

No. 10-018

In The
Supreme Court of the United States

MAJOR LEAGUE BASEBALL,
Petitioner,

vs.

KEVIN WILSON,
MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,
Respondent.

**On Writ of Certiorari
To the United States Court
Of Appeals For the Fourteenth Circuit**

BRIEF FOR PETITIONER

Team 18
Attorneys for Petitioner

QUESTIONS PRESENTED

- I. WHETHER SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT PREEMPTS MINNESOTA'S DRUG AND ALCOHOL TESTING IN THE WORKPLACE ACT WHEN RESOLUTION OF THE STATE LAW CLAIM REQUIRES A COURT TO INTERPRET A COLLECTIVELY BARGAINED AGREEMENT BETWEEN THE PARTIES TO THE CLAIM.

- II. WHETHER AN ARBITRATION AWARD CAN BE VACATED UNDER A NARROW PUBLIC POLICY EXCEPTION WHEN THE SURROUNDING CIRCUMSTANCES CONCERN THE POTENTIAL EXISTENCE OF A FIDUCIARY DUTY AND WHEN THE HEALTH AND SAFETY OF INDIVIDUAL PLAYERS IS AT ISSUE.

TABLE OF CONTENTS

QUESTIONS PRESENTED..... ii

TABLE OF AUTHORITIES v

STATEMENT OF THE CASE..... 1

STANDARD OF REVIEW 4

SUMMARY OF THE ARGUMENT 4

ARGUMENT 8

I. Summary judgment in favor of the MLB should be granted because Congress intended Section 301 of the LMRA to preempt a state law claim whenever adjudication of the state law claim depends upon an interpretation of a CBA or upon rights and duties established by a CBA..... 8

A. Congress intended Section 301 to preempt Respondents’ DATWA claims based on the need to promote uniformity in interpretation and enforcement..... 8

B. Section 301 preempts Respondents’ DATWA claims because the CBA requires interpretation..... 11

C. Section 301 preempts Respondents’ DATWA claims because the CBA establishes Wilson’s rights and duties..... 14

II. The arbitrator’s award should be upheld because such awards are afforded an extraordinary amount of deference and the award does not violate public policy. 16

A. Courts afford great deference to an arbitration award and no exception exists to justify vacating Wilson’s suspension. 16

1. Courts generally offer deference to arbitration awards..... 16

2. The arbitrator’s award upholding the players’ suspensions fails to meet the narrow exception allowing a valid public policy to overturn the award..... 17

B. The arbitrator’s award does not encourage violation of a fiduciary duty and the health and safety of the players lacks adequate policy concerns to justify overturning the award..... 19

1. The arms-length negotiations between the MLB and the players did not establish a fiduciary relationship and any duty the MLB owed did not extend to warnings about specific products.....	19
2. The health and safety of the individual players lacks a valid public policy concern because baseball players are not in safety-sensitive positions.....	22
CONCLUSION.....	24

TABLE OF AUTHORITIES

UNITED STATES SUPREME COURT CASES

Allis-Chalmers Corp. v. Lueck,
471 U.S. 202 (1985)..... 9, 12, 14, 15

E. Ass’n Coal Corp. v. United Mine Workers,
531 U.S. 57 (2000)..... 18, 23

Healy v. Beer Inst.,
491 U.S. 324 (1989)..... 8, 9

Lingle v. Norge Div. of Magic Chef, Inc.,
486 U.S. 399 (1988)..... 9, 12,

Livadas v. Bradshaw,
512 U.S. 107 (1994)..... 12

Local 174, Teamsters v. Lucas Flour Co.,
369 U.S. 95 (1962)..... 9

Textile Workers Union v. Lincoln Mills,
353 U.S. 448 (1957)..... 10

United Paperworkers Int’l Union v. Misco, Inc.,
484 U.S. 29 (1987)..... 18, 20

W.R. Grace & Co. v. Local Union 759,
461 U.S. 757 (1983)..... 17, 18

UNITED STATES COURT OF APPEALS CASES

Anderson v. Ford Motor Co.,
803 F.2d 953 (8th Cir. 1986) 9, 11, 14

Bogan v. Gen. Motors Corp.,
500 F.3d 828 (8th Cir. 2007) 4

Crawford Group, Inc. v. Holekamp,
543 F.3d 971 (8th Cir. 2008) 18

<u>Delta Air Lines, Inc v. Air Line Pilots Ass’n Int’l,</u> 861 F.2d 665 (11th Cir. 1988)	23
<u>Gore v. Trans World Airlines,</u> 210 F.3d 944 (8th Cir. 2000).	8, 14
<u>Grandon v. Merrill Lynch & Co., Inc.,</u> 147 F.3d 184 (2d Cir. 1998).....	19
<u>Iowa Elec. Light & Power v. Local Union 204 of Int’l Bhd. Of Elec. Workers,</u> 834 F.2d 1424 (8th Cir. 1987)	4, 23
<u>McLean v. Gordon,</u> 548 F.2d 513 (8th Cir. 2008)	4
<u>Trs. of the Twin City Bricklayers Fringe Benefits Funds v. Superior Waterproofing, Inc.,</u> 450 F.3d 324 (8th Cir. 2006)	12

UNITED STATES DISTRICT COURT CASES

<u>Holmes v. NFL,</u> 939 F. Supp. 517 (N.D. Tex. 1996).	16, 17
<u>Lumbermens Mut. Cas. Co. v. Franey Muha Alliant Ins. Servs.,</u> 388 F. Supp. 2d 292 (S.D.N.Y. 2005).....	19, 20
<u>United Feature Syndicate, Inc. v. Miller Features Syndicate, Inc.,</u> 216 F. Supp. 2d 198 (S.D.N.Y. 2002).....	19

STATE CASE

<u>Partee v. San Diego Chargers Football,</u> 668 P.2d 674 (Cal. 1983)	10
---	----

STATUTES

9 U.S.C. § 10(a)(1) (2009)	18
9 U.S.C. § 10(a)(2) (2009)	18
9 U.S.C. § 10(a)(3) (2009)	18

29 U.S.C. § 185(a) (2009).....	9
Minn. Stat. § 181.950 subdiv. 4 (2009)	13
Minn. Stat. § 181.951 subdiv. 4 (2009)	13
Minn. Stat. § 181.953 subdiv. 6 (2009)	13
Minn. Stat. § 181.953 subdiv. 9 (2009)	13
Minn. Stat. § 181.955 subdiv. 1 (2009)	12, 15
Minn. Stat. § 181.955 subdiv. 2 (2009)	12

STATEMENT OF THE CASE

Through arms-length dealings, the Players Association (“Union”) negotiated a Collective Bargaining Agreement (“CBA”) with Major League Baseball (“MLB”) that Kevin Wilson (“Wilson”) violated. (R. at 1.) The CBA incorporated a strict liability policy regarding anabolic steroids and related substances (“Policy”) in the interests of promoting “fairness and integrity” in baseball. (R. at 1, 12.) The Policy holds players liable for any positive test result regardless of their excuse. (R. at 1.) In order to assist the players in making informed decisions, the MLB created the MLB Supplement Hotline (“Hotline”) and employed Dr. Larson, the independent administrator of the Policy, and Dr. Finkle, the consulting toxicologist, to oversee and assist with the Policy and its procedures. (R. at 2.) The Hotline provides players, coaches, and trainers with an opportunity to obtain information regarding certain products. (R. at 2.) Dr. Larson was responsible for drug testing procedures, reporting positive test results to the Commissioner, and providing education to the players regarding the Policy. (Ct. App. at 12.)

Dr. Larson was aware that the energy-enhancement market was largely unregulated by the Food and Drug Administration (“FDA”), in which products fail to disclose a complete ingredients list. (R. at 3, 17.) Because of this overall problem found in energy-enhancing products, Dr. Larson was extremely cautious about specifically informing the players of SpeedShot (the product containing the banned substance Clomiphene) alone, and chose only to issue general statements urging players to stay away from all energy-enhancing products. (R. at 16.) The players not only knew to contact Dr. Larson, but were expressly directed to do so with any questions about

prohibited substances. (Ct. App. at 12.)¹ Dr. Larson testified that had any of the players utilized their opportunity to contact him, he would have informed them about the existence of Clomiphene in SpeedShot. (R. at 16, 17; Ct. App. at 12.) Furthermore, Andrew Birch, the Vice President of Law and Labor Policy for the MLB, provided the Hotline with “undisputedly accurate” information regarding SpeedShot. (Ct. App. at 12.) In keeping with the concern about specific warnings, the players were never guaranteed that the information from the Hotline would be complete, rather they were only guaranteed that the information would be “confidential and accurate.” (R. at 2.)

Dr. Larson reminded players, in a memorandum announcing the Policy, that they would be held strictly liable for any banned substance in their bodies and that utilizing the Hotline would not excuse a positive test result. (R. at 2.) After the MLB discovered that the energy-enhancing product, SpeedShot, contained Clomiphene, the MLB issued a second memorandum, further reminding players of the dangers posed by energy-enhancing products. (R. at 3.) Although this memorandum never expressly mentioned SpeedShot, it did urge players not to take energy-enhancing products like SpeedShot, and again reminded them of the strict liability rule of the Policy that “if you test positive for a banned substance this constitutes a positive test, regardless of intent to do so.” (R. at 3-4.) Additionally, the MLB notified the Union, who in turn notified the players, that they were precluded from doing business with the company that distributed SpeedShot. (R. at 3.)

¹ Given that the Record contains two opinions each starting with page number “1”, the opinion for the District Court for the Southern District of Tulania is referenced with the citation “R.”, and the opinion for the United States Court of Appeals for the Fourteenth Circuit is referenced with the citation “Ct. App.”

Despite repeated warnings, Wilson of the Minnesota Twins and four other players throughout the MLB tested positive for Clomiphene because they took SpeedShot. (R. at 4.) After testing positive, Wilson and the other players received a fifteen game suspension. (R. at 4.) Wilson and the other players appealed the arbitrator's decision to a neutral arbitrator pursuant to the terms of the Policy, which state that the decision, "constitutes a full, final, and complete disposition of the appeal that is binding on all parties." (R. at 2, 4.) Both parties concede the arbitrator's decisions at issue "draw their essence" from the CBA. (R. at 15.) A neutral arbitrator found in favor of the MLB determining 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 5.) The arbitrator also noted that, "if the Union disagreed with this apportionment of strict liability, it is free to bargain for a different Policy." (R. at 18.)

Wilson, as the only player from Minnesota, and the Major League Baseball Players Association ("Respondents") sought an injunction in Minnesota state court alleging a violation of Minnesota's Drug and Alcohol Testing in the Workplace Act ("DATWA"), which the court temporarily granted. (R. at 5.) The other players' suspensions were upheld and are not a party to the suit because they are not Minnesota employees. (Ct. App. at 2.) The MLB removed the case to federal court and moved for summary judgment on the basis that Section 301 of the Labor Management Relations Act ("LMRA") preempts Respondents' DATWA claims, and that the arbitration award should be upheld because it does not violate public policy. (R. at 5, 6.) The district court

below found in favor of the MLB, a decision reversed by the court of appeals below. (R. at 20; Ct. App. at 14.)

STANDARD OF REVIEW

The standard of review is *de novo* when assessing a determination to grant a motion for summary judgment. McLean v. Gordon, 548 F.3d 613, 616 (8th Cir. 2008). Whether DATWA is preempted by Section 301 of the LMRA is also subject to *de novo* review. Bogan v. Gen. Motors Corp., 500 F.3d 828, 832 (8th Cir. 2007). A court should adopt the facts as found by the arbitrator and review public policy concerns *de novo*. Iowa Elec. Light & Power v. Local Union 204 of Int'l Bhd. of Elec. Workers, 834 F.2d 1424, 1427 (8th Cir. 1987).

SUMMARY OF THE ARGUMENT

Summary judgment in favor of Petitioner should be upheld because Section 301 of the LMRA preempts Minnesota's DATWA because resolution of Respondents' DATWA claims requires interpretation of the CBA. The arbitrator's award should also be upheld because neither the CBA nor the award violate public policy. Therefore, the decision of the Circuit Court below should be reversed. Given the prior precedent of this Court, Congress' express intent, and the legislative authority bestowed by the Supremacy and Commerce Clauses, Section 301 should preempt Respondents' Minnesota DATWA claims. Additionally, this Court should uphold the arbitrator's award because such awards are usually given a high degree of deference by courts and the award does not violate any public policy.

Congress enacted Section 301 of the LMRA to ensure uniform application of labor law across the nation and to give industry a reliable mechanism for national self-

governance through CBAs. Congress recognized that by giving a nationally uniform legal effect to CBAs, it supported the need for flexibility required by modern commerce. Congress realized that no legislative body could unilaterally enact generally applicable laws without unavoidably impeding the economic productivity of the nation. In coming to this realization, Congress employed its powers under the Supremacy Clause and the Commerce Clause and precluded states from enacting legislation involving CBA disputes.

This Court has long interpreted Section 301 not only as an assignment of federal jurisdiction, but also as a mandate for the judiciary to develop a federal common law for adjudicating labor disputes involving CBAs. To that end, this Court has consistently held any time resolution of a state law claim substantially depends upon analysis of a CBA or requires the court to interpret a CBA, Section 301 will preempt state law and give effect to the terms bargained for in the CBA. This Court also intended preemption any time resolution of the state law claim depends upon rights and duties established by the CBA itself.

Minnesota's DATWA is a state law preempted by Section 301. DATWA expressly affords the parties to a CBA the right to bargain with respect to drug and alcohol testing as long as the standards established by the CBA "meet[] or exceed[]" the minimum standards established by DATWA. Therefore, as written, DATWA implicitly requires interpretation of a CBA any time a CBA exists between parties to a DATWA claim. Essentially, the Minnesota legislature mandated, whether intentionally or not, that federal law will control whenever a DATWA claim is brought between parties to a CBA. Furthermore, the employee rights protected by DATWA are individual negotiable rights,

which DATWA expressly allows to be altered by agreement. In the present case, the parties altered the rights established by DATWA by agreement, thereby requiring an interpretation of the CBA to determine to what extent those rights have been altered. The fact that the altered rights may or may not meet the minimum standards set forth by DATWA is, ultimately, of no consequence since federal law preempts state law, giving legal effect to the CBA. Therefore, DATWA, by its own terms, establishes negotiable rights, which require an interpretation of the CBA any time such an agreement exists between the parties to the DATWA action. The negotiability of the rights protected by DATWA, and DATWA's implicit need for interpretation of any existent CBA creates no possibility other than for Section 301 to preempt all DATWA claims between parties to a CBA.

Regarding the arbitration award, courts usually uphold arbitration awards as long as the arbitrator is even reasonably construing the CBA. Giving deference to the arbitration award offers protection for the terms of the CBA, and encourages players to respect the MLB's strict liability policy for which they validly bargained. Except for fraud, duress, illegality, or conflict of interest, an arbitration award may be overturned only where it violates public policy. However, the public policy must be clearly stated in the laws and precedents of the community; a valid public policy is not a nebulous concept of fairness, nor can it be the substitution of court's discretion for that of the arbitrator's. Given no evidence of fraud, duress, illegality, or conflict of interest, violation of an express public policy is the only avenue along which the instant award may be overturned.

The contention that the instant award encourages breach of a fiduciary duty is not valid. The continuing conduct of arms-length communications between the MLB and the players is insufficient to establish any fiduciary relationship. The laws of New York (the ones applicable under the forum-selection terms of the CBA) do not indicate any precedent that would place a duty on the MLB to specifically warn the players about the existence of Clomiphene in SpeedShot. The bargained-for terms of the CBA obligate the players to follow the strict liability policy, placing the onus on the players to know what substances go into their bodies. Therefore, no valid public policy based on a fiduciary duty exists.

Lastly, the circuit court incorrectly determined that the arbitrator's award violated public policy because the CBA and the Policy potentially harmed the players. New York law establishes that health and safety concerns constitute valid public policy concerns insofar as the health safety at issue is *public* in nature. The players at issue in this case are not employees in a safety-sensitive position, and the health and safety of the players does not constitute a concern that is public in nature. On the contrary, professional baseball players are sophisticated and resourceful individuals, represented by the Union, who specifically knew that they were strictly liable for any banned substance that entered their body. The players and the players alone suffer the direct consequences of a violation of the Policy. Therefore, this Court should give deference to the arbitrator's award because it does not violate public policy.

ARGUMENT

I. Summary judgment in favor of the MLB should be granted because Congress intended Section 301 of the LMRA to preempt a state law claim whenever adjudication of the state law claim depends upon an interpretation of a CBA or upon rights and duties established by a CBA.

Section 301 of the LMRA preempts Respondents' claims under DATWA.

Congress intended Section 301 to preempt state law claims to ensure that labor laws would be uniformly applied throughout the nation. Preemption is required when the rights the plaintiff claims come from the CBA or, alternatively, when the CBA must be interpreted by a court to determine the outcome of a state law claim. Respondents' DATWA claims should be dismissed as preempted, in accordance with Congress' intentions, because the outcome of the claims require interpreting the CBA and depend on rights established by the CBA.

A. Congress intended Section 301 to preempt Respondents' DATWA claims based on the need to promote uniformity in interpretation and enforcement.

Congress intended claims, such as Respondents' DATWA claims, to be preempted by Section 301 of the LMRA. Congress, acting under its authority pursuant to the Supremacy Clause and the Commerce Clause, intended federal law to govern disputes between parties to a CBA, because of the need for uniform interpretation and enforcement of CBAs. Respondents' claims arise out of a dispute between parties to a CBA. Therefore, those claims should be preempted.

Congressional intent determines when a federal law preempts a state law claim. Gore v. Trans World Airlines, 210 F.3d 944, 949 (8th Cir. 2000). Congress has the express power to regulate commerce. Healy v. Beer Inst., 491 U.S. 324, 326 (1989). This express Congressional power limits the power of the states to pass laws affecting

interstate commerce. Id. (striking down a beer pricing scheme that fostered economic protectionism for a single state and disadvantaged out-of-state businesses). Congress' power to preempt state law derives from the Supremacy Clause. Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 208 (1985). Preemption often requires a balancing of state and federal interests, but under the Supremacy Clause, such balancing is irrelevant when Congress previously decided federal law controls, not state law. Id. at 214. If a state statute creates inconsistent legislation regarding interstate commerce among the fifty states, the Supremacy Clause requires preemption of a state statute when Congress is acting pursuant to an express authorization, such as the Commerce Clause. Healy, 491 U.S. at 336.

Section 301 of the LMRA states, "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 . . ." 29 U.S.C. § 185(a) (2009). Congress intended questions regarding labor agreements to be "resolved by reference to uniform federal law." Lueck, 471 U.S. at 211. Congress passed Section 301 because it feared that conflicting interpretations between federal and state judiciaries would discourage the use of CBAs and foster non-uniformity. Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95, 103 (1962). Uniform interpretation of CBAs aids the federal policy of favoring these agreements. Anderson v. Ford Motor Co., 803 F.2d 953, 955 (8th Cir. 1986). This ensures a "consistent resolution of labor . . . disputes" in national industry. Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S. 399, 404 (1988). In addition, if a particular form of commerce requires regulation by a single authority in order to create national

uniformity, then state law is invalid. Partee v. San Diego Chargers Football, 668 P.2d 674, 677 (Cal. 1983) (holding that professional football is a unique form of commerce and only federal antitrust law is applicable, not state antitrust law, because this would “unreasonably burden interstate commerce”). Furthermore, the Supreme Court held that Section 301 was not merely a grant of jurisdiction from Congress, but rather that uniform federal law should apply to interpretation of CBAs. Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 454 (1957).

Congress’ power to regulate commerce and its intent to promote uniformity compels preempting Respondents’ DATWA claims. Similar to Partee, this dispute involves the livelihood of professional baseball players nationally, thereby affecting a unique form of commerce that necessitates being governed by a single authority. Moreover, the outcome of this dispute involves more than just the administration of baseball because all industries would be affected if labor laws were not uniform throughout the nation. Section 301 preemption of Respondents’ DATWA claims furthers Congress’ intent in promoting the use of CBAs and creating uniformity among labor laws. Without uniformity in labor laws, parties would not enter into CBAs because of fear of inconsistent outcomes in litigation and fear that any agreement entered into would not be enforced by the courts. Employees and employers would, therefore, have no incentive to enter into CBAs if the give-and-take principles of the bargaining process would be overcome by state law. Essentially, any party to an agreement could give up a right under the CBA, but then re-claim that same right under state law. Allowing state law to trump a CBA renders a CBA ineffective and interferes with the rights and duties bargained for by the players and the MLB.

Additionally, such inconsistent application of the law would be unfair to the other players not receiving the protection of Minnesota or another similar state's law. For example, the four other players who tested positive for the same banned substance as Wilson did not receive an injunction lifting their suspensions. This creates unpredictability across the nation by potentially allowing states to adopt any law varying the requirements of drug and alcohol testing in the workplace or in professional sports. Such inconsistency would give players, like Wilson, an unfair advantage on the field because they would receive greater state law protection regarding performing enhancing drugs than players from other states subject to less state protection in this area. Therefore, Respondents' DATWA claims should be preempted by Section 301 of the LMRA in accordance with Congress' intent for federal law to dictate disputes between parties to a CBA.

B. Section 301 preempts Respondents' DATWA claims because the CBA requires interpretation.

Respondents' DATWA claims should be preempted because the claims require interpreting the CBA. Section 301 preempts the state law claim any time a state court must interpret a CBA because the CBA and state law are so related that they cannot be analyzed separately. Since specific provisions of the CBA must be interpreted to determine if the CBA complies with DATWA, Section 301 preempts Respondents' DATWA claims.

“When resolution of a state law claim is substantially dependent upon analysis of the terms of an agreement made between the parties to a labor contract, preemption is required.” Anderson, 803 F.2d at 956. Also, courts mandate preemption when adjudication of a state law claim is “inextricably intertwined” with evaluation of a CBA.

Id. A court’s analysis begins by looking at the claim itself and whether the claim requires interpretation of the CBA. Trs. of the Twin City Bricklayers Fringe Benefits Funds v. Superior Waterproofing, Inc., 450 F.3d 324, 331 (8th Cir. 2006). When a state sets a minimum standard for a right but allows parties to negotiate, or otherwise alter by agreement the rights established by state law, the agreement implicitly requires interpretation to determine whether and to what extent the right has been altered. Lueck, 471 U.S. at 213. If the claim is based on a negotiable right, capable of being altered by agreement, the CBA must be examined to determine how the parties changed and defined that contractual and obligatory right. Id.

However, “[p]urely factual questions about an employee’s conduct or employer’s conduct and motives do not require a court to interpret any term of a CBA.” Lingle, 486 U.S. at 213 (finding the need to determine whether an employer had a non-retaliatory reason for firing an employee was a purely factual inquiry). The mere need to reference a CBA does not require interpretation, and therefore, does not mandate preemption. Livadas v. Bradshaw, 512 U.S. 107, 125 (1994) (demonstrating that the need to reference a CBA to determine a bargained-for wage rate when calculating damages does not require preemption because the CBA was not interpreted).

DATWA expressly states that it shall apply to all CBAs between employers and employees. Minn. Stat. § 181.955 subdiv. 2 (2009). However, under DATWA’s section entitled “Freedom to Collectively Bargain,” the parties to a CBA are free to bargain with respect to drug and alcohol testing as long as the CBA “meets or exceeds” the DATWA requirements. Id. § 181.955 subdiv. 1 (2009). DATWA also states information that employers must give employees, which includes: the specific substances that may be

tested for, the right to be retested and to explain a positive result, and the criteria for laboratory testing. Id. §§ 181.950 subdiv. 4 (2009), 181.953 subdiv. 6 (2009), 181.953 subdiv. 9 (2009). DATWA specifically allows random testing of professional athletes, but only if it is consistent with the governing CBA. Id. § 181.951 subdiv. 4 (2009).

In the present case, the express language of DATWA mandates an interpretation of the CBA because the Policy, the portion of the CBA that addresses drug and alcohol testing, must be interpreted to determine if the CBA “meets or exceeds” what DATWA requires. Here, unlike Lingle, an analysis of the CBA exceeds a purely factual inquiry because it requires more than just comparing the procedure followed with respect to drug testing under the Policy to the procedure required by DATWA. Instead, specific terms of the Policy must be analyzed to determine whether those terms comply with DATWA. This is similar to Lueck in that state law sets the minimum standard and allows the parties to negotiate how that standard is implemented. The Policy lists banned substances, testing requirements, and an arbitration clause. The players are held strictly liable, under the Policy, for any banned substance found in their bodies and are not afforded an opportunity to explain a positive test result. The players and the MLB bargained for all of these provisions. Furthermore, even without looking to the express language of DATWA, the Policy must also be interpreted in order to determine if there is a fiduciary duty between the parties.

DATWA contains provisions that are substantially different from provisions in the Policy. DATWA contains a list of banned substances, but it does not address the additional substances contained in the Policy. Additionally, DATWA has its own requirements for drug testing and appeal, and here, employees have a chance to challenge

and explain a positive result. The specific provisions of the Policy regarding these issues must be analyzed to determine whether the strict liability rule imposed “meets or exceeds” what is required by DATWA. Therefore, under the express terms of DATWA, interpretation is unavoidable. Whether the CBA meets the minimum standards of DATWA is irrelevant because Section 301 preempts Respondents’ DATWA claims since the lower court must still interpret the Policy and compare it to DATWA, making the state law claim and the CBA “inextricably intertwined.”

C. Section 301 preempts Respondents’ DATWA claims because the CBA establishes Wilson’s rights and duties.

The CBA creates the rights and duties between Respondents and the MLB. When the outcome of a state law claim depends on rights created by a CBA, Section 301 preempts that claim. The CBA established Wilson’s right to challenge his suspension on the basis that the MLB owed him a duty to warn of a specific product containing a banned substance. Therefore, Respondents’ DATWA claims require preemption.

Section 301 has been interpreted as mandating preemption of a state law claim when it involves rights established by a CBA. Lueck, 471 U.S. at 213. “[I]f state law purports to define the meaning of the contract relationship under the CBA, state law will be preempted in deference to Section 301.” Anderson, 803 F.2d at 956. When resolution of a claim requires examining a plaintiff’s rights and a defendant’s duties under a CBA, that claim is preempted. Gore, 210 F.3d at 948.

However, rights that come from state laws “independent” of a CBA are not preempted. Anderson, 803 F.2d at 956. The inquiry concerns whether the claim derives from contract rights established under the CBA, or is a “nonnegotiable state-law right on employees and employers independent of any right established by contract.” Lueck, 471

U.S. at 213. Rights accruing in the public-at-large are generally nonnegotiable, whereas rights accruing in the individual are negotiable. Id. at 211-12.

DATWA expressly provides that its terms “shall not be construed to limit the parties to a CBA from bargaining and agreeing with respect to a drug and alcohol testing policy” Minn. Stat. § 181.955 subdiv. 1 (2009). Therefore, according to Minnesota law, the rights regarding drug and alcohol testing in the workplace are negotiable and the parties to a CBA are free to bargain for them. Id.

In the present case, the rights and duties bargained for under the CBA are negotiable, according to Minnesota law, which specifically permits the parties to bargain for their drug and alcohol testing policy. Furthermore, the right to urological privacy and rights to protection against disciplinary action in the workplace are rights that accrue in the individual, and not the collective public. These private rights are negotiable and, therefore, are alterable by agreement. The contractual obligations imposed by the CBA determine the rights and duties of the parties.

Respondents’ claim depends on whether the CBA creates a fiduciary relationship between the parties. Wilson’s right to contest his suspension on the basis that the MLB owed him a fiduciary duty to disclose SpeedShot as a product containing a banned substance would be a right imposed by the CBA itself. Wilson’s right to explain a positive result would originate in DATWA, except that his explanation for the result relies on an alleged right to be told when the MLB became aware SpeedShot contained a banned substance. Respondents currently challenge the right to explain the positive result based on whether the MLB owed Wilson a fiduciary duty, and this right can only come from the CBA. Wilson’s right to explain a positive result does not exist

independently from the CBA. The rights and duties, on which Respondents' DATWA claims are based, come from the CBA, making preemption a requirement.

II. The arbitrator's award should be upheld because such awards are afforded an extraordinary amount of deference and the award does not violate public policy.

The arbitrator's award maintaining the players' suspensions should be upheld. Arbitration awards are given an extraordinary amount of deference and are only overturned for public policy reasons under narrow circumstances. The award given by the arbitrator should be given deference because the award does not encourage violation of a fiduciary duty and the health and safety of the players is an unfounded policy concern to justify overturning the award.

A. Courts afford great deference to an arbitration award and no exception exists to justify vacating Wilson's suspension.

The arbitrator's award should be offered deference. Decisions made by arbitrators are afforded extraordinary deference and are only vacated in rare instances. The present case does not warrant overturning the arbitrator's decision because no valid public policy or other applicable exception exists.

1. Courts generally offer deference to arbitration awards.

The arbitrator's award maintaining the players' suspensions should be given deference. Courts will not second-guess an arbitration award if it "draws its essence" from any reasonable interpretation of the CBA. Holmes v. NFL, 939 F. Supp. 517, 524 (N.D. Tex. 1996). This high standard provides that "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 [the arbitrator] committed serious error does not suffice to overturn his decision." Id. The reason for shielding these decisions derives from

preference to have labor disputes settled privately, rather than overly burdening the court system. Id. Furthermore, parties to CBAs find security in knowing their contracts will be honored. W.R. Grace & Co. v. Local Union 759, 461 U.S. 757, 771 (1983). In addition, upholding arbitration awards discourages parties from circumventing the CBA. Id. at 771. Lastly, parties to CBAs are free to negotiate their own rules for arbitration. Holmes, 939 F. Supp. at 524.

In the present case, the arbitrator's award should not be vacated and should be offered deference. Both parties conceded the decisions made by the arbitrator "drew their essence" from the CBA because the arbitrator made reasonable conclusions based on the CBA. Respondents and the MLB determined the arbitrator's decision would "constitute the full, final, and complete disposition of the appeal and will be binding on all parties," and therefore, the decision is entitled to deference. Upholding the award in the present case continues to encourage the private settlement of CBA disputes and warns future players that they will be held to their contracts. If Respondents' wished to settle CBA disputes another way, they had the opportunity to bargain for it. The arbitration award should be afforded deference and be upheld.

2. The arbitrator's award upholding the players' suspensions fails to meet the narrow exception allowing a valid public policy to overturn the award.

The arbitrator's award upholding the suspension of the players should be offered deference because no applicable exception exists to vacate the award. An arbitration award should only be reversed in rare instances. The arbitrator's award should be upheld because it does not violate an express public policy.

Courts afford an extraordinary amount of deference to arbitration awards and only set aside arbitration decisions in certain delineated instances. Crawford Group, Inc. v. Holekamp, 543 F.3d 971, 976 (8th Cir. 2008). For example, under the Federal Arbitration Act, an arbitration award can be set aside if it was “procured by fraud, corruption, or undue means,” if the arbitrator failed to act impartially, or engaged in any other misconduct. 9 U.S.C. § 10(a)(1)-(3). Also, this Court created an exception for vacating arbitration awards that violate public policy. W.R. Grace, 461 U.S. at 766. The public policy exception is founded in contract law to prevent courts from enforcing agreements violating public policy. United Paperworkers Int’l Union v. Misco, Inc., 484 U.S. 29, 42 (1987). This exception is very narrow. E. Ass’n Coal Corp. v. United Mine Workers, 531 U.S. 57, 58 (2000). Therefore, the purported public policy must be well-defined and explicit. W.R. Grace, 461 U.S. at 766. This public policy should be determined “by reference to the laws and legal precedents and not from general considerations of public interests.” Id. Finally, a court may not vacate an arbitrator’s decision simply because a court disagrees with the decision. Misco, 484 U.S. at 38.

In the present case, there is no exception warranting the overturning of the arbitrator’s award. First, Respondents do not contest that there is any Federal Arbitration Act violation. Second, enforcement of this award does not encourage violation of any public policy because there is no well-defined or explicit public policy to warrant the court’s interference with a bargained-for agreement.

B. The arbitrator's award does not encourage violation of a fiduciary duty and the health and safety of the players lacks adequate policy concerns to justify overturning the award.

There is no public policy exception applicable to overturn the arbitrator's decision. Public policy concerns do not exist if there is no fiduciary duty based on the ongoing conduct of the parties or if concerns for individual health and safety are unfounded. The ongoing conduct between the players and the MLB does not indicate a fiduciary relationship, and the health and safety of the players is an insufficient public policy because baseball players are not in safety-sensitive positions. Therefore, the arbitrator's award should be upheld.

1. The arms-length negotiations between the MLB and the players did not establish a fiduciary relationship and any duty the MLB owed did not extend to warnings about specific products.

No fiduciary relationship existed between the players and the MLB, and even if one did, no breach occurred. A fiduciary relationship exists where there is clearly trust between the parties. There was no trust relationship because Respondents and the MLB created the CBA through arms-length negotiations, and the MLB did not have a duty to issue specific warnings about specific products.

A fiduciary relationship exists when one party has superior knowledge on which another party has reasonably relied. Lumbermens Mut. Cas. Co. v. Franey Muha Alliant Ins. Servs., 388 F. Supp. 2d 292, 305 (S.D.N.Y. 2005). A fiduciary relationship is also found where one party has a duty to give advice to another party. United Feature Syndicate, Inc. v. Miller Features Syndicate, Inc., 216 F. Supp. 2d 198, 218 (S.D.N.Y. 2002). There must be a trust relationship between the parties for a fiduciary duty to exist. Grandon v. Merrill Lynch & Co., Inc., 147 F.3d 184, 189 (2d Cir. 1998). For example,

an agency relationship constitutes a fiduciary relationship where one party represents to another that he will act on that individual's behalf. Lumbermens, 388 F. Supp. 2d 295, 301 (finding an agency relationship where the defendant could bind insurance contracts on behalf of the plaintiff). Where none of these relationships exist, no claim for breach of a fiduciary duty exists. Id. at 304. The ongoing conduct between the parties indicates whether there is a duty giving rise to a fiduciary relationship. Id. at 305. Furthermore, for there to be a violation of a fiduciary duty within the arbitration context, the contract the arbitrator is construing must violate public policy, rather than the conduct of the parties themselves. Misco, 484 U.S. at 42.

In the present case, the arbitration award does not encourage violation of a fiduciary duty because ongoing conduct between the MLB and the players conduct indicates no fiduciary relationship even existed. Unlike the agency relationship found in Lumbermens, where one party represented to the other that they would act on behalf of another individual, there was no agency relationship between the MLB and the players. However, there was an agency relationship between the players and the Union, who represented the interests of the players, and should have bargained with the MLB if it wished to impose specific obligations on behalf of the MLB. The MLB dealt with the players through arms-length negotiations, and therefore, did not create a relationship of trust. Since no fiduciary relationship between the MLB and the players existed, no requirement existed to issue warnings. The MLB's primary interest was in promoting the "fairness and integrity" of baseball. To promote this interest, the MLB chose to provide guidance to the players to help them make informed decisions. To guide the players, the MLB created Dr. Larson's position and the Hotline. However, in doing so, the MLB did

not create a duty to provide the players with advice. Furthermore, the players are aware they are held to a strict liability policy and should not have reasonably relied on Dr. Larson or the Hotline to excuse a positive result. If there is no fiduciary relationship, this public policy exception does not apply.

However, even if the MLB did make itself a fiduciary to Wilson and the other players by holding itself out to have superior knowledge regarding banned substances, the scope of the fiduciary duty the MLB owed to the players did not extend to specific warnings about specific products. Dr. Larson, Dr. Finkle, Andrew Birch, and the MLB did not have a fiduciary duty to the players to make specific warnings about specific products nor was it required to issue specific warnings through the Hotline. The arbitrator found, and the district court agreed, 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.” Dr. Larson did issue specific warnings about banned substances; this warning included the substance Clomiphene. Dr. Larson also issued multiple general warnings about the use of energy-enhancing products and reminded the players several times that they would be held strictly liable for any banned substances in their bodies. The Policy explicitly directs the players to ask Dr. Larson about energy-enhancing products. Moreover, Dr. Larson testified that if any player had asked about SpeedShot specifically, he would have told them it contained a banned substance. Furthermore, the MLB informed the players that they were not allowed to endorse any SpeedShot products. This made the players sufficiently aware that they should not be using any

energy-enhancing products and they would be held strictly liable for any positive test result.

Since the Policy imposed strict liability, any action taken by Dr. Larson and the MLB to warn the players did not change the fact that the players were responsible for what they ingest. In fact, it may have been worse for Dr. Larson to issue specific warnings about specific products because players would rely on these specific warnings and incorrectly assume that any other non-listed, energy-enhancing products were allowed. This would lure the players into a false sense of security since it would imply that non-listed products were permitted, even though non-listed products may still contain banned substances. In addition, it would be impossible to hold the MLB to a fiduciary duty to warn of every product that may contain a banned substance in a market not subjected to usual FDA guidelines. Therefore, even if the MLB owed a fiduciary duty to the players, no violation of that duty occurred.

Even if Dr. Larson violated a fiduciary duty by not issuing a specific warning about SpeedShot, this is not enough to overturn the arbitrator's award because the CBA itself must violate a public policy. The conduct of the parties is insufficient to overturn the arbitrator's award. The CBA itself does not encourage the violation of a fiduciary duty because the CBA does not establish a fiduciary duty. Therefore, the arbitrator's award should be upheld.

2. The health and safety of the individual players lacks a valid public policy concern because baseball players are not in safety-sensitive positions.

The purpose behind drug and alcohol testing in the workplace is inconsistent with the court of appeals attempt to make the health and safety of the players a valid public policy. Public policy favors drug and alcohol testing in the workplace for jobs that are

traditionally “safety-sensitive.” See, e.g., E. Ass’n Coal Corp., 531 U.S. at 64 (demonstrating that a truck driver was a safety-sensitive job because impacts the public); see also Delta Air Lines, Inc. v. Air Line Pilots Ass’n Int’l, 861 F.2d 665, 674 (11th Cir. 1988) (establishing a public policy for public safety behind ensuring an airplane pilot was not intoxicated because of the potential danger to passengers); see also Iowa Elec. Light & Power v. Local Union 204 of Int’l Bhd. of Elec. Workers, 834 F.2d 1424, 1428 (8th Cir. 1987) (finding a nuclear plant employee deliberately violating a federally mandated safety regulation posed a hazard to public health because of potential exposure to radiation). The courts in these cases were concerned with the threat to public safety rather than the individual safety of the employees. See E. Ass’n Coal Corp., 531 U.S. at 64; see also Delta Air Lines, Inc., 861 F.2d at 674; see also Iowa Elec. Light & Power, 834 F.2d at 1428.

The court of appeals below held the health and safety of the players was a sufficient public policy to justify vacating the arbitrator’s award. However, drug and alcohol testing policies have traditionally been put in place for safety-sensitive positions because of the impact these positions have on the health and safety of the public. Unlike the drug and alcohol testing of truck drivers, pilots, and nuclear plant employees, baseball players are not in safety-sensitive positions that directly impact the public. The potential threat to public health and safety stemming from employees in safety-sensitive positions is far greater than a baseball player confined to a stadium. The public policy concern should be the health and safety of the public at large, rather than the individual players. The players were free to bargain for what responsibilities the MLB would have regarding

their health and safety, and the players accomplished this to the extent they deemed necessary.

The only explicit public policy applicable in the case at bar is encouraging the finality of arbitration awards. This public policy is consistent with maintaining the arbitrator's award. Therefore, the arbitrator's award should be upheld because the Policy and the CBA do not violate public policy since the agreement does not threaten the health and safety of the public.

CONCLUSION

Therefore, the Petitioner respectfully requests this Court reverse the decision below.

Respectfully Submitted,

Team # 18

Attorneys for the Petitioner