

No. 09-214

**IN THE SUPREME COURT OF THE UNITED STATES OF
AMERICA**

Major League Baseball,

Petitioner,

v.

Kevin Wilson; Major League Baseball Players Association,

Respondents.

ON WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT

Brief for Petitioner

Team Number 16
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QUESTIONS PRESENTED

- I. Whether the Court of Appeals erred in holding that a Major League Baseball player's claims under Minnesota's Drug and Alcohol Testing in the Workplace Act challenging a suspension under a collectively bargained for drug policy are not preempted by Section 301 of the Labor Management Relations Act.

- II. Whether the Court of Appeals improperly set aside an arbitrator's award sanctioning the Major League Baseball's refusal to issue warnings regarding the presence of a banned substance in specific products because such an award does not violate public policy.

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STATEMENT OF THE CASE

For the alleged violation of Minnesota’s Drug and Alcohol Testing in the Workplace Act (“DATWA”) and a breach of contract, Kevin Wilson brought suit against Major League Baseball (the “MLB” or the “League”), Dr. Larson, Dr. Ray Finkle, and Andrew Birch in Minnesota state court. (R. at 24.) The state court found in favor of Wilson and granted a temporary restraining order barring the suspension issued at a prior arbitration. (R. at 24.) In response, the MLB removed the case to federal court where it became consolidated with an action brought by the Major League Baseball Players Association (the “MLBPA”) seeking to vacate the arbitration awards of Wilson and four other players (collectively the “Players”) as a violation of public policy. (R. at 23.) The MLBPA then amended its complaint and also contended that Wilson’s suspension would violate Minnesota law. (R. at 25.)

The District Court granted the MLB’s motion for summary judgment and upheld the arbitration award. (R. at 25.) It concluded that § 301 of the Labor Management Relations Act (“LMRA”) preempted Wilson’s DATWA claim because his claim could only be resolved by interpreting the terms of the player’s labor contract. (R. at 25.) The court also found that the MLB had no duty to specifically warn its players that an energy supplement contained a banned substance and that the arbitration award suspending the Players did not violate public policy. (R. at 25.) The MLBPA and Wilson appealed the District Court’s decision and the Fourteenth Circuit reversed on all counts. (R. at 36.) The case is now before this Court on the MLB’s appeal.

STATEMENT OF FACTS

In 2007, Petitioner, MLB established a Collective Bargaining Agreement (“CBA”) with Respondents, Wilson and the MLBPA. (R. at 3.) The comprehensive CBA governs the terms

and conditions of MLB employment and incorporates a drug policy (“Policy”), which was jointly negotiated by the MLBPA and the MLB. (R. at 3.) The Policy prohibits the consumption of a variety of substances, including steroids and performance enhancers, and adopts a strict liability approach where “a positive test result will not be excused because a player was unaware he was taking a Prohibited Substance.” (R. at 3.) The Policy twice cautions that “[p]layers are responsible for what is in their bodies.” (R. at 3, 10.) In addition, the MLB repeatedly warned the players, including Wilson, of the dangers of consuming energy-boosting supplements. (R. at 5, 11.) Wilson acknowledged hearing these warnings and knew about the Policy’s strict liability rule. (R. at 6.) Yet, despite his knowledge of the risks associated with taking energy-boosting supplements, he voluntarily took SpeedShot, an energy-boosting supplement, before a preseason training scrimmage and later tested positive for Clomiphene, one of the Policy’s banned substances. (R. at 6.) The MLB subsequently suspended him as well as four other players from different teams who also failed a drug screening after taking Speedshot. (R. at 6.)

Prior to the Players use of SpeedShot, the MLB had made a significant effort to inform them of the dangers and consequences of taking energy supplements. For example, the MLBPA and the MLB wrote a letter to players stating that both organizations “strongly encourage[] players to avoid the use of supplements altogether” warning that “if you take these products, you do so AT YOUR OWN RISK!” (R. at 11.) The letter also stated, “several players have been suspended even though their positive test result may have been due to the use of a supplement.” (R. at 11.) The letter ends by again informing players that a positive test result will be disciplined by a suspension because “you and you alone are responsible for what goes into your body.” (R. at 11.)

In addition, the League created a confidential Hotline in order to provide players with information about energy-boosting supplements. (R. at 4.) A memorandum explaining the Hotline to the players stated, “Although we [the MLB] strongly discourage the use of supplements of any kind and for any reason, we understand that an informed decision is the best one.” (R. at 11.) This memorandum also reiterated to the players that “you and you alone are responsible for what goes into your body” and warned that “[u]sing the Hotline will not excuse a positive test result.” (R. at 11.)

Dr. Larson, an independent administrator not affiliated with the Commissioner’s office or the MLB, is responsible for implementing the terms of the Policy. (R. at 4.) Although Dr. Larson is a licensed physician, he does not serve as a personal physician to any of the players. (R. at 4.) His responsibilities are limited to overseeing drug-testing procedures, reporting positive test results, and educating the players regarding the Policy’s implementation. (R. at 4.) Dr. Larson also has an obligation to “make himself available for consultation with players and Club physicians; oversee violated protocols; oversee the development of education materials; participate in research on steroids” and provide continuing education to the players regarding energy-boosting supplements. (R. at 34.)

In September, 2007, the MLB learned that some bottles of SpeedShot, contained the prohibited substance, Clomiphene. (R. at 5.) The SpeedShot label, however, failed to disclose the substance as an ingredient. (R. at 5.) Even though Dr. Larson discussed with his consulting toxicologist, Dr. Ray Finkle, that the use of this particular product could pose a danger to players, he ultimately decided to issue a general warning reiterating the dangers of using energy supplements and the League’s strict liability policy. (R. at 5-6, 35.) He later testified that he decided to issue the general warning about energy-boosting supplements rather than a specific

warning about SpeedShot because he believed that other energy-boosting supplements also contained undisclosed prohibited substances. (R. at 18.) Dr. Larson feared that if he gave players a product-specific warning they would assume that SpeedShot was the only unsafe energy-boosting supplement and be inclined to take other brands of supplements out of a false sense of security. (R. at 18.)

To reinforce Dr. Larson's warnings, the MLB asked the MLBPA to notify players that the company that "distributes SpeedShot has been added to the list of prohibited energy-boosting supplement companies" and, consequently, players were no longer permitted to endorse any of the company's products. (R. at 5.) Furthermore, the MLB advised the Hotline to remind players that they should avoid taking energy-boosting supplements because they may contain substances not included in the ingredient lists. (R. at 19.)

According to the terms of the Policy, Wilson and four players from different teams were suspended for fifteen games after testing positive for Clomiphene. (R. at 6.) The Players appealed their suspensions in accordance with the arbitration procedures contained in the Policy, which provided for review of the suspension by a neutral arbitrator whose decision is final and binding on the parties. (R. at 4.) The arbitrator upheld the suspensions noting that "the Policy does not articulate or impose an obligation to issue specific warnings about specific products, and nothing in the record suggests that the bargaining parties have ever contemplated imposing such a requirement." (R. at 7.) Consequently, he held that the "players used SpeedShot at their own risk, did so in the face of repeated warnings about the risks inherent in using supplements in general and energy-boosting supplements in particular, and did so knowing that a positive test would result in a suspension that would not be excused based on a claim of unintentional or inadvertent use." (R. at 7.)

SUMMARY OF THE ARGUMENT

This Court should reverse the Court of Appeals' ruling and find that § 301 preempts Wilson's DATWA claim. Congress enacted § 301 to ensure that a uniform application of federal labor law would prevail over inconsistent state laws. In evaluating § 301 cases, the Supreme Court has clarified that federal preemption is required when the resolution of a claim is substantially dependent upon the meaning of a collective bargaining agreement. Here, this Court cannot resolve Wilson's claim without analyzing the grievance procedures set forth in the CBA to determine if they comply with the procedural standards established under Minnesota law. In addition, when a CBA is executed, DATWA expressly instructs a reviewing court to examine its terms to verify that the agreement does not exceed or conflict with any of the statute's provisions. Because resolution of this case ultimately depends upon the meaning of the CBA, § 301 must preempt Wilson's DATWA claim.

Furthermore, this Court should reverse the Court of Appeals' finding that the MLB had a fiduciary duty to issue product-specific warnings to players and that enforcement of the arbitration award would violate public policy. The terms of the CBA govern the relationship between the MLB and its players. The Policy adopted a strict liability approach and the Players alone assumed the risk and disciplinary consequences of taking a banned substance. Without question, the governing instrument does not confer a fiduciary duty upon the MLB and it is not within the province of the judiciary to revise a freely bargained for agreement with more stringent obligations than those created by the parties. Additionally, the enforcement of the arbitration award does not violate public policy because subjecting MLB players to disciplinary action does not threaten the safety or welfare of the public nor does it contravene any existing regulation or law.

STANDARD OF REVIEW

This Court reviews the issue of preemption de novo. *Bogan v. General Motors Corp.*, 500 F.3d 828, 832 (8th Cir. 2007). Similarly, the Court of Appeals' denial of the MLB's motion for summary judgment is a question of law to be reviewed de novo. *Iowa Elec. Light & Power Co. v. Local Union 204*, 834 F.2d 1424, 1427 (8th Cir. 1987).

ARGUMENT

- I. THE COURT OF APPEALS ERRED WHEN IT HELD THAT SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT DOES NOT PREEMPT MINNESOTA STATE LAW BECAUSE THE RESOLUTION OF KEVIN WILSON'S CLAIM SUBSTANTIALLY DEPENDS ON AN INTERPRETATION OF THE COLLECTIVE BARGAINING AGREEMENT AND PREEMPTION IS NECESSARY TO CARRY OUT CONGRESS'S INTENT TO RESOLVE LABOR DISPUTES IN A UNIFORM MANNER ACROSS THE COUNTRY.

The Court of Appeals erred when it found that Wilson's DATWA claim is not preempted by § 301 of the LMRA. Congress expressly declared that the purpose behind the LMRA is "to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing interference by either with the legitimate rights of the other . . . [and] to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare" 29 U.S.C. §141 (2009). According to the Act, "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . may be brought in any district court of the United States having jurisdiction of the parties" *Id.* § 185(a). In evaluating § 301 claims, the Supreme Court has determined that "if the resolution of a state law claim depends upon the meaning of a collective-bargaining agreement, the application of state law is pre-empted and federal labor-law principles – necessarily uniform throughout the Nation – must be employed to resolve the dispute." *Lingle v. Norge Div. of Magic Chef, Inc.*,

486 U.S. 399, 405-06 (1988). Here, because Wilson’s DATWA claim cannot be resolved without analyzing the terms of the CBA, it must be preempted by § 301. Furthermore, preemption is necessary in the present case in order to ensure uniformity in the resolution of disputes concerning professional athletes in accordance with Congressional labor policy.

- A. Section 301 preempts Minnesota state law because the resolution of Kevin Wilson’s claim substantially depends upon an interpretation of the terms of his Collective Bargaining Agreement.

The Court of Appeals erred in finding that § 301 does not preempt Wilson’s DATWA claim because the resolution of his state claim substantially depends on interpreting the terms of the CBA. Supreme Court jurisprudence has delineated cases pertaining to § 301 preemption into two categories: those that require an interpretation of a collective bargaining agreement and those that merely reference one. *Tr. of the Twin City Bricklayers Fringe Benefit Funds v. Superior Waterproofing, Inc.*, 450 F.3d 324, 330 (8th Cir. 2006). Essentially, any state law claim that is based upon rights created by a collective bargaining agreement is preempted by § 301 when the resolution of the claim is “inextricably intertwined” with, or “substantially dependent” upon an analysis of the terms in the agreement. *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 213, 220 (1985). When evaluating § 301 cases, “the factors relevant to the determination of whether a state law claim meets the ‘substantially dependent’ standard is whether the claim derives from or is implied from contract rights established under a collective bargaining agreement, and whether evaluation of the claim is ‘inextricably intertwined with consideration of the terms of the labor contract.’” *Anderson v. Ford Motor Co.*, 803 F.2d 953, 956 (8th Cir. 1986) (citing *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 216 (1985)).

In the present case, any meaningful evaluation of Wilson’s claim would substantially depend on an interpretation of the CBA. To resolve his claim, the Court would have to interpret

the CBA's testing and grievance procedures to determine whether they comply with the requirements set forth under Minnesota law. For example, this Court would need to analyze the Policy's appeals process to determine if it sufficiently affords an employee the right "to explain a positive test result" as required under DATWA. *See* Minn. Stat. Ann. § 181.952(1)(5) (West 2009). Additionally, because Wilson may bring a DATWA claim only after exhausting all applicable grievance procedures under a CBA, this Court must examine the rules of the Policy to ensure that Wilson indeed exhausted all of his grievance options. *See Id.* § 181.956(1). At the very minimum, this Court would be required to construe the terms of the CBA to determine if the testing laboratories used by the MLB qualify as "certified laboratories" as defined by the Minnesota statute. *See Id.* § 181.953. Contrary to the Court of Appeals' findings, this Court cannot merely compare the facts and procedures that the MLB actually followed with the requirements of DATWA to resolve this dispute; rather, this Court is obligated to analyze the Policy's terms and grievance procedures in order to effectively measure the League's level of compliance with the statutory provisions. Accordingly, Wilson's claim is "inextricably intertwined with consideration of the terms of [his] labor contract." *Allis-Chalmers Corp.*, 471 U.S. at 216. Because Wilson's DATWA claim substantially depends on an understanding of the terms of the CBA, this Court is mandated to find § 301 preempts the state law.

Additionally, § 301 preemption is necessary because Wilson's claim derives solely from the terms of his labor contract and would not exist absent the CBA. The League's Policy prohibits MLB players from using a myriad of prohibited substances, including various performance enhancing drugs like Clomiphene. (R. at 3.) However, Minnesota law is more limited and applies only to a few specified drugs like cocaine and marijuana. (R. at 9.) Clomiphene and other performance enhancing drugs are not covered by DATWA. (R. at 9.)

Consequently, the disciplinary action taken against Wilson emanated exclusively from the terms of his CBA and would not have occurred absent the agreement. Wilson's claim derived solely from conduct proscribed by the CBA, not Minnesota law. Because Wilson's case would not exist but-for the terms of the Policy, any attempt to assess liability would inevitably involve an interpretation of the labor contract.

Given that a resolution in the present case requires an interpretation of the CBA, the Court of Appeals improperly relied on *Karnes v. Boeing Co.* (R. at 30.) In *Karnes*, an employee was terminated for violating the anti-drug policy of his employer and later filed suit under the Oklahoma Drug Testing Act. *Karnes v. Boeing Co.*, 335 F.3d 1189, 1192 (8th Cir. 2003). Although the *Karnes* court held that the employee's state law claims were not preempted by § 301, its holding is limited by the fact that the employee's claims only related to whether a company uniformly applied an anti-drug policy as opposed to whether the company breached the terms of a CBA. *Id.* at 1193. Unlike the case at bar where the state law claim is tightly tied to an interpretation of the CBA, the employee's claim in *Karnes* dealt with a purely factual inquiry that could be resolved without consideration of the labor contract. *Id.* at 1194.

Furthermore, under the express terms of DATWA, this Court is directed to examine and interpret the rights created by Wilson's CBA. Pursuant to § 181.955(1), DATWA explicitly provides that Minnesota law "shall not be construed to limit the parties to a collective bargaining agreement from bargaining and agreeing with respect to a drug and alcohol testing policy that meets or exceeds, and does not otherwise conflict with, the minimum standards and requirements for employee protection" Minn. Stat. Ann. § 181.955(1) (West 2009). The plain language of this Section demonstrates the intent of the Minnesota legislature to provide parties with great latitude in bargaining for the specific terms of their own drug policy so long as the parties

preserve the minimum standards of protection afforded by the Act. By expressly authorizing parties to collectively bargain for drug policies that diverge from the statute's black letter, the Minnesota legislature has signaled to the judiciary that DATWA is not to exclusively govern when a CBA has been executed. It would defy logic to enact a statute that permits parties to contract for rights that differ from the statute's requirements only later to demand that the contractual relationship subsequently created be strictly governed by the very requirements the parties opted not to follow. Section 181.955 serves no other purpose than to establish that collective bargaining agreements should be afforded distinct and special consideration when evaluating a DATWA claim. By enacting that § 181.955, it is clear that the Minnesota legislature anticipated that federal labor law could be implicated in disputes concerning a CBA. Thus, given that the plain language of the Minnesota statute requires this Court to analyze the terms of the CBA to determine whether the contract "meets or exceeds" or even "conflicts with" the statutory provisions, this Court must find that § 301 preempts Wilson's DATWA claim.

In ruling that § 301 preempts Wilson's claim, this Court would harmonize itself with over forty years of Supreme Court precedent mandating § 301 preemption when, as here, the resolution of a state law claim substantially depends upon an analysis of a CBA. *See Livadas v. Bradshaw*, 512 U.S. 107, 122 (1994); *Lingle*, 486 U.S. at 421; *Allis-Chalmers Corp.*, 471 U.S. at 220; *Local 174 v. Lucas Flour Co.*, 369 U.S. 95 (1962). Moreover, this Court would help effectuate the intent of Congress "to provide federal jurisdiction over 'suits for violation of contracts between an employer and labor organization,' 29 U.S.C. § 185, in order to fashion a body of federal common law for the purpose of resolving labor disputes in a uniform manner across the country." *Superior Waterproofing, Inc.*, 450 F.3d at 330 (quoting *Allis-Chalmers*

Corp., 471 U.S. at 209). Therefore, this Court should reverse the Court of Appeals and find that § 301 preempts Wilson’s claim.

- B. Preemption of Wilson’s state law claim is necessary in order to further Congress’s intent of settling labor disputes in a uniform manner across the country.

By overlooking the bedrock principle of uniformity that rests at the very core of federal labor law, the Court of Appeals improperly concluded that § 301 does not preempt Wilson’s DATWA claim. Congressional desire for uniformity and predictability in the resolution of labor disputes is the perennial pulse of § 301 and a “[s]tate law which frustrates the effort of Congress to stimulate the smooth functioning of that process strikes at the very core of federal law labor policy.” *Lucas Flour Co.*, 369 U.S. at 104. Accordingly, the Supreme Court has recognized that “the subject matter of § 301(a) ‘is peculiarly one that calls for uniform law.’” *Id.* at 103.

It is irrefutable that Congress enacted § 301 to ensure that a uniform application of federal labor law would prevail over inconsistent local law. *Id.* at 104. The very reason for why uniformity is warranted in the realm of labor relations is aptly demonstrated by the case at bar. As the employer of hundreds of players across the country, the MLB is charged with regulating workers in multiple jurisdictions. (R. at 3.) Given that state law varies depending on the territory, the MLB had to enact a set of uniform rules and enforcement procedures in order to carry out its regulatory duties in a fair and consistent manner. As a result, the League entered into a mutually agreed upon drug policy with its players that establishes the proper grievance procedures to be followed in the event a player tests positive for drugs. (R. at 3.)

Despite Wilson’s attempt to circumvent his labor contract, the freely bargained for terms of the League’s Policy must be enforced uniformly against players and cannot be subject to change depending on geographic location. The disruptive influence of employing Minnesota law in the present case would be immeasurable. Allowing Wilson’s claim to prevail would

effectively rob the MLB of the ability to evenhandedly enforce its policies against individual players. For example, while Minnesota law may conceivably allow Wilson to avoid suspension despite his positive test results, other players in different jurisdictions who similarly tested positive would nevertheless be subjected to discipline. As the District Court astutely observed, “[s]uch disparate enforcement of the Policy threatens the ‘fairness and integrity’ of the athletic competition on the playing field, threatens to distort the results of games and League standings, and obviously unfair to those players who do not wish to use these substances.” (R. at 14.)

Moreover, utilizing Minnesota law in the present case would generate uncertainty as to how future disputes would be settled. Neither the League nor the players could be sure what substantive law would be used to resolve future conflicts. In effect, “the possibility of conflicting substantive interpretation under competing legal systems would tend to stimulate and prolong disputes” *Lucas Flour Co.*, 369 U.S. at 104. Additionally, later negotiations and agreements would be unduly complicated “by the necessity of trying to formulate contract provisions in such a way as to contain the same meaning under two or more systems of law which might someday be invoked in enforcing the contract.” *Allis-Chalmers Corp.*, 471 U.S. at 214.

The Supreme Court has recognized that “the text of § 301 not only grant[s] federal courts jurisdiction over claims asserting breach of collective bargaining agreements but also authorize[s] the development of federal common-law rules of decision, in large part to assure that agreements to arbitrate grievances would be enforced, regardless of the vagaries of state law and lingering hostility toward extrajudicial dispute resolution.” *Livadas*, 512 U.S. at 121-22. Here, the “vagaries of state law” clearly threaten to subvert a collectively bargained for agreement to arbitrate grievances related to drug testing. The application of dissimilar state law

in every dispute arising out of the CBA would inevitably lead to inconsistent results and disparate treatment among MLB players. Additionally, this Court's failure to enforce the terms of the CBA would impair the LMRA's future ability to regulate similarly situated national athletic organizations under a uniform federal policy as Congress intended.

To avoid the evils and ambiguities that emerge from using separate systems of substantive law, "Congress enacted § 301 . . . to fashion a body of federal common law for the purpose of resolving labor disputes in a uniform manner across the country." *Superior Waterproofing, Inc.*, 450 F.3d at 330. It is for that reason that the Supreme Court has emphasized that "questions relating to what the parties to labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement, must be resolved by reference to uniform federal law" *Allis-Chalmers Corp.*, 471 U.S. at 211. Here, this Court is faced with the precise issue faced by the Supreme Court in *Allis-Chalmers Corp.* - the legal consequences that flow from a breach of a labor agreement. *Id.* Because the case at bar requires this Court to analyze the contractual terms of the CBA and determine the legal consequences of Wilson's contractual breach, this Court should follow Supreme Court guidance and Congressional policy in finding that federal preemption is warranted.

Without question, § 301 represents a Congressional desire to avoid the application of individualized local rules in dealing with the enforcement of collective bargaining agreements. In order to effectuate the intent of Congress and maintain the integrity of our national labor policy, it is incumbent upon this Court to find that federal law preempts Wilson's claim. To hold otherwise would set a noxious precedent that would effectively undermine the future regulation of interstate professional athletes as well as lead to an erosion of the federal industrial scheme. Therefore, to ensure uniformity in the regulation of professional athletes in accordance with

federal labor policy, this Court must reverse the Court of Appeals and find that § 301 preempts Wilson's state law claim.

II. THE COURT OF APPEALS ERRED WHEN IT VACATED THE ARBITRATION AWARD BECAUSE THE MLB DID NOT HAVE A FIDUCIARY DUTY TO ISSUE A PRODUCT-SPECIFIC WARNING AND ENFORCEMENT OF THE ARBITRATION AWARD DOES NOT VIOLATE PUBLIC POLICY.

The Court of Appeals erred in holding that the MLB breached a fiduciary duty to the Players by failing to issue a specific warning that SpeedShot contained Clomiphene. It also improperly found that enforcement of the award violated public policy. The burden for overturning an arbitration award is steep particularly with respect to labor disputes. *Coca-Cola Bottling Co. of St. Louis v. Teamsters Local Union No. 688*, 959 F.2d 1438, 1440 (8th Cir. 1992). The Supreme Court has specifically cautioned courts "against interference with labor-management agreements about appropriate employee discipline." *E. Associated Coal Corp. v. United Mine Workers, District 17*, 531 U.S. 57, 64 (2000). Accordingly, the "decision of an arbitrator who has not exceeded his contractual authority is almost always upheld." *Iowa Elec. Light & Power Co. v. Local Union 204*, 834 F.2d 1424, 1427 (8th Cir. 1987). Courts may not reconsider the merits of an award even if the award is based on the misinterpretation of a contract or errors of fact. *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 36 (1987). To allow otherwise would contravene federal policy that advocates private resolution of labor disputes through arbitration. *Id.*

As a general rule, when the parties have a bargained-for agreement to settle disputes through arbitration, as the parties do here, the courts must defer to the arbitrator's decision. *Coca-Cola Bottling Co.*, 959 F.2d at 1440. The parties of a collective bargaining agreement have negotiated and contracted to have their disputes resolved by an arbitrator rather than a court of law and, therefore, have chosen to be bound solely by the arbitrator's analysis of the facts and

interpretation of the collective bargaining agreement. *United Paperworkers*, 484 U.S. at 37-38. A losing party cannot compel a court to overturn an award merely because it finds the arbitrator's decision unsatisfactory. *W.R. Grace & Co. v. Rubber Workers*, 461 U.S. 757, 765 (1983). Indeed, "as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision." *United Paperworkers*, 484 U.S. at 38.

Given that courts play an extremely limited role in reviewing an arbitrator's decision, the Court of Appeals exceeded the scope of its authority when it vacated the Players' arbitration award. In reversing the lower court's decision, this Court would harvest the precedential seed it planted forty years ago when it stated, "The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements. The federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards." *United Paperworkers*, 484 U.S. at 38 (quoting *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 596 (1960)).

- A. The MLB did not have a fiduciary duty to issue a product-specific warning to the Players because the Players had assumed responsibility for what they put in their bodies under the strict liability approach adopted by the Policy.

A fiduciary relationship exists when one party is "under a duty to act or to give advice for the benefit" of another party "upon matters within the scope of the relation." *Lumbermens Mut. Cas. Co. v. Franey Muha Alliant Ins. Servs.*, 388 F.Supp.2d 292, 305 (S.D.N.Y. 2005) (internal citations omitted). A fiduciary obligation may result between two parties independent of the contract that binds them. *Id.* at 306. However, as a general rule, if the parties "do not create their own relationship of higher trust" the courts should not impose a stricter duty on the parties than they themselves created. *Id.* at 304. New York courts examine the facts on a case-by-case

basis to determine “whether a party reposed confidence in another and reasonably relied on the other’s superior knowledge or expertise.” *Id.* at 305.¹

The Players’ reliance on the MLB to issue a product-specific warning is unreasonable in light of the Policy’s terms. Under the Policy’s strict liability approach, MLB players bore sole responsibility for what was in their bodies. The MLB repeatedly explained the Policy’s strict liability rule to its players and the Players acknowledged that they knew the rule. (R. at 6.) The Policy also made clear that players who chose to take energy-boosting supplements against the advice of the MLB assumed the risk of testing positive for a prohibited substance. To reinforce the Policy’s position, the MLBPA and the MLB wrote in a letter to the players that they “strongly encourage[d] players to avoid the use of supplements altogether” and warned that “if you take these products, you do so AT YOUR OWN RISK!” (R. at 11.) Consequently, the Players were on express notice that they assumed the risk of violating the terms of the Policy when they chose to take SpeedShot. Given that the Players fully assumed the risk of taking SpeedShot, justice demands that they now be barred from claiming that they relied on the MLB to issue a product-specific warning.

Moreover, the Players had undeniably been given sufficient warning that SpeedShot was dangerous. Before taking SpeedShot, the Players knew that the MLB strongly discouraged the use of energy-boosting supplements; they knew that energy-boosting supplements could contain undisclosed banned substances; they knew that other players had been suspended for taking energy-boosting supplements; and they knew that the company which distributed SpeedShot had been added to the list of banned companies. (R. at 5, 11, 19.) Yet, despite their knowledge, only one of the five players actually called the Hotline. (R. at 36.) The remaining Players took SpeedShot without making any effort whatsoever to call the information Hotline or further

¹ New York law governs here under the terms of the CBA to the extent federal law does not govern.

inquire about the product. Their failure to do so evinces a careless disregard for the consequences of their actions. To claim, after the fact, that they were inadequately warned by the MLB and that the League did not fulfill its obligations to them lacks merit.

Furthermore, the Players' claim that Dr. Larson had an obligation to issue a product-specific warning is unreasonable in light of Dr. Larson's responsibilities as plainly explained by the Policy. The Policy fully defined the scope of Dr. Larson's duty to players; he was to implement the Policy and provide them with continuing education about the risks associated with using supplements. (R. at 4.) Even though Dr. Larson had neither a duty under the Policy to issue a warning regarding particular substances nor any responsibility for what the players chose to consume, Dr. Larson still made extra efforts to protect the players. After discovering that SpeedShot contained Clomiphene, Dr. Larson issued a statement to the players urging them to abstain from taking any product or supplement that claimed to boost energy and reminded players of the Policy's strict liability rule. (R. at 5-6.) He chose to issue a general warning rather than a more specific one because he felt the entire supplement industry was a problem. (R. at 18.) He was concerned that if he told players SpeedShot contained Clomiphene they would develop a false sense of security and assume all other energy-boosting supplements would be safe to use. While Dr. Larson is a licensed physician, he is employed as an administrator of the Policy and not as a personal physician to the players. As such, he was not personally responsible for the individual decisions or health of the players. On the contrary, he was merely an administrator responsible for the successful implementation of a drug policy. The Players had no valid reason to expect that Dr. Larson would issue a product-specific warning.

Moreover, the case law makes clear that the creation of a Hotline to inform players about supplements did not impliedly impose a stricter duty of disclosure on the MLB. In the analogous

case, *Walton-Floyd v. United States Olympic Committee*, a court held that an organization that operated a hotline service for its athletes was not liable for failing to issue a product-specific warning because it did not voluntarily assume a duty to issue particularized warnings by merely operating the service. 965 S.W.2d 35, 40 (Tex. App. Ct. 1998). In *Walton-Floyd*, an athlete was suspended from competing in amateur track and field events after failing a drug test on facts almost identical to those here. *Id.* at 36. Just like in *Walton-Floyd*, the operation of the Hotline in the present case did not impose a stricter burden of disclosure on the MLB. The mere existence of the Hotline, without more, cannot be construed to establish obligations other than those specified in the CBA; the purpose of the Hotline was to give players information about energy boosting supplements, nothing more. (R. at 4.) The memorandum explaining the Hotline to the players further supports this reasoning. By reiterating that “you and you alone are responsible for what goes into your body” and warning that “[u]sing the Hotline will not excuse a positive test result,” the players were on express notice that using the Hotline would not insulate them from liability if they were found with a banned substance in their system regardless of the information given to them by the Hotline. (R. at 11.)

If the players wanted a policy that provided more protection they could have bargained for a policy that imposed a fiduciary duty on the MLB or Dr. Larson to issue product-specific warnings. The parties, however, specifically bargained for the terms of their relationship and this Court should not impose a higher burden on the parties than the one they bargained for. *Lumbermens Mut. Cas. Co.*, 388 F.Supp.2d at 304. Public policy favors binding parties to arbitration awards given under collective bargaining agreements because it is the “[arbitrator’s] judgment and all that it connotes that was bargained for.” *United Paperworkers*, 484 U.S. at 36-37. Without question, “the speedy resolution of grievances by private mechanisms would be

greatly undermined” if courts had the authority to reconsider an arbitrator’s interpretation of a collective bargaining agreement. *Id.* at 38. The players, represented by the MLBPA, fairly negotiated for the terms of the Policy. The judicial pen should not later be permitted to penetrate the four corners of a freely bargained for agreement merely because the agreement yielded unfortunate results for five players.

Under the terms of the Policy the MLB did not have a fiduciary duty to disclose that SpeedShot contained Clomiphene. The collectively bargained for policy defined the duties of Dr. Larson and the MLB, requiring only that they educate the players about the dangers of taking energy-boosting supplements. (R. at 4.) Dr. Larson and the MLB discharged their duties under the Policy by establishing a Hotline, issuing warnings, and prohibiting the players from endorsing SpeedShot. The Players, having received ample warning of the risks associated with taking energy-boosting supplements and undoubtedly aware of the Policy’s strict liability rule, cannot reasonably argue that a fiduciary obligation existed post facto when the facts clearly evince that one never did.

- B. Enforcement of the arbitration award does not violate public policy because it does not threaten the health or safety of the public nor does it contravene any existing law or regulation.

The Court of Appeals erred when it held that enforcement of the award would violate public policy. In a narrow set of circumstances a court may vacate an arbitration award that violates an explicit public policy that is well defined and dominant. *W.R. Grace & Co.*, 461 U.S. at 766. The public policy violated by an award must be established “by reference to the laws and legal precedents and not from general considerations of supposed public interests.” *Id.* Here, enforcement of the arbitration award does not offend “law or legal precedent” or pose any risk to the public. On the contrary, the MLB acted within its purview in disciplining the Players for

their blatant violation of the existing labor contract and such action only affects the interests of private parties and not society as a whole.

In *Delta Air Lines, Inc. v. Air Line Pilots Ass'n, Int'l*, the Eleventh Circuit vacated an arbitration award that reinstated an airline pilot who was discharged after flying a commercial airplane while intoxicated. 861 F.2d 665, 671 (11th Cir. 1988). The court held that it was a “rare example of an award the enforcement of which would violate clearly established public policy.” *Id.* The court found that there was a clear public policy against the enforcement of the award because every state had either a statute that explicitly prohibited flying while intoxicated or prohibited flying recklessly, which has been interpreted to include flying while intoxicated. *Id.* at 672-73. The court also vacated the award because allowing the reinstatement of a pilot who flew while intoxicated put the lives of the flight crew, passengers, and public at risk. *Id.* at 674. Similarly, in *Iowa Elec. Light & Power Co. v. Local Union 204*, the Eighth Circuit vacated an arbitration award that called for the reinstatement of a nuclear power plant machinist who had been terminated for violating a federal safety regulation. 834 F.2d 1424, 1430 (8th Cir. 1987). The court explained that there was a strong national policy requiring strict obedience to nuclear safety rules because unsafe operation of a nuclear power facility is an issue of national security, public health, and safety and that this policy would be violated by judicial enforcement of an award reinstating an employee who violated those rules. *Id.* at 1427-28.

Unlike *Iowa Elec. Light & Power Co.* and *Delta Air Lines*, the facts of this case do not fit the public policy exception because enforcement of the Players’ fifteen-game suspensions will not put the health or safety of the public at risk. In the present case, suspending the Players for their breach of the CBA does not have any ramifications outside of the MLB and, therefore, does not concern the general public. Furthermore, absent a very large threat to the public, courts have

even enforced arbitration awards in cases when an employee's conduct violated safety regulations. *See, e.g., MidAm. Energy Co. v. Int'l Bhd. of Elec. Workers Local 499*, 345 F.3d 616, 618, 621 (8th Cir. 2003) (enforcing an arbitration award that called for the reinstatement of an employee who disabled monitoring and safety devices at a liquid natural gas storage facility because the natural gas industry is less regulated and poses less of a health risk to the public than the nuclear energy industry). Here, the MLB's conduct has not violated any ascertainable law or regulation; rather, the MLB acted in accordance with the terms of the CBA when it suspended the Players for their admitted breach of the labor contract. Accordingly, public policy as well as the case law supports enforcement of the arbitration award.

The purpose of the exception is to take into account the public's interests because those interests are often not represented by the terms of private agreements. *United Paperworkers*, 484 U.S. at 42. In this case, vacating the arbitration award does not serve the underlying purpose of protecting the public's interests because the award's enforcement only affects certain players of the MLB. Because the Players agreed to be subject to the disciplinary procedures outlined in the jointly negotiated Policy, they undeniably acquiesced to a fifteen game suspension if they inadvertently consumed a banned substance. The action taken by the MLB against the Players for their violation of the Policy's terms does not threaten the health and safety of society. Accordingly, given that enforcing the award will only affect the interests of the Players and not cause harm to the general public, the arbitration award must be upheld.

Moreover, enforcing the award does not sanction behavior that threatened the health of the players because it was the Players' own conduct- choosing to take SpeedShot- that jeopardized their health. Dr. Larson never advocated that the players take SpeedShot. Instead, he and the MLB consistently advised players not to use energy-boosting supplements. When the

Players made the decision to take SpeedShot, they made an informed decision - they knew that SpeedShot could contain banned ingredients and that they could face suspension by taking it. (R. at 6.) Dr. Larson and the MLB went to extraordinary efforts to protect the players and discourage the use of supplements and, despite these warnings, the Players assumed the risk of ingesting SpeedShot.

Consequently, this Court should reverse the Court of Appeals because enforcement of the arbitration award does not violate public policy. Enforcement of the Players' suspension does not threaten the health or safety of the public at-large, nor does it violate any ascertainable laws or regulations. Furthermore, enforcement of the award does not sanction bad conduct because the MLB did not act in a way that put the players' health at risk; instead, the MLB took significant measures to discourage players from taking energy-boosting supplements and should be commended, not sanctioned, for its efforts.

CONCLUSION

For the foregoing reasons, this Court should reverse the Court of Appeals' ruling and find that § 301 preemption is warranted. This Court should also find that, under the explicit terms of the CBA, the MLB did not have a fiduciary duty to issue product-specific warnings. Moreover, this Court should hold that enforcement of the arbitration award is not in violation of public policy.

Respectfully submitted,

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