

SUPREME COURT OF THE UNITED STATES OF AMERICA

MAJOR LEAGUE BASEBALL,

Petitioner

-against-

KEVIN WILSON; MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,

Defendant - Respondent

No. 09-214

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

BRIEF FOR PETITIONER

TEAM NUMBER #34

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QUESTIONS PRESENTED

- I. Whether the Court of Appeals correctly held that a MLB player's claims under Minnesota's DATWA challenging a suspension under a collectively bargained-for drug policy are not preempted by section 301 of the LMRA.
- II. Whether the Court of Appeals was correct in setting aside an arbitrator's award sanctioning MLB's refusal to issue warning regarding the presence of a banned substance in specific products, because such an award was in violation of public policy.

STATEMENT OF CASE

The Policy

In 2007, the Major League Baseball Players Association (hereinafter "MLBPA") and Major League Baseball (hereinafter "MLB") entered into a Collective Bargaining Agreement (hereinafter "CBA") that incorporates the MLB Policy on Anabolic Steroids and Related Substances (hereinafter "Policy"). The Policy prohibits MLB players from using a number of "Prohibited Substances," including a variety of performance enhancing drugs, such as Clomiphene. The Policy provides that "players are responsible for what is in their bodies," and further explains that "this Policy adopts an approach of strict liability, meaning that a positive test result will not be excused because a player was unaware he was taking a Prohibited Substance." The Policy further states: "a positive test result will not be excused because it does not result from an intentional use of a Prohibited Substance."

Players with confirmed positive test results will be subject to discipline by the

Commissioner as outlined in the Policy. Additionally, the Policy provides that “[p]layers subject to disciplinary action may appeal to an arbitrator, who is either the Commissioner or his designee, whose decision constitutes a full, final, and complete disposition of the appeal that is binding on all parties.” The Policy also establishes an arbitration process for the review of any action taken in accordance with the Policy, and provides that the decision will be made by a neutral arbitrator whose decision will be “the full, final, and complete disposition of the appeal and will be binding on all parties.”

The Policy also created the “MLB Supplement Hotline,” (hereinafter “Hotline”) a confidential hotline provided to players in order to obtain “confidential and accurate information about these products, including their ingredients, effects, and adverse reactions.” The purpose of the Hotline was to provide MLB players, coaches, and trainers with an opportunity to inquire and obtain information about certain supplements and their relation to the Policy. The memorandum announcing the Policy, however, goes on to caution players, “You and you alone are still responsible for what goes into your body. Using the Hotline will not excuse a positive test result.”

Dr. John Larson, a licensed physician, is Director of the Policy and an Independent Administrator. Dr. Larson is in charge of implementing the terms of the Policy, including overseeing the drug-testing procedures under the policy, reporting any positive test results to the Commissioner for discipline, and providing education to the players regarding the Policy’s implementation. Dr. Ray Finkle is the “Consulting Toxicologist” to aid in the implementation of the Policy. Dr. Larson and Dr. Finkle have no affiliation with either the Commissioner’s office or any MLB club.

SpeedShot and the Arbitration Award

In 2007, MLB learned that some bottles of SpeedShot, an energy-boosting supplement that claims to provide five hours worth of energy, contained Clomiphene, a prohibited substance named in the Policy. The SpeedShot label does not disclose Clomiphene as an ingredient. When Dr. Larson was alerted to a possible connection between the positive results for Clomiphene and SpeedShot, he informed Dr. Finkle, who asked David Klein, Director of the Sports Medicine Research Testing Laboratory, to analyze SpeedShot. On November 14, 2007, Klein emailed Dr. Finkle and Dr. Larson informing them that SpeedShot did in fact contain Clomiphene. Andrew Birch, Vice President of Law and Labor Policy for MLB, was made aware of this finding. Despite the lab director's request that MLB report the information about SpeedShot to the Food & Drug Administration, Birch and Dr. Larson refused to do so.

The MLB notified the MLBPA that "Mega Energy Products", which distributes SpeedShot, had become a banned company with which teams and players were prohibited from doing business. In addition, Dr. Larson sent a memorandum to all MLB players reminding them of the dangers posed by Energy-Boosting Supplements and "urging players not to take products or supplements that claim to provide or boost energy." The memoranda reiterated the strict liability rule of the Policy that, "if you test positive for a banned substance this constitutes a positive test, regardless of intent to do so."

Despite multiple warnings against the use of energy-boosting supplements, Kevin Wilson took SpeedShot the morning of a scheduled preseason training camp scrimmage. Pursuant to the Policy's annual preseason provisions, Wilson was drug tested, and his results came back positive for Clomiphene. As required by the Policy, MLB suspended the plaintiff for fifteen games for testing positive for a prohibited substance. Additionally, four other players, Pat Wilson of the

Houston Astros, Manny Rogers of the Boston Red Sox, Al Peterson of the St. Louis Cardinals, and Bradley Melton of the Florida Marlins, also tested positive for Clomiphene and received the same suspension. During the arbitration proceedings, all five players, including Wilson, did not dispute their positive tests or the presence of Clomiphene in their systems. Additionally, the players admitted that they were aware of the warnings regarding energy boosters, the Hotline, and the Policy's rule that each player is responsible for what is in his body.

After a full hearing, the arbitrator upheld the suspensions pursuant to the Policy's strict liability rule. The arbitrator found that, "none of the players challenged the laboratory analysis or any other aspect of the test." Thus, there was "no genuine dispute regarding the positive test of each player's urine sample." "There is no question," the arbitrator further ruled, "that the Policy enforces a rule of strict liability—a rule that players alone are responsible for what is in their bodies; that supplements are used at the player's own risk, and each player clearly understood that rule and what it means." Moreover, the arbitrator found, "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." Thus, the "players used SpeedShot at their own risk, did so in the face of repeated warnings about the risks inherent in using supplements in general and energy-boosting supplements in particular, and did so knowing that a positive test would result in a suspension that would not be excused based on a claim of unintentional or inadvertent use."

SUMMARY OF ARGUMENT

MLB appeals the decision of the United States Court of Appeals for the Fourteenth Circuit (hereinafter "Court of Appeals"), which ruled that a MLB player's claims under

Minnesota's Drug and Alcohol Testing in the Workplace Act (hereinafter "DATWA"), challenging a suspension under a collectively bargained for drug policy, are not preempted by section 301 of the Labor Management Relations Act (hereinafter "LMRA"). In addition, MLB appeals the decision of the Court of Appeals that set aside an arbitrator's award sanctioning MLB's refusal to issue warning regarding the presence of a banned substance in specific products, because the award was in violation of public policy. The prosecution writes this brief in support of MLB and respectfully requests that the MLB player's claim under Minnesota's DATWA be preempted by section 301 of the LMRA and that the arbitrator's award be reinstated.

I. THE COURT OF APPEALS INCORRECTLY HELD THAT SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT DOES NOT PREEMPT MR. WILSON'S MINNESOTA STATUTORY CLAIM.

When parties bring forth claims under the LMRA and subsequently make claims under state law, a procedural question of federal preemption has been established. In order to adjudicate the petitioner's state claim, the state-law must not need to analyze the CBA between the employer and the employee union. Essentially, federal preemption under the LMRA occurs when state-law calls for a deeper examination of a CBA. When an agreed upon drug policy between an employer and the employee union would need to be stripped to its core in order to determine the value of certain clauses, this would be considered the type of analysis that is preempted by the LMRA. Thus, in circumstances when this occurs, the Court should dismiss the state-claim due to well-established preemption standards under the LMRA.

If the Court does not reverse the judgment of the Court of Appeals, it will be deviating from its own standard establishing that state-law claims that are "substantially dependent upon

analysis of the terms of an agreement” are preempted by Section 301 of the LMRA. *Allis-Chambers v. Lueck*, 471 U.S. 202, 220 (1985); 29 U.S.C. §185(a). If this Court chooses to accept the Court of Appeals ruling, it will considerably affect the standard for federal labor law adjudication and will go against the policy of having national labor law standards and lead to the inconsistent results the court was trying to guard against in creating the preemption. *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 406 (1988).

For a state-law claim to be adjudicated upon under the LMRA, it must survive a two-step analysis and thus be considered a self-sufficient claim which Section 301 of the LMRA would not preempt. The first step is to determine if a provision in the CBA creates a right that the state-law claim is then based on. *Bogan v. General Motors Corp.*, 500 F.3d 828, 832 (8th Cir. 2007). Thus, the state-law claim must be “based on” a relevant portion of the CBA in order to survive preemption. *Bogan*, 500 F.3d at 832.

The second step of the analysis is that “[t]here is no preemption [under the LMRA] unless the state-law claim itself is based on, or dependent on an analysis of, the relevant CBA.” *Id.* (quoting *Meyer v. Schnucks Mkts., Inc.*, 163 F.3d 1048, 1050 (8th Cir.1998)), thus the state-law claim cannot be established without a succinct analysis of the terms of the CBA.

In reviewing the question of preemption under Section 301 of the LMRA, this Court will review de novo the Court of Appeals decision to overturn the MLB’s motion for summary judgment as a question of law. *McLean v. Gordon*, 548 F.2d 513, 516 (8th Cir. 2008). The Court of Appeals ruling that the state-law DATWA claim is not preempted by Section 301 of the LMRA in addition shall be reviewable de novo. *Bogan*, 500 F.3d at 832.

Mr. Wilson's DATWA is preempted by Section 301 of the LMRA because analysis of provisions of the CBA between the MLB and the MLBPA would be needed. Mere consultation of the CBA will not be sufficient; only a scrutinizing analysis of the agreement would determine if a DATWA violation has occurred. Thus, this Court should overturn the Court of Appeals decision, and rule in favor of the MLB on the issue of preemption.

A. Mr. Wilson's DATWA claim is not independently sufficient to survive Section 301 preemption, because interpretation of terms in the CBA is needed in order to determine if the MLB's drug policy met the DATWA threshold.

MLB will show that the CBA must be scrutinized in order to determine if there was a DATWA violation thus, Section 301 of the LMRA preempts this cause of action from being fully adjudicated. In order for a state-law claim to not be preempted, it must not be "substantially dependent upon analysis of the terms of the agreement between the parties" in a CBA. *Allis-Chambers*, 471 U.S. at 220. The existence of an agreement does not mean that all state-law claims are barred. *Id.* at 221. The key is whether a state-law claim can be adjudicated without interpreting the CBA and the provisions that might be in question. Mr. Wilson's DATWA claim will need to analyze portions of the agreed upon Drug Policy (hereafter "Policy") between the MLB and the MLBPA in order to determine if there was in fact a violation of the Minnesota law.

The MLB and MLBPA collectively bargained in order to create the Policy, in which the players are responsible for what they ingest and outlines the rules regarding the testing procedure, and all other relevant standards. As *Twin City Bricklayers* stated, the court can only enforce state-law if it specifically does not interpret or look at the construction of the CBA. *Trustees of the Twin City Bricklayers Fringe Benefit Funds v. Superior Waterproofing, Inc.*, 450 F.3d 324, 330 (8th Cir. 2006).

In order to determine if the court should analyze the CBA, one must first look at DATWA. The key DATWA provision is that the Act does not limit bargaining for a drug policy within a CBA, but the policy must not conflict with the minimum standards for employee protection. *The Drug and Alcohol in the Workplace Act*, Minn. Stat. § 181.955(1). The Act does comment on professional athletes, saying they are “subject to a CBA permitting random testing but only to the extent consistent with the collective bargaining agreement.” *Id.* § 181.951(4). Mr. Wilson was suspended under the policy for ingesting Clomiphene, a banned substance under the CBA. Testing occurred under the preseason provisions, which both MLB and MLBPA agreed upon during the negotiation period. The only way to determine if a DATWA violation occurred is to determine if the CBA Policy meets the minimum standards under the Act. Under the *Gore* holding, the 8th Circuit held that in order to determine if a Policy fails to meet the minimum standards of DATWA, an interpretation of the CBA must occur. *Gore v. Trans World Airlines*, 210 F.3d 944, 951 (8th Cir. 2000). In order to determine whether the MLB had a fiduciary duty under the Policy and thus were in violation of DATWA provisions, could only be determined by substantial analysis of the agreement under the *Allis-Chambers* holding. Thus, the court must apply Section 301 preemption, because it breaks the established rules that a state-law claim cannot survive federal preemption from Section 301 when analysis of the agreement is needed.

Mr. Wilson and the MLBPA argued for and were able to prevail on the theory that consultation of the Policy in order to adjudicate the DATWA claim was unnecessary. The Court of Appeals summarized that only the facts of the Wilson’s drug testing need to be analyzed under DATWA. As the Court determined in *Hawaiian Airlines*, a “purely factual question,” does not require the interpretation of a CBA. *Hawaiian Airlines, Inc. v. Norris*, 512 US 246, 261, 266 (1994). The Court later upheld this theory, holding that no inquiry into the CBA was needed,

because it was merely a factual inquiry. *Karnes v. Boeing Co.*, 335 F.3d 1189 (10th Cir. 2003).

The secondary argument that backed this position was that the court would consider the state-law claim independently if it only needs to be “consulted during adjudication.” *Twin City Bricklayers*, 450 F.3d at 330.

While Mr. Wilson has provided these arguments to show that a factual analysis may be made, he fails to recognize that case law exists in both professional sports and non-sports settings, showing that in order to determine the true meaning of agreed upon stipulations in a CBA, there would need to be substantial analysis of many of its provisions. In the case of deceased NFL player Korey Stringer, the court found that using a state-law claim would involve analysis of the intertwining provisions of the CBA in order to determine if the league was liable for his death during the practice. *Stringer v. National Football League*, 474 F.Supp.2d 894, 910 (S.D. Ohio 2007). Another analogous case involved the NFL; a state-law claim was preempted, because the court needed to analyze multiple provisions of the CBA to determine whether a drug test was authorized over invasion of privacy claims. *Holmes v. National Football League*, 939 F.Supp. 517, 527 (N.D. Tex. 1996).

Arguments made by Mr. Wilson and the MLBPA that substantial analysis will not be needed to determine the validity of his DATWA claim are incorrect. The DATWA claim, promulgated by Mr. Wilson, is that the MLB had a fiduciary duty to warn the players that SpeedShot contained Clomiphene. This is not a factual issue in the least; rather, it involves whether the Policy involves a clause that guarantees a duty from the MLB to the MLBPA and the players it represents. A factual side-by-side comparison will not do justice to the DATWA claim, because the inquiry is based on the level of protection afforded by the Policy and whether it meets the Act’s minimum-level standards. The only way to complete such an analysis of a

fiduciary duty owed from the employer to the members of the employee union would be a substantial analysis of what the Policy outlines. The inquiry is different from both *Hawaiian Airlines* and *Karnes*, where courts felt the need to do more than compare the facts to determine if those in question had violated the individual states' drug and alcohol acts. While a succinct Policy does exist in the CBA, the question posed by the Court of Appeals is why can't the MLB point to one specific provision to analyze. One specific provision cannot be targeted, because the agreement is a collection of intertwined provisions negotiated with the MLBPA. As stated in the *Allis-Chambers* holding, the court would need to compare and analyze DATWA's 24 provisions against the numerous provisions in any CBA. *Allis-Chambers*, 471 U.S. at 213. This holds true when it comes to the CBA between the MLB and MLBPA. This is what makes the *Stringer* and *Holmes* cases directly on point, as without analyzing multiple provisions of the agreement, the finder of fact could not determine if a violation of the DATWA Act has occurred.

Mr. Wilson's claim would force the finder of fact to analyze what is included in the Policy under the CBA between the MLB and MLBPA in order to determine if the fiduciary duty existed. This in turn would preempt the DATWA claim under Section 301 of the LMRA. This Court should reverse the Court of Appeals decision in order to continue uniformity under federal labor law preemption under Section 301.

B. Allowing the DATWA claim to proceed would significantly alter established policies as to state-law claims being preempted by Section 301 of the LMRA, thus, due to the precedent that national consistency in labor relations must be maintained, the Court should rule in favor of the claim being preempted.

Mr. Wilson's DATWA claim should be preempted due to the precedent of the Court - not allowing state-law claims to disrupt nationwide CBAs. MLB can establish that the agreement negotiated with the MLBPA incorporates teams in 25 states and the groups negotiated within

federal labor law standards. The Court has held in various labor relations decisions that state-law claims should not destroy the uniformity of an agreement made under the national standards. *See Teamsters v. Lucas Flour, Co.*, 369 U.S. 95 (1962); *Lingle.*, 486 U.S. 405-406. Preemption should be upheld due to MLB and the MLBPA negotiating a national CBA thus, under the concept of national uniformity of labor relations, governed by Section 301 of the LMRA.

Section 301 of the LMRA was drafted in order to protect CBAs from numerous state-law interpretations effecting the negotiated agreement. *Teamsters*, 369 U.S. at 103. If every state law is allowed to effect an agreement, “different meanings under state and federal law would inevitably exert a disruptive influence...[in the] administration of collective agreements.” *Id.* In order for negotiations and enforcement of an agreement to be fair, it is necessary for uniformity to exist, because “formulating contract provisions in such a way as to contain the same meaning under two or more systems of law” would frustrate the system of national labor negotiations tremendously. *Id.* at 103-104. The Court has argued that state-law principles disturb federal labor law principles and that preemption has been instituted so that the federal-law would be used to resolve such disputes. *Lingle.*, 486 U.S. at 405. Due to the nature of professional sports leagues and the fact that the members of such leagues exist over a large number of states, courts have held that leagues should not be subject to every state’s labor rules, but should be accepted as national organizations governed by federal law. *Partee v. San Diego Chargers Football Co.*, 668 P.2d 674, 678 (Cal. 1983). In relation to a drug-testing policy, courts have held that due to state-law irregularities, Section 301 of the LMRA creates a consistent and predictable standard for handling such claims made against employers and thus, preemption is appropriate. *Twin City Bricklayers*, 450 F.3d at 334.

Properly negotiated CBA's will not be subject to state-law under Section 301 of the LMRA. Federal labor law should govern the CBA between the MLB and the MLBPA for two distinct reasons. The first is that the MLB has teams in 25 states. Allowing Mr. Wilson's Minnesota DATWA claim will allow players in other states found to have violated the Policy to sue under their state's applicable labor law. This will lead to a flood of litigation and essentially deem the Policy worthless, as it might not meet every state's regulation. As *Twin City Bricklayers* stated, Section 301 was drafted to remove the uncertainty of state law interfering with agreements that cross state lines. The CBA between the MLB and the MLBPA crosses more than one state line. For the Policy within the CBA to meet every state's law that maintains a team would be nearly impossible and lead to the kind of erratic results that Section 301's writers meant to end. As the *Partee* holding stated, professional sports leagues need to be governed as national organizations under federal law to avoid the creating an unmanageable situation. Thus, as a sports league dealing within the issue of drug testing, precedent establishes that state-law claims should be found to be preempted by Section 301 of LMRA in order to maintain uniformity in interpretation of the Policy under the federal labor law policies.

Precedent from the Court has established that the great inconsistency of state-law claims would destroy the process of negotiations and enforcement of labor agreements. In both *Teamsters* and *Lingle*, the court warned that allowing state-law claims to effect agreements based on a nationwide negotiation process (in which both sides believed that the LMRA would govern) would be extremely detrimental. *Teamsters*, 369 U.S. at 103; *Lingle*., 486 U.S. at 405. Allowing Minnesota's DATWA claim by Mr. Wilson would not only be detrimental in this case but to many future cases involving state-law labor claims. Ruling in favor of Mr. Wilson would give rise to any employee using a state-law claim against his employer and it not being preempted by

Section 301. The drafters of this section wanted to create a nationally uniform labor relations law under the LMRA so that state-law claims would not create a free-for-all of decisions in each state. For every CBA between employer and employee union to be subject to every state's law would create significant setbacks in labor law. Ruling against preemption would essentially create a system in which every state's law could govern a CBA. Practically, you must reverse the Court of Appeals decision due to the concept of uniformity within labor law under the LMRA.

Thus, Mr. Wilson's DATWA claim should be preempted under precedent established by this Court. Sports leagues are multi-state entities that state-law should govern, and similar cases involving state-law drug policies have been held to be preempted due to the complexity of having to deal with individual state-law. Ruling against precedent would destroy the purpose of Section 301 of the LMRA and open many CBA provisions to state-law interpretations due to the inability of preemption from being imposed.

II. THE COURT OF APPEALS INCORRECTLY SET ASIDE AN ARBITRATOR'S AWARD SANCTIONING MAJOR LEAGUE BASEBALL'S REFUSAL TO ISSUE WARNINGS REGARDING THE PRESENCE OF A BANNED SUBSTANCE IN SPECIFIC PRODUCTS, BECAUSE SUCH AN AWARD VIOLATED PUBLIC POLICY.

The Court must reinstate the arbitrator's award sanctioning MLB's refusal to issue warnings regarding the presence of a banned substance in specific products, because such an award violated public policy. A Court is not obligated to refrain from enforcing an arbitration award of a collective bargaining agreement unless the collective bargaining agreement itself violates an explicit public policy. *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 766 (1983). This explicit public policy must be "well defined and dominant" and can be "ascertained by reference to the laws and legal precedents and not from general considerations of supposed

public interests.” *W.R. Grace*, 461 U.S. at 766. Since the Respondents are not able to identify an explicit public policy that is “well defined and dominant” and can be “ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests,” the Court should not have set aside an arbitration award that it was not obligated to refrain from enforcing.

A. The Court is not obligated to refrain from enforcing the Policy by setting aside the arbitration award, because there is no explicit violation of public policy.

Because there is no explicit violation of public policy, there is no obligation on the Court to set aside the arbitration award. Courts play only a limited role when asked to review the decision of an arbitrator. *United Paperworkers Int’l Union v. Misco, Inc.*, 484 U.S. 29, 36 (1987). The courts are not authorized to reconsider the merits of an award even though the parties may allege that the award rests on errors of facts or on misinterpretation of the contract. *United Paperworkers*, 484 U.S. at 36. The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements. *Id.* at 36. The courts' having the final say on the merits of the awards would undermine the federal policy of settling labor disputes by arbitration. *Id.* at 36 (quoting *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 596 (1960)). The arbitrator’s award settling a dispute with respect to the interpretation or application of a labor agreement must draw its essence from the contract and cannot simply reflect the arbitrator’s own notions of industrial justice. *Id.* at 38. As long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision. *Id.* at 38.

As with any contract, a court may not enforce a collective bargaining agreement that is contrary to public policy. *W.R. Grace*, 461 U.S. at 766. The question of public policy is ultimately one for resolution by the courts. *Id.* If the contract, as interpreted, violates some explicit public policy, the Court is obliged to refrain from enforcing it. *Id.* That doctrine derives from the basic notion that no court will lend its aid to one who founds a cause of action upon an immoral or illegal act. *United Paperworkers*, 484 U.S. at 42. Such public policy, however, must be well defined and dominant, and is to be ascertained “by reference to the laws and legal precedents and not from general considerations of supposed public interests.” *W.R. Grace*, 464 U.S. at 766. A refusal to enforce an award must rest on more than speculation or assumption. *United Paperworkers*, 484 U.S. at 44. The violation of such policy must be clearly shown if an award is not to be enforced. *Id.* at 43.

In order to prevail on this claim, the MLBPA and Wilson must show that a fiduciary duty exists and was breached, that the fiduciary duty is explicit public policy, and that the Policy as interpreted by the arbitrator violated that public policy by condoning a breach of fiduciary duty.

In *United Paperworkers International Union, AFL-CIO et al., v. Misco, Inc.*, the Court reversed the decision of the Court of Appeals to vacate an arbitration award, because reinstatement would violate public policy against operation of dangerous machinery by persons under influence of drugs. *Id.* at 45. Misco, Inc. is a party to a collective bargaining agreement with the United Paperworkers International Union, AFL-CIO, under which the Company or the Union may submit to arbitration any grievance that arises from the interpretation of its terms, and the arbitrator’s decision is final and binding upon the parties. *Id.* at 32. For about a decade, the Company’s rules had listed as a cause for discharge reporting for work under the influence of controlled substances. *Id.* On January 21, 1983, Cooper, an employee of Misco, Inc., was found

in the back of a car in the plant's parking lot with marijuana smoke in the air and a lighted marijuana cigarette in the front seat ashtray. *United Paperworkers*, 484 U.S. at 33. Plastic scales case and marijuana gleanings were also found in Cooper's car. *Id.*

Cooper's company discharged him on February 7, citing his violation of having drugs on the plant premises. *Id.* at 33. Cooper filed a grievance protesting his discharge the same day, and an arbitrator upheld the grievance and ordered the Company to reinstate Cooper. *Id.* at 34. The arbitrator found that finding Cooper in the backseat of a car and a burning cigarette in the front seat ashtray was insufficient proof that Cooper was using or possessed marijuana on company property. *Id.* The Company filed suit, but the decision of the Court of Appeals was reversed and the arbitration award reinstated, since the assumed connection between the marijuana gleanings found in Cooper's car and Cooper's actual use of drugs in the workplace was tenuous at best and provides an insufficient basis for holding that his reinstatement would actually violate the public policy identified by the Court of Appeals. *Id.* at 44.

In *W.R. Grace and Company v. Local Union 759*, the Court affirmed the decision of the Court of Appeals to enforce an arbitration award of back-pay damages against petitioner under the collective bargaining agreement for layoffs pursuant to a conciliation agreement. *W.R. Grace*, 461 U.S. at 772. A collective bargaining agreement between petitioner and respondent had expired in March 1974, and failed negotiations led to a strike. *Id.* at 759. The strike ceased in May with the signing of a new agreement that continued the plant seniority system specified by the expired agreement. *Id.* at 760. The strikers returned to work, but the Company also retained female strike replacements. *Id.* at 766. The company assigned women replacements to positions in the plant ahead of men that had greater seniority. *Id.* at 760. The men affected by

this action filed grievances under the procedures established by the collective bargaining agreement. *W.R. Grace*, 461 U.S. at 760.

In response to the filed grievances by male employees, the Company sought an injunction prohibiting arbitration of the grievances. *Id.* Prior to the injunction, the Company and the Equal Employment Opportunity Commission signed a conciliation agreement dated December 11, 1974, which provided that in the event of layoffs, the Company would maintain the existing proportion of women in the plant's bargaining unit. *Id.* In January 1978, two years following the injunction that stated the conciliation agreement was binding on all parties, the court reversed the injunction, and the Company was compelled to arbitrate the grievances. *Id.* at 762.

Arbitrator Gerald A. Barrett was presented with the complaints of two men who had been laid-off before, and one man who had been laid-off after the entry of the injunction. *Id.* at 762. Despite Barrett accepting the Company's contention that it had acted in good faith in following the conciliation agreement, he concluded that the collective bargaining agreement made no exception for good faith violations of the seniority provisions, and that the Company had acted at its own risk in breaching the agreement. *Id.* at 763-764. In reaching this conclusion, Barrett interpreted the collective bargaining agreement as providing that the injunction did not extinguish the Company's liability for its breach. *Id.* at 764.

In affirming the decision of the United States Court of Appeals to reverse vacation of the arbitration awards, the Court reasoned, "regardless of what our view might be of the correctness of Barrett's contractual interpretation, the Company and the Union bargained for that interpretation." *Id.* at 765. Additionally, while it is "beyond question that obedience to judicial orders is an important public policy," the Court concluded that the collective bargaining

agreement, as interpreted by Barrett, did not compromise public policy. *W.R. Grace*, 461 U.S. at 767. This was because the Company voluntarily assumed its obligations under the collective bargaining agreement and the arbitrator's interpretations of it, and no public policy was violated by holding the Company to those obligations. *Id.* at 770. The Court recognized that to hold otherwise would undermine the federal labor policy that parties to a collective bargaining agreement must have reasonable assurance that their contract will be honored. *Id.* at 771.

Enforcement of the arbitration award upholding the suspension of Mr. Wilson should be reinstated, because the arbitration award, pursuant to the Policy, does not explicitly violate public policy. When reaching the conclusion that Mr. Wilson should remain suspended for his positive test, the arbitrator concluded that Mr. Wilson had not "challenged the laboratory analysis or any other aspect of the test," and because "the Policy enforces a rule of strict liability... players alone [were] responsible for what [was] in their bodies." Emphasis for this arbitration award was placed on the concept that Mr. Wilson used SpeedShot at his own risk, and that he clearly understood what a strict liability rule meant. However, in their reasoning for vacating the arbitration award, the United States Court of Appeals for the Fourteenth Circuit reasoned that the "awards at issue... sanction MLB's knowing and intentional breach of a fiduciary duty and willful failure to disclose the fact that SpeedShot secretly contained a banned substance... failure to act was both a violation of the Policy and was potentially harmful to the Players' health." When deciding whether to uphold or vacate the arbitration award, the core question remains whether the collectively bargained strict liability rule controls Mr. Wilson's positive test or whether MLB breached its fiduciary duty to Mr. Wilson by failing to warn players about SpeedShot specifically. The precedents of *United Paperworkers* and *W.R. Grace* support adherence to the concept that players alone are responsible for what is in their bodies.

In *United Paperworkers*, the Court reversed the decision of the Court of Appeals to vacate an arbitration award because reinstatement would violate public policy against operation of dangerous machinery by persons under influence of drugs. In supporting this conclusion, the Court reasoned that the assumed connection between the marijuana gleanings found in Cooper's car and Cooper's actual use of drugs in the workplace was tenuous at best and provided an insufficient basis for holding that his reinstatement would actually violate the public policy identified by the Court of Appeals. In the case at present, Mr. Wilson received a memorandum from Dr. Larson regarding the dangers posed by Energy-Boosting Supplements that urged players "not to take products or supplements that claim to provide or boost energy" and reiterated that "if you test positive for a banned substance this constitutes a positive test, regardless of intent to do so." With this information, and with the option of taking advantage of an anonymous Hotline where Mr. Wilson could have inquired about SpeedShot prior to his consumption of it, Mr. Wilson consumed the product, and later tested positive for Clomiphene. The Respondents argue that despite Mr. Wilson testing positive for the banned substance Clomiphene due to his consumption of SpeedShot, this resulted from Dr. Larson's withholding of critical information he had learned about SpeedShot "that was directly relevant to the health of MLB players." For this argument to represent the violation of an explicit public policy that would allow the arbitration award to be properly vacated there is a reliance on the assumption that had Mr. Wilson known specifically about SpeedShot containing Clomiphene, he would not have consumed SpeedShot.

Similarly, in *United Paperworkers*, for Cooper's reinstatement to violate public policy, there needed to be an explicit and direct correlation between the presence of marijuana in Cooper's system and in his car to his performance at the plant under the influence of this drug;

this explicit and direct correlation would have been clarified from an assumption that Cooper used the drug while performing his job. However, the Court in *United Paperworkers* did not find that the direct and explicit relationship existed between the presence of marijuana in Cooper's system and his use of marijuana on plant property because that type of correlation cannot be assumed. Similarly, in the case at present, the court cannot assume that Mr. Wilson would not have consumed SpeedShot even had he received specific information about it containing Clomiphene from Dr. Larson. Were Mr. Wilson to consume SpeedShot even while knowing that it contained Clomiphene, this would not constitute MLB violating a public policy of endangering its players' health, because Mr. Wilson himself chose to take a banned substance. Mr. Wilson had a memorandum talking about the dangers of supplements such as SpeedShot and had an avenue to inquire anonymously about them, via the Hotline, prior to his consumption of it. That Mr. Wilson would not have consumed SpeedShot had he known that it contained Clomiphene is not an assumption that the Court can make to establish an explicit violation of public policy. Therefore, because the Court cannot assume the connection between knowing SpeedShot contains Clomiphene and Mr. Wilson's personal choice to take it, there is no explicit violation of public policy.

In *W.R. Grace*, the Court affirmed the decision of the Court of Appeals to enforce an arbitration award of back pay damages against petitioner under the collective bargaining agreement for layoffs pursuant to a conciliation agreement. In supporting this conclusion, the Court reasoned that the Company voluntarily assumed its obligations under the collective bargaining agreement and the arbitrator's interpretations of it, and no public policy was violated by holding the Company to those obligations. The Court emphasized that to hold otherwise would undermine the federal labor policy that parties to a collective bargaining agreement must

have reasonable assurance that their contract will be honored. In the case at present, the Policy prohibits MLB players from using a number of prohibited substances, including Clomiphene. This Policy provides that “players are responsible for what is in their bodies” and that “this Policy adopts an approach of strict liability, meaning that a positive test result will not be excused because a player was unaware that he was taking a prohibited substance.” The Policy also states that players who test positive for a prohibited substance are subject to discipline as outlined by the Policy. This disciplinary action, in return, may be appealed to an arbitrator; however, the decision by the arbitration process, according to the Policy, is “the full, final and complete disposition... and will be binding on all parties.” The MLBPA was bargaining as representative of Mr. Wilson with the MLB in order to negotiate this Policy. Similarly, in *W.R. Grace*, the Company and the Union collectively bargained an agreement containing a seniority provision violated by the conciliation agreement. When deciding whether the collective bargaining agreement or conciliation agreement controlled the future of the male employees, the Court held the Company to the terms of the agreement collectively bargained for by the Company and the Union. All of these facts are relevant when assessing the situation of Mr. Wilson. By finding MLB at fault for not releasing a memorandum specifically warning about SpeedShot, the Court of Appeals in this present case is not holding MLB and the MLBPA to the terms of the collective bargaining agreement that states that players alone are responsible for what they consume. Similarly, in *W.R. Grace*, had the Court held the Company to the terms of the conciliation agreement instead of the collective bargaining agreement, the Court’s decision would undermine the purpose of creating a collective bargaining agreement in the first place; why create a collectively bargained for set of rules if those rules will not ultimately be the final standard? As the court in *W.R. Grace* stated, “to hold otherwise would undermine the federal

labor policy that parties to a collective bargaining agreement must have reasonable assurance that their contract will be honored.” To state that MLB is violating a public policy by restricting itself to the terms of the collective bargaining agreement would undermine the same federal labor policy that would have been undermined had the Court in *W.R. Grace* held the Company to the standards of the conciliation agreement.

The MLBPA, while representing Mr. Wilson and other baseball players alike, collectively bargained for an agreement, which states that players, and players alone, are responsible for what goes into their bodies. To vacate the arbitration award that emphasizes this same strict liability standard would be a direct violation of the collective bargaining agreement instead of a direct violation of public policy. This is not the result that Courts should seek when evaluating whether to vacate an arbitration award; MLB and the MLBPA collectively bargained for this particular agreement, and to hold both parties to a different standard than that stated in the collective bargaining agreement is to nullify the very purpose of collective bargaining. Therefore, because the vacation of Mr. Wilson’s arbitration award would be a direct violation of federal labor policy, by disregarding the exact terms of a collective bargaining agreement, there is no explicit violation of public policy on the part of Major League Baseball.

In conclusion, because the Court of Appeals cannot assume the connection between knowing SpeedShot contains Clomiphene and Mr. Wilson’s personal choice to take SpeedShot, and because vacating Mr. Wilson’s arbitration award is in direct violation of the collective bargaining agreement between MLB and the MLBPA, there is no violation of explicit public policy. The court should reinstate Mr. Wilson’s arbitration award.

CONCLUSION

Based on the forgoing, the prosecution respectfully requests that the MLB player's claim under Minnesota's DATWA be preempted by section 301 of the LMRA, and the court should reinstate the arbitrator's award.