

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**

**THE TULANE MARDI GRAS SPORTS LAW
COMPETITION, 2010**

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QUESTIONS PRESENTED

- I. WHETHER THE COURT OF APPEALS CORRECTLY HELD 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 WAS CORRECT IN SETTING ASIDE AN ARBITRATOR'S AWARD SANCTIONING MAJOR LEAGUE BASEBALL'S REFUSAL TO ISSUE WARNINGS REGARDING THE PRESENCE OF A BANNED SUBSTANCE IN SPECIFIC PRODUCTS BECAUSE SUCH AN AWARD WAS IN VIOLATION OF PUBLIC POLICY.

STATEMENT OF CASE AND FACTS

The Major League Baseball Players' Association ("MLBPA") and Major League Baseball ("MLB") entered into a collective bargaining agreement ("CBA") in 2007 that incorporated a Policy on "Anabolic Steroids and Related Substances." *Wilson v. Major League Baseball*, No. 09-AC-0213 at 1. The Policy prohibits use of certain performance enhancing substances including, Clomiphene, Cyclophenil, Fulvestrant, and other Anti-Estrogens. *Id.* The Policy imposes a strict liability rule that players are "responsible for what is in their bodies" and that a positive test result will not be excused even if the substance was taken unknowingly. *Id.*

Players with confirmed positive test results are subject to discipline as outlined in the Policy. *Id.* First time offenders receive suspension of at least fifteen, but no more than twenty-five games. *Id.* at 1-2. The Policy provides that "players subject to disciplinary action may appeal to a [neutral] arbitrator, who is either the Commissioner or his designee, whose decision constitutes a full, final, and complete disposition of the appeal that is binding on all parties." *Id.* at 2. It also establishes the arbitration process for the. *Id.*

Licensed physician, Dr. John Larson directs the Policy as an independent Administrator. *Id.* He is in charge of overseeing drug testing procedures, reporting positive test results to the Commissioner for discipline, and keeping the

players educated regarding the Policy's implementation. *Id.* Consulting toxicologist, Dr. Ray Finkel assists in the implementation of the policy. *Id.*

The Policy also creates a MLB Hotline ("Hotline") that provides players with "confidential and accurate information about these products, including their ingredients, effects, and adverse reactions." *Id.* The purpose of the Hotline is to provide players, coaches, and trainers with information and the opportunity to inquire about certain products and their relation to the Policy. *Id.* While the Commissioner didn't recommend any use of these products, he believed that an informed decision was the best decision. *Id.* at 9. The Policy cautioned that players were still responsible for what was in their bodies and that the Hotline would not serve as an excuse for a positive test result. *Id.* at 2

In 2007, MLB learned that some bottles of SpeedShot, a product that claims to provide 5 hours of energy, contained Clomiphene, a banned substance under the Policy, though the SpeedShot label did not disclose Clomiphene as an ingredient. *Id.* at 3. Dr. Larson informed Dr. Finkel of the connection between SpeedShot and Clomiphene and the product was sent to a laboratory for testing. *Id.* On November 14, 2007, Larson and Finkel were informed that SpeedShot did, in fact contain Clomiphene. *Id.* Andrew Birch, Vice President of Law and Labor Policy, was informed of this result. *Id.* Even though the lab director requested that MLB

report the information to the Food and Drug Administration, Birch and Larson refused to report it. *Id.*

MLB notified the MLBPA that MegaEnergy Products, the company that distributes SpeedShot, had become a banned company that players and teams were prohibited from endorsing and doing business with, and asked that the information be relayed to the players. *Id.* As a result, players were notified that the company that produces SpeedShot was placed on “the list of prohibited supplement companies” and players were prohibited from endorsing its products. *Id.*

Additionally, Dr. Larson sent out a memorandum to all players reminding them of the dangers of using performance-enhancing supplements and of the strict liability rule in the policy that “if you test positive for a banned substance, this constitutes a positive test, regardless of intent to do so.” *Id.* at 3-4. None of the communications to the players specifically mentioned that SpeedShot contained Clomiphene. *Id.* at 4

Despite the countless warnings, Kevin Wilson (“Respondent”) took SpeedShot the morning of a preseason scrimmage. *Id.* He was drug tested pursuant to the Policy’s preseason provision and the test came back positive for Clomiphene. *Id.* He was suspended for fifteen games as directed under the policy for the positive test result. *Id.* Four other 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, also tested positive for Clomiphene and were given the same suspension. *Id.* All five players appealed to an arbitrator as specified under the Policy. *Id.*

During arbitration, all five players, including Respondent, admitted to awareness of the warnings about energy boosters, the risks associated, the Hotline, and the strict liability rule. *Id.* None of the players, including Respondent, challenged the positive test results or the presence of Clomiphene in their system. *Id.* Instead, their argument was that the positive test result should be excused because Dr. Larson and MLB knew that some SpeedShot products contained Clomiphene. *Id.* They also argued that despite the repeated warnings regarding energy boosters and the strict liability rule, the Policy created a fiduciary duty requiring MLB to give the players a more specific warning about products with banned substances. *Id.*

After a full hearing, pursuant to the Policy's strict liability rule, the arbitrator upheld all five players' suspensions. *Id.* at 5. He found that "none of the players disputed the laboratory analysis or any other aspect of the test" and there was "no genuine dispute regarding the positive test of each player's urine sample." *Id.* The arbitrator also noted the strict liability rule and that all five players demonstrated clear understanding that they were responsible for what was in their bodies and the risks of energy boosters. *Id.* In addition, he found that the Policy creates no duty to

warn about specific products and “nothing in the record suggest that the bargaining parties have ever contemplated imposing such a requirement.” *Id.* The arbitrator concluded 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.” *Id.*

Nature of the Case

MLB appeals the determination of the Court of Appeals for the Fourteenth Circuit that the respondent’s state claims are not preempted by federal labor law. MLB also appeals the order of that court vacating an arbitration award declaring that it did not have a fiduciary duty to the respondent to give specific warnings about SpeedShot. On appeal, this court is asked to determine two issues: (1) whether the Court of Appeals correctly held that a Major League Baseball player’s claim under Minnesota’s Drug and Alcohol Testing in the Workplace Act (“DATWA”) challenging a suspension under a collectively bargained for drug policy are not preempted by Section 301 of the Labor Management Relations Act (“LMRA”); and (2) whether the Court of Appeals was correct in setting aside an arbitrator’s award sanctioning Major League Baseball’s refusal to issue warnings

regarding the presence of a banned substance in specific products because such an award was in violation of public policy.

Course of Proceedings

The respondent filed suit against MLB, Dr. Larson, Dr. Finkel, and Andrew Birch in Minnesota State Court claiming violation of DATWA, seeking damages and an injunction against enforcement of the arbitration award. *Wilson v. Major League Baseball*, No. 09-AC-0213 at 5. The state court granted a temporary injunction. *Id.* MLB then removed the case to federal court where it was consolidated with an action brought by the MLBPA to vacate the arbitration award under the LMRA. *Id.* The respondent, in the District Court for the Southern District of Tullahoma, appealed the arbitration award that upheld his suspension for violating the Policy created through the collective bargaining between the MLB and the MLBPA and the removal to federal court. *Id.* at 4. He claimed that federal law did not preempt his DATWA claim and that the arbitration award violated public policy because the MLB was under a duty to give specific warnings about banned substances. *Id.* at 6,14. The District Court concluded that Respondent's DATWA claim was preempted by Section 301 of the LMRA, and also affirmed the arbitration award. *Id.* at 14,19. Respondent appealed to the Court of Appeals for the Fourteenth Circuit.

Disposition of the Lower Tribunal

The Court of Appeals for the Fourteenth Circuit reversed the District Court's ruling, holding that the respondent's DATWA claim was not preempted by Section 301 of the LMRA and that the arbitration award violated public policy. *Wilson v. Major League Baseball*, No. 09-2108 at 10, 14. The court concluded that the DATWA claim was not preempted because it was "not dependent upon an interpretation of the CBA or the Policy," but was instead "predicated on Minnesota law." *Id.* at 10. The court also vacated the arbitration award for violating public policy, because "it sanctions and in fact encourages breaches of fiduciary duty." *Id.* at 14.

SUMMARY OF THE ARGUMENT

Respondent's DATWA claim is preempted by Section 301 of the LMRA, because resolution of the state action requires interpretation of the Policy and therefore the CBA. A state claim is preempted by Section 301 of the LMRA if its resolution substantially relies on the interpretation of the CBA or is inextricably intertwined with the CBA. This Court cannot resolve the DATWA claim without interpreting the Policy. DATWA sets forth minimum requirements for drug and alcohol testing policies in Minnesota. The requirements serve as a floor that employers may not fall below. The statute clearly states that parties are free to collectively bargain other terms that at least meet or exceed the requirements of

DATWA. Therefore, before a court can decide that a policy violates DATWA, it must first interpret the terms of the policy to determine whether the policy's requirements, though maybe different, exceed or are comparable with DATWA without conflicting with it. In terms of the policy allegedly violated in this case, the court must interpret the provisions allegedly violated to see if they fall below DATWA's floor. Despite the outcome of that inquiry, since the court must interpret the Policy, the claim is preempted.

Not all state claims are preempted by Section 301 simply because the parties are subject to a CBA. Purely factual inquiries and mere references to the CBA are not preempted. However, Respondent's DATWA claim is neither a factual inquiry nor a mere reference to the Policy. The claim requires a substantial interpretation of the Policy and therefore is preempted by Section 301.

Denying preemption and subjecting the Policy to different state regulations will result in uneven enforcement of the Policy and the compromised integrity of MLB as a business. MLB is a multi-jurisdictional business and the uniform enforcement of the drug testing policy is integral to the competition. Not all of the players with confirmed positive test results have a rule like DATWA in their states. They will be subject to discipline and suspension while the respondent is excused due to inconsistent state law. Therefore, some teams will be forced to play without one of their players while the respondent's team comes out unscathed. This

method of interpreting a policy for employees in multiple jurisdictions is both erratic and unfair.

Also, the respondent's claim that the Court should vacate the arbitration award is futile. The courts cannot tamper with an arbitrator's decision that is made within the "essence" of the disputed contract and within the arbitrator's power as the parties' agreed upon authority. There are a few limited circumstances, when the courts can intervene to vacate an arbitration award: if an arbitrator violates 9 U.S.C. § 10, or if the arbitration award violates public policy. Because the arbitrator was working within the bounds of the contract when he decided that MLB did not have fiduciary duty to give specific warnings to the players, this interpretation of the Policy cannot be disrupted by the Court.

The arbitrator's decision also does not violate public policy, because the MLB does not have any duty to the players to give specific warnings contrary to the Court of Appeals' reasoning. MLB did not have a fiduciary duty to the respondent and the other players. The terms of the Policy were fulfilled, and Dr. Larson met his responsibilities when he gave the general warning to the players. The Policy only required him to educate and warn players about the risks of supplements. In addition, the existence of the Hotline did not create a fiduciary relationship. The Policy made clear that the Hotline was there for player use but its use would not excuse a positive test result.

ARGUMENT

I. The Court Of Appeals Erred In Reversing The Summary Judgment Of The District Court Because The DATWA Claim Is Dependent On An Interpretation Of the CBA And Therefore Preempted By Section 301 Of The LMRA.

Standard of Review

The standard of review in this case is *de novo*. *Bogan v. General Motors Corp.*, 500 F.3d 828, 832 (8th Cir. 2007). Whether the DATWA claim is preempted by Section 301 is reviewed *de novo*. *Id.*

A. Wilson's DATWA claim cannot be resolved without interpreting the CBA to determine whether the Policy "meets or exceeds" DATWA's protections.

The court cannot determine whether the Policy violates DATWA without first analyzing whether the Policy's procedures "meet or exceed" the protections of the state law.

A state law is preempted by Section 301 if the outcome is dependent on an interpretation of the CBA. *Allis-Chalmers Corp., v. Lueck*, 471 U.S. 202, 210 (1985). Section 301 of the LMRA, 29 U.S.C. § 185(a) (1947), applies to any suit brought for violation of contract between a labor organization and an employer. The Supreme Court of the United States has held that federal law must be applied to suits for breach of CBAs. *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 456 (1957); *Allis-Chalmers*, 471 U.S. at 210. In *Allis-Chalmers*, an employee brought a tort claim against his employer and insurer, which administered an insurance plan

pursuant to a collective bargaining agreement for the mishandling of the claim. *Allis-Chalmers*, 471 U.S. at 204. The Supreme Court held that when the state claim is substantially dependent on an interpretation of the terms of the collective bargaining agreement, the claim must be treated as a Section 301 claim or preempted by federal labor law. *Id.* at 219; *Trustees of the Twin City Bricklayers Fringe Benefit Funds v. Superior Waterproofing, Inc.* 450 F.3d 324, 330 (8th Cir. 2006) (claim is preempted if it requires interpretation of the CBA). The analysis must focus on whether the state action as applied “confers non-negotiable state-law rights” on employers separate from any rights established in the CBA, or whether evaluation of the state law claim is “inextricably intertwined with consideration of the terms of the labor contract.” *Allis-Chalmers*, 471 U.S. at 213; *See also, U.S. Steelworkers v. Rawson*, 110 U.S. 362, 369 (1990) (Supreme Court of United States held that the claim could not be described as independent of the CBA, since the representatives were participating in the inspection pursuant to the CBA).

The Drug and Alcohol Testing in the Workplace Act, Minn. Stat. § 181.950 (1987), sets minimum requirements for drug and alcohol testing of employees in Minnesota. *Id.* § 181.952. However, the Act does not preclude parties to a CBA from bargaining and agreeing to a policy that “meets or exceeds and does not otherwise conflict with” the standards set forth in the Act. *Id.* § 181.955 subdiv. 1.

Therefore, DATWA's requirements serve as a floor that testing procedures may not fall below but may rise above. *Id.*

The Court of Appeals' understanding of the district court decision "that an employee has no DATWA claim if he or she is a party to a CBA that is at least as protective of the employee as DATWA" is misplaced. *Wilson v. Major League Baseball*, No. 09-2108 at 7. Whether or not there is a DATWA claim does not hinge on whether the employee is a party to a CBA that is at least as protective of the employee. The court should not even reach that point in the analysis of this case. In order to determine whether the Policy violates DATWA, the court must interpret the Policy to see if it "meets or exceeds" the requirements of the state law. Minn. Stat. § 181.955 subdiv. 1. Because DATWA allows for bargaining "with respect to a drug and alcohol testing policy that meets or exceeds and does not otherwise conflict with" the protections in the Act, the only way to determine whether the Policy violates the Act is to analyze the policy. *See, Id.* That particular phrase in the statute makes the terms negotiable as long as the agreed upon policy does not violate the statute. *See, Id.; Allis-Chalmers*, 471 U.S. at 202. Therefore, the court should never reach the question of whether the "employee is a party to a CBA that is at least as protective of the employee as DATWA." *Wilson v. Major League Baseball*, No. 09-2108 at 7. The court must interpret the Policy to that conclusion of law. Once a court has to analyze the CBA to determine if it

“meets or exceeds,” the claim is preempted and the question of whether the employee is a party to a CBA that is at least as protective is moot. For example, Respondent claims that MLB violated DATWA because it failed to use certified laboratories. *Id.* at 6. While the laboratory used by MLB may not have conformed to the exact requirements of the statute, it may have exceeded the requirements set forth by DATWA. Before making a determination, this Court must first interpret the Policy requirements to see if, while different, they meet or exceed the requirements of the statute without being in conflict with the statute itself. *See*, Minn. Stat. § 181.955 subdiv. 1. Also, to determine whether appropriate notice procedures were taken, the Court must look to the administrator’s procedures in the Policy to see if those procedures exceed DATWA. *See, Id.; Wilson v. Major League Baseball*, No. 09-2108. at 5-6

The fact that the employee is a party to a CBA does not automatically mean that his claim is preempted. *Miner v. Local 373*, 513 F.3d 854, 865 (8th Cir. 2008). A state claim that requires purely a factual inquiry is not preempted even when the parties are subject to a CBA. *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246 (1994); *Karnes v. Boeing Company*, 335 F.3d 1189 (10th Cir. 2003). In addition, there is no Section 301 preemption when the court merely references the CBA. *Lividas v. Bradshaw*, 512 U.S. 107 (1994) (no preemption when the court had to reference the CBA to compute damages).

The Court of Appeals' conclusion that a court would only need to "compare the facts and the procedure that the MLB actually followed with respect to the drug testing of Wilson with DATWA's requirements" is flawed. *Wilson v. Major League Baseball*, No. 09-2108 at 7. The court relied on *Lingle v. Norge Division of Magic Chef, Inc*, 486 U.S. 399 (1988) to show that purely factual inquiries about employee or employer conduct do not require interpretation of the CBA. *Wilson v. Major League Baseball*, No. 09-2108 at 7; See also *Hawaiian Airlines*, 512 U.S. at 246. However, *Lingle* can be distinguished from the present case. In *Lingle*, the state statute allegedly violated had two factors, both pertaining to the conduct of the employee and the motivations of the employer. *Lingle*, 486 U.S. at 407. The statute allegedly violated in this case, DATWA, does not directly pertain to the conduct of the employee or the motivation of employer. Minn. Stat. § 181.955 subdiv. 1. It pertains to the actual policy and whether its procedures fall below DATWA's requirements. *Id.* § 181.955 subdiv. 1. The statute does not set forth requirements for employers; it sets forth requirements for drug testing policies. *Id.* § 181.950.

The court's comparison with *Karnes*, is also illustrative of this distinction. See, *Wilson v. Major League Baseball*, No. 09-2108 at 8. In *Karnes*, in order to establish a violation of the Oklahoma Drug and Alcohol in the Workplace statute, the employee needed to show that the employer "(1) discharged him based on his

drug test, and (2) failed to confirm the result through a second test.” *Karnes*, 335 F.3d at 1193. The court was correct in holding that neither factor requires the court to interpret the CBA. *See, Id.* However, like in *Lingle*, the inquiries in *Karnes* are purely factual regarding employer conduct, thus distinguishing it from DATWA and the present case. *See, Id.*

Respondent’s DATWA claim follows the reasoning of *Allis-Chalmers*. *See, Allis-Chalmers*, 471 U.S. at 202. The evaluation of the DATWA claim is “inextricably intertwined” with an interpretation of the CBA since it is not purely factual (making it independent) and requires interpretation of the Policy. *Id.* The state action does not confer nonnegotiable state-law rights because DATWA allows for bargaining terms that “meet or exceed” its requirements. *Id.*; Minn. Stat. § 181.955 subdiv. 1. Thus DATWA is inherently negotiable. *Id.* And, because DATWA allows for bargaining and agreement to a policy that meets or exceeds its requirements, the court will always have to interpret the policy to determine whether it violates the statute. Therefore, despite the answer to whether the Policy’s procedures fell below DATWA’s requirements, once the court is forced to interpret the CBA, Section 301 preemption applies.

B. Preemption is necessary in order to preserve the integrity of MLB as a business and to ensure evenhanded enforcement of the CBA/Policy against individuals working in multiple and/or different jurisdictions.

Due to the national character of Major League Baseball, federal law must apply to ensure uniform interpretation and enforcement of the CBA. Section 301 must apply to promote uniformity in interpretation of CBAs and to reduce the possibility of disruptive influence on negotiation and administration of contracts. *Lingle* 486 U.S. at 405; *Teamsters v. Lucas Flour Co.*, 369 U.S. 95 (1962).

The congressional intent of Section 301 was to ensure uniformity in the interpretation of CBAs. *Teamsters*, 369 U.S. at 103. In *Teamsters*, the Supreme Court of the United States determined that Section 301 calls for uniform law so that parties are aware of the rights they obtained or conceded from entering into the CBA. *Id.* In addition, the court held that without preemption, it would become difficult to try to align two different bodies of law. *Id.* In *Lingle*, the Supreme Court of the United States added that in an instance that depends on the interpretation of a CBA, the application of state law could lead to inconsistencies “since there could be as many state-law principles as there are States.” *Lingle*, 486 U.S. at 405. It concluded that federal labor law would provide uniform enforcement and resolve the problem of inconsistent law. *Id.* The court in *Twin City* added, that the lack of preemption may “undermin[e] the ‘interpretive uniformity and predictability’ which Congress intended to foster with its passage

of Section 301.” *Twin City*, 450 F.3d at 334 (quoting *Allis-Chalmers*, 471 U.S. at 211). Particular to national competitive sports, the denial of preemption could result in “[f]ragmentation of the league structure on the basis of state lines.” *Partee v. San Diego Chargers Football Co.*, 668 P.2d 674, 678 (Cal. 1983).

In contrast, the United States Court of Appeals for the Ninth Circuit in *Cramer v. Consolidated Freightways, Inc.*, 255 F.3d 683, 695 n.9 (9th Cir. 2001), held that the “LMRA certainly did not give employers and unions the power to displace any state regulatory laws they found inconvenient.” *Id.* The Supreme Court of the United States also cautioned that Section 301 couldn’t be read too broadly as to allow employers to exempt themselves from inconvenient state labor law. *Allis-Chalmers*, 471 U.S. at 211.

The Court of Appeals’ alignment of the present case with *Cramer* and *Allis-Chalmers* (for purposes of broadness) was inaccurate. The Ninth Circuit in *Cramer* characterized the employer’s claim as a “displacement of regulatory laws [he] found inconvenient.” *Cramer*, 225 F.3d at 695. This is distinct from the present case. Major League Baseball did not merely find the application of state law inconvenient. Application of state law in this situation compromises the integrity of the athletic competition and the business, which is far more than just an inconvenience. Five players were suspended for consuming the exact same supplement, however, only one has the shield of DATWA. The other players do

not have comparable state laws in their jurisdiction. Therefore, they must be disciplined for their behavior under the Policy, while Respondent is able to escape discipline because he lives in Minnesota. Besides the overt unfairness to the other four players who are suspended, that result puts the teams whose players don't have the protection of the state law at a disadvantage since they each will be forced to play without one of their players. Thus, inconsistent enforcement of the Policy will result in fragmentation of the league based on the fact that players are employed (by the same employer) in different states. In addition, drug policies are integral to professional baseball and inconsistency in the enforcement of the policies will compromise that integrity. Major League Baseball is distinguishable from the employer in *Cramer* because it is not merely inconvenienced by the application of state law – it is not able to function as a business and an athletic competition without evenhanded enforcement of drug testing policies. *See, Id.*

The present case is more properly aligned with the Congressional intent of Section 301 and the *Lingle* decision. Congress intended for Section 301 to apply to the interpretation of CBAs to avoid inconsistencies and to provide a uniform law. *Lingle*, 486 U.S. at 399; *Teamsters*, 369 U.S. at 95. As noted above, the application of DATWA to the enforcement of the CBA/Policy would lead to a number of inconsistencies including the lack of evenhanded enforcement. In *Lingle*, the court held that where the application of state law lead to

inconsistencies, federal law was applied. *Lingle*, 486 U.S. at 399. Applying that holding to this case, since the application of DATWA leads to inconsistencies in enforcement in multiple jurisdictions that inhibit the functioning of the business, federal law should apply.

II. The Court Of Appeals’ Decision To Vacate The Arbitrator’s Award Upholding The Suspension Of The Respondent Should Be Overturned, Because An Arbitrator’s Decision Can Rarely Be Disturbed, And The Arbitrator Did Not Violate Public Policy In Deciding MLB Did Not Have A Fiduciary Duty To Warn Of Specific Banned Substances.

Standard of Review

The standard of review for an appeal of an arbitration award is *de novo*. *Stark v. Sandberg, Phoenix & von Gontard, P.C.*, 381 F.3d 793, 798 (8th Cir. 2004). Also, in reviewing an arbitration award, “courts accord ‘an extraordinary level of deference’ to the underlying award itself.” *Id.* Since there is a question of law whether the arbitrator’s award violated public policy, the standard in this case is *de novo* and the Court must give deference to the arbitrator’s decision.

A. In upholding the suspension of the respondent, the arbitrator was free to interpret that there was no fiduciary duty on the part of MLB to the players to warn that specific products contained banned substances under the Policy, because he derived that interpretation from the “essence” of the contract within his scope of authority.

This Court should not interfere with the arbitrator’s determination that MLB had no fiduciary duty to the players under the Policy, because of the encompassing

power given to the arbitrator in the CBA. The District Court correctly noted that the arbitrator's award was made within the scope of the Policy, and it should be emphasized that this Court should not interfere with his decision as did the Court of Appeals. When parties decide to settle their disputes through arbitration, the arbitrator is given great authority to interpret the disputed contract. Awards based on these interpretations can rarely be disrupted by the courts, so long as the arbitrator's decisions are based within the "essence" of the contract. *Stark*, 381 F.3d at 799. In order to be within the "essence" of a contract, the arbitrator's award must be "derived from the agreement, viewed in light of its language, its context, and any other indicia of the parties' intentions." *Id.* Having given this power to the arbitrator, and deciding that he "will determine remedies for contract violations that he finds, courts have no authority to disagree with his honest judgment in that respect." *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 38 (1987). Even if a court would have not decided the same way as the arbitrator, it is not permitted to tamper with the arbitrator's decision. The court in *Crawford Group, Inc. v. Holekamp*, 543 F.3d 971 (8th Cir. 2008), determined that courts "may not set aside an award simply because [they] might have interpreted [a contract] differently or disagreed with the arbitrator's factual determinations." *Id.* at 978.

The courts' policy for giving great deference to an arbitrator's interpretation of a contract, and the awards based on those interpretations, is in effectuating parties' contracts and upholding their agreed upon remedies during contractual disputes. Today, parties are looking for the quicker and more cost effective dispute resolution found in arbitration. Courts are worried that substituting their own judgment in place of an arbitrator's will result in "the speedy resolution of grievances by private mechanisms [being] greatly undermined." *United Paperworkers*, 484 U.S. at 341. The courts are also leery of intervening because of the "decided preference for private settlement of ...disputes without the intervention of government." *Id.* at 370.

The arbitrator's decision to uphold the suspension of Wilson and the players because MLB had no fiduciary duty to them was within his power as the parties' agreed upon authority in contractual disputes under the Policy. The language of the Policy states that "players subject to disciplinary action may appeal to an arbitrator...whose decision constitutes a full, final, and complete disposition of the appeal that is binding on all parties." *Wilson v. Major League Baseball*, No. 09-AC-0213 at 2. The arbitrator decided, and the District Court agreed, that it was "not a breach of fiduciary duties to tell the players only that energy boosters [in general] are risky." *Id.* MLB did not have to give a warning that a specific energy booster contained banned substances not included on the ingredient list. *Id.* at 17.

The Policy set forth a well established and emphasized rule of strict liability that the players alone are “responsible for what goes into [their bodies],” and not MLB. *Id.* at 2. Due to the strict liability provision, the arbitrator determined that the Policy set up no specific obligation regarding products MLB had to warn about, and the parties did not contemplate such an obligation. *Id.* at 20.

The District Court’s decision to uphold the arbitration award was well reasoned and the Court of Appeals was in error in reversing its order. The arbitrator formulated this decision within the boundaries of his authority and the terms of the Policy. When an arbitrator, as in this case, awards a remedy that derives its essence from the contract in dispute, then the court can only disagree with, but not change, the outcome of the case.

B. The arbitrator’s decision does not violate public policy because MLB does not have a fiduciary duty to the respondent through the Policy’s language, its interactions with him or the other players, or through the Hotline.

Contrary to the Court of Appeals’ ruling, the arbitrator’s decision that there was no duty owed to the players to warn about specific products containing banned substances does not fall within the limited circumstances of when a court can overturn an arbitrator’s award. There are only a few, very limited situations in which a court can vacate an arbitration award. 9 U.S.C. § 10 (2004). A court can vacate an award only if it was produced by “corruption, fraud, or undue means,” when there is “partiality or corruption” or “misconduct” on the part of the

arbitrator, or where an arbitrator has “exceeded [his or her] powers.” *Id.* Within the realm of this statutory provision, case law has established that a court should vacate “an arbitrator’s award under a collective-bargaining agreement” that “is contrary to public policy.” *United Paperworkers*, 484 U.S. at 42. The Supreme Court of the United States in *United Paperworkers* explained that if an arbitrator enforced a CBA in such a way that violates public policy, then the court has the duty to negate the arbitration award based on the principle that “a court may refuse to enforce contracts that violate law or public policy.” *Id.* In order to set aside on a public policy basis, the policy must be “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.’” *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 766 (1983) (quoting *Muschany v. United States*, 324 U.S. 49 (1945)). Therefore, the courts cannot vacate on a basis of their own sense of public policy, but only if an arbitrator’s interpretation of a contract and the remedies given violate clearly established rules set in place to protect the public. *See, Delta Air Lines, Inc. v. Airline Pilots Ass’n, Int’l*, 861 F.2d 665 (11th Cir. 1988) (vacating an award that reinstated a pilot who flew under the influence of alcohol, because of the many rules and regulations against operating a plane while intoxicated); *Ace Elec. Contractors, Inc. v. Int’l Bd. of Elec. Workers, Local Union No. 292*, 414 F.3d 896 (8th Cir. 2005) (arbitration award vacated because it

violated specific age discrimination laws); *Iowa Elec., Light & Power Co. v. Local Union 204 of Int'l Bd. of Elec. Workers (AFL-CIO)*, 834 F.2d 1424 (8th Cir. 1987) (vacating award making nuclear company rehire employee who violated clearly established federal regulations for nuclear plant safety).

In this case, the question is not whether the players taking a banned substance violated public policy, but whether the arbitrator's interpretation that MLB owed no fiduciary duty to them to specifically warn of the banned substance violated public policy. *See, e.g., Eastern Assoc. Coal Cos. v. United Mineworkers of Am.*, 531 U.S. 57, 63 (2002) (the Court did not ask if an employee's drug use violated public policy, but whether a "contractual agreement to reinstate" an employee who was caught using drugs "[ran] contrary to an explicit, well-defined, and dominant public policy, as ascertained by reference to positive law and not from general considerations of supposed public interests").

The Court of Appeals was incorrect when it held that MLB had a fiduciary duty to the respondent and other players, and that the arbitration award violated public policy. Two parties are in a fiduciary relationship when "one of [the parties] is under a duty to act or to give advice for the benefit of the other upon matters within 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) (quoting *Bank of Am. Corp. v. Lengruber*, 385 F.Supp.2d 200,224 (S.D.N.Y. 2005)). Also, "influence

[must have] been acquired and abused, in which confidence has been reposed and betrayed.” *United Feature Syndicate Inc. v. Miller Features Syndicate, Inc.*, 216 F.Supp.2d 198, 218 (S.D.N.Y. 2002) (quoting *Penato v. George*, 542 A.D.2d 939, 383 N.Y.S.2d 900 (2nd Dep’t 1976)). If one party has “superior knowledge” compared to the other, and knows that the other party is relying on that superior knowledge then a fiduciary relationship is established. *Callahan v. Callahan*, 127 A.D.2d 298, 301 (N.Y. App. Div. 1987). In the *Callahan* case, there was a fiduciary duty on the part of a lawyer to someone he did not represent, because of their previous friendly relationship, his legal knowledge, and the explicit public policy that a lawyer must advise third parties to seek their own legal counsel. Also, “‘ongoing conduct between parties’ [can] be considered in order to assess... ‘whether a party reposed confidence in another and reasonably relied on the other’s superior expertise or knowledge.’” *United Feature Syndicate* at 218 (S.D.N.Y. 2002) (quoting *Weiner v. Lazard Freses & Co.*, 241 A.D.2d 114, 627 N.Y.S.2d 8, 14 (1st Dep’t 1998)).

The Court of Appeals mistakenly reasoned that because MLB had a fiduciary duty to the players, by not giving a specific warning about SpeedShot it violated public policy in not following the language of the Policy and in jeopardizing the health of the players. *Wilson v. Major League Baseball*, No. 09-2108 at 11. However, the Policy does not establish a fiduciary duty between

MLB and the players, nor do the parties' interactions create such a relationship that has been abused because of MLB's superior knowledge on SpeedShot. Even though Dr. Larson, acting as MLB's agent under the Policy, was to "make himself available" to the players on issues concerning the Policy, his responsibilities did not reach the level of fiduciary relationship as described in *Lumbermens*. *Id.* at 12; *See also, Lumbermens*, 388 F.Supp.2d at 305. Any responsibilities Dr. Larson did have were met when he gave the general warning about the risk of energy boosting supplements. He also testified in the District Court that he would have given information on SpeedShot had a player specifically asked. *Wilson v. Major League Baseball*, No. 09-AC-0213 at 16. The Court of Appeals was expecting something more than the bargained for terms of the Policy. Its holding negated the explicit contractual terms that the players alone are responsible for what they take when it reasoned that Dr. Larson and MLB had a fiduciary relationship with the players. No contractual terms were broken by Dr. Larson giving only a general warning about energy boosters, because he followed the Policy's terms that stated its "administrators will make a 'special effort to educate and warn players about the risks involved in the use of supplements.'" *Wilson v. Major League Baseball*, No. 09-2108 at 13. He did this by sending a memo to the players, warning that all energy boosters are unhealthy and should be avoided. The players were also aware that MegaEnergy was a banned company through Dr. Larson's warning.

The interactions between the players and MLB did not create a fiduciary relationship between them so that the players could argue reliance upon MLB's superior knowledge. Unlike the lawyer in the *Callahan* case, Dr. Larson did not hold himself out to the players as being in a fiduciary relationship with them. In fact, Dr. Larson never gave any particular warnings about specific substances in order to avoid the illusion of such a duty towards the players. *Id.* at 14. He also did not abuse his superior knowledge. Even though, he knew that SpeedShot contained a banned substance and did not give a specific warning, he also knew that energy boosters were bad for players and gave a general warning about not taking those kinds of supplements. The only knowledge that matters in this case is the personal knowledge of the players that they alone are responsible for what goes into their body.

Finally, the existence of the Hotline did not create a fiduciary relationship between MLB and the players. The players cannot argue that they relied on the Hotline to save them from liability for violating the Policy. In *Walton-Floyd v. United States Olympic Comm.*, 965 S.W.2d 35 (Tex. Ct. App. – Houston [1st Dist.]), the court found that no fiduciary duty existed on the part of the USOC for the “voluntary assumption of [a] hotline service.” *Id.* at 40. Similar to this case, athletes had been warned that the banned substance list was not complete and that it was still “the athlete’s responsibility to check the status of all medications.” *Id.*

at 36. Even though the Policy created a hotline for the athletes to use for “information about certain supplements and their relation to the Policy,” the players were heavily cautioned that the “Hotline will not excuse a positive test result.” *Wilson v. Major League Baseball*, No. 09-AC-0213 at 2.

Nothing MLB did set it out to be in a fiduciary relationship with the players through its responsibilities under the Policy, through the interactions between its agent Dr. Larson and the players, or through the Hotline. Therefore the arbitration award cannot be set aside on a public policy argument, because there was no breach of fiduciary duties on the part of MLB towards the players.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this court to affirm the decision of the United States Court of Appeals for the Fourteenth Circuit.

Respectfully submitted,

Counsel for the Petitioner
(names omitted pursuant to Section 6, R. 9a)