the collective bargaining agreement, his award does not draw its essence from the agreement and must be vacated. As established in the Company's opening brief (at 25-26), arbitrator Kasher ignored key subcontracting provisions of the Agreement. This Court has recognized that "a decision to ignore or supersede language conceded to be binding allows a court to vacate the award." *Int'l Union of Operating Eng'rs* v. *J.H. Findorff & Son*, 393 F.3d 742, 745 (7th Cir. 2004).

Although Judge Der-Yeghiayan noted that the arbitrator's award must draw its essence from the agreement (A7), he failed to examine whether the Kasher award ignored the key contractual precondition to the review and allotment process. The district court therefore failed to determine, as required by the Supreme Court and this Court, whether arbitrator Kasher interpreted and applied the contract. See Ameritech Br. 26-28.

A. Because the Kasher award fails to interpret and apply governing contract terms, it must be vacated.

The Union's assertion (at 16) that an arbitral award must be upheld "if it is based upon the terms of the bargaining agreement which the arbitrator is called upon to interpret and apply" simply begs the question. If, as here, the award does *not* interpret and apply the terms of the agreement, the award cannot be "based on" such terms. An award must be vacated if the arbitrator "ignore[s] or refuse[s] to follow" contract terms (*Anheuser-Busch, Inc.* v. *Beer Sales Drivers, Local Union No. 744*, 280 F.3d 1133, 1140 (7th Cir. 2002)) or if he "rejects the plain language of the contract * * * and in doing so rewr[ites] the contract" (*id.* at 1147 (Easterbrook, J., dissenting)).

The Union claims (at 19) that it has "never understood" the Company's argument that the Kasher award fails to draw its essence from the Agreement. That argument is quite simple. Paragraph 1.03 of

the Agreement guarantees the Company's right to continue subcontracting and provides only one exception:

> *If* such work to be contracted out will *cause layoffs* * * * *or prevent the rehiring* of employees with seniority standing, such contracting out of work will be *reviewed* by the Company with the Union *and allotted* on the basis of what the Company is equipped to perform and what the employees represented by the Union are able and trained to perform.

SA2 (emphasis added). As arbitrator Flagler concluded, and as arbitrator Perkovich reaffirmed after the parties asked him to conclusively resolve the question, that sentence requires review and allotment "only if the Union first establishes a direct causal nexus between prospective or new contracting out of bargaining unit work and the failure of the [Company] to reemploy laid off bargaining unit employees with recall rights." SA88; see also SA29-30. The record is clear—and the Union nowhere denies—that arbitrator Kasher ordered review and allotment without finding this causation requirement satisfied. See Ameritech Br. 13-16, 35-36.

Like Kasher's award, the Union's brief skips over this causation language. For example, the Union asserts that Kasher applied contract language "requiring the parties to review contracted work and allot such work if the 'Company is equipped to perform and what the employees represented by the Union are able and trained to perform.'" Union Br. 19-20. Paragraph 1.03, however, permits review and allotment only if the Union has previously established that subcontracting caused a failure to

rehire laid-off employees. Although the Company provided information to the Union relevant to this inquiry, the Union did not even attempt to establish the required causal link before any of the three arbitrators. See Ameritech Br. 12-14, 21-22.

It is precisely *because* Kasher "requir[ed] the parties to review contracted work and allot such work" without first considering causation that his award fails to draw its essence from the Agreement and must be vacated. The Union has no answer to the case law compelling this result. See *Clinchfield Coal Co.* v. *United Mine Workers*, 720 F.2d 1365, 1369 (4th Cir. 1983) (where "the arbitrator fails to discuss critical contract terminology" that "might reasonably require an opposite result, the award cannot be considered to draw its essence from the contract"); Ameritech Br. 36 (citing cases).

It is not true, as the district court opined and the Union asserts, that the Company alleges only that Kasher "rejected Ameritech's interpretation of Section 1.03." Union Br. 20-21 (quoting A7). The point is not *how* Kasher resolved the causation issue but rather that he ordered review and allotment *without resolving it at all*. It is for that reason that his award must be vacated for failing to draw its essence from the Agreement and for exceeding his authority.

B. The Union offers no valid reason to uphold the Kasher award.

Unable to deny that the Kasher award simply skips over the causation requirement of paragraph 1.03, the Union seeks to divert attention from that critical lapse. None of its diversionary arguments withstands scrutiny.

First, the Union mischaracterizes the Company's position, contending that the Company relies primarily on the *res judicata* effect of the Flagler award. Union Br. 2, 9-10, 17-19. As the Company's opening brief explains (at 37-38), *res judicata* is not the issue. Regardless of what Flagler concluded, Kasher's failure to interpret and apply the Agreement's causation requirement alone compels vacatur. See Ameritech Br. 35-36. However, Kasher's failure to explain why he disregarded Flagler's interpretation of paragraph 1.03 is not irrelevant. As arbitrator Perkovich subsequently ruled, the Flagler interpretation of paragraph 1.03 had become part of the Agreement. SA87 & n.6. Kasher's failure to explain why he disregarded it confirms that he did not interpret and apply this key contractual provision. See Ameritech Br. 39.

Second, the Union tries to rewrite the Kasher award, treating it as if it implicates only the "review" portion of the review and allotment remedy. See Union Br. 19, 24-25. In fact, Kasher found that "the Union has the right under [paragraph] 1.03 to demand * * * a review *and*

allotment process" and required the Company to begin implementing it. SA69 (emphasis added). But whatever its scope, the Kasher award fails to draw its essence from the Agreement because it leaps over the paragraph 1.03 causation requirement, which applies to both review and allotment. See SA2.

Third, the Union contends (at 24) that it must engage in the review ordered by Kasher so that it will know whether "the totality of subcontracting engaged in by the Employer is within the restraints referenced in the Perkovich decision." But that puts the cart before the horse. The Perkovich phase one award could not be clearer in requiring that the Union prove causation before review and allotment are triggered. If the Union needed more information to make its case on the causation issue, it could have sought more discovery from arbitrator Kasher or arbitrator Perkovich (and may do so in any future arbitrations subject to paragraph 1.03). But no matter how an arbitrator would resolve that procedural question, the plain terms of the Agreement provide that the Union *must* prove causation before the review and allotment process is triggered. Kasher's failure to require the Union to do so invalidates his review and allotment order under the governing standard.

Finally, the Union argues that the Company's interpretation requires the courts to "rewrite the terms of and/or add terms to the bargaining agreement and rewrite and supplement the Flagler decision."

Union Br. 20. But courts regularly vacate arbitral awards without rewriting the parties' agreement where the arbitrator ignored the plain terms of the agreement. See Ameritech Br. 35-36, 42-43. Here, there is no need to rewrite paragraph 1.03 but simply to read it. If there were any question as to whether it means what it says—that the Union must prove causation before an arbitrator can order review and allotment—it was settled in the "final resolution" by arbitrator Perkovich. SA73, SA87; see *infra*, Part III.

II. Kasher's Post-Award Letter Also Should Be Vacated For Exceeding His Authority And Disregarding Governing Contract Terms.

As demonstrated in the Company's opening brief (at 48-53), arbitrator Kasher lacked authority to issue his post-award letter, which substantially expanded the burdens placed on the Company by his award.

Kasher's letter acknowledged that his status was *functus officio* and that it was "not [his] intention to reassert jurisdiction in this case." SA71b. But he proceeded to order the Company to produce subcontracting information without regard to whether "subcontracts were let by one department of the Company as opposed to another." *Ibid*. The Union's view that the Company now must provide information on all work that it has subcontracted, whether or not the work was customarily performed by the bargaining unit, would impermissibly expand the

meaning of "work customarily performed by [bargaining unit] employees." SA2 ¶ 1.03; see Ameritech Br. 48-53.

The Union (at 21) broadly denies that the Kasher letter imposes substantial burdens on the Company. Yet the record before the district court proves otherwise. See Ameritech Br. 17-18, 53. Moreover, the Union does not suggest how the Company could practicably review all of its subcontracts in Illinois and Northwest Indiana, including those pertaining to work that has never been performed—let alone "customarily performed"—by bargaining unit employees. See Ameritech Br. 17-19, 50, 54-55. More fundamentally, the Union offers no response to the Company's showing that Kasher lacked authority to expand the scope of his award through a subsequent letter.

In particular, the Company showed that the Kasher letter disregards the language in paragraph 1.03 limiting its scope to "work customarily performed" by bargaining unit employees; exceeds the limits on his remedial authority imposed by other parts of the Agreement; and was issued after Kasher's authority over the dispute had expired. Ameritech Br. 50-51. The Union does not suggest why the Kasher letter should be upheld in the face of these fundamental defects.

Instead, the Union alleges (at 22) that the Kasher letter was merely a "clarification" and "did not involve adding to or modifying his decision and award." The Union relies on *La Vale Plaza, Inc.* v. *R.S. Noonan, Inc.*,

378 F.2d 569 (3d Cir. 1967), and *Glass Workers Int'l Union* v. *Excelsior Foundry Co.*, 56 F.3d 844 (7th Cir. 1995). But whether arbitrators provided proper clarifications in other cases is irrelevant to whether Kasher did so here.

In *La Vale Plaza*, the parties were unsure whether an arbitrator's final award was net of payments already made. 378 F.2d at 570. The Third Circuit ruled that it was appropriate for the arbitrator to clarify that issue. *Id.* at 573. Unlike this case, there was no issue regarding the propriety of either the original award or the clarification. Hence, *La Vale Plaza* has no bearing on whether arbitrator Kasher exceeded his authority by expanding the scope of his award.

In *Glass Workers*, the arbitrator ordered reinstatement of an employee who had been terminated for failing a drug test, provided that he complete a drug rehabilitation program within 60 days. At the union's request, the arbitrator subsequently clarified that the employee was responsible for the cost of the program. At the union's further request, the arbitrator issued another clarification, stating that the 60-day period began on the date he issued his previous clarification. The employer refused to reinstate the employee following his treatment program and the union sued to enforce the award as clarified. This Court held that the clarification as to when the 60 days began was merely "interpretive" and therefore fell within the "clarification-completion exception" to the

functus officio doctrine. 56 F.3d at 847-48. Here, in contrast, the Kasher letter did not merely interpret his award but expanded its scope beyond the bargaining-unit work limitation provided in paragraph 1.03 of the Agreement. See Ameritech Br. 53-54. Moreover, unlike the arbitrator in *Glass Workers*, Kasher recognized that he was *functus officio* and stated that he lacked authority over the case. SA71b.

Glass Workers and *La Vale Plaza* support the conclusion that *some* clarifications of awards are valid. They do nothing, however, to rebut the showing in our opening brief (at 48-53) that arbitrator Kasher's letter is invalid both because Kasher lacked authority to expand the scope of his award and because he disregarded the governing contract language.

Finally, the Union suggests (at 21) that the Company itself should have sought clarification of the Kasher award. But there was no reason for the Company to seek "clarification" of an award that so flagrantly disregarded the Agreement's causation requirement. Furthermore, as discussed in the next section, the parties attempted to resolve their continuing dispute after the Kasher award and, unable to do so, submitted their dispute to arbitrator Perkovich for what they agreed would be "the culmination of protracted litigation between the parties." SA73.

III. The District Court's Judgment Enforcing The Kasher Award Should Be Vacated In Light Of The Perkovich Award, Which Finally Resolved The Meaning And Applicability Of Paragraph 1.03.

Even if the Kasher award stands, this Court should vacate the district court's judgment enforcing the Kasher award. See Ameritech Br. 56-61. The district court abused its discretion in denying the Company's Rule 60(b) motion, filed after the Perkovich award, seeking that relief.

The Union acknowledges that this Court may rule on the Company's Rule 60(b) motion but asserts that "the Perkovich decision and award is neither inconsistent with nor renders the Kasher Award moot." Union Br. 23. In fact, the Perkovich award held that paragraph 1.03 expressly requires a showing of causation before review and allotment may be compelled, while the Kasher award orders review and allotment without addressing causation. See Ameritech Br. 14-16, 20-21. Those two standards cannot coexist.

The procedural background leading up to the Perkovich award shows that the parties intended it to supersede the result of the Kasher arbitration. After both parties appealed from the district court's orders enforcing the Kasher award and participated in this Court's settlement conference program, the parties mutually agreed that arbitrator Perkovich would provide "a *final* resolution of the proper interpretation and application of [paragraph] 1.03 . . . relative to [the 2002 layoffs]."

SA73 (emphasis added); see Ameritech Br. 19-20. The parties thereby agreed that the Kasher award was incomplete and that the parties' dispute required final resolution by another arbitrator. See Ameritech Br. 56-57. The district court's judgment should be reversed for that reason alone, as it is error to enforce an incomplete arbitration award. See *id.* at 59.

Although the Union asserts (at 23) that the Perkovich award does not supersede the Kasher award because Perkovich "dealt solely with a distinct set of data with respect to some of the [Company's] construction subcontracts," the Union provides no record support for that assertion, which is incorrect. While the second phase of the Perkovich award did apply paragraph 1.03 in the context of certain construction subcontracts (SA89), the first phase was not so limited.

In the first phase, the parties asked Perkovich to determine the meaning of the causation prerequisite to review and allotment in paragraph 1.03. SA82. The parties agreed that Perkovich's interpretation of paragraph 1.03 would be "*final*" and the "*culmination* of protracted litigation between the parties" regarding the 2002 layoffs. SA73 (emphasis added). Hence, the parties agreed that Perkovich would have the final say as to the meaning of paragraph 1.03 and that his interpretation would apply no matter which subcontracts were at issue. Moreover, in the second phase, Perkovich re-emphasized his prior ruling

that the Union must prove "a direct causal nexus between prospective or new contracting out of bargaining unit work and the failure of the Employer to reemploy laid off bargaining unit employees with recall rights" and that the Union must do so "before the parties can be compelled to engage in the remedial review and allotment process." SA96.

The Union also contends that the Perkovich award is consistent with the Kasher award because "Arbitrator Perkovich noted in his decision that it was not necessary for him to consider the Kasher Award." Union Br. 23. But as Perkovich also noted, he made that comment only because Flagler's prior interpretation of the causation prerequisite in paragraph 1.03 had already "bec[o]me a part of the parties' collective bargaining agreement." SA87 & n.6; see Ameritech Br. 20. By reconfirming Flagler's interpretation of paragraph 1.03, the "final" Perkovich award made clear that Kasher's disregard of the causation requirement could not stand.

The Union (at 25) further contends that both the Kasher and Perkovich awards require the Company "to provide detailed subcontracting information to the Union and then to jointly review such information with the Union to determine whether any of such work could be or is required to be allotted to the bargaining unit." But the notion that such review must take place regardless of whether the causation

requirement has been satisfied cannot be reconciled with the Perkovich award, which says precisely the opposite: "The Union must prove this causation element *before* the parties can be compelled to engage in the remedial review and allotment process." SA87-SA88 (emphasis added). The Union's continuing insistence that the Company comply with the Kasher award cannot be reconciled with this clear holding by arbitrator Perkovich.

Finally, the Union tries to rely on this Court's refusal, in *Consolidation Coal Co.* v. *United Mine Workers*, 213 F.3d 404 (7th Cir. 2000), to set aside inconsistent arbitration awards "under the principles of *res judicata* and under the limited standards for judicial review established by the Supreme Court." Union Br. 17. As is evident from the Company's opening brief, the Company's position does not rely on principles of *res judicata*. Rather, it is based on the failure of the Kasher award to interpret and apply the causation language in paragraph 1.03, the parties' agreement to submit the meaning and applicability of that language to arbitrator Perkovich, and Perkovich's resolution of that issue, which is incompatible with the Kasher award.

Furthermore, this Court noted in *Consolidation Coal* that a different case would be presented if the arbitrators' "inconsistent interpretations * * * result in the kind of impasse" where the employer is simultaneously enjoined and authorized to continue the identical practice. 213 F.3d at

406. This is just such a case. The Company is faced with two incompatible awards addressing the same Agreement. Arbitrator Kasher ordered the Company to commence the burdensome review and allotment process without considering causation, and the district court entered judgment enforcing his award. SA69; A10. Yet under the first phase of the subsequent Perkovich award, the Company need engage in review and allotment only after the Union proves causation. SA87-88. Thus, unlike in *Consolidation Coal*, the Company cannot practicably comply with both the Kasher and Perkovich awards. Because the parties expressly agreed that phase one of the Perkovich award would provide the final and definitive interpretation of paragraph 1.03, his interpretation applies to all arbitrations challenging the 2002 layoffs. SA73; see *Consolidation Coal*, 213 F.3d at 407 (explaining that the parties' agreement to give an arbitral decision preclusive effect made it reasonably certain that subsequent arbitrations would be resolved in the same manner). It is undisputed that none of the three arbitrators found that the Union satisfied the causation requirement. Hence, applying paragraph 1.03 as "finally" construed by Perkovich requires that the Kasher award be vacated.[1]

[1] There are additional distinctions between this case and *Consolidation Coal*. Whereas the arbitrator there was not informed of the prior award, arbitrator Kasher was fully informed of—but flatly disregarded—the Flagler award. See (cont'd)

IV. The Union Waived Its Cross-Appeal And, In Any Event, The District Court Did Not Abuse Its Discretion In Denying The Union's Motion To Enforce The Judgment.

A. The Union waived its cross-appeal.

The Union cross-appealed the district court's denial of its motion to enforce the judgment. The Court need not reach this issue, however, if it vacates the Kasher award or the district court's judgment for the reasons given above. Moreover, the Court should not consider this issue in any event because the Union did not address the merits of the cross-appeal in its brief. Even in its April 23, 2007 response to the Company's motion to dismiss the cross-appeal, which this Court denied without opinion on May 7, 2007, the Union did not offer any ground for holding that the district court erred in denying the Union's motion to enforce the judgment. To the contrary, the Union acknowledged that the denial "does not affect the substantive issues to be decided by the Court of Appeals," and thus "the Union's ability to enforce the award must await a final decision [on] the Company's appeal." Response at 2-3; *cf. Chrysler Motors*

(… cont'd)

213 F.3d at 407; Ameritech Br. 34-39. In addition, *Consolidation Coal* did not address whether a judgment enforcing an inconsistent arbitral award should be vacated. Such a judgment had been entered in a separate case from which the company did not appeal. Instead, after the company filed a new suit, the district court entered judgment confirming prior and subsequent awards in its favor. *Consolidation Coal*, 213 F.3d at 406. Here, by contrast, the Company has appealed from the Kasher award and from the district court's enforcement order, raising among other issues their inconsistency with both the Flagler and Perkovich awards.

Corp. v. *Int'l Union, Allied Indus. Workers*, 909 F.2d 248, 250 (7th Cir. 1990) (authorizing the district court to defer requested contempt proceeding until the validity of the underlying injunction was tested on appeal).

The Union did contend that it had sufficiently preserved its cross-appeal by responding to the Company's arguments for vacating the Kasher award. Response at 4. But simply showing that an arbitral award should not be vacated is a far cry from proving that it should be specifically enforced on pain of contempt—a showing that the Union has not even attempted to make on appeal. For these reasons, the Union has waived its cross-appeal. See *Baker* v. *Runyon*, 114 F.3d 668, 669 n.1 (7th Cir. 1997) (appellee's failure to address cross-appeal arguments waived them).

B. Even if not waived, the cross-appeal is meritless.

Even if the Union did not waive its cross-appeal, this Court should reject it on the merits and affirm the district court's order. The Union's notice of appeal stated that it was appealing the district court's order of July 27, 2005 (R54), which denied the Union's motion for entry of an order enforcing the judgment (R40).[2] The Union's motion and

[2] The notice does not appear to appeal the Union's prior motion to enforce the judgment and for contempt (R31), which the district court had denied without prejudice (R38). In any event, the Union later conceded that it was not error to (cont'd)

accompanying brief complained that the Company had failed to provide the Union with subcontracting data as required by the Kasher award. R40, at 2; R42, at 3. The Union recognized, however, that the district court's judgment (R28) merely granted the Union's summary judgment motion and did not specifically require the Company to perform particular acts. R42, at 6. Accordingly, the Union asked the district court to enter an order enforcing its judgment and commanding the Company to comply with Kasher's directive to "provide the Union with sufficient identifying data concerning post-December 27, 2002 subcontracting." *Ibid.* In the Union's view, this language from the Kasher award was specific enough to authorize the court to hold the Company in contempt. *Ibid.*

A district court's denial of a motion for contempt is subject to review only for abuse of discretion. *Jones* v. *Lincoln Elec. Co.*, 188 F.3d 709, 737 (7th Cir. 1999). For two reasons, the district court did not abuse its discretion by denying the Union's motion.

First, the motion effectively sought an injunction mandating the Company to obey a labor arbitration award. See *Int'l Longshoremen's Ass'n* v. *Phila. Marine Trade Ass'n*, 389 U.S. 64, 74-76 (1967). Courts are

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(… cont'd)

deny that motion because the district court's bare-bones judgment (R28) is not sufficiently specific to support a finding of contempt. See R42, at 5-6.

justifiably "reluctant to issue labor injunctions" because the parties have agreed to obtain any such relief through arbitration. *Consolidation Coal*, 213 F.3d at 406; see also *Local 1545* v. *Inland Steel Coal Co.*, 876 F.2d 1288, 1294-96 (7th Cir. 1989).

Especially where, as here, an arbitrator's award states general rules that require further interpretation or directs a party to take action that gives rise to a subsequent dispute, a district court should allow the matter to be resolved through the arbitral process instead of ordering enforcement. *Derwin* v. *General Dynamics Corp.*, 719 F.2d 484, 491 (1st Cir. 1983) (citing cases); see also *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593, 595-96, 599 (1960) (holding that appellate court properly modified judgment enforcing incomplete arbitral award and required parties to complete arbitration). Arbitrator Kasher's award falls within this general rule.

Instead of entering a specific award that could support a contempt finding, Kasher generally directed the Company "to provide the Union with *sufficient* identifying data concerning post-December 27, 2002 subcontracting," listed some examples of data that should be provided, and concluded by stating that "any other reasonable, non-proprietary information *that the parties may agree upon*" should also be provided. SA71 (emphasis added). The parties subsequently disagreed about the scope of information that this general language obligated the Company to

produce. See Ameritech Br. 16-19. The district court refused to resolve that dispute by "further elaborat[ing] on [arbitrator Kasher's] ruling," observing that the court "cannot assume the role of the arbitrator." R54, at 2; see also *United Steelworkers* v. *Danly Mach. Corp.*, 852 F.2d 1024, 1027 (7th Cir. 1988) ("The court may not interject itself into the arbitration process by elaborating on or rewriting an arbitrator's award"). In light of the imprecise language from the Kasher award on which the Union relied, the district court's decision to deny the Union's request for dispute resolution in the guise of enforcement was correct and certainly not an abuse of discretion.

Second, even if the enforcement sought by the Union were otherwise available, the district court did not abuse its discretion by concluding that the Union's motion was premature because the Union "ha[d] not shown that [the Company] [was] failing to comply with the [court's] ruling." R54, at 2. That conclusion was supported by the Company's evidence that it was complying with the Kasher award. R51, at 3, 9-10. For this additional reason, the district court properly denied the Union's motion to enforce.

CONCLUSION

This Court should reverse the district court's judgment and remand for entry of an order vacating the Kasher award and letter. Alternatively, in light of the subsequent Perkovich award, the Court should vacate the

district court's judgment enforcing arbitrator Kasher's award. In addition, the Court should deny the Union's cross-appeal.

Dated: May 30, 2007

Respectfully submitted.

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), the undersigned hereby certifies that the foregoing brief of appellant Ameritech Corporation

(i) complies with the type-volume limitation in Fed. R. App. P. 32(a)(7)(B)(i) because it contains 4,805 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii); and

(ii) complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 97-2002 in 13-point Bookman Old Style.

_____

Jeffrey W. Sarles

Dated: May 30, 2007

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on May 30, 2007 he caused two copies of the foregoing Reply Brief for Plaintiff-Appellant And Brief for Cross-Appellee Ameritech Corporation to be served by hand delivery, and a digital version of that brief to be served by e-mail, on the following:

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