Order up fast-food firing fairness: In praise of the City
Council push for just-cause terminations

By WILLIAM B. GOULD IV

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To paraphrase Martin Luther King Jr., the New York City Council proposal to require neutral arbitration to resolve
fast-food disputes about worker dismissals is an illustration of the long arc of history bending towards justice. Ever since World War II, the idea that employers should not have carte blanche to fire workers for unfair reasons has gained wide acceptance where employees are represented by unions. Loss of one's job and income is the workplace's capital punishment. But unions only represent 6% of the workforce in the private sector, thus exposing the overwhelming bulk of workers to no protection.

The unvarnished truth is that in America, in contrast to all other industrialized countries, non-union workers can be dismissed for a bad reason or no reason at all, and thus possess no due process on the job. True, if a worker can show discrimination on account of sex, race, disability or religion, the courts and fair employment commissions can provide redress and, beginning in the late 1970s, the courts have intervened to provide limited protection for wrongful discharge.
But both avenues are frequently lengthy and expensive, dependent upon lawyers who must screen out not only the cases which they deem to be without merit, but also would be difficult to pursue because low-income workers produce small damages.

In 1984, a California State Bar Committee, which I co-chaired, proposed the right to arbitration under a just-cause standard of the kind now put suggested for New York City fast food employers. Notwithstanding my committee's assumption that unions would push for this concept because their familiarity with arbitration would be a good organizing tool, little was heard from the labor movement in California or elsewhere where similar proposals were made.

The reason? Many organized labor leaders thought that arbitration should be a benefit available only to workers who chose union representation.

Obviously, employers had no interest in limiting their authority — and in the 1990's, they began to devise their own systems of arbitration so as to diminish employment law liability, a development ratified by the United States Supreme Court last May.
In contrast to labor-management negotiated procedures, these new employer-controlled systems have managed to give arbitration a bad name. The New York City approach could promote an independent and disinterested resolution of conflicts between the parties. Congress won't take the initiative, but state or local governments close to the needs of fast-food workers fighting for minimum standards are better suited to the challenge in any event.

In New York, union advocates pushing for fast food arbitration have stepped into a vacuum that badly needed filling.

A new mechanism aimed at unjust and arbitrary firings would not only provide workers with a genuine alternative to our imperfect wrongful discharge litigation in the courts — it would also induce the airing of general grievances which are not dependent upon proof that the unfair treatment is because of race, sex or other characteristics. Minorities and women are sometimes treated unfairly even when the grievance is not triggered by discrimination.
Fast-food employers won't like these changes in any event no matter the shape or form. They don't want constraints on their authority. But, as jazz musician Les McCann said in a different context, "Compared to what?"
The process now being advocated is far superior to unredressed grievances, discord, litigation or employer "unbargained for" systems. New York City could be on the brink of an idea whose time has come.

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