

IN THE SUPREME COURT OF THE UNITED STATES

February 2010

MAJOR LEAGUE BASEBALL

Petitioner,

-versus-

KEVIN WILSON and MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION

Respondent.

*On Writ of Certiorari to the United States Court of Appeals for
The Fourteenth Circuit*

BRIEF FOR THE RESPONDENT

QUESTIONS PRESENTED

- I. Whether the Court of Appeals erred in holding that Section 301 of the Labor Management Relations Act does not preempt a player's cause of action challenging his suspension under the Minnesota Drug and Alcohol Testing in the Workplace Act.
- II. Whether the Court of Appeals erred in vacating an arbitration award when it neither violates public policy nor sanctions the breach of a fiduciary duty.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE.....	1
I. STATEMENT OF THE FACTS	1
II. STATEMENT OF THE PROCEEDINGS	3
SUMMARY OF THE ARGUMENT	4
ARGUMENT.....	6
I. SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT PREEMPTS WILSON’S CLAIM UNDER MINNESOTA’S DRUG AND ALCOHOL TESTING IN THE WORKPLACE ACT.....	6
a. Federal Law Preempts State Law When a Resolution Cannot Be Reached Without Interpretation of the Collective Bargaining Agreement.....	7
b. Interpretation of a Collective Bargaining Agreement Demands Application of the Plain Meaning of the Language In the Agreement.....	9
c. Preemption Is Proper When Application of State Laws Leads to Unfair Results Thereby Diminishing Arbitration Effectiveness.....	11
II. THE ARBITRATION AWARD IS PROPER AND SHOULD BE ENFORCED.....	14
a. Courts Afford Great Deference to Arbitration Awards	14
b. The Arbitration Award Does Not Violate Public Policy	16
c. The Collective Bargaining Agreement Does Not Impose a Fiduciary Duty Upon Major League Baseball to Issue Product-Specific Warnings	18
CONCLUSION AND REQUEST FOR RELIEF.....	23

TABLE OF AUTHORITIES

Constitutional Provisions

U.S. Const. art. VI..... 7

United States Statutes

Labor Management Relations Act, 29 U.S.C. § 185 4

United States Supreme Court Cases

Allis-Chalmers Corp. v. Lueck,
471 U.S. 202 (1985)..... 4, 7

Eastern Assoc. Coal Cos. v. United Mine Workers of Am.,
531 U.S. 57 (2000)..... 19, 21

Lingle v. Norge Division of Magic Chef, Inc.,
486 U.S. 399 (1988)..... 7, 8

Livadas v. Bradshaw,
512 U.S. 107 (1994)..... 11

Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of Am. v. Lucas Flour Co.,
369 U.S. 95 (1962)..... 12

Muschany v. United States,
324 U.S. 49 (1945)..... 14

Textile Workers v. Lincoln Mills,
353 U.S. 448 (1957)..... 4

W. R. Grace & Co. v. Local Union 759,
461 U.S. 757 (1983)..... 4, 14, 16, 17, 18, 21, 22

United States Court of Appeals Cases

Bogan v. General Motors Corp.,
500 F.3d 828 (8th Cir. 2007) 6

<i>Coca-Cola Bottling Co. v. Teamsters Local Union No. 688</i> , 959 F.2d 1438 (8th Cir. 1992)	15, 16
<i>Delta Air Lines, Inc. v. Air Line Pilot Ass'n, Intern.</i> , 861 F.2d 665 (11th Cir. 1988)	16, 17, 18
<i>Iowa Elec. Light & Power Co. v. Local Union 204 of the Int'l Bhd. of Elec. Workers</i> , 834 F.2d 1424 (8th Cir.1987)	18
<i>Karnes v. Boeing Co.</i> , 335 F.3d (10th Cir. 2003)	13
<i>Nat'l Labor Relations Bd. v. Dixie Motor Coach Corp.</i> , 128 F.2d 201 (5th Cir.1942)	18
<i>Stark v. Sandberg, Phoenix, & von Gontard, P.C.</i> , 381 F.3d 793 (8th Cir. 2004)	4, 5, 14, 15
<i>Trustees of the Twin City Bricklayers Fringe Benefit Funds v. Superior Waterproofing, Inc.</i> , 450 F.3d 324 (8th Cir. 2006)	6, 9
<i>Wilson v. Major League Baseball</i> , (14th Cir. 2009).....	4, 15

United States District Court Cases

<i>Lubermens Mut. Cas. Co. v. Franey Muha Alliant Ins. Services</i> , 388 F. Supp.2d 292, 305 (S.D.N.Y. 2005)	19, 20
<i>United Feature Syndicate, Inc. v. Miller Features Syndicate, Inc.</i> , 216 F. Supp.2d 198 (S.D.N.Y. 2002)	19
<i>Walton-Floyd v. The United States Olympic Committee</i> , No. 01-95-01442-CV, 1998 Tex. App. LEXIS 1223 (Tex. Ct. App.—Houston [1 st Dist.] February 26, 1998).....	19, 21, 22, 23
<i>Wilson v. Major League Baseball</i> , (S.D. Tulania 2009).....	1, 2, 3, 10, 15, 16, 19, 21, 22, 23
<i>Zupancich v. United States Steel Corp.</i> , No. 08-5847 ADM/RLE, 2009 U.S. Dist. LEXIS 44504 (D. Minn. May 27, 2009).....	10

State Statutes

Minn. Stat. § 181..... 8, 10

STATEMENT OF THE CASE

I. STATEMENT OF THE FACTS

In 2007, the Major League Baseball Players Association (“MLBPA”) entered into a Collective Bargaining Agreement (“CBA”) with Major League Baseball (“MLB”). *Wilson v. Major League Baseball* at 1 (S.D. Tuleya 2009) (hereinafter “D. Ct. Opinion”). The CBA sets forth a policy against anabolic steroids and related substances. *D. Ct. Opinion* at 1. The purpose of this league-wide policy is to protect the integrity of the game by enforcing a uniform standard of player conduct. *Id.* at 12. The Policy imposes a strict liability standard “providing that players are responsible for what is in their bodies,” including the unintentional ingestion of prohibited substances. *Id.* The Policy requires a minimum suspension of 15 games in the event a player tests positive for a banned substance with any further disputes and appeals being subject to binding arbitration. *Id.* at 2.

MLB provides players with the opportunity to contact an informational hotline (“Hotline”) to obtain “confidential and accurate information” about certain products, their ingredients and potential effects. *Id.* at 9. Despite the availability of the Hotline, the Policy emphasizes strict liability stating that “using the Hotline will not excuse a positive test result.” *Id.* Dr. John Larson, a licensed physician, and Dr. Ray Finkle, the Consulting Toxicologist, implement the Policy by overseeing drug testing procedures, reporting positive test results to the League Commissioner, and educating players about the Policy. *Id.*

In 2007, MLB learned that certain bottles of SpeedShot, an energy-booster, contained Clomiphene, a banned substance named in the Policy. *Id.* at 3. The SpeedShot label, however, did not list Clomiphene as an ingredient. *Id.* Upon receiving this information, Dr. Larson and

Dr. Finkle requested that David Klein, the Director of the Sports Medicine Research Testing Laboratory, analyze SpeedShot to confirm its composition. *Id.* The Vice President of Law and Labor Policy for MLB, Andrew Birch, was then advised of the findings. *Id.* While SpeedShot was not added to the banned substance list, MLB issued a decree prohibiting players and teams from doing business with or endorsing any company that distributes SpeedShot. *Id.* Following the specific warnings about distributors of SpeedShot, Dr. Larson sent memorandums to all players warning them about the general dangers of energy-boosting supplements and reiterating the strict liability policy. *Id.* at 3-4.

Subsequent to distribution of the memorandum, Kevin Wilson, a player for the Minnesota Twins and MLBPA member, consumed SpeedShot prior to a training camp scrimmage. *Id.* at 4. Wilson, as well as four other players from various teams, later tested positive for the drug Clomiphene. *Id.* MLB, as a result, imposed a 15-game suspension on all five players. *Id.* The Players and the MLBPA subsequently appealed the suspension to a neutral arbitrator in accordance with the terms of the CBA. *Id.*

During arbitration, the players alleged that MLB owed them a fiduciary duty under the Policy. *Id.* This alleged duty encompassed the responsibility to be specific in warnings, notwithstanding the memorandums, Hotline, or strict liability policy. *Id.* The players did not challenge the drug testing procedures or results. *Id.* Dr. Larson testified that he decided to issue a general warning rather than a specific one “because the whole energy-boosting supplements industry is a problem.” *Id.* at 16. The arbitrator found there was no “genuine dispute regarding the positive test of each player.” *Id.* at 5. Therefore, the arbitrator held that each 15-game suspension was appropriate pursuant to the strict liability policy, and the Policy imposed no duty on MLB to be specific in its warnings. *Id.* The record is unclear whether the parties ever

contemplated imposing a duty requiring specificity. *Id.* at 17. Following arbitration, Wilson filed suit against MLB, Larson, Finkle and Birch alleging the Policy violated Minnesota's Drug and Alcohol Testing in the Workplace Act ("DATWA"). *Id.*

II. STATEMENT OF THE PROCEEDINGS

Respondents Wilson and the MLBPA brought suit against the petitioners, MLB, Dr. Larson, Dr. Finkle and Birch, in Minnesota state court alleging the Policy violated Minnesota's DATWA. *Id.* at 5. In addition to damages, Wilson, as a Minnesota employee, sought an injunction to prevent enforcement of his suspension pursuant DATWA. *Id.* However, because the other players were not Minnesota employees their suspensions could not be lifted under the same regulation. *Id.* Wilson further claimed that the Policy failed to comply with the drug testing procedures outlined in DATWA. *Id.* at 6.

Subsequently, MLB removed the case to federal court where multiple actions were consolidated. *Id.* MLB then moved for summary judgment seeking preemption of Wilson's state claims by Section 301 of the Labor Management Relations Act ("LMRA") and confirmation of the arbitration award. *Id.* at 6. The District Court for the Southern District of Tullahoma granted summary judgment in favor of MLB holding that the arbitration award was proper and the claims were preempted. *Id.* at 20.

The Fourteenth Circuit Court of Appeals reversed the lower court's holding on both issues. *Ct. App. Opinion* at 14. First, the court found the state claims were not preempted by Section 301 of the LMRA because they were sufficiently "independent" and analysis of the CBA was not necessary. *Id.* at 5. Second, the circuit court vacated the arbitration award based on a breach of an implied fiduciary duty because a specific warning about SpeedShot was not given.

Id. at 11. Furthermore, the court found MLB violated public policy by failing to disclose SpeedShot's potential dangers to players' health. *Id.* at 13-14.

SUMMARY OF THE ARGUMENT

This Court should reverse the Court of Appeals' holding and find that Section 301 of the LMRA preempts Wilson's DATWA claim. Section 301 of the LMRA provides that "[s]uits 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. Moreover, federal law governs the resolution of labor disputes under Section 301. *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 456 (1957). Section 301 preempts any state law claim that is "inextricably intertwined with consideration of the terms" of the CBA. *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 213 (1985). The respondents' claims are intertwined with the aforementioned CBA for three reasons. First, the state court must interpret the CBA as either meeting or exceeding the employee protections afforded to Minnesota employees under DATWA. Second, the plain language of the CBA and state statute must be considered to resolve the current issue. Third, the application of local statutes to a league-wide policy affects uniformity and results in inconsistent interpretations of the same provisions from state to state. This Court should reverse the lower court's holding and preempt the state claims with federal law.

Additionally, this Court should reverse the Court of Appeals' holding and enforce the arbitration award for several reasons. First, arbitration awards are afforded "an extraordinary level of deference." *Stark v. Sandberg, Phoenix, & von Gontard, P.C.*, 381 F.3d 793, 798 (8th Cir. 2004). Second, although a court may not enforce an arbitration award that is "contrary to

public policy,” the current arbitration award does not violate public policy. *W. R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 766 (1983). Third, MLB had no fiduciary duty to issue specific warnings concerning SpeedShot. Therefore, this Court should reverse the lower court’s decision and uphold the arbitration award.

ARGUMENT

This Court should reverse the Court of Appeals' decision finding that Section 301 of the LMRA does not preempt the respondents' claims. Furthermore, this Court should reverse the lower court's decision to vacate the arbitration award. The preemption issue on appeal involves a determination of whether litigation requires interpretation of the CBA and whether the application of state law results in a lack of uniformity and unfair administration of the law. On the issue pertaining to the arbitration award, this Court should weigh the public policy concerns and whether MLB breached an implied fiduciary duty by issuing a general warning. The Supreme Court reviews rulings on issues of law, such as in this case, *de novo*. *Bogan v. General Motors Corp.*, 500 F.3d 828, 832 (8th Cir. 2007).

I. SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT PREEMPTS WILSON'S CLAIM UNDER MINNESOTA'S DRUG AND ALCOHOL TESTING IN THE WORKPLACE ACT.

This Court should reverse the Court of Appeals' ruling and find that Section 301 of the LMRA preempts respondents' claim. Wilson's DATWA claim should be preempted because it cannot be resolved without interpreting the CBA, and it invites forum shopping and unfair administration of contractual obligations. This Court has definitively held that "[a] claim against an employer [is] preempted under §301 because the claim [cannot] be resolved without interpreting the [CBA]." *Trustees of the Twin City Bricklayers Fringe Benefit Funds v. Superior Waterproofing, Inc.*, 450 F.3d 324, 331 (8th Cir. 2006). Although actions of arbitrators and parties to a contract are subject to judicial review, state laws may not be used to rewrite the terms of a CBA.

a. Federal Law Preempts State Law When a Resolution Cannot Be Reached Without Interpretation of the Collective Bargaining Agreement.

Federal law preempts state law when a judicial resolution requires interpretation of the CBA. *Id.* The Supreme Court reasoned that “Section 301 of the LMRA preempts a state law claim which is ‘inextricably intertwined’” with the language of the CBA. *Lueck*, 471 U.S. at 213. The evaluation of a duty “ultimately depends upon the terms of the agreement.” *Id.* at 216. Moreover, courts have held that allowing a state court to delve into the language of a CBA is equivalent to allowing them to decide “precisely the same issue as would an arbitrator.” *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399, 408 (1988). Furthermore, the authority in Section 301 is derives from the Supremacy Clause found in Article VI of the Constitution. U.S. Const. art. VI. Thus, when state law “conflicts with federal law or would frustrate the federal scheme,” federal law supersedes it. *Lueck*, 471 U.S. at 208. A contrary result undermines the necessary uniformity and predictability that labor-contract disputes require to be effectively resolved. *Id.* at 211.

In *Lueck*, the Supreme Court examined whether a claim that substantially relied on the evaluation of a CBA was preempted by the LMRA. *Id.* at 206. The employee sued her employer and insurance company under the CBA for failure to reasonably perform their obligations. *Id.* at 203-206. Ultimately, this Court held that preemption was proper because the evaluation of a duty demanded the evaluation of the CBA’s contractual terms. *Id.* at 216. In reaching this decision, the Court noted that “questions [as to] what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement, must be resolved by reference to uniform federal law.” *Id.* at 211.

Similar to *Lueck*, the foundation of respondents’ argument relies on an evaluation of MLB’s duties under the CBA. Without denying the presence of Clomiphene in their systems,

the respondents believe the positive results of the drug tests should be excused because of MLB's alleged failure to disclose a particularized warning regarding SpeedShot. Minnesota state law requires that all drug testing meet the minimum standards laid out in DATWA. Minn. Stat. § 181.950. These standards provide when drug testing may be requested or required, the rights of employees to refuse testing, confirmation of a positive finding by a second test, the right of employees to explain results and available appeal procedures. *Id.* § 181.952 subdiv. 1. Parties, however, may impose greater restrictions or obligations in a CBA. An evaluation of MLB's contractual obligations cannot be separated from the CBA. The arbitrator considered the express language of the CBA in determining whether MLB fulfilled their obligation to the players. Although the arbitrator found no obligation to issue product-specific warnings, he found that sufficient warnings existed through the Hotline, the express banning of SpeedShot distributors and the memorandums cautioning players about the use of energy-boosting supplements. Evaluating duties and protections under DATWA requires an analysis of the CBA because the court must comb through the language to determine if the CBA meets the requirements of DATWA. *See* Minn. Stat. § 181.952 subdiv. 1(1)-(6). While some claims can be resolved apart from interpreting the CBA, interpretation is unavoidable with respect to respondents' claim.

Section 301 of the LMRA does not preempt all state labor claims. To illustrate, in *Lingle*, the retaliatory discharge raised issues of anti-discrimination law, not specific aspects of the CBA. *Lingle*, 486 U.S. at 412. *Lingle* is distinguishable, however, as Wilson's DATWA claim requires a thorough analysis of the CBA's terms and does not involve any allegations of discriminatory behavior. In fact, preemption of state law protects players that are employed in less favorable forums because their states' DATWA equivalent may not afford them the same

advantages. Wilson, a Minnesota employee, was the only player whose suspension was lifted. Therefore, respondents' arguments require this Court to interpret MLB's duties within the CBA, which ultimately demands preemption under Section 301 of the LMRA.

b. Interpretation of a Collective Bargaining Agreement Demands Application of the Plain Meaning of the Language In the Agreement.

When interpreting a CBA, courts have held the plain, "express contractual language deserves greater weight than course of dealing." *Trustees*, 450 F.3d at 332. In *Trustees*, an owner of a corporation was sued by union trustees for failure to pay various contributions for employees in accordance with the CBA. *Id.* at 327. The corporation owner defended stating that although he had agreed to the terms of the CBA for more than 25 years, the Union was aware that he customarily paid half the contributions owed. *Id.* Preemption was necessary to determine whether the terms of the CBA warranted the corporation owner's reliance on the Union's assurances. *Id.* at 332. The court held preemption was proper because the trustees argued the plain meaning of the CBA, while the employee relied on implied terms and course of dealing. *Id.* at 334.

Contractual analysis often begins by looking to the plain language used in the contract. The district court was unable to find express provisions requiring greater notice or specificity than that which was given. Respondents, however, relied on a course of dealing defense. Since implementation of the CBA in 2007, MLB has provided banned substance lists and detailed information through the Hotline. Although the record is unclear, MLB may have previously given particularized warnings about banned substances and products. At no time, however, have past warnings disposed of the strict liability language or personal responsibility of the players. The respondents were aware of Clomiphene being a banned substance. *D. Ct. Opinion* at 1.

They were also aware of the strict liability provision in the CBA. Players were cautioned through memorandums, general warnings by their agents, and the Hotline against taking energy-boosting supplements. Applying state law would allow different interpretations of the CBA based on jurisdiction. State law could also be used to circumvent the provisions bargained for by the parties. For the foregoing reasons, respondents' DATWA claim must be preempted by Section 301 of the LMRA.

In *Zupancich v. United States Steel Corp.*, the court found preemption was warranted and dismissed the suit because state officials were not enforcing the CBA according to the plain meaning of the terms. No. 08-5847 ADM/RLE, 2009 U.S. Dist. LEXIS 44504, at *11 (D. Minn. May 27, 2009). In this case, an employee brought suit in response to an employee "swipe in" mechanism used to monitor attendance and track work hours. *Id.* at *2. This device subtracted paid time if check out occurred sooner than six minutes after the end of shift. *Id.* The employee brought suit in state court for the violation of Minnesota's Fair Labor Standards Act ("MFLSA"). The court reasoned that, "[i]n evaluating the MFLSA claim, the plain language of the statute require[d] the court to examine the CBA...as such, the claim [was] inextricably intertwined with the CBA and [was] not independent." *Id.* at *9. The analysis required interpretation of the CBA, thus the court dismissed the suit. *Id.* at *11.

Zupancich seeks to reinforce the importance of the plain meaning of language used in the claim as well as the state statute. The CBA at issue does not expressly cover energy boosters, performance-enhancing drugs, or Clomiphene. This Court must thoroughly interpret the language of DATWA to determine its applicability to the CBA. DATWA provides in its terms that it "shall not be construed to limit the parties to a CBA from bargaining and agreeing with respect to the drug and alcohol testing." Minn. Stat. § 181.955(1). Players bargained for a CBA

drug policy with equal or more protection than individual state provisions. DATWA requires analysis of not only the language of the CBA but the implementation of its express provisions. Reviewing the agreement with a plain language standard allows the court to better gauge the meaning of the contractual language. This Court, therefore, must interpret the plain language of the CBA.

Moreover, if the plain language of the state statute must be reviewed to determine whether it seeks to interpret the CBA or only references it, “a court must look to... federal law.” *Livadas v. Bradshaw*, 512 U.S. 107, 133 (1994). Respondents, however, argue that the preemption in *Livadas* is based on the bad faith of the arbitrator and, therefore, is distinguishable. *Id.* at 134. This Court, however, clarified its decision stating that “the Commissioner's policy [had] such direct and detrimental effects on the federal statutory rights of employees that it must be pre-empted.” *Id.* at 135. Enforcement of the state policy by the Commissioner was unfair and inconsistent even within the state. Only a universal federal interpretation would allow all citizens in and out of the state of California to enjoy rights afforded to them under their CBAs and federal labor laws. Preemption was necessary for the enjoyment of the express provisions of the CBA. Similarly, application of Minnesota state law to the CBA causes inconsistencies from state to state by allowing only Wilson to circumvent his league-imposed suspension. The remaining suspended players are without the same protection, thereby creating an inequitable application of the CBA.

c. Preemption Is Proper When Application of State Laws Leads to Unfair Results Thereby Diminishing Arbitration Effectiveness.

Uniformity is imperative when interpreting CBAs. This principle was reinforced in *Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of Am. v. Lucas Flour Co.* where

the court found, “the possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements.” 369 U.S. 95, 103 (1962). Preemption assures uniform interpretation and application whether in arbitration or court.

In *Teamster*, an employee and union member was fired by his employer. *Id.* at 97. The primary dispute centered on whether a strike was permissible under the CBA while the disputed matter was in arbitration. In deciding the case, this Court considered the potential for diminished effectiveness and inconsistency of arbitration when CBAs are subject to competing state systems. *Id.* at 103. The Court held that federal law preempted the state regulation to ensure uniform application of the CBA and support judicial equity and fairness. *Id.* at 106.

Preemption ensures uniform interpretation that fosters arbitration effectiveness. Because the CBA is a league-wide agreement governing players from multiple states, allowing state-by-state interpretation undermines the effectiveness of the agreement. The *Teamster* Court discussed the disruptive influence a lack of uniformity has on the application of a CBA. The Court’s rationale reflects the need to enforce those rights and duties willingly and intentionally bargained for between employees and employers. Contemplating the current dispute, MLB and players bargained for the strict liability rule to ensure a rigid application of the CBA’s terms, specifically to prevent the use of performance-enhancing drugs. Application of Minnesota state law diminishes confidence in arbitration by providing discriminatory protections under rules of a specific state. *Id.* at 110. Uniformity increases parties’ willingness to contract for arbitration resolution thereby increasing judicial economy. Therefore, arbitration effectiveness and judicial economy suffer when CBA application varies among teams and players due to inconsistent administration and application.

Application of different state policies also encourages forum shopping and unfairness. Although five players tested positive for Clomiphene, only one player's suspension was lifted because of the application of Minnesota state law. Violation of the agreement has resulted in varying outcomes based solely on different jurisdictions. A lack of uniformity hinders the ability and willingness to bargain. For instance, lack of uniformity encourages parties to bargain in bad faith to avoid personal responsibility by using state law as protection from the bargained-for agreement. Moreover, *Karnes v. Boeing* involved the termination of an employee for violating the terms of a drug policy within a CBA. *Karnes v. Boeing Co.*, 335 F.3d 118 (10th Cir. 2003). The court held that the employee's claims failed to meet the standard for preemption. *Id.* at 1194.

Distinguishable from the facts in *Karnes*, respondents must first analyze whether the CBA encompasses the requirements set forth in DATWA. This Court must first interpret the express plain language of the CBA to determine whether the agreement's protections are insufficient with respect to DATWA. Thus, a closer reading and analysis of the CBA's terms is necessary to gauge the validity of respondents' allegation that the CBA's protections are insufficient. Alleging that a fiduciary duty exists requiring the disclosure of information suggests an ambiguity in the language or obligations specified in the Policy. While the dispute in *Karnes* involved a purely factual inquiry, respondents attempt to rewrite the provisions of the CBA through incorporation of Minnesota state law. In doing so, the administration of the CBA would depend entirely on the respective jurisdiction governing the dispute. Preemption is integral to the equal and consistent administration of the strictures of the CBA. The introduction of Minnesota state law would destroy uniformity and sanction the inequitable distribution of disciplinary measures pursuant to the CBA.

II. THE ARBITRATION AWARD IS PROPER AND SHOULD BE ENFORCED.

This Court should reverse the Court of Appeals' ruling and uphold the arbitration award. Respondents' claim cannot overcome the "extraordinary level of deference" afforded to an arbitration award unless that award defies public policy. *Stark*, 381 F.3d at 798. When parties include an arbitration clause in their CBA, "they choose to have disputes concerning constructions of the contract resolved by an arbitrator." *W.R. Grace*, 461 U.S. at 764 (citing *Muschany v. United States*, 324 U.S. 49, 66 (1945)). This Court has previously defined public policy as something "well-defined and dominant, and is to be ascertained by reference to laws and legal precedents and not from general considerations of supposed public interests." *W.R. Grace*, 461 U.S. at 766. Furthermore, the arbitration award does not violate an implied fiduciary duty which would offend public policy. Consequently, "a federal court may not overrule an arbitrator's decision simply because the court believes its own interpretation of the contract would be the better one." *Id.* at 764.

a. Courts Afford Great Deference to Arbitration Awards.

The suspension of players testing positive for banned substances pursuant to the CBA should be upheld. Because arbitration awards are granted an "extraordinary level of deference," an award may only be vacated if the arbitrator fails to abide by the terms of the agreement. *Stark*, 381 F.3d at 798; *Coca-Cola Bottling Co. v. Teamsters Local Union No. 688*, 959 F.2d 1438, 1443 (8th Cir. 1992). In *Stark*, a couple brought claims against their mortgage company. During arbitration, the arbitrator awarded several thousand dollars in damages as well as legal expenses to the couple for the mortgage company's breach of the Fair Debt Collection Practices

Act; it also awarded millions in punitive damages. *Id.* The Eighth Circuit ultimately affirmed the arbitration award in its entirety stating, “it was [the mortgage company] that insisted on removing the matter to arbitration. In so doing, [it] got exactly what it bargained for.” *Id.* at 803.

Stark defines the level of deference afforded to arbitration decisions that fall within the scope of the CBA. Respondents concede that “a party seeking to set aside an arbitration award bears a very high burden.” *Ct. App. Opinion* at 10. Because arbitration awards draw their essence from the CBA, “the decisions are not distinguishable from the contractual agreement.” *D. Ct. Opinion* at 15. Respondents, as a result, received what was bargained for in the agreement. Although the Hotline and banned substance list were provided as tools to assist players, a strict liability policy remained in place. The Policy and subsequent memorandums cautioned that “[players] and [players] alone are still responsible for what goes into [their] bodies.” *Id.* at 2. This Court should defer to the award reflecting the remedy contemplated by the parties. While the respondents argue that MLB’s actions warrant vacating the award, the arbitrator held that although a specific warning is preferable, the petitioners acted reasonably and in accordance with the CBA. *Id.* at 17. Thus, this Court must defer to the arbitration award.

Deference is limited to arbitration awards complying with the letter of the CBA. In *Coca-Cola*, the court analyzed the contractual language in deciding whether the award overstepped the authority granted to the arbitrator by the CBA. *Coca-Cola*, 959 F.2d at 1442. Likewise, the arbitrator strictly construed the terms of the CBA and enforced the strict liability rule in the Policy. *D. Ct. Opinion* at 5. The award was proper and “both parties concede that the decisions at issue draw their essence from the parties’ CBA.” *Id.* at 15. This Court, therefore, should afford deference to the arbitration award respecting the parties’ willingness to contract.

b. The Arbitration Award Does Not Violate Public Policy.

This Court has established that no court may enforce an arbitration award that is contrary to public policy. *W.R. Grace*, 461 U.S. at 766. Examples of arbitration awards “that so offend public policy that they should be set aside” are not easily found. *Delta Air Lines, Inc. v. Air Line Pilot Ass'n, Intern.*, 861 F.2d 665, 670 (11th Cir. 1988). Arbitration awards are set aside only when the reviewing court determines the award violates public policy or involves fraud.

In *W. R. Grace*, a company engaged in hiring practices that prevented women and minorities from entering into management positions signed an agreement with the Equal Employment Opportunity Commission (“EEOC”). *W. R. Grace*, 461 U.S. at 759. When negotiations to restructure the existing CBA failed, the resulting strike allowed employers to hire female replacements. *Id.* These replacements were retained after the strike ended. *Id.* However, the agreement with the EEOC violated the shift preference seniority provision in an existing CBA. *Id.* Aggrieved employees requested arbitration which the company refused, arguing preemption. *Id.* at 760. Following removal to federal court, the complaint was amended to include the grievances of several male employees who would have been protected by the seniority clause. *Id.* at 769-761. The Court ordered the company to participate in arbitration because the seniority system was not in violation of federal law. *Id.* at 762. The Court looked to concerns of fairness, good-faith violations, and contractual language in rendering its decision. *Id.* at 763. Although discrimination is against public policy, the Court held that the company committed itself to contradictory obligations and could not raise impossibility of performance as a defense. *Id.* at 767. Ultimately, the arbitration award was upheld as encouraging “conciliation and true voluntary compliance with federal employment discrimination law.” *Id.* at 771.

Although *W. R. Grace* defines public policy and exceptions that allow vacating an arbitration award, the players' suspensions do not constitute such an exception. While the court in *W. R. Grace* expressly recognized that "obedience to judicial orders is an important public policy," it did not recognize lack of full disclosure as a reason to discard a strict liability clause. *Id.* at 766. This Court refused to imply an exception for good-faith violations of a CBA. *Id.* at 765. Likewise, player-respondents claiming impossibility or violation of the CBA in good faith cannot be excused from the consequences of their actions. Therefore, this Court should find that the arbitration award did not violate public policy and uphold the suspensions.

The holding in *Delta* exemplifies a rare instance in which an arbitration award was vacated because it offended public policy. In *Delta*, the court used positive law as a means of identifying public policy. The facts involved an aircraft pilot engaged in binge drinking prior to flying a plane from Boston, Massachusetts to Bangor, Maine. *Delta*, 861 F.2d at 666. Although the pilot was unfit to operate the aircraft, he acted as pilot-in-command. *Id.* at 667. When the flight arrived, the pilot's suspected intoxication was reported to a customer service manager. *Id.* Following a sobriety test, it was determined that the pilot-in-command had a blood alcohol content over the legal limit at the time he flew the aircraft. *Id.* *Delta* subsequently discharged the pilot. *Id.* at 667-668. Arbitration proceedings found that the pilot's behavior did not amount to "just cause" for termination. The district court vacated the award citing that the "performance of his employment is the very thing which offends public policy" and the circuit court affirmed. *Id.* at 674. An arbitration award may only be set aside if it is found to "violate clearly established public policy." *Id.* at 669.

Public policy encompasses public interest, which requires employees entrusted with the lives and safety of others to act responsibly. *Delta*, 861 F.2d at 673. *Delta* and *W. R. Grace* set

forth areas of public policy in which positive law would be violated: an intoxicated pilot flying in violation of Massachusetts and Maine state laws, an intoxicated commercial bus driver violating Texas state law, and a worker failing to adhere to federal safety regulations pertaining to radiated materials. *Id.* at 665; *Nat'l Labor Relations Bd. v. Dixie Motor Coach Corp.*, 128 F.2d 201 (5th Cir. 1942); *Iowa Elec. Light & Power Co. v. Local Union 204 of the Int'l Bhd. of Elec. Workers*, 834 F.2d 1424 (8th Cir. 1987). Presently, neither the CBA nor the arbitration award violates positive law. The arbitration award does not endanger public safety or implicate an important public interest. Strict liability is not against public policy, and “the arbitrator upheld the suspensions pursuant to the Policy’s strict liability rule.” *D. Ct. Opinion* at 5. Thus, this Court should uphold the arbitration award.

Should this Court find that the arbitration award implicates any public policy, it merely furthers the public interests connected to the integrity of the game. Both fans and players alike have a vested interest in assuring fair play. Performance-enhancing drugs are generally disparaged and tarnish the American pastime of baseball and spirit of competition. Rather than hindering public policy, the arbitration award sustains and furthers the goals of both MLB and the MLBPA as bargained for in the CBA.

c. The Collective Bargaining Agreement Does Not Impose a Fiduciary Duty Upon Major League Baseball to Issue Product-Specific Warnings.

The arbitration award should be upheld because it does not violate or sanction the violation of a fiduciary duty. A fiduciary relationship may exist “between two persons when one of them is under a duty to act or to give advice for the benefit of the other upon matters within the scope of the relation[ship].” *Lubermens Mut. Cas. Co. v. Franey Muha Alliant Ins. Services*, 388 F. Supp.2d 292, 305 (S.D.N.Y. 2005). Rather than exclusively looking to a formal writing,

however, courts have held that “the ongoing conduct between parties” must be considered to gauge whether a fiduciary duty existed. *United Feature Syndicate, Inc. v. Miller Features Syndicate, Inc.*, 216 F. Supp.2d 198, 218 (S.D.N.Y. 2002). In some instances, a fiduciary relationship may create a duty to disclose information. Congress, however, never “intend[ed] to create an implied right” or duty to disclose in CBAs. *Walton-Floyd v. The United States Olympic Committee*, No. 01-95-01442-CV, 1998 Tex. App. LEXIS 1223, at *22 (Tex. Ct. App.—Houston [1st Dist.] February 26, 1998) (affirming the suspension of a middle distance runner that consulted a hotline about the status of a carbohydrate supplement prior to ingestion).

In the past, courts have only found an implied fiduciary duty when there was an obligation to act on behalf of another. In *United Feature Syndicate*, a distributor of newspaper features, alleging a breach of a fiduciary duty, sued a Canadian corporation to recover funds owed to them. *United Feature Syndicate*, 216 F. Supp.2d at 198. In determining whether a fiduciary relationship existed, the court noted that “ongoing conduct between parties must be considered in order to assess...whether a party reposed confidence in another and *reasonably* relied on the other's superior expertise or knowledge.” *Id.* at 218. In evaluating MLB’s past and current conduct with the MLBPA, it is apparent that no fiduciary duty existed on the part of MLB. At no time has MLB or the CBA represented its officers or the Hotline to have ultimate knowledge regarding energy-boosting supplements. In fact, the Policy emphasizes that “using the Hotline will not excuse a positive test results.” *D. Ct. Opinion* at 2. Previously mentioned tools and warnings were intended to merely supplement players’ personal research and were never intended to be a definitive source of information—a fact well-known by the players. *Id.* at 17. In fact, although the information given by the Hotline was “undisputedly accurate,” strict liability was always enforced. *Id.* Furthermore, in addition to emphasizing the general dangers

of energy-boosting supplements, the memorandum sent by Dr. Larson to all MLB players reiterated the strict liability rule of the Policy. *Id.* at 3. The existence of the strict liability policy and MLB's continuous reiterations of it prevent the players from reasonably relying on the league as an exhaustive source of information. 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." *Id.* at 5. MLB, therefore, was never under a fiduciary duty to issue specific, exhaustive warnings concerning banned substances to players.

On the contrary, respondents allege that a fiduciary relationship arises merely from one party's reliance on another. *Lubermens*, 388 F. Supp.2d at 305 (holding that the plaintiff insurer's losses were pursuant to the agreement, not the defendant's alleged nondisclosure). Respondents seek to impose obligations of an agency relationship on MLB. As an agent, MLB would be required to act on behalf of the players. The memorandum sent by Dr. Larson to all MLB players emphasized the general dangers of energy-boosting supplements and reiterated the strict liability rule of the Policy. *Id.* at 3. Respondents wish to dispose of personal responsibility by imposing the duties of an agency relationship on MLB. Thus, an implied fiduciary duty cannot supplant the personal responsibility of the players imposed by the Policy.

Callahan acknowledged a duty to disclose being present whenever one party has legal representation and another does not. *Id.* *Callahan* involved a lawyer fraudulently convincing his client's wife to forgo her legal rights, effectively rendering her without legal representation. Similarly, Wilson may allege that he lacked legal representation during the formation of the CBA and as a result should not have his dispute governed by the arbitration provision of the CBA. Wilson's rights, however, were represented by the MLBPA. As a union member,

Wilson's legal representation in all negotiations was that of the MLBPA. Importantly, both parties freely negotiated for the CBA. It follows that the CBA is not inherently unfair because the rights of both the MLBPA and MLB were represented. As previously mentioned, "a federal court may not overrule an arbitrator's decision simply because the court believes its own interpretation of the contract would be the better one." *W.R. Grace*, 461 U.S. at 764. Therefore, interpreting duties or protections not included in the CBA's contractual terms is not within the scope of judicial review.

Furthermore, MLB and MLBPA have "granted the arbitrator authority to interpret the meaning of their contract's language." *Eastern*, 531 U.S. at 62. The court in *Eastern* recognized that a reasonable decision falls to the arbitrator, who is entrusted to choose the appropriate remedial measure. *Id.* at 67. Use of strict liability policies is customary in athletics. *Walton-Floyd*, 1998 Tex. App. LEXIS 1223, at *15-17. The decision to issue a general rather than specific warning pertaining to SpeedShot did not breach any duty to the players. *D. Ct. Opinion* at 16. Furthermore, the arbitrator found Dr. Larson to be acting within his discretion pursuant to the CBA. *Id.* Although the respondents disagree with the issuance of a general warning, the district court found that "Larson exercised his discretion under the Policy to educate players, and did so in a general way because he believed all energy-boosting supplements, not just SpeedShot, carried potential risks." *Id.* While a specific warning may have been preferable to the players, it did not amount to a breach of a duty to disclose.

The existence of a hotline does not, in itself, implicate an assumption of a duty to disclose. While athletes in *Walton-Floyd* were instructed to call a hotline, MLB never instructed its players to call the Hotline which often "[told] players what they already knew." *Walton-Floyd*, 1998 Tex. App. LEXIS 1223, at *3. Specifically, the *Walton-Floyd* court found that the

creation of a hotline was not a voluntary assumption of a duty to disclose. *Id.* at *22. The strict liability rule, wording of the Policy, memorandums, and industry custom all affirmatively demonstrate that MLB never voluntarily assumed a duty to issue specific warnings concerning energy-boosting supplements. A federal court may not “overrule an arbitrator’s decision simply because the court believes its own interpretation of the contract would be the better one.” *W.R. Grace*, 461 U.S. at 764. Therefore, interpretation of the CBA is not within the scope of judicial review.

CONCLUSION AND REQUEST FOR RELIEF

Based on the aforementioned reasons, MLB respectfully requests that this Court reverse the Court of Appeals' holding and find that interpretation of the CBA is unavoidable and the application of Minnesota state law diminishes the effectiveness of arbitration. As such, Section 301 of the Labor Management Relations Act must preempt respondents' DATWA claim. Furthermore, MLB respectfully requests that this Court reverse the Court of Appeals' holding and find that the arbitration award, which is afforded great deference, does not violate public policy or sanction the breach of any alleged fiduciary duty.