

No. 09-214

In the

SUPREME COURT OF THE UNITED STATES OF AMERICA

MAJOR LEAGUE BASEBALL,

Petitioner.

v.

KEVIN WILSON;

MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION

Respondents.

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

BRIEF FOR THE PETITIONER

Counsel for PETITIONER

Team 33

QUESTIONS PRESENTED

- I. Whether the Court of Appeals erred in holding that Wilson's claim under Minnesota's Drug and Alcohol Testing in the Workplace Act was not preempted by Section 301 of the Labor Management Relations Act, where resolution of the claim required analyzing the terms of the collective bargaining agreement, and where application of state law would interfere with the uniform interpretation of the collective bargaining agreement, which is vital to industrial peace and stability.

- II. Whether the Court of Appeals erroneously applied the public policy exception in vacating the labor arbitration awards which refused to excuse suspensions of Major League Baseball players who tested positive for banned substances based on the arbitrator's interpretation of the Strict Liability Policy as not requiring Major League Baseball to issue more particularized warnings about banned substances.

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OPINION BELOW

The Opinion of the United States District Court for the Southern District of Tulania is not officially reported, but appears as *Kevin Wilson; Major League Baseball Players Ass'n. v. Major League Baseball*, No. 09-AC-0213, D. op. at 1-20 (D. Tulania 2009). (“D.” at 1-20.) The Opinion of the United States Court of Appeals for the Fourteenth Circuit is not officially reported, but appears as *Kevin Wilson; Major League Baseball Players Ass'n v. Major League Baseball*, No. 90-2108, 14th Cir. op. at 1-14 (14th Cir. 2009). (“C.” at 1-14.)

STANDARD OF REVIEW

Pursuant to the standard set forth in the Mardi Gras Invitational National Sports Law Competition Packet, the United States Supreme Court will review all matters *de novo*. *McLean v. Gordon*, 548 F.3d 613, 616 (8th Cir. 2008).

STATEMENT OF THE CASE

SUMMARY OF THE FACTS

The CBA and The Policy. In 2007, the Major League Baseball Players Association (“MLBPA”) and Major League Baseball (“MLB” or “League”) entered into a Collective Bargaining Agreement (“CBA”), incorporating MLB’s Policy on Anabolic Steroids and Related Substances (“Policy”). (D. at 1.) The CBA laid out terms governing all employment matters and established dispute resolution procedures through neutral arbitration. (D. at 8.)

The Policy strictly prohibited MLB players from using certain “Prohibited Substances,” explaining that banned substances have “no legitimate place in professional baseball because they threaten the fairness and integrity of the athletic competition on the playing field” by

creating an artificial advantage that distorts the results of the game and League standings. (D. at 1, 8, 11.) The Policy included a strict liability rule that made players wholly responsible for positive test results and explicitly warned that “a positive test result will not be excused because it does not result from an intentional use of a Prohibited Substance.” (D. at 8.) A joint letter from the MLBPA and MLB to the players provided further notice of this rule warning that “if you take these products, you do so AT YOUR OWN RISK” and “strongly encourage[d] players to avoid the use of supplements altogether.” (D. at 9.)

Disciplinary Provisions Outlined in Policy. Players who test positive for banned substances were subject to discipline by the Commissioner. (D. at 1.) A first time offense resulted in a player’s suspension from fifteen to twenty-five games. (D. at 1-2.) The Policy provided that “[p]layers subject to disciplinary action may appeal to a [neutral] arbitrator,” and that any decision made by the arbitrator would be “the full, final, and complete disposition of the appeal and [would] be binding on all parties.” (D. at 2.)

The Hotline. The Policy also created the “MLB Supplement Hotline,” (“Hotline”) to provide MLB players, coaches, and trainers with a forum to obtain information about supplements. (D. at 2.) Players could obtain “confidential and accurate information” about over-the-counter products, including their ingredients, effects, and adverse reactions.” (D. at 2, 9.) A memorandum announcing the Hotline stated: “Although we strongly discourage the use of supplements of any kind and for any reason, we understand that an informed decision is the best one.” (D. at 9.) Particularly, it cautioned that “[players] alone are still responsible for what goes into [their bodies]. Using the Hotline will not excuse a positive test result.” (D. at 2, 9.)

The Policy’s Independent Administrator. The Policy’s Independent Administrator, Dr. Larson, was responsible for implementing the Policy, oversaw the drug-testing procedures,

reported test results to the Commissioner, and provided information about the Policy to players. (D. at 2.) Dr. Ray Finkle, the “Consulting Toxicologist,” aided Dr. Larson. Neither had any affiliation with the Commissioner’s office or any MLB clubs. (D. at 2.)

In 2007, Dr. Larson was alerted as to the prospect that SpeedShot, an energy-boosting supplement, contained Clomiphene, a prohibited substance named in the Policy. (D. at 3.) Clomiphene was not listed as an ingredient in SpeedShot. (D. at 3.) On November 14, 2007, it was confirmed that some bottles of SpeedShot did in fact contain Clomiphene. (D. at 3.) Subsequently, MLB immediately notified MLBPA that Mega Energy Products, the distributor of SpeedShot, was henceforth a banned company with which teams and players were prohibited from doing business. (D. at 3.) MLB requested that the MLBPA directly inform players of this matter. (D. at 3.) MLBPA notified players of the prohibition through their agents. (D. at 3.) At about that time, Dr. Larson also sent a memorandum to all MLB players, “urging [them] not to take products or supplements that claim to provide an energy boost.” (D. at 3.) Additionally, the memo reiterated the Policy’s strict liability rule. (D. at 3-4.)

Players Violate Policy. Despite the plethora of warnings against using energy-boosting supplements, Kevin Wilson of the Minnesota Twins, decided to take SpeedShot the morning of a scheduled preseason training camp scrimmage. (D. at 4.) When tested pursuant to the Policy’s annual preseason provisions, Wilson and four other players tested positive for Clomiphene. (D. at 4.) Accordingly, the five players were suspended for fifteen games, the minimum penalty permitted for first time offenders under Policy guidelines. (D. at 4.)

The Arbitration Proceedings. All five players and the MLBPA appealed the suspensions to the arbitrator. (D. at 4.) During the proceedings, the players did not dispute the positive test results. (D. at 4.) The players admitted that they were aware of all the warnings regarding

energy boosters, the Hotline, and the Policy's strict liability standard. (D. at 4.) Nonetheless, they argued that their irresponsible behavior should be excused because Dr. Larson and MLB knew that SpeedShot contained Clomiphene and had not specifically advised MLB players of this fact, despite multiple warnings about the dangers of using any energy-boosting supplements. (D. at 4.) They asked that their suspensions be excused, arguing that the Policy created a fiduciary duty requiring MLB to give a more particularized warning about SpeedShot, once it was found to contain Clomiphene. (D. at 4.)

The Arbitrator's Decision. The arbitrator rejected the players' argument and rendered a decision upholding the suspensions. (D. at 5.) He based his decision on the facts that because no challenges were made regarding any aspect of the test, the testing process, or sample analysis, there was "no genuine dispute regarding the positive test of each player's urine sample." (D. at 5.) The arbitrator also ruled that there was "no question that the Policy mandated strict liability. (D. at 5.) Moreover, he found that "the Policy does not articulate or impose an obligation to issue specific warnings about specific products, and nothing in the record suggests that the bargaining parties have ever contemplated imposing such a requirement." (D. at 5.)

Additionally, the arbitrator found Dr. Larson had properly exercised his discretion in educating players about the potential risks associated with all energy-boosting supplements. (D. at 16.) He stated that players who "used SpeedShot at their own risk, did so in the face of repeated warnings and knowing that a positive test would result in a suspension that would not be excused based on a claim of unintentional or inadvertent use." (D. at 5.) In concluding, the arbitrator reiterated that if MLBPA disagreed with the Policy's strict liability standard, it was free to re-negotiate the terms. (D. at 18.)

SUMMARY OF THE PROCEEDINGS

Dissatisfied with the arbitrator's decision, Wilson filed suit in Minnesota state court, alleging a violation of Minnesota law and breach of contract against MLB and Dr. Larson. (C. at 2.) The Minnesota court issued a preliminary injunction, blocking Wilson's suspension, asserting that MLBPA had established a likelihood of success on its claim that the Policy violated Minnesota's Drug and Alcohol Testing in the Workplace Act ("DATWA"). (C. at 2-3.) MLB then removed the case to federal district court. (C. at 3.) At the same time, MLBPA filed a separate suit in federal court on behalf of the players against MLB under Section 301 of the Labor Management Relations Act ("Section 301"). They sought to have the arbitration awards vacated on public policy grounds. (C. at 3.) Later, MLBPA amended its complaint to include Wilson's DATWA claim. (C. at 3.)

Subsequently, MLB filed for summary judgment, claiming that Section 301 preempted Wilson's DATWA claim and that MLB had no duty to issue specific warnings under prescribed CBA terms. (C. at 3.) The Southern District Court of Tulania granted summary judgment, ruling that Section 301 indeed preempted Wilson's DATWA claim, and upheld the arbitration awards under Section 301, concluding that the awards did not violate public policy and thus must be upheld. (C. at 3.) Thereafter, MLBPA appealed and the Court of Appeals reversed the District Court's ruling and vacated the arbitration awards on public policy grounds. (C. at 14.)

SUMMARY OF THE ARGUMENT

Section 301 must preempt Wilson's DATWA claim because the disposition of that claim is "inextricably intertwined" with the terms of the collectively-bargained for Policy. Considering the congressional purpose of Section 301, this Court must hold that the application of DATWA

would contravene such legislative intent and cause inconsistent results, as “there could be as many state-law principles as there are States.” (D. at 14.)

Additionally, the arbitration awards must be reinstated because the Court of Appeals misapplied the public policy exception by impermissibly applying facts not found by the arbitrator and because the formulation of the public policy asserted was not in accordance with the standard set forth by this Court. Moreover, even if the formulation of public policy is accepted, there was no clear violation of that policy and thus vacatur of the arbitral awards was improper.

ARGUMENT

I. SECTION 301 OF THE LMRA PREEMPTS WILSON’S DATWA CLAIM AGAINST MLB BECAUSE THE CLAIM INVOLVES INTERPRETING THE CBA, BECAUSE THE ALLEGED RIGHTS AT ISSUE WERE CREATED EXCLUSIVELY BY THE CBA, AND BECAUSE POLICY CONSIDERATIONS OF FEDERAL LAW MANDATE PREEMPTION OF SUCH CLAIMS.

The preemptive power of the federal government derives from two constitutional sources. *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 208 (1985) (citing *Gibbons v. Ogden*, 9 Wheat. 1, 6 L. Ed. 23 (1824)). The Supremacy Clause of Article VI of the United States Constitution deems federal law the “supreme law of the land,” thus granting Congress the power to preempt state law when it either expressly conflicts with federal law or policy. U.S. Const. Art. IV. cl. 2; *Allis-Chalmers Corp.*, 471 U.S. at 208. While it has not expressly preempted the field, Congress nonetheless has the power to regulate the field of labor relations. *Allis-Chalmers*, 471 U.S. at 208 (citing *NLRB v. Jones & Laughlin Corp.*, 301 U.S. 1 (1937)). When express preemption language is absent, courts will sustain a local regulation unless it conflicts with a congressional purpose, frustrates a congressional scheme, or if the totality of the circumstances suggests

“Congress sought to occupy the field to the exclusion of the States.” *Allis-Chalmers*, 471 U.S. at 209 (citing *Malone v. White Motor Corp.*, 435 U.S. 497, 504 (1978)). Since congressional purpose is the “ultimate touchstone,” preemption thus turns on Congressional intent. *Allis-Chalmers*, 471 U.S. at 208.

Additionally, the Commerce Clause extends Congress’ power to preempt state law. U.S. Const. Art. I §8 cl. 3. When a state statute “directly controls” outside the boundaries of the state, it exceeds the state’s authority and is void. *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336 (1989). A state law is further invalidated if it unduly burdens interstate commerce. *Id.*

Presently, at issue is the preemptive scope of Section 301 of LMRA. 29 U.S.C. § 185(a). It provides that suits for violations of contracts between an employer and a labor organization, representing employees in an industry affecting commerce, “may be brought in any district court of the United States having jurisdiction of the parties.” *Id.* This provision grants courts federal jurisdiction over controversies involving labor contracts, regardless of the requisite requirements of diversity and amount in dispute. *Textile Workers Union of Am. v. Lincoln Mills of Ala.*, 353 U.S. 448, 450 (1957). Significantly, Section 301 authorizes courts to fashion a body of law to enforce collective bargaining agreements. *Id.* at 451. Not only does this mandate create a uniform and predictable standard, but it also “promotes industrial peace” by encouraging parties to make and abide by collectively bargained agreements. *Id.* at 454.

Traditionally, a preemption analysis begins by examining the claim itself. *Trs. of the Twin City Bricklayers Fringe Benefit Funds v. Superior Waterproofing, Inc.*, 450 F.3d 324, 331 (8th Cir. 2006) (citing *Smith v. Colgate-Palmolive Co.*, 942 F.2d 764, 768 (7th Cir. 1991)). If resolution of a state claim is “inextricably intertwined” with the collective bargaining agreement, then it is preempted. *Allis-Chalmers*, 471 U.S. at 213. This occurs when the right at issue

derives from a collective bargaining agreement, or if resolution of the claim requires the court to do more than merely consult or reference the collective bargaining agreement. *Id.* at 218. In contrast, if the claim exists independently of the collectively bargained agreement, then preemption does not apply, unless it frustrates congressional intent. *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399, 407 (1988).

A. Wilson’s DATWA Claim Is Preempted By Section 301 Because Resolution Of This Claim Is “Inextricably Intertwined” With The CBA, And Because The Players’ Asserted Rights Arise From Its Provisions.

If resolution of the claim is inextricably intertwined with the collectively bargained agreement, then federal law must take precedence in order to animate the legislative purpose of Section 301. *Twin City Bricklayers*, 450 F.3d at 330. Foremost, a state-created right is preempted when the court must interpret the collective bargaining agreement in order to resolve the claim. *Gore v. Trans World Airlines*, 210 F.3d 944, 951 (8th Cir. 2000). Preemption also exists when the right asserted is created by the collective bargaining agreement and thus, is nonexistent absent the agreement between the parties. *Local 174, Teamsters, Chaukfeurs, Warehousemen & Helpers of Am. v. Lucas Flour, Co.*, 369 U.S. 95, 105 (1962).

1. *Wilson’s claim is preempted because its resolution requires the court to analyze the provisions of the CBA.*

While Section 301 grants Congress preemptive powers, “not every dispute concerning employment, or tangentially involving a provision of a CBA is preempted.” *Allis-Chalmers*, 471 U.S. at 211. Thus, the court must focus on whether the claim is independent or inextricably intertwined with consideration of the terms in the agreement. *Id.* at 214. Section 301 preemption is inapplicable when a state claim is “amendable to resolution” without interpreting

the agreement, because it is a purely factual inquiry. *See Lingle*, 486 U.S. at 409-10; *Karnes v. Boeing Co.*, 335 F.3d 1189, 1193 (10th Cir. 2003); *Anderson v. Ford Motor Co.*, 803 F.2d 953, 957 (8th Cir. 1986). In *Anderson v. Ford Motor Co.*, the employees accused Ford of violating a collectively-bargained-for promise not to replace them with preferential hires. 803 F.2d at 955. However, Section 301 preemption did not apply in that case because the alleged misrepresentation occurred before the employees were hired; and thus, before they were covered by the agreement. *Id.* at 958. Consequently, the court was precluded from even referencing the collective bargaining agreement to resolve the claim. *Id.* at 957.

Likewise, in *Karnes v. Boeing Co.*, Karnes had to show that Boeing discharged him based on the drug test and that Boeing failed to confirm the result with a second test. 335 F.3d at 1193. This purely factual inquiry focused on the actions of the employer, without reference to the agreement, thus Section 301 preemption did not apply. *Id.*; *see also Bogan v. Gen. Motor Corp.*, 500 F.3d 828, 832 (8th Cir. 2007) (holding no preemption because the CBA did not confer rights upon the employee for which she could base her claim); *Lingle*, 486 U.S. at 407 (finding no preemption because the claim for wrongful discharge focused on the parties' conduct apply).

In contrast, this Court has held that if resolution of the claim requires interpreting the CBA, or ascertaining the meaning of a provision within the CBA, then it is preempted. *Thompson v. Hibbing Taconite Holding Co.*, 2008 U.S. Dist. LEXIS 8705 at 10 (citing *Lingle*, 486 U.S. at 413). For example, in *Gore v. Trans World Airlines*, Gore alleged his employer invaded his privacy by publishing information about him that would offend the reasonable person. 210 F.3d at 951. Although an invasion of privacy is a state claim, the extent of the privacy rights to which Gore was entitled, was negotiated for in the collective bargaining agreement. *Id.* The claim was preempted because the employer's liability hinged on the privacy

rights the CBA granted to Gore. *Id.* Furthermore, in *Allis-Chalmers v. Lueck*, the employee brought a state action alleging his disability claim was handled in bad faith. *Allis-Chalmers*, 471 U.S. at 214. Yet, analyzing the elements of the bad faith claim required this Court to look to the terms of the collective bargaining agreement to establish the duties owed by each of the parties in order to determine whether bad faith existed. *Id.* at 215.

Additionally, a state-created right is preempted when it requires the court to ascertain the meaning of provisions in the collective bargaining agreement. *Twin City Bricklayers*, 450 F.3d at 331. For example, in *Trustees of the Twin City Bricklayers Fringe Benefit Funds v. Superior Waterproofing, Inc.*, the trustees of a benefit fund alleged its employer violated the collective bargaining agreement by failing to contribute to the fringe benefits for all covered employees. *Id.* at 327. The employer countered that the agreement did not require it to account for contributions to all employees so long as it contributed to the fund. *Id.* Thus, the claim was preempted because it required the court to examine the relevant provisions to determine if it was sufficiently ambiguous to support the employer's interpretation. *Id.* at 332.

Likewise, in *Thompson v. Hibbing Taconite Co.*, Thompson alleged his discharge because of a positive drug test violated Minnesota law. 2008 U.S. Dist. LEXIS 8705 at 10. However, Thompson's claim was preempted by Section 301 because whether the employer violated the policy was a detached question from whether it satisfied the requirements under Minnesota law. *Id.* at 12; *see also Holmes v. NFL*, 939 F. Supp. 517, 527 (N.D. TX 1996) (holding Holmes claim was preempted because whether he had to submit to a drug test required interpreting the collectively-bargained agreement).

Similarly in the present case, Wilson asserts the Policy violates Minnesota law; specifically, that it does not meet the minimum requirements of DATWA. (D. at 6.) Though

Wilson's claim appears analogous to *Karnes*, it is distinguishable because DATWA allows parties to collectively bargain for different terms. (D. at 7.) DATWA expressly states that parties to a collectively-bargained agreement are not precluded from negotiating terms that meet, exceed or do not conflict with the minimum standards and requirements of DATWA. (D. at 7.) This provision expressly forces the court to interpret the CBA to confirm whether the Policy conflicts, meets, or exceeds the minimum standards of DATWA.

The Court of Appeals concluded that resolution of Wilson's claim is a purely factual inquiry specifically determining whether the players were provided with adequate knowledge about when drug testing was to take place *only* requires the court to look at the actual actions taken by MLB. (C. at 7.) This is erroneous. The DATWA allows parties to reach their own agreement regarding their rights, thus the court must look at the CBA to see determine what the parties had negotiated. This inevitably raises questions as to whether a test conducted "pursuant to the Policy's annual preseason provisions" serves as adequate notice regarding when testing is requested or required. (D. at 4.) DATWA also requires the employer to inform the employee about any right the player has to explain a positive test through a confirmatory test or through any other available appeal procedures. (D. at 7.) Here, the Policy allows the players who are subject to disciplinary action to appeal to an arbitrator. (D. at 2.) Subsequently, the court would have to examine the language of the Policy to determine whether the right to appeal sufficiently allows the player to explain a positive test result. Thus, because resolution of Wilson's DATWA claim requires the court to analyze the CBA provisions, it is necessarily preempted under Section 301.

2. *Any rights the players had were exclusively created by the CBA and thus, the claim is preempted.*

Additionally, a claim is preempted when the right asserted derives from the CBA.

Thompson, 2008 U.S. Dist. LEXIS 87045 at 10 (citing *Allis-Chalmers*, 471 U.S. at 213). Under traditional principles of contract law, the terms of an agreement impose duties upon the parties, the breach of which can give rise to damages. *Lucas Flour Co.*, 369 U.S. at 103. For example, in *Local 174, Teamsters, Chaukfeurs, Warehousemen & Helpers of Am. v. Lucas Flour, Co.*, the union claimed it was not liable for violating a no-strike provision because absent the provision in the agreement with the company, there would have been no violation. *Id.* at 105. However this Court disagreed, noting that since the union had agreed to the provision, it was bound to follow its terms. *Id.* This Court reasoned that applying individualized local rules would make the collective bargaining process ineffective if the same contract provisions could have multiple interpretations under various state laws. *Id.* at 103-104. Therefore, to ensure uniformity, the union was held liable under the terms of the agreement. *Id.* at 105.

Here, the claim on behalf of the four players and Wilson's claim, involve a right derived from the CBA. Since the four other players are not residents of Minnesota, they are not subject to that state's jurisdiction, thereby DATWA is inapplicable. (D. at 4.) As such, if MLB did commit a violation, it would be a violation of the CBA and the rights it created for these players. Wherein the players allege the Policy created a fiduciary duty that required MLB to "give particularized warnings," the court would have to examine the provisions of the CBA to determine if such a duty was created; and if it was, whether it was violated. (D. at 4.) Abidingly, such analysis involves only the Policy in the CBA and does not require the court to look at state created rights and/or obligations.

Additionally, DATWA expressly states that parties to a collective bargaining agreement are free to negotiate drug and alcohol testing requirements that exceed those provided for in DATWA. (D. at 7.) If a court determines that the Policy grants additional protections, they are rooted in the Policy. Thus, as MLB's alleged violation of such policies is dictated by an initial finding of whether the CBA created the right, Respondents' claim is preempted by Section 301.

B. DATWA Violates The Commerce Clause Because It Unduly Burdens Interstate Commerce, Further Conflicting With The Express Purpose Of Section 301.

Article III Section 2 of the United States Constitution grants Congress the power to regulate labor-management disputes such as this one. U.S. Const. Art. I §8 cl. 3; *Textile Workers*, 353 U.S. at 457 (citing *Houston East & West Texas R. Co. v. U.S.*, 234 U.S. 342 (1914)). A state statute that controls commerce outside the boundaries of the enacting state's authority is invalid as unduly burdening interstate commerce. *Healy*, 491 U.S. at 336. When a state statute allegedly unduly burdens interstate commerce, a court must consider how the challenged statute may interact with legitimate regulatory regimes of other states, and what would occur if other states adopted similar legislation. *Id.*

For example, in *Healy v. Beer Institute*, this Court invalidated a state statute that required shippers to promise not to sell their beer to neighboring states at a lower price than what they charged in Connecticut. *Id.* at 337. Since this required shippers to consider the price they charged other states, the statute had the effect of controlling interstate commerce. *Id.* at 338. Notably, a brewer could charge whatever price it chose, if it did not sell its beer in a border state, thus the statute discriminated against shippers who engaged in interstate commerce, in violation of the Commerce Clause. *Id.* at 340-41.

Likewise, in *Partee v. San Diego Chargers Football Co.*, the court held that California's anti-trust legislation was inapplicable to professional football because it unduly burdened the ability of the association to engage in interstate commerce. 668 P.2d 674, 678-79 (Cal. Sup. Ct. 1983) (citing *Flood v. Kuhn*, 443 F.2d 264, 267-268 (2nd Cir. 1971)); see also *Robertson v. NBA*, 389 F. Supp. 867, 881 (S. D. N.Y. 1975); *HMC Management v. New Orleans Basketball Club*, 375 So. 2d 700, 706-707 (4th Cir. 1979). (holding state anti-trust legislation is inapplicable to professional basketball.) The *Partee* court noted that professional football necessitates a uniform and nationwide league structure. *Partee*, 668 P.2d at 678. Application of state law to nationwide professional sports leagues would cause fragmentation, adversely affecting the success of the competitive business and unduly burdened interstate commerce. *Id.* at 678.

Though preemption was not at issue in *Partee*, the policy considerations precluding the application of state law are correspondingly applicable when Section 301 preemption is at issue. *Textile Workers*, 353 U.S. at 453. In *Textile Workers*, this Court noted that purpose of Section 301 is to promote industrial peace through creation of a uniform standard in the field of labor relations. *Id.* at 454. While Section 301 does not give employers the freedom to displace state regulatory laws, the tangible risk of inconsistent obligations would temper the creation of CBAs thus tipping the balance in favor of industrial peace. *Lucas Flour Co.*, 369 U.S. at 104; *Cramer v. Consolidated Freightways, Inc.*, 225 F.3d 683, 695 n.9 (9th Cir. 2001) (en banc). Therefore, the "dimensions of [Section] 301 require the conclusion that substantive principles of federal labor law must be paramount in the area covered by the statute," so that the issues raised by Section 301 will be decided according to the purpose of federal labor policy. *Lucas Flour Co.*, 369 U.S. at 103.

Considering the *Partee* court's reasoning, this Court should similarly find that Minnesota law is inapplicable in this case. Professional baseball is nearly identical to professional basketball and football, both in its nature and structure. Thus, the same burdens that preclude the application of state laws to professional basketball and football apply to this case as well. If Respondent's claim is resolved under state law, it would lead exactly to what Congress sought to prevent. As emphasized by the District Court, Wilson is the only player, under the CBA, who tested positive and is subject to Minnesota law. (D. at 4.) Pat Wilson is from Texas, while Manny Rogers, Al Peterson, and Bradley Melton are from Massachusetts, Missouri, and Florida, respectively. (D. at 4.) All of these players are also parties to the CBA and subject to the Policy's strict liability standard. (D. at 1.) If Minnesota held that Wilson could keep playing despite his positive test result, it would jeopardize the purpose of collective bargaining and create different meanings for the same contract terms.

Consequently, parties would hesitate to enter into agreements, knowing that state courts could alter bargained-for strict liability standards. Players could use this to circumvent the strict liability standard and take anabolic steroids without fear of any subsequent discipline. This would create an unfair standard and threaten the uniform application of rules, as prescribed by the terms negotiated for between MLB and MLBPA. Those who take anabolic steroids would have the advantage of being the stronger player as compared to those who rely solely on their natural abilities.

Such policy implications override Respondents' contention that preemption in this case would allow MLB to contract around state regulatory laws. (C. at 9.) While the court in *Cramer v. Consolidated Freightways, Inc.*, sustained a state law claim for this very reason, it clarified that, for the purpose of collective bargaining, privacy rights are non-negotiable while drug

testing procedures are negotiable. *Cramer*, 255 F.3d at 695-96. Thus, preemption is required in this case as it would maintain uniformity and cement the validity of collectively-bargained-for agreements. Thus, this Court must find that Section 301 preempts Wilson's DATWA claim.

II. THE COURT OF APPEALS MISAPPLIED THE PUBLIC POLICY EXCEPTION WHEN IT OVERTURNED THE DISTRICT COURT'S JUDGMENT UPHOLDING THE LABOR ARBITRATION AWARDS AS VALID UNDER SECTION 301 OF THE LMRA AND THUS MUST BE REVERSED.

Congress' primary purpose in promulgating the LMRA was to promote industrial peace and security, vital to the nation's economic health. The scheme of national labor laws generally provides for a policy of non-governmental intervention in labor-management affairs. Consistent with this policy, the LMRA encourages the practice of collective bargaining between labor unions and employers. Where parties to a collective bargaining agreement agree to resolve disputes arising out of the CBA through final and binding arbitration, national labor law and federal arbitration law strongly promote the policy of judicial deference to the arbitrator's award.

A. Courts Are Bound By Strong Federal Policy Favoring Judicial Deference To Arbitral Awards Made In Good Faith, Especially In The Context Of Labor-Management Disputes Arising Out Of A Collective Bargaining Agreement.

Federal policy affords "an extraordinary level of deference" to labor arbitration awards. *Stark v. Sandburg, Phoenix & von Gontard, P.C.*, 381 F.3d 793, 798 (8th Cir. 2004). Thus the function of the federal courts reviewing an arbitrator's decision under Section 301 of LMRA is "confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the [CBA]." *Delta Air Lines, Inc. v. Air Line Pilots Ass'n, Int'l*, 861 F.2d 665, 669 (11th Cir. 1988) (citing *United Steelworkers of Am. v. Am. Mfg. Co.*, 363 U.S. 564, 567-68 (1960)). Once a district court confirms that the arbitrator was acting within its scope of authority in interpreting the parties' agreement and rendering its award, the courts are generally

bound by liberal federal policy favoring arbitration agreements. *See Stark*, 381 F.3d at 798; *Crawford Group, Inc. v. Holekamp*, 543 F.3d 971, 976 (8th Cir. 2008). On appeal from a district court's order, confirming an arbitral award, the district court's findings of fact are reviewed for clear error and questions of law are reviewed *de novo*. *Stark*, 381 F.3d at 798. In its review of the awards, a court should give considerable leeway to the arbitrator. *Crawford Group*, 543 F.3d at 976; 9 U.S.C.A. §§ 10(a)(1)-(2). For instance, a court may not set aside an arbitral award simply because it might have interpreted the agreement differently or because it disagreed with the arbitrator's factual findings. *Crawford Group*, 543 F.3d at 976.

Accordingly, an arbitrator's award should only be set aside in certain narrow circumstances. 9 U.S.C.A. §§ 10(a)(1)-(2). The statutory grounds for vacatur are limited to awards "procured by fraud, corruption, or undue means," or when "there was evident partiality in the arbitrators." *Id.* Also, arbitral awards may be set aside where a court finds the arbitrator's decision was "completely irrational" or where there is evidence of "manifest disregard for the law." *Stark*, 381 F.3d at 799. Concurrently, federal arbitration laws allow parties to incorporate terms into arbitration agreements that are contrary to state law, and national labor laws allow parties to include a choice-of-law clause in the CBA to indicate the state law that the arbitrator will apply. *Id.* The arbitrator's interpretation of the agreed upon rules or laws governing the agreement is final and binding on the parties, and generally must be accepted by a court reviewing the arbitrator's decision.

In this case, the Court of Appeals' vacatur of the awards on public policy grounds was in error since it relied on its improper conclusion that New York law imposed a fiduciary obligation that was breached when MLB issued only general warnings about SpeedShot. (C. at 14.) The court had "no business weighing the merits of the grievance." *Delta Air Lines*, 861

F.2d at 669; *United Steelworkers of Am.*, 363 U.S. at 567-68. The arbitrator found that no such duty was owed and the District Court held that the arbitrator's findings were rationally based on the terms of the CBA and thus, were properly within the arbitrator's scope of authority to decide. (D. at 18-20.) As such, the Court of Appeals was bound to uphold the awards even if it believed that the arbitrator's conclusions were erroneous. By affirming the Court of Appeals' vacatur of the awards under such circumstances, this Court would set a dangerous new precedent, diminishing the ability of parties to freely contract for binding arbitration as their chosen method to resolve their disputes and would undermine the important process of collective bargaining that is fundamental to national labor policy designed to promote industrial peace and stability.

B. The Court Of Appeals Misapplied The Public Policy Exception To The General Rule Of Judicial Deference And Failed To Conform To The Standard Set Forth By This Court In Its Formulation Of Public Policy.

This Court has long recognized that where an otherwise valid arbitral award enforces a contractual agreement or condones certain behavior that is so abhorrent to national interests, the courts are obligated to refrain from enforcing the otherwise valid award on public policy grounds. *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 766 (1983) (citing *Muschany v. United States*, 324 U.S. 49, 66 (1945)). The public policy exception to judicial deference generally afforded to labor arbitration awards is an exceptionally narrow. *W.R. Grace*, 461 U.S. at 766. Under this rarely applied doctrine, vacatur of awards is generally limited to circumstances in which the labor arbitration award enforces an agreement that poses a threat to the public health or safety. *Iowa Elec. Light & Power Co. v. Local Union 204 of Int'l Bd. of Elec. Workers (AFL-CIO)*, 834 F.2d 1424, 1427 (8th Cir. 1987); *see also Delta Air Lines*, 861 F.2d at 665. Moreover, the courts require the contesting party to explicitly state a "well defined and dominant" public policy. *W.R. Grace*, 461 U.S. at 766. The proper formulation of such a

public policy must be “ascertained by reference to the laws and legal precedence and not from general considerations of supposed public interests.” *United Paperworkers Int’l Union v. Misco, Inc.*, 484 U.S. 29, 43 (1987). Additionally, this Court has held that even if the formulation of public policy under the standard set in *United Paperworkers Int’l Union v. Misco, Inc.* is accepted, when there is no clear violation of that public policy, vacature of an arbitral award is not justified. 484 U.S. at 43.

In essence, the courts must ask whether the interests in enforcing the agreement are outweighed under the circumstances by a public policy harm should the award be enforced. *See E. Assoc. Coal Corp. v. United Mine Workers of Am.*, 531 U.S. 57, 57 (2000). In this case, the public policy formulated by the Court of Appeals, is a policy against enforcing arbitral awards that sanctioned the breach of MLB’s fiduciary duty to players, by encouraging MLB’s “willful failure to disclose the presence of Clomiphene in SpeedShot” when the arbitrator concluded that “the Policy did not impose an obligation upon the League to issue product specific warnings.” (C. at 14.) The weight of this public policy, when balanced against the policies underlying the federal labor laws and federal arbitration laws that generally promote judicial deference to labor arbitration awards, is hardly sufficient to tip the scales in favor vacature.

Thus, the Court of Appeals misapplied the public policy exception for several reasons. First, the Court of Appeals impermissibly applied facts not found by the arbitrator, as discussed above. Second, the formulation of the public policy asserted was not in accordance with the standard set forth by this Court in *Misco*. 484 U.S. at 29. Lastly, even if the formulation of the Court of Appeals is accepted, the public policy exception was improperly invoked in this case because there was no clear violation of the fiduciary obligations assumed to exist under New

York common law. *See Lumbermans Mut. Cas. Co. v. Franey Muha Alliant Ins. Servs.*, 388 F. Supp. 2d 292, 292 (S.D.N.Y. 2005).

Furthermore, the formulation of public policy by the Court of Appeals is faulty because it failed to consider the degree of dominance of the asserted public policy by referencing the laws and legal precedence of the nation. *Muschany*, 324 U.S. at 66. Specifically, the court failed to look at what the People have done on the subject through their elected representatives. *Delta Air Lines*, 861 F.2d at 672-73. As such, the Court of Appeals did not set forth a “well defined and dominant” policy, as required under the standard set forth in *W.R. Grace & Co. v. Local Union 759* and reemphasized by this Court in *Misco*. *W.R. Grace*, 451 U.S. at 766; *Misco*, 484 U.S. at 43. An example of a proper formulation of public policy is found in *Delta Air Lines, Inc. v. Air Line Pilots Ass’n, Int’l.* 861 F.2d at 665. There, the court pointed out that “it is universally accepted [throughout the nation] that the operation of a motor vehicle while intoxicated is a crime.” *Id.* at 671(holding that an arbitrator’s award was properly vacated based on the public policy exception, where the arbitrator found, pursuant to his interpretation of the collective bargaining agreement, that the airline had no “just cause” for discharging a pilot who flew a passenger plane while intoxicated). In support, the *Delta* court cited the laws of over forty states as proof of the nation’s concurrence with its asserted public policy against the operation of aircrafts while intoxicated. *Id.* at 672. Also, on the federal level, the court referred to regulations of the Federal Aviation Administration forbidding piloting an aircraft while intoxicated. *Id.* at 673. The strength of the court’s formulation of that public policy was emphasized by its observation that there existed no “statute, law, ordinance, or court precedence, to the effect that flying under the influence of alcohol is consistent with public policy.” *Id.* at 674. Thus, where national public policy so clearly denounces particular conduct required by the terms of a

collectively-bargained for agreement as interpreted by an arbitrator, then the narrow public policy exception articulated by this Court is properly invoked and an arbitral award enforcing such an agreement must be set aside.

In the present case, no such compelling policy has been explicitly stated. The only authorities cited in the record pertaining to fiduciary obligations were those of New York state and one Texas case cited in the District Court's opinion. See *Callahan v. Callahan*, 127 A.D.2d 298 (N.Y. App. Div. 1987); *Grandon v. Merrill Lynch & Co., Inc.*, 147 F.3d 184 (2nd Cir. 1998); *Lumbermans Mut. Cas. Co.*, 388 F. Supp. 2d at 305; *United Feature Syndicate Inc., v. Miller Features Syndicate, Inc.*, 216 F. Supp.2d 198 (S.D.N.Y. 2002); *Walton-Floyd v. U.S. Olympic Comm.*, 965 S.W.2d 35, 40 (Tex. Ct. App. Houston [1st Dist.] 1998). This is hardly sufficient to satisfy the extensive formulation of public policy as required under the public policy exception doctrine. This is particularly true where in the Texas case cited, the court held that the U.S. Olympic Committee had not voluntarily assumed a duty under state law simply because it had offered its athletes a hotline service to assist the athletes in identifying the status of all medications in relation to prohibited substances by the league. *Walton-Floyd*, 965 S.W.2d at 40.

Moreover, a reviewing court applying the public policy exception is not bound by the policy interests of any one particular jurisdiction. Nor should the court be concerned with the harm that may result to MLB players if arbitrator's interpretation of the strict liability rule in this case is enforced. As both the arbitrator and the District Court pointed out, if the players or the MLBPA were dissatisfied with the terms of the Policy as interpreted by the arbitrator, they were free to renegotiate the terms of that agreement through the collective bargaining process. (D. at 18.)

Thus, because the Court of Appeal’s formulation of the public policy exception relies solely on New York’s common law pertaining to extra-contractual fiduciary obligations, it is insufficient and must fail. *See Lumberman*, 388 F. Supp. 2d at 292 (discussing generally the fiduciary obligations under New York law). The court’s failure to point to any federal, state statutes, or any court precedence beyond those of New York state courts, is fatal to its order to vacate the arbitral awards based on the public policy exception.

C. The Court Of Appeals’ Order To Vacate The Arbitral Awards Was In Error Because There Was No Clear Violation Of Any Public Policy.

Even if the Court of Appeals’ formulation of New York’s common law duty pertaining to fiduciary obligations is accepted as a “well-defined and dominant” public policy of the nation, there was no clear breach of that public policy by MLB in the present case, and thus the arbitral awards should be enforced. *Muschany*, 324 U.S. at 66. The public policy in this case is the public policy against the breach of a fiduciary obligation as allegedly committed by MLB when it issued a generalized warning regarding the dangers of banned substances in energy boosting products as opposed to issuing more specific warnings about the content of particular products known to contain banned substances. (D. at 14.) The MLBPA’s breach of fiduciary duty claim rests on the laws of New York and thus those laws are applied to the court’s analysis. (D. at 18 n2.)

Under New York law, the absence of duty is fatal to negligence or fiduciary duty claims. To show a breach of fiduciary duty claim under New York law, plaintiffs must demonstrate: (1) existence of fiduciary relationship; and (2) breach of fiduciary duty. *See Lumbermans Mut. Cas. Co.*, 388 F. Supp. 2d at 292. Generally, a “fiduciary relation” exists between two persons when one is under a duty to act or give advice for benefit of other upon matters within the scope of the

relation. *Id.* Additionally, if a contract establishes a relationship of trust and confidence between parties, then a fiduciary duty arises from the contract that is independent of the contractual obligation. *Id.* Such fiduciary relationships have traditionally been found in relationships of parties engaged in monetary business dealings. *Id.*

Here, the purpose of the Policy and Hotline was not to protect the health of players; rather the Policy was put in place to protect the fairness of the sport. (D. at 8.) Thus, there is no basis for the MLBPA's contentions that MLB owed a fiduciary obligation to provide particularized warnings for the purpose of protecting the players' health. (C. at 14.) Furthermore, the Court of Appeals relied on facts not found by the arbitrator to conclude that such a duty was owed by MLB and was breached due to the generalized warnings issued. (C. at 11.); *see Callahan*, 127 A.D.2d at 300; *United Feature Syndicate Inc.*, 216 F. Supp.2d at 198; *Grandon*, 147 F.3d at 184; *Lumbermans Mut. Cas. Co.*, 388 F. Supp. 2d at 292. Such a conclusion is improper because it usurps the function of the arbitrator as fact-finder. *Stark*, 381 F.3d at 798. The Court of Appeals was required to apply the facts as found by the arbitrator in its analysis under the public policy exception as long as the arbitrator is "even arguably construing or applying the parties' contract and acting within his scope of authority." *Misco*, 484 U.S. at 38. Federal courts may vacate arbitral awards which are completely "irrational" or evidence a "manifest disregard for the law." *Stark*, 381 F.3d at 799. An arbitration award is "irrational" when it fails to draw its essence from the parties' agreement. *Id.* Moreover, arbitration awards evidence a "manifest disregards for the law" where the arbitrator clearly identifies the applicable, governing law and proceeds to ignore it. *Id.*

In the present case, the parties concede that the arbitrator acted within its scope of authority and that the awards were drawn from the essence of the CBA. (D. at 15.) MLBPA

had the burden of proving that the arbitrators were fully aware of the existing and applicable laws of New York governing its arguments during the arbitration proceedings. “The players argued that the sanctions should be lifted because, notwithstanding the explicit and repeated warnings about energy-boosting supplements and the Policy’s strict liability rule, the Policy created a fiduciary duty that required the MLB to give more particularized warnings about SpeedShot once it was found to contain Clomiphene.” (D. at 4.) Because the arbitrator’s decision was concededly drawn from the essence of the CBA, the reviewing courts are bound by the arbitrator’s factual findings and application of law. *Misco*, 484 U.S. at 38. Because those findings were rationally based on the plain language of the Policy and the evidence presented during the arbitration proceedings, the Court of Appeals had no authority to override the arbitrator’s determinations. Accordingly, this Court must reverse the erroneous vacateur of the labor arbitration awards.

CONCLUSION

For the aforementioned reasons, this Court must reverse the Court of Appeals’ judgment.

Respectfully submitted,

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