

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,
Respondent.

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

BRIEF FOR THE PETITIONER

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Questions Presented

- I. WHETHER THE COURT OF APPEALS ERRED IN HOLDING THAT A MAJOR LEAGUE BASEBALL'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 ERRED IN VACATING AN ARBITRATOR'S AWARD WHICH SANCTIONED MAJOR LEAGUE BASEBALL'S DECISION NOT TO ISSUE SPECIFIC WARNINGS REGARDING THE PRESENCE OF A BANNED SUBSTANCE IN SPECIFIC PRODUCTS BECAUSE SUCH AN AWARD VIOLATES PUBLIC POLICY.

Statement of Jurisdiction

The United States District Court for the Southern District of Tulania had subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 (2006) and 29 U.S.C. § 185 (2006).

The United States Court of Appeals for the Fourteenth Circuit had subject matter jurisdiction pursuant to 28 U.S.C. § 1291 (2006) because it was an appeal of a final judgment in a civil case.

This Court has jurisdiction to review the judgment herein by writ of certiorari under 28 U.S.C. § 1254 (2006).

Statement of the Case

Facts

Respondent Kevin Wilson is a player in Major League Baseball (“MLB” or “League”). (DC-1). He is a member of the Major League Baseball Players Association (“MLBPA”), also a party to this case, and an employee of the Minnesota Twins, L.L.C., not a party to this case. (DC-1). The MLB Policy on Anabolic Steroids and Related Substances (“Policy”) was specifically incorporated into the Collective Bargaining Agreement (“CBA”) between the MLBPA and MLB in 2007. (DC-1). The Policy, which was motivated in part to protect the players’ health, outlined the regulations concerning prohibited uses of certain drugs. (DC-1; CC-11). It prohibited the players from using “Anti-estrogens, including Clomiphene” and other performance-enhancing drugs (“Prohibited Substances”). (DC-1). The CBA established a form player’s contract in which players agree to avoid performance-related drugs because of “the detriment to the League and professional baseball club that would result from impairment of public confidence in the honest and orderly conduct of MLB games or the integrity and good character of MLB players.” (DC-8).

The Policy explained that the Prohibited Substances “[had] no legitimate place in professional baseball” and “threaten[ed] the fairness and integrity of the athletic competition on the playing field” because they would allow the players to “distort the results of the game and League standings.” (DC-8). Per the Policy, the MLB Commissioner would discipline players who tested positive for drugs; a first time violation would result in a 15-25 game suspension.

(DC-1-2). The players could then appeal their punishment to a neutral arbitrator “whose decision constitute[d] a full, final, and complete disposition of the appeal that [was] binding on all parties.” (DC-2).

The Policy established the “MLB Supplement Hotline” (“Hotline”). (DC-2). The Hotline was created as a way for MLB players, coaches and trainers to procure “confidential and accurate information about [the Prohibited Substances], including their ingredients, effects, and adverse reactions.” (DC-2). A memorandum announcing the Hotline cautioned against the use of all supplements, warned about a strict liability policy and recognized that “an informed decision is the best one.” (DC-9). Use of the Hotline would not excuse positive test results, as Section Eight of the Policy warned that “players are responsible for what goes into their bodies.” (DC-2, 8). It “adopt[ed] an approach of strict liability, meaning that a positive test result [would] not be excused because a player was unaware he was taking a Prohibited Substance” or “because it [did] not result from an intentional use of a Prohibited Substance.” (DC-1, 8). Appendix C to the policy contained a letter to the players from the MLB and the MLBPA that “strongly encourage[d] players to avoid the use of supplements altogether” and cautioned, “if you take these products, you do so AT YOUR OWN RISK!” (DC-9). The letter reiterated that “you and you alone are responsible for what goes into your body.” (DC-9).

The Policy’s Independent Administrator was Dr. John Larson. (DC-2). He directed and implemented the Policy, oversaw drug testing and reported positive test results to the Commissioner, and educated the players about the Policy. (DC-2). Dr. Ray Finkle (DC-2)

helped implement the Policy as the “Consulting Toxicologist.” (DC-2). Neither Dr. Larson nor Dr. Finkle were affiliated with the MLB club or the Commissioner’s office. (DC-2).

The Policy directed the MLB “to give advice for the benefit of [MLB players] upon matters within the scope of the relation.” (CC-12). It stated that the administrators of the Policy would make a “special effort to educate and warn players about the risks involved in the use of supplements”; Dr. Larson viewed this as a continuing obligation within the scope of his duties. (CC-13). Under the Policy, Dr. Larson “[would] make himself available for consultation with players and Club physicians; oversee violated protocols; oversee the development of educational materials; participate in research on steroids.” (CC-12). In a memorandum sent to all players, Dr. Larson wrote that he would “continue to provide MLB Players with information” about energy-boosting supplements. (CC-12). The Policy instructed the players to ask Dr. Larson for information about energy-boosting supplements, stating that “If you questions or concerns about a particular supplement or other product, you should contact Dr. Larson.” (CC-12). The Policy did not contain a provision requiring Dr. Larson or the MLB to specifically inform players when any energy-boosting or other type of supplement contained a Prohibited Substance, though the MLBPA could have bargained for such a requirement to be part of the CBA. (DC-18).

In September 2007, the MLB learned that some bottles of an energy-boosting supplement called “SpeedShot” contained Clomiphene (a Prohibited Substance under the Policy) but did not include it on its ingredient list. (DC-3, 4). Dr. Larson learned of this and alerted Dr. Finkle who subsequently prompted Dr. David Klein, Director of the Sports Medicine Research Testing

Laboratory, to analyze SpeedShot. (DC-3). On November 14, 2007, Dr. Klein informed Dr. Finkle and Dr. Larson that SpeedShot did contain Clomiphene; MLB Vice President of Law and Labor Policy, Andrew Birch, was also alerted to this finding. (DC-3). Dr. Finkle believed that “there should be some concern about the potential adverse effects on the health of players who may be taking this drug without proper medical supervision.” (CC-13). Dr. Klein requested Mr. Birch and Dr. Larson report the information to the Food & Drug Administration, but they declined. (DC-3).

To alert the players, the MLB notified the MLBPA that “Mega Energy Products, which distributes SpeedShot” was now a banned company with which the teams and players could not do business. (DC-3). Per the MLB’s request, the MLBPA passed the information to the players; it notified all players, through their agents, that the company that “distributes SpeedShot ha[d] been added to the list of prohibited energy-boosting supplement companies” and that “players [were] prohibited from endorsing any of their products.” (DC-3). Dr. Larson also sent a memorandum directly to all MLB players to remind them of the dangers of energy-boosting supplements and “urg[ed] players not to take products or supplements that claim to provide or boost energy.” (DC-3).

The memorandum also reiterated the Policy’s strict liability rule, reminding players that “if you test positive for a banned substance this constitutes a positive test, regardless of intent to do so.” (DC-4). The policy gave Dr. Larson the discretion to determine how to warn players. (DC-16). Because he believed that all energy-boosting supplements were potentially dangerous,

Dr. Larson used his discretion and sent a general warning to the players about them. (DC-16). If he had just given them a warning about SpeedShot, it is likely the players would have turned to another, potentially dangerous, supplement. (DC-16, 18). If a player had followed the Policy and directly called Dr. Larson to ask him about SpeedShot, Dr. Larson would have told him that the product contained Clomiphene. (DC-16).

The MLB also followed up with the Hotline to make sure it was giving a proper warning to the players. (DC-17). Mr. Birch asked the Hotline how many calls it had received about SpeedShot after the discovery that the supplement contained Clomiphene. (DC-17). Though he did not tell the Hotline that SpeedShot was on the banned substances list, he told the Hotline to instruct the players to avoid taking any energy supplement because the supplements' labels might not include all ingredients. (DC-17).

The players had been warned repeatedly against taking energy-boosting supplements because they could contain the Prohibited Substances and cause a positive test result. (DC-17). Kevin Wilson ignored the warnings and still took SpeedShot. (DC-4). He and four other MLB players (collectively the "Players") – Pat Wilson of the Houston Astros, Manny Rogers of the Boston Red Sox, Al Peterson of the St. Louis Cardinals and Bradley Melton of the Florida Marlins – tested positive for Clomiphene and received 15-game suspensions. (DC-4). The Players and the MLBPA appealed the suspensions to an arbitrator. (DC-4). None of the Players disputed the positive test results and all admitted they had known about the warnings, the Hotline and the Policy's strict liability rule. (DC-4).

The arbitrator held a hearing and upheld the suspensions, finding that there was “no genuine dispute regarding the positive test of each player’s urine sample,” that the players used the supplements at their own risk, “and that each player clearly understood [the strict liability] rule and what it means.” (DC-5). The arbitrator also found 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.” (DC-5).

Procedural History

Following the arbitrator’s award, Wilson filed suit in Minnesota state court against the MLB, Dr. Larson, Dr. Finkle and Mr. Birch. (CC-2). He alleged violations of Minnesota common law and breach of contract, including that the Policy violated DATWA. (CC-2; DC-5). The court issued a preliminary injunction blocking Wilson’s suspension, but the injunction did not apply to the other players since they were not Minnesota state employees. (CC-2). The MLB then removed the case to federal court where it was consolidated with a separate action that had been brought by the MLBPA in federal court, on behalf of the Players, seeking to vacate the arbitrator’s award for violating public policy. (CC-2).

The District Court for the Southern District of Tulsania granted the MLB’s motion for summary judgment on both claims. (DC-19-20). It found that Section 301 of the Labor Management Relations Act preempted Wilson’s DATWA claim, and that the MLB did not have a duty to disclose the fact that SpeedShot contained Clomiphene so the arbitrator’s award did not

violate public policy. (DC-19-20). The Players appealed the court's decision regarding the DATWA claim, and Wilson and the MLBPA appealed the public policy decision to the U.S. Court of Appeals for the Fourteenth Circuit. (CC-1). The Circuit Court reversed the District Court's decision. (CC-14). This case is now on appeal on writ of certiorari before the Supreme Court of the United States.

Standard of Review

The Court's standard of review in this case is de novo.

Summary of the Argument

The Circuit Court erroneously reversed the District Court's decision because (1) Section 301 of the LMRA preempts Respondent's DATWA claim, and (2) the arbitrator's award does not violate public policy. Therefore, this Court should reverse the Circuit Court's decision and find in favor of the MLB.

Congress enacted Section 301 of the LMRA so that the federal courts could uniformly interpret contractual labor agreements across jurisdictions. Section 301 preempts state-law claims that are either based on provisions of a labor contract or are substantially dependent upon an interpretation of such a contract. Section 301 preempts Wilson's DATWA claim for both of these reasons. Wilson's state-law claim is based upon provisions of the CBA between the MLB and the MLBPA. Though Wilson neglected to specify which provisions were violated, his claim must be based on either the drug testing provision or arbitration provision of the CBA, or both, because those are the two areas DATWA purports to regulate.

Wilson's state-law claim also is preempted because it is substantially dependent upon an interpretation of the CBA. Since DATWA does not regulate the drug-testing procedures for substances such as Clomiphene, DATWA would not apply to this case were it not for the CBA. To resolve Wilson's claim, the Court must interpret the CBA to see what drug-testing duties the MLB owed to Wilson. It must analyze the drug testing and arbitration provisions of the CBA to determine whether they violate DATWA. The court must also interpret the CBA to determine whether Wilson waived his DATWA rights. If this Court does not find that Section 301

preempts Wilson's DATWA claim, Wilson will be exempt from suspension while all the other Players will not be.

Second, the arbitrator's award does not violate public policy so should not be set aside. To vacate an arbitrator's award, the award must violate an explicit and well-defined public policy. The award at issue does not violate a public policy because the MLB and Dr. Larson did not breach a fiduciary duty; even if they did, fiduciary duties are not explicit public policy. The MLB and Dr. Larson did not have a fiduciary duty to specifically warn players about the presence of Clomiphene in SpeedShot. While the MLPBA could have bargained to give such a duty to Dr. Larson and the MLB in the CBA, they declined to do so. Instead, the Policy outlining the terms of the parties' relationships only assigned a duty to the MLB and Dr. Larson to generally warn the players about banned substances and energy-boosting supplements. Dr. Larson and the MLB upheld this duty through a notification, a memo to the players and a message on the Hotline.

Additionally, there is no explicit and well-defined public policy involving breaches of fiduciary duties. Without such a policy, there can be no violation of it. Thus, the arbitrator's award could not violate a public policy. Because Section 301 preempts Wilson's DATWA claim and because the arbitrator's award does not violate public policy, this Court should reverse the Circuit Court's judgment and find in favor of the MLB.

Argument

The Circuit Court erroneously reversed the District Court's decision. First, Section 301 of the LMRA preempts Wilson's DATWA claim. Second, the arbitrator's award does not violate public policy. This court should reverse the Circuit Court's decision and find that Wilson's DATWA claim is preempted by Section 301 of the LMRA and that the arbitrator's award does not violate public policy.

I. THIS COURT SHOULD REVERSE THE CIRCUIT COURT'S DECISION BECAUSE WILSON'S DATWA CLAIM IS PREEMPTED BY SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT.

The Circuit Court incorrectly held that Wilson's DATWA claim is not preempted by Section 301 of the LMRA. First, Wilson's DATWA claim is based on a provision of the CBA. Second, his claim is substantially dependent upon an analysis of the CBA. Third, Congress intended that Section 301 preempt this type of state-law claim. Congress's power to preempt state law is derived from the Supremacy Clause of Article VI of the Constitution. Allis-Chalmers v. Lueck, 471 U.S. 202, 208 (1985). "Complete preemption' arise[s] when Congress intends that a federal statute preempt a field of law so completely that state-law claims are considered to be converted into federal causes of action." Dennis Thompson v. Hibbing Taconite Holding Co., No. 08-868, 2008 U.S. Dist. LEXIS 87045, *1, *9 (D. Minn. Oct. 24, 2008). Courts have looked to this doctrine in cases involving LMRA claims. Id. (citing Chapman v. Lab One, 390 F.3d 620, 629 (8th Cir. 2004)).

Congress enacted Section 301 "to fashion a body of federal common law for the purpose of resolving labor disputes in a uniform manner across the country" for claims involving labor

unions and employers. Lueck, 471 U.S. at 209 (internal citations omitted). Section 301 reads, in relevant part, “Suits for violation of contracts between an employer and a labor organization representing employees . . . may be brought in any district court of the United States having jurisdiction of the parties” 29 U.S.C. § 185(a) (2006). The preemptive effect of Section 301 “extends beyond state-law contract actions.” United Steelworkers v. Rawson, 495 U.S. 362, 369 (1990). Section 301 also authorizes federal courts to create a body of federal law for the enforcement of labor contracts. Textile Workers v. Lincoln Mills, 353 U.S. 448, 451 (1957). Thus, while state court claims involving labor contract violations must be brought under Section 301 and resolved under federal law, Section 301 also preempts state-law claims that are “substantially dependent upon analysis of a CBA.” Lueck, 471 U.S. at 211, 220.

A Section 301 preemption doctrine analysis begins by looking at the “claim itself.” See Trustees of the Twin City Bricklayers Fringe Benefit Funds v. Superior Waterproofing, Inc., 450 F.3d 324, 331 (8th Cir. 2006). The courts then ask two questions to determine whether the claim is “sufficiently independent to survive Section 301 preemption.” Bogan v. Gen. Motors Corp., 500 F.3d 828, 832 (8th Cir. 2007)). First, the courts ask whether the state-law claim is “based on a . . . provision of the CBA” such that the CBA includes the right upon which the claim is based. Id. Second, the courts ask whether the state-law claim “requires interpretation of a provision of the CBA.” Id. If the courts answer either question in the affirmative, the claim is preempted. Id. Because Wilson’s DATWA claim is based on a provision of the CBA and requires

interpretations of them, Section 301 preempts his claim. Thus, this Court should reverse the Circuit Court's decision.

A. Wilson's DATWA Claim Is Based on Provisions of the CBA So Is Preempted by Section 301.

This Court should find that Wilson's claim is preempted by Section 301 because it is based on provisions of the CBA. A Section 301 preemption analysis begins by looking at the underlying state-law claim. Lingle vs. Norge Div. of Magic Chef, Inc., 486 U.S. 399, 408 (1988). When that claim is based upon a provision of the CBA, the state-law claim is preempted. Bogan, 500 F.3d at 832. Wilson's state-law complaint alleged that the Policy, which was specifically incorporated into the parties' CBA, violated DATWA. (DC-1, 5). Though Wilson failed to specify at either the trial or appellate level which provision of DATWA was violated by which provision of the Policy, his claim could only be based on the drug-testing and arbitration provisions because DATWA regulates drug and alcohol testing in Minnesota. DATWA imposes "minimum standards and requirements for employee protection" upon employers' drug and alcohol testing procedures. Minn. Stat. § 181.955(1) (2009). Because Wilson alleged that the collectively bargained-for policy violated DATWA, the state-law claim is based upon the drug-testing rights set forth in the CBA. His claim is therefore preempted by Section 301.

As this Court has established, "Preemption by federal law cannot be avoided by characterizing the union's negligent performance of what it does on behalf of the members of the bargaining unit pursuant to the terms of a collective-bargaining contract as a state-law [claim]." Rawson, 495 U.S. at 371-72. Rather than agreeing to incorporate the MLB's policy into their

CBA during the bargaining process, Wilson’s union could have insisted on a different drug testing procedure. (DC-1). Wilson is trying indirectly, through a state-law DATWA claim, to do what his union already had a chance to do. This Court should such a claim to proceed.

B. Wilson’s DATWA Claim Is Substantially Dependent Upon an Analysis of the CBA So Is Preempted by Section 301.

Even if this Court finds that Wilson’s DATWA claim is not directly based on provisions of the CBA, it should find that his claim still is preempted because it is substantially dependent upon an analysis of the CBA. A state-law claim is preempted when “its resolution is substantially dependant on an analysis of the terms” of the parties’ CBA.¹ Lueck, 471 U.S. at 220. This is the case when resolution of the claim is “inextricably intertwined with consideration of the terms of the labor contract.” Id. at 213. The claim is also substantially dependent when “resolution of the state-law claim requires more than a factual analysis of the CBA.” Hawaiian Airlines, Inc. v. Norris, 512 U.S. 246, 261 (1994). Wilson’s claim is both “inextricably intertwined” with consideration of the terms of the CBA, and its resolution necessitates more than a factual analysis of the CBA. See Lueck, 471 U.S. at 213; Norris, 512 U.S. at 261.

DATWA establishes the drug and alcohol testing procedures for Minnesota employers. (DC-7). It bans consumption of specific illegal controlled substances such as methamphetamines, opiates, cocaine and marijuana. Minn. Stat. §§ 152.01, 152.02, 181.950(4).

¹ This Court defined the test with regard to state-law tort claims. This analysis assumes that the test applies more broadly to all state-law claims.

DATWA recognizes that the parties to a CBA have the “freedom to collectively bargain” for drug testing policies whose requirements exceed those outlined in DATWA. See id. § 181.955. The CBA, not DATWA, gave the MLB the right to test Wilson for Clomiphene; DATWA’s banned list does not include that substance. (DC-1). Therefore, Wilson is only able to bring a DATWA claim because of the CBA.

1. Wilson’s DATWA claim is preempted by Section 301 because it is inextricably intertwined with an interpretation of the CBA.

This Court should find that Wilson’s claim is “inextricably intertwined” with an interpretation of the CBA, thus the claim is preempted. See Lueck, 471 U.S. at 213. A claim is such when it cannot be resolved without looking to a close interpretation of the CBA. Id. Because Wilson did not specify which provision of the Policy violated DATWA, this Court must analyze and interpret both the provisions outlining the drug-testing procedures and describing the arbitration process.

In one case, a state-law claim could not be resolved without looking to a close interpretation of a CBA when the court had to examine a provision of an agreement to determine whether it provided the source of duties. Gore vs. Trans World Airlines, 210 F.3d 944, 951 (8th Cir. 2000). In Gore, the defendant had filed several state-law tort claims against his employer for its handling of his suicidal statements. Id. at 947-48. To determine if it was an independent state-law claim, the court had to interpret whether the CBA outlined the duties that the employer allegedly breached. Id. at 950. The defendant’s state-law claims did not address the CBA between him and his employer, yet the court found that the claims “depended on an

interpretation of the management rights clause . . . to determine whether the employer acted contrary to its duties under the agreement.” Id. The court found the claims were “inextricably intertwined” with an interpretation of the CBA and were preempted by Section 301. Id. at 951.

Wilson’s DATWA claim depends on the meaning of the CBA because this Court, in resolving the claim, must interpret whether the Policy violates DATWA. (DC-5). Wilson alleges that the Policy violates DATWA and the policy is part of the CBA; the Court must look to the CBA. (DC-1). As in Gore, this Court must interpret the CBA to examine the MLB’s duties to determine whether the Policy violates DATWA. See Gore, 210 F.3d at 951. It must analyze the CBA’s drug-testing provision to determine whether the Policy’s drug-testing procedures violated DATWA. It also must analyze the arbitration provision to determine first, whether Wilson properly “exhaust[ed] all applicable grievance procedures . . . under the CBA,” and second, whether the nature of Wilson’s rights in arbitration violated DATWA’s requirement of an opportunity to explain a positive test result. Minn. Stat. §§ 181.956(1), 181.954(1)(a)(5). Thus, the DATWA claim is “inextricably intertwined” with the CBA and are preempted by Section 301. See Gore, 210 F.3d at 949.

A claim also is “inextricably intertwined” with a CBA if the state-law claim confers negotiable state law rights on employers or employees independent of any right established by contract. Lueck, 471 U.S. at 202, 213. DATWA provides a negotiable state-law right to employees in the state of Minnesota to “bargain[] and agree[] with respect to a drug and alcohol testing policy that meets or exceeds, and does not otherwise conflict with, the minimum

standards and requirements [of DATWA].” Minn. Stat. § 181.955(1). However, an employee’s right to bring an action under DATWA must not be affected by a decision of a collective bargaining agent not to pursue a grievance. Id. § 181.956 (1).

While the Circuit Court was correct in finding that DATWA does not preclude a party to a CBA from bringing a claim under DATWA, it overlooked the fact that DATWA affords a party to a CBA the ability to waive its DATWA rights. See id. The record does not indicate whether the CBA between the MLB and the MLBPA called for such a waiver. Nonetheless, it can be assumed that the procedures agreed upon in the CBA constituted an exhaustive list of the drug-testing duties because the collective bargaining process “involve[d] arms length negotiations and is inherently confrontational and adversarial.” Superior Waterproofing, 450 F.3d at 332. Because DAWTA confers negotiable state-law rights, this claim is “inextricably intertwined” with the terms of the CBA. See Leuck, 471 U.S. at 213.

2. Wilson’s DATWA claim is preempted because it involves more than a question of fact.

This Court should find that Wilson’s DATWA claim is preempted because resolving the claim requires more than a factual analysis. See Norris, 512 U.S. at 261 (explaining that state-law claims will only be preempted when they are not purely questions of fact and require more than a mere reference to the CBA). Section 301 preempts a state-law claim if the elements underlying the claim go beyond purely factual questions pertaining to the conduct and motivation of the employer. Id. at 266. The Circuit Court incorrectly found that Wilson’s DATWA claim could be resolved with reference only to the facts.

Wilson's DATWA claim involves more than a question of fact because it requires the court to interpret the CBA. First, the court must analyze whether the CBA constituted a waiver of Wilson's right to even bring a DATWA claim. See Minn. Stat. § 181.956(1). Then, it must determine whether Wilson properly exhausted his claim under the CBA. (DC-11). This is more than a question of fact because the court must interpret the CBA's arbitration requirements and apply them to the facts. The court must also analyze Wilson's arbitration rights and the Independent Administrator's duties in reviewing Wilson's positive test result to confirm whether the CBA provided an opportunity to "explain the positive test" under DATWA. (DC-11 (quoting Minn. Stat. § 181.953(6))). This analysis goes beyond an inquiry into the facts because the court is interpreting the rights and duties outlined in the Policy to determine whether they violate DATWA's; this analysis looks beyond the facts of what happened to determine what was supposed to happen.

C. In Passing Section 301, Congress Intended to Preempt State-Law Claims Such as Wilson's DATWA Claim.

Wilson's DATWA claim is just the type Congress intended to preempt by passing Section 301. The purpose of Section 301 "is peculiarly one that calls for uniform law . . . the possibility that individual contract terms might have different meanings under state-law and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements." Teamsters v. Lucas Flour Co., 369 U.S. 95, 103 (1962). Congress passed Section 301 so that labor contracts could be given interpretive uniformity and predictability. Superior Waterproofing, 450 F.3d at 331. CBAs otherwise would

be interpreted inconsistently by applying state laws in situations like this; hence Section 301 preempts those state-law claims.

Wilson's claim challenges a provision of the Policy that established national uniform rules. (DC-12). If this Court upholds Wilson's DATWA claim, Wilson would be exempt from regulations of the labor contract that apply to all MLB players. As this court has explained, where resolving the state-law claim requires an interpretation of the CBA, "state-law (which might lead to inconsistent results since there could be as many state-law principles as there are States) is preempted and federal labor-law principles – necessarily uniform throughout the Nation – must be employed to resolve the disputes." Lingle, 486 U.S. at 405-06. The four other players who tested positive for Clomiphene and were given the same suspension as Wilson were not afforded the benefit of Wilson's DAWTA claim, even though all five players were parties to the same CBA. (DC-4). If Wilson's DATWA claim prevails, it "would stultify the congressional policy of having the administration of CBA accomplished under a uniform body of law." See Lueck, 471 U.S. at 211.

In conclusion, Wilson's DAWTA claim is based on a provision of the CBA between the MLB and the MLBPA, is substantially dependent upon an interpretation of the CBA and is a perfect example of the type of claim Congress sought to preempt when it passed Section 301. This Court should hold that Wilson's claim is preempted by Section 301 of the LMRA.

II. THIS COURT SHOULD REVERSE THE CIRCUIT COURT’S DECISION BECAUSE THE ARBITRATORS AWARD DOES NOT VIOLATE PUBLIC POLICY

This Court should find that the Circuit Court erred in setting aside the arbitrator’s award.

The award does not violate any public policy because the MLB and Dr. Larson did not have a fiduciary duty to specifically warn about SpeedShot, and even if they had such a duty and breached it, there is no public policy that the award could violate. A court’s review of an arbitration award is very limited. United Paperworkers Int’l Union, AFL-CIO v. Misco, Inc., 484 U.S. 29, 36 (1987). A court is to give an award “an extraordinary level of deference.” Stark v. Sandburg, Phoenix & von Gontard, P.C., 381 F.3d 793, 798. (8th Cir. 2004) (citations omitted). It must enforce an award that ““draws its essence from the collective bargaining agreement,’ . . . as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority.” Misco, 484 U.S. at 36, 38.

A court can vacate an arbitration award if it violates the Federal Arbitration Act (FAA), 9 U.S.C. §§ 1-16 (2006). See Crawford Group, Inc. v. Holekamp, 543 F.3d 971, 976 (8th Cir. 2008). A court also may set aside an award if the arbitrator’s interpretation of the CBA “would violate ‘some explicit public policy’ that is ‘well defined and dominant . . .’” Misco, 484 U.S. at 42 (quoting W.R. Grace and Co. v. Local Union 759, Int’l Union of the United Rubber Corp. Linoleum & Plastic Workers of Amer., 461 U.S. 757, 765 (1983)); see also MidAm. Energy Co. v. Int’l Bhd. of Elec. Workers Local 499, 345 F.3d 616, 620 (8th Cir. 2003) (holding that the issue is not whether an employee’s behavior violated public policy but whether the arbitrator’s

decision to reinstate the employee did)). The policy must be determined “by reference to the laws and legal precedents and not from general considerations of supposed public interests.”

Muschany v. U.S., 324 U.S 49, 66 (1945).

To prevail on their public policy claim, Respondent must show that the MLB and Dr. Larson had a fiduciary duty, they breached it, the duty was overt public policy, and the arbitrator’s award violated the policy. (DC-16). Because (1) the MLB and Dr. Larson did not breach a fiduciary duty, and (2) because there is no explicit public policy against the breach of fiduciary duties, the arbitrator’s award does not violate any public policy and must be enforced.

A. The MLB and Dr. Larson Did Not Breach a Fiduciary Duty to Specifically Warn the Players About Prohibited Substances in Specific Supplements Because They Did Not Have Such a Duty

This Court should find that because the MLB and Dr. Larson did not have a fiduciary duty to inform players about the presence of Prohibited Substances in specific supplements, they could not have breached that duty. A fiduciary relationship exists when one party has “a duty to act or to give advice for the benefit of the other upon matters within the scope of the relation.”

Lumbermens Mut. Cas. Co. v. Franey Muha Alliance Ins. Servs., 388 F.Supp.2d 292, 305

(S.D.N.Y. 2005) (citations omitted); see, e.g. Walton-Floyd v. U.S. Olympic Comm., 965 S.W.2d

35, 40 (Tex. App. 1998) (rejecting the claim of an athlete – who had been suspended for testing

positive for a supplement after the committee’s hotline had said was not banned – that the

committee had a duty). Courts look to the facts of a relationship to see if “a party reposed

confidence in another and reasonably relied on the other’s superior expertise or knowledge.”

Lumbermens, 388 F.Supp.2d at 305 (internal quotations and citations omitted). While the MLB and Dr. Larson did have a fiduciary relationship with the players, the Policy defined the scope of that relationship and gave the MLB and Dr. Larson general duty to educate and advise the players about energy-boosting supplements. The MLB and Dr. Larson did not have a specific duty to warn the players about the presence of Clomiphene in SpeedShot, and therefore could not have breached it.

The Policy gave the MLB the duty “to give advice for the benefit of [MLB players] upon matters within the scope of the relation” and stated that the Policy administrators would make a “special effort to educate and warn players about the risks involved in the use of supplements.” (CC-12-13). The Policy gave Dr. Larson the duty to “make himself available for consultation with players and Club physicians; oversee violated protocols; oversee the development of educational materials; participate in research on steroids.” (CC-12). Dr. Larson offered in a memorandum to “continue to provide MLB Players with information on the subject throughout the year.” (CC-12). Beyond assigning those roles, the Policy explicitly provided players an avenue to acquire information on specific supplements: “If you have questions or concerns about a particular supplement or other product, you should contact Dr Larson.” (CC-12). The Policy established a strict liability rule, stating that a player’s positive drug test result would not be excused because the player did not intentionally use the Prohibited Substance or because he was unaware that he was taking it. (DC-1).

Dr. Larson and the MLB upheld their prescribed general duty by warning the players about the dangers of energy-boosting supplements in at least three ways. First, Dr. Larson sent a memorandum to all MLB players urging them not to take any supplements or products that claim to boost energy and reminding the players of these products' dangers and the MLB's strict liability rule. (DC-3,16). While he knew that SpeedShot contained Clomiphene, Dr. Larson exercised his discretion and chose to give a generalized warning about all energy-boosting supplements because he believed all supplements were problematic for the players. (DC-16). His warning encompassed other potentially dangerous products, beyond just SpeedShot, because, as the district court found, it was likely that the players would have turned to another supplement had they only been warned not to take SpeedShot. (DC-18). There was no guarantee that those other supplements did not contain banned substances. (DC-18).

Second, Mr. Birch instructed the Hotline to tell players that they should avoid taking all energy supplements. (DC-17). Had the Players wanted additional information about SpeedShot, the Policy explicitly instructed them to call Dr. Larson, who would have told them that it contained Clomiphene. (DC-16; CC-12). Third, the MLB notified the MLBPA that players were banned from doing business with "Mega Energy Products, which distributes SpeedShot"; the MLBPA then alerted all players that SpeedShot's distributor "had been added to the list of prohibited energy-boosting supplement companies." (DC-3).

The MLBPA was free to negotiate for the CBA to give a specific duty to the MLB and Dr. Larson, but the arbitrator found no evidence that it "even contemplated" doing so. (DC-5,

18). Instead, the Policy gave the MLB and Dr. Larson a general duty to warn players about dangerous supplements that they upheld through the warning to the MLBPA, Dr. Larson's memo and the Hotline message. The MLB and Dr. Larson did not have a duty to specifically warn the Players about SpeedShot; they could not have breached a duty that they did not have.

B. There Is No Dominant and Explicit Public Policy for the Arbitrator's Award to Violate.

This Court should find that the arbitrator's award does not violate public policy because there is no relevant public policy at issue. Even if this Court finds that the MLB and Dr. Larson did breach a fiduciary duty, there is no explicit and dominant public policy that the award could possibly violate. For an arbitrator's award to be set aside, the award must "violate 'some explicit public policy' that is 'well defined and dominant, and is to be ascertained 'by reference to the laws and legal precedents and not from general considerations of supposed public interests.'" Misco, 484 U.S. at 43 (citations omitted); see, e.g. Delta Air Lines, Inc. v. Air Line Pilots Ass'n, 861 F.3d 665, 674 (8th Cir. 1998) (finding a violation of a public policy evidenced by specific state statutes, federal regulations and case law). Because there is no such applicable public policy in this case, there is no violation by the arbitrator's award.

In another case, a federal court recognized a high threshold for finding such public policy violations. See MidAmer. 345 F.3d at 620-22. In MidAmerican, the court upheld an arbitrator's award reinstating a natural gas employee who had violated safety rules because the award did not violate any public policy. Id. There were federal safety regulations concerning natural gas, but the court found that they were insufficient to evidence a relevant public policy because the

regulations were too general and lacked specific and exact requirements. Id. at 621. The court was unable to “discern the type of explicit safety concerns” that would establish the public policy needed to vacate the award. Id. The court distinguished its finding from a case in which it had vacated an arbitrator’s reinstatement award for violating a public policy evidenced by much more specific and exact regulations. Id. at 620-22 (comparing Iowa Elec. Light & Power, 834 F.2d 1424, 1426-28 (8th Cir. 1987)). The court also reasoned that the MidAmerican arbitrator’s award was conscious of the safety concerns involved because it only required the company to reinstate the employee, not to reinstate him to a safety-sensitive position. Id. at 621-22. Therefore, even if there had been a public policy, the award would not have violated it. Id.

This case does not meet the threshold set by the MidAmerican court. See id. at 620-22. In MidAmerican, the court found that even though there were federal and state safety regulations, they were not specific or exact enough to substantiate a required well-defined and dominant public policy. Id. at 621. In this case, Respondent has not even identified a regulation concerning breaches of fiduciary duties, much less identified an explicit one, or *any* other evidence of a related public policy. The MidAmerican court’s requirement that the arbitrator’s award violate a public policy is missing in this case because there is no explicit public policy that the arbitrator’s award could violate. See id. at 621-22. Therefore, the award in this case should be upheld.

This Court found that an arbitrator’s award reinstating a hazardous-machine operator who was suspected of drug use did not violate public policy. Misco, 484 U.S. at 44-45. The police

had apprehended the employee, searched his car in the employer's parking lot and found a marijuana cigarette, gleanings and smoke. Id. at 32-33. The employer's rules had banned bringing controlled substances onto its property, consuming them there and working under the influence of them. Id. at 32. The company claimed the arbitrator's award violated a public policy regarding the safety concerns of employees who, under the influence of drugs, operate hazardous machinery. Id. at 34-35. This Court found that the lower court had made "no attempt to review existing laws and legal precedents" to prove an explicit public policy. Id. at 44. Additionally, even if there had been such a policy, there was no violation of it because there was a weak connection between the drugs and their actual use in the workplace, thus between the award and the policy. Id.

Similar to that case, there is no evident and dominant public policy here. See id. at 44-45. Though the Circuit Court in this case claimed that breaches of fiduciary duties violate public policy, it did not point to any "existing laws and legal precedents" to show an explicit, well-defined policy, just as the court failed to do in Misco. See id. at 44. The Misco Court found that even if there was a public policy about safety concerns, reinstating an employee who controlled dangerous machinery after his alleged drug use while on company property was not enough to violate it. Id. at 45. In this case, there is no public policy at issue, and even if there is, there is no showing that the arbitrator's award violates it. See id. at 44-45.

In conclusion, the MLB and Dr. Larson did not have a fiduciary duty to specifically warn the players about the Clomiphene in SpeedShot. However, even if this Court decides that they

did, the arbitrator's award should be upheld because it does not violate any "explicit" or "well defined" public policy. See W.R. Grace, 461 U.S. at 766. Thus, this court should uphold the arbitrator's award.

Conclusion

For the foregoing reasons, the decision of the Court of Appeals for the Fourteenth Circuit should be reversed and its judgment vacated.