No. 09-214

In the

SUPREME COURT OF THE UNITED STATES

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 PETITIONER

Team 45
Attorneys for Petitioner

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STATEMENT OF JURISDICTION

This Court has jurisdiction by writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree pursuant to 28 U.S.C. § 1254 (1988).

QUESTIONS PRESENTED FOR REVIEW

I. WHETHER THE COURT OF APPEALS WAS INCORRECT IN REVERSING THE DISTRICT COURT'S DETERMINATION THAT A MAJOR LEAGUE BASEBALL PLAYER'S CLAIMS UNDER MINNESOTA'S DRUG AND ALCOHOL TESTING IN THE WORKPLACE ACT CHALLENGING A SUSPENSION UNDER A COLLECTIVELY BARGAINED FOR DRUG POLICY ARE PREEMPTED BY SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT.

II. WHETHER THE COURT OF APPEALS WAS INCORRECT IN VACATING AN ARBITRATION AWARD WHICH DID NOT VIOLATE THE FEDERAL ARBITRATION ACT OR CONTRADICT AN EXPLICIT, WELL-DEFINED AND DOMINANT PUBLIC POLICY.

TEXT OF STATUTORY PROVISIONS

9 U.S.C. § 10(a) (2006).

> In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration:
>
> 1) where the award as procured by corruption, fraud, or undue means;
> 2) where there was evident partiality or corruption in the arbitrators, or either of them;
> 3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced;
> 4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made;
> 5) where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators.

29 U.S.C. § 185(a) (2006).

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Minn. Stat. §181.952 subdiv. 1(1)-(6) (2009).

> An employer's drug and alcohol testing policy must, as a minimum, set forth the following information:
>
> (1) the employee or job applicants subject to testing under the policy;
> (2) the circumstances under which drug or alcohol testing may be requested or required;
> (3) the right of an employees or job applicant to refuse to undergo drug and alcohol testing and the consequences of refusal;
> (4) any disciplinary or other adverse personnel action that may be taken based on a confirmatory test verifying a positive test result on an initial screening test;
> (5) the right of an employee or job applicant to explain a positive result on a confirmatory test or request and pay for a confirmatory retest; and
> (6) any other appeal procedures available.

STATEMENT OF THE CASE

This case is on appeal by petition of Major League Baseball (hereinafter MLB) from the United States Court of Appeals for the Fourteenth Circuit, which reversed the United States District Court for the District of Tulania's grant of summary judgment in favor of the Respondents, Kevin Wilson and the Major League Baseball Player's Association (hereinafter MLBPA). (R. at 34). The Court of Appeals erroneously reversed the District Court's findings that: (1) the Respondents' claims are preempted by federal law, and (2) the arbitration award must be sustained as it was not contrary to any public policy nor was it a breach of any fiduciary duty between MLB and Respondents. (R. at 31, 34). There is no dispute of the facts by either party, which follow. (R. at 22).

In 2007, the MLBPA and MLB mutually entered into the Collective Bargaining Agreement (hereinafter the CBA), which incorporated the agreed upon MLB Policy on Anabolic Steroids and Related Substances (hereinafter the Policy). (R. at 1). The Policy expressly prohibited players from using certain substances including Clomiphene. (R. at 1). The Policy expressed that each player is solely responsible for what he ingests and further explained that each player is strictly liable for resulting positive tests. (R. at 1). The Policy set out a clear and developed procedure to be followed when a player returns a positive test result for banned substances. (R. at 2). Any positive test requires the automatic suspension of the offending player for a minimum of fifteen to a maximum of twenty-five games. (R. at 2). The Policy established specific mechanisms through which a player may appeal positive test results. (R. at 2). These procedures are rooted in the terms of the CBA. (R. at 2). The Policy Director, Dr. John Larson, was charged with overseeing all drug-testing procedures and reporting any positive results to the

Commissioner for discipline. (R. at 2). The Policy also sought to educate the players by providing for the employment of a toxicology expert, Dr. Ray Finkle, and the creation of a "MLB Supplement Hotline" designed to allow players to learn about substances before ingesting them. (R. at 2). The Policy and Hotline are designed to support two policies. First, they encourage players to take full personal responsibility for what they put into their bodies. Second, they bolster the strict liability nature of the Policy as a call to the Hotline will not excuse a positive test result. (R. at 2).

Subsequent to the establishment of the Policy, the MLB learned that an energy drink produced by Mega Energy Products named SpeedShot contained Clomiphene, a chemical on the MLB banned substance list. (R. at 3). Shortly thereafter, the MLB notified the MLBPA and all teams and players that Mega Energy Products was now a banned company with which the players and teams could not do business. (R. at 3). Further, the MLB informed players that use of all energy boosting supplements was dangerous and urged players not to take those products reiterating that players are strictly liable for any positive test for banned substance. (R. at 3-4). Pursuant to the duties expressed by the Policy and the CBA, the MLB did not specifically mention Clomiphene in its communications to players, but stated strongly "SpeedShot was a banned substance." (R. at 4).

In the face of repeated warnings and cautions, Respondent Wilson, along with other players, took SpeedShot, which resulted in positive drug tests. (R. at 4). Following the procedures set forth in the Policy, Respondent and other players were suspended for the positive test results. (R. at 4). Pursuant to the terms of the CBA, an arbitrator upheld the ruling citing the strict liability rule implemented by the Policy. (R. at 5). The

arbitrator noted the Policy expressed that the players were responsible for what they put into their own bodies and never imposed an affirmative obligation on the MLB to issue product-specific warnings. (R. at 5).

Respondents filed suit against the MLB, Drs. Larson and Finkle, and the arbitrator, Andrew Birch, in Minnesota state court alleging violations of the state's Drug and Alcohol Testing in the Workplace Act (hereinafter DATWA), which defined the threshold standard for employee drug testing in Minnesota. (R. at 5). Although other players tested positive for the same substance, only Respondent was able to bring suit under the DATWA because he was the only employee working within Minnesota. (R. at 5).

This case was removed to the United States District Court for the Southern District of Tulania by the MLB seeking summary judgment, arguing Section 301 of the LMRA preempted Respondents' DATWA claims and that the arbitrator's award should be upheld. (R. at 5-6). The District Court held both claims must fail because Section 301 of the LMRA preempted the DATWA claims as they were inextricably intertwined with the CBA. (R. at 19). Moreover, the court found that the arbitrator's decision must be upheld because the award did not violate the Federal Arbitration Act, nor did it violate any public policy that would require a reversal. (R. at 19).

The United States Supreme Court granted certiorari to review the Court of Appeals decision reversing the District Court's ruling in favor of the MLB.

SUMMARY OF THE ARGUMENT

The United States Court of Appeals for the Fourteenth Circuit was incorrect in holding that Respondents' claims under the Minnesota Drug and Alcohol Testing in the Workplace Act (hereinafter DATWA) were not preempted by Section 301 of the Federal Labor Management Relations Act (hereinafter LMRA). Section 301 of the LMRA preempts the Respondent's claims under the DATWA because the claims are inextricably intertwined with and are substantially dependent upon the Collective Bargaining Agreement (hereinafter the CBA) established between the MLBPA and MLB

The Respondents' claims are inextricably intertwined with the CBA because the rights and obligations of the parties with regard to drug testing are not nonnegotiable rights and are not independent of the CBA. Several courts have held that terms of a drug testing policy are negotiable issues within CBAs and claims rooted in those issues must be governed by the mechanisms of the CBA and federal law. The Respondents' claims under the DATWA should be preempted because the claims are rooted in the duties and obligations laid out in the negotiated drug testing Policy incorporated by the CBA. Further, the Respondents' claims are substantially dependent upon the interpretation of the CBA because the CBA must be interpreted in order to determine whether the policy meets or exceeds the protections of the DATWA.

The Respondents' claims under the DATWA are preempted by Section 301 of the LMRA, even where the claim can be resolved without reference to the CBA, because deference to federal law will create a uniform system of labor dispute resolution and maintain a level playing field across the MLB. Deference to federal law in labor disputes arising from the terms of a CBA will create a nationally uniform system of dispute resolution. Relying on federal law is particularly important when analyzing terms of a

CBA established between professional sports leagues and their players because it ensures nationally uniform competition standards to foster integrity and fairness.

The Fourteenth Circuit Court of Appeals also incorrectly vacated the arbitration award issued in favor of the MLB. Arbitration awards may only be vacated when they violate the Federal Arbitration Act, or if they fall within the narrow public safety exception. The Federal Arbitration Act only permits a court to review an arbitration award if the award was obtained by fraud or if the arbitrators were guilty of misconduct. Additionally, a court may review an arbitration award if it violates a clearly prevailing and important public policy that can be identified by reference to existing laws or precedent. Here, there was no allegation that the arbitrators violated the FAA, and the award does not run contrary to any clearly articulable public policy.

Regarding public policy, Respondents suggest that enforcement of the arbitrator's award would circumvent fiduciary duties owed by the MLB to the players. There is no fiduciary duty between the MLB and the players, and even if there was a duty, there exists no discernable explicit, well-defined public policy that would require the arbitrator's award to be vacated. Instead, confirming the arbitrator's award in this case supports three policy concerns. First, the MLB and the MLBPA are equally sophisticated parties with identical bargaining powers. Together, these parties agreed to arbitration as a final resolution of any conflicts arising from the Policy. Confirming the award recognizes this judicious agreement. Second, confirming the award respects the bargained-for allocation of responsibility to the players for what goes into their bodies. In addition to the terms of the Policy, players were reminded in a subsequent and recent memorandum that they would be held strictly liable for any negative drug test result.

Finally, confirming the award further recognizes the bargained-for allocation of testing costs. The MLB avoids burdensome costs that come from testing supplements on the market for banned substances. With no discernable public policy to the contrary, this Court must affirm the arbitrator's award.

ARGUMENT

I. THE UNITED STATES COURT OF APPEALS FOR THE FOURTEENTH CIRCUIT WAS INCORRECT IN HOLDING THAT RESPONDENTS' CLAIMS UNDER THE MINNESOTA DRUG AND ALCOHOL TESTING IN THE WORKPLACE ACT WERE NOT PREEMPTED BY SECTION 301 OF THE FEDERAL LABOR MANAGEMENT RELATIONS ACT.

The Respondents' state law claims against Major League Baseball (hereinafter MLB) under the Drug and Alcohol Testing in the Workplace Act, Minn. Stat. § 181.952 (2009) (hereinafter DATWA), are preempted by Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a) (2006) (hereinafter LMRA), because they are inextricably intertwined with and substantially dependent upon the collective bargaining agreement established between the MLBPA and the MLB. Even if the DATWA labor claims can be resolved without reference to the Collective Bargaining Agreement (hereinafter CBA), the Court should still implement federal law because Section 301 creates a uniform system of labor dispute resolution and maintains a level playing field for all MLB teams.[1]

A. Section 301 of the LMRA Preempts the Respondents' Claims Under the DATWA Because the Claims Are Inextricably Intertwined With and Are Substantially Dependent Upon the CBA Established Between the MLBPA and the MLB.

A state law claim is preempted by Section 301 when it is "inextricably intertwined with consideration of the terms of the labor contract" or "substantially dependent upon the analysis of the terms of an agreement made between parties of a labor contract." Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 213 (1985). A claim is inextricably intertwined with a CBA when it deals with the obligations and duties of the parties under the contract. Here, Respondents claim Dr. Larson and Dr. Finkle violated the DATWA

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[1] Reference to interpretation of the CBA specifically means reference to the MLB Policy on Anabolic Steroids and Related Substances (hereinafter the "Policy").

when they acted pursuant to the procedures set forth in the CBA with regard to the drug testing Policy. The rights and obligations with regard to drug testing of players are expressly defined in the language of the CBA, thus any claim by players regarding drug testing procedure are intertwined with the CBA. Further, the Respondents' claims are substantially dependent upon the interpretation of the CBA because the CBA must be interpreted in order to determine whether the Policy meets or exceeds the protections of the DATWA.[2]

1. The Respondents' claims are inextricably intertwined with the CBA because the rights and obligations of the parties with regard to drug testing are not nonnegotiable rights and are not independent of the CBA.

Section 301 must preempt the DATWA because the claims are inextricably intertwined with the rights and obligations expressed in the CBA. When the rights asserted in a state claim are not nonnegotiable independent state law rights, they are intertwined with the consideration of the terms of the labor contract. Gore v. TWA, 210 F.3d 944, 949 (8th Cir. 2000); see also, Miner v. Local 373, 513 F.3d 854, 865 (8th Cir. 2008) (holding "the crucial inquiry is whether resolution of a state law claim depends upon the meaning of a CBA"). Though the courts have not explicitly defined the scope of negotiable rights they have provided a framework within several cases outlining those duties and obligations which parties may agree to within labor contracts.

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[2] Petitioner does not concede that the DATWA provides Respondents with an appropriate state remedy in this case. The DATWA applies to testing of employees by employers for the use of drugs or controlled substances as defined in Minn. Stat. § 152.02 (2009). See Minn. Stat. § 181.952 (2009). Because Clomiphene is not listed on any of Minnesota's five established Schedules of Controlled Substances, employer tests of employees for this substance are not governed by the DATWA. Since the DATWA does not cover the testing at issue in this case, it cannot serve as the basis for Respondents' state law claims.

For example, in Allis-Chalmers, the Court found where the parties to a labor agreement have established the rights and procedures set forth in insurance claims, including forum selection for dispute resolution, federal law must preempt any parallel state law. 471 U.S. at 218-19; see also, Anderson v. Ford Motor Co., 803 F.2d 953 (8th Cir. 1986) (affirming "federal labor policy favors resolution of disputes among parties to collective bargaining agreements to contractual grievance procedures or arbitration"). The respondent there attempted to bring a tort suit against the employer for bad faith handling of his insurance claim in state court, which intentionally disregarded the procedures set forth in the collective bargaining agreement. Allis-Chalmers, 471 U.S. at 206. The Court asserted that when parties are free to bargain for negotiable rights within a contract, claims for breach of duty are not independent of the labor agreement and must be evaluated by federal law. Id. at 217. The Court recognized that questions arising from terms agreed to by the parties in a labor contract must be resolved by reference to federal law; any other result would allow parties to evade the requirements of Section 301. Id. at 211.

Similarly in United Steelworkers of America v. Rawson, this Court found that safety standards were negotiable as they may arise from the duties and obligations defined in the CBA. 495 U.S. 362, 371 (1990). There, mineworkers alleged negligence by the mine owner in the inspection of a mine that eventually collapsed and killed ninety-one miners. Id. at 369. Prior to the collapse, the parties had negotiated an agreement regarding the nature and scope of the Union's duty to inspect the mines for safety issues. Id. at 370. This Court found the resolution of the respondent's tort negligence claim relied on the obligations and duties imposed by the labor agreement and therefore was not "sufficiently

independent of the agreement to withstand preemption." Id. at 369. Because resolution of the negligence issue was dependent on the duty of care outlined in the labor agreement, this Court held federal law must govern those disputes. Id. at 371.

Finally, while state law has created certain tort actions for invasion of privacy, a CBA may define the source of the negotiable duties to maintain a safe workplace. Gore, 210 F.3d at 949-50. In Gore the court held that the privacy rights asserted in the state tort claim were not nonnegotiable and independent but rather were inextricably intertwined with the terms of the labor agreement. Id. at 949. Although Gore's claims asserted violations of privacy rights, the extent of these rights were legally negotiated by the terms of the labor agreement. Id. at 951. In so holding, the court affirmed that parties are free to negotiate duties and obligations under a labor agreement and claims for breach of those duties will be inextricably intertwined with the provisions of the labor agreement. Id. at 950.[3]

Some courts in specific areas of fundamental privacy rights have only recently limited the broad range of negotiable rights. For example, in Cramer v. Consolidated Freightways, Inc., the court held that certain rights could not be given away even through the terms of a CBA. 255 F.3d 683, 695 (9th Cir. 2001). There the court found that parties could not negotiate a policy that included the surreptitious videotaping of employees while in the bathroom. Id. at 696-97. Although the decision limited

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[3] Federal district courts have also added to the framework outlining the scope of negotiable rights. See Stringer v. National Football League, 474 F. Supp.2d 894, 910 (S.D. Ohio 2007) (finding certification and responsibilities of team trainers and physicians to be negotiable terms within collective bargaining agreement); see also, Holmes v. National Football League, 939 F. Supp. 517, 527 (N.D. Tex. 1996) (finding mandatory participation in a league drug testing program was a negotiable term within the collective bargaining agreement).

preemption in certain areas of a CBA, the court emphasized when the issue is not a nonnegotiable privacy right and both parties contemplate the terms, state law should be preempted. Id. at 696-97.

Moreover, when companies employ drug testing, the obligations and duties of the testing are outlined in the respective CBAs thereby providing employees sufficient notice. Id. at 696. A CBA must contain "clear and unmistakable language" waiving state rights to privacy for the court to give it effect. Id. at 692. Section 301 does not grant parties the right to bargain for nonnegotiable rights or what is illegal under state law, but when certain rights are reasonably negotiated without infringing on fundamental rights a CBA may control. Id. at 695-96.

While certain rights may be nonnegotiable and independent of the CBA, a drug testing policy, which is central to the fairness and integrity of professional sports, is a negotiable and dependent aspect of the CBA. Similar to Rawson and Gore where the courts found the duties and responsibilities of the parties were derived from within the labor agreement, here, the obligations of the MLB and the Respondent were expressed in the CBA. Further, like the parties in Allis-Chalmers who contracted for terms of an agreement, here the MLBPA and the MLB agreed to terms of a drug testing policy that defined the obligations of each party and the Respondents' claims are rooted in those rights and obligations. The Policy expressly and repeatedly places players on notice that it imposes a strict liability standard and that players will be responsible for their actions and any positive test results for banned substances. (R. at 8). Each player agreed to the "form player contract," which incorporates the language of the Policy in every player's contract with each team. (R. at 8). Finally, like the court in Gore which found the rights

and duties of the parties involved were defined by the language of the labor agreement, here, respondent attempts to claim a violation of a state drug testing policy where the rights and duties with regard to drug testing were already defined by the CBA.

2. The Respondents' claims are substantially dependent upon the interpretation of the CBA because the CBA must be interpreted in order to determine whether the Policy meets or exceeds the protections of the DATWA.

This Court should overturn the previous Circuit Court decision and find Section 301 preempts the Respondents' DATWA claims because they cannot be resolved without interpretation of the CBA. Section 301 of the LMRA preempts the DATWA because state law claims are preempted when their resolutions is dependent on the interpretation of the CBA. Trs. of the Twin City Bricklayers Fringe Benefit Funds v. Superior Waterproofing, Inc., 450 F.3d 324, 331 (8th Cir. 2006). The starting point of the substantially dependent analysis is to determine whether the nature of the claim makes interpretation of a labor contract necessary. Id. at 331. Here, interpretation of a labor agreement is necessary to make this determination and resolve the issue; therefore federal law under Section 301 of the LMRA must preempt the state law claims. Id. at 332. A different result would undermine the "interpretive uniformity and predictability" which Congress intended to create in the enactment of Section 301. Id. at 334.

The development of federal common-law rules to create a uniform enforcement policy of a CBA should be enforced regardless of the vagaries of state law. Livadas v. Bradshaw, 512 U.S. 107, 122 (1994). Although this Court has held that the mere need to reference a CBA does not trigger preemption by federal law, it has recognized preemption may be proper where the actual labor contract requires interpretation. Id. at 124; see also, Zupanich v. United States Steel Corp., No. 08-5847, 2009 U.S. Dist.

LEXIS 44504, at 8-9 (D. Minn. May 27, 2009) (holding where plain language of a statute requires examination of a CBA, such claims are inextricably intertwined with the CBA). In Livadas, this Court found the petitioner's claims were not inextricably intertwined with the collective bargaining agreement; however, the only question raised in this case was whether the employer willfully failed to pay the petitioner wages, an issue completely independent of the collective bargaining the agreement. 512 U.S. at 124-25.[4] This Court found the claims were not substantially dependent upon the CBA because only the calendar needed to be referenced; nevertheless preemption remains appropriate when the interpretation of the labor contract is necessary. Id. at 124; see also, Karnes v. Boeing Co., 335 F.3d 1189, 1194 (10th Cir. 2003) (holding employee's claims that Boeing violated the Oklahoma Drug Testing Act were not preempted where the violation only requires a factual inquiry into the conduct of the employer).

The circumstances of this case are distinct from Livadas and Karnes because here, analyzing the facts and the procedures the MLB actually followed in the testing of Respondent essentially requires looking at the procedure as defined by the Policy. The MLB was operating in compliance with the negotiated procedure within the CBA, which means analyzing their conduct would be equal to analyzing the CBA. Although this Court in Livadas concluded that the state claim was independent of the CBA because only a mere reference to the CBA was needed, in this case, the drug testing procedure within the CBA needed to be fully interpreted to determine whether the duties and

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[4] In Hawaiian Airlines, Inc. v. Norris, this Court recognized that purely factual questions about an employer's conduct do not require a court to interpret any part of the CBA. 512 U.S. 246, 261 (1994). In contrast to Hawaiian Airlines where the issue focused on the independent actions of an employer, here, the issue depended on the actual terms and procedures set forth in the drug testing policy within the CBA.

protections were at least as protective as the DATWA. (R. at 10). Rather than simply referencing a wage payment chart, here the Court must look at the detailed procedure to understand if the Policy meets the baseline created by the DATWA.

In Twin City Bricklayers, the court looked to the nature of the claim and found the claim could not be resolved without interpretation of the CBA. In contrast here, the nature of the claim hinges on whether the CBA Policy meets or exceeds the protections of the DATWA. To make this determination there is a substantial need to interpret the language and procedures set forth in the CBA. Because this Court would be required to analyze twenty-seven pages of the Policy to compare the procedures to the DATWA, the claims are substantially dependent on the analysis of the terms of the CBA and therefore preempted. (R. at 11).

Section 301 of the LMRA preempts the Respondents' claims because they are substantially dependent on the interpretation of the CBA signed between the MLBPA and the MLB. The threshold issue for this Court is to inquire into the conduct of the MLB with regards to drug testing players, which then turns on the interpretations of the drug testing procedure from the Policy of the CBA. This Court must look to the protections provided by the CBA to determine whether they meet or exceed the protections provided by the DATWA. The DATWA expressly provides that it "shall not be construed to limit the parties to a CBA from agreeing to a drug and alcohol testing policy that meets or exceeds and does not conflict with the minimum standards and protections provided in the Act." (R. at 7). The District Court correctly concluded that analyzing the CBA in order to determine whether it meets or exceeds the DATWA results in the claims being substantially dependent upon the interpretation of the CBA. (R. at 10).

B. The Respondents' Claims Under the DATWA Are Preempted by Section 301 of the LMRA, Even Where the Claim Can Be Resolved Without Reference to the CBA, Because Deference to Federal Law Will Create a Uniform System of Labor Dispute Resolution and Maintain a Level Playing Field Across the MLB.

Section 301 of the LMRA preempts Respondents' state law claims because it furthers the necessary existence of a uniform federal policy favoring the effective resolution of labor disputes. This Court must overturn the Court of Appeals' decision and find Section 301 of the LMRA preempts the Respondents' claims because public policy necessitates a uniform drug testing policy within the MLB to ensure fairness and integrity of competitive sports.

1. Deference to federal law in labor disputes arising from the terms of a CBA will create a nationally uniform system of dispute resolution.

Section 301 of the LMRA authorizes the courts to fashion a body of law to enforce CBAs to promote industrial peace. Textile Workers Union of Am. v. Lincoln Mills of Ala., 353 U.S. 448, 449 (1957). The intent of Congress was to cultivate a uniform labor law that would aid in the resolution of disputes between unions, employees and employers. Lincoln Mills, 353 U.S. at 453-55. In Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95, 103 (U.S. 1962), the Court concluded the lower courts erroneously held that state law should be called upon to enforce agreements which were meant to be controlled by federal law. The possibility that individual contract terms may have different meanings among the several states would have a disruptive influence on negotiation and administration of CBAs. Id. at 103. Conflicting legal concepts may substantially impede a party's willingness to agree to contract terms. Id. at 104. As the Court recognized, the keystone to federal labor law is to promote industrial peace. Id.

Allowing Section 301 to control the terms, duties and obligations of collective bargaining agreements creates a more efficient system for labor dispute resolution. The

Court in Lincoln Mills required federal law to control where parties have agreed to terms within a labor contract because a uniform interpretation creates industrial peace. Resolving the claim under Section 301 in the present case would avoid the disruptive effect nature of inconsistent state laws on a national league located in twenty-five states. (R. at 12).

If this Court allows the Respondents to pursue their claims under the DATWA, it will undercut the effectiveness of the CBA, creating industrial unrest as players will no longer be policed by the uniform Policy but rather by individual state law. Individual players should not be able to circumvent the goal of uniform labor dispute resolution by claiming violations of state laws that are justifiably preempted by federal law. Allowing state-by-state regulation of the Policy within the CBA would make it impossible to create a nationwide policy prohibiting substances used by players. (R. at 12). By reversing the decision of the Court of Appeals in this case, this Court will continue its long-standing policy of allowing federal preemption of state law by CBAs, thereby ensuring an effective and uniform system of labor dispute resolution.

2. Deference to federal law is particularly important when analyzing terms of a CBA established between professional sports leagues and their players because it ensures nationally uniform competition standards.

Section 301 of the LMRA preempts the Respondents' claims because public policy necessitates a uniform drug testing policy within the MLB in order to ensure fairness and integrity in professional sports. This section mandates resort to federal rules of law in order to ensure uniform interpretation of collective bargaining agreements to promote peaceable, consistent resolution of labor disputes. Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S. 399, 404 (1988). This Court must adhere to the judicial policy upholding Section 301 preemption of labor disputes under CBAs in this case

because the need for uniformity is even more important in the arena of a competitive sports league.

The Policy, through the CBA, established guidelines that ensure "fairness and integrity of athletic competition" by prohibiting certain substances. (R. at 8). Artificial advantages distort results of games and league standings, as well as impair public confidence in the honesty of our "American Pastime." (R. at 8). Like Lucas Flour where the Court held inconsistent state laws would make negotiations of contracts impossible, here, inconsistent state laws would impede fair negotiations in player contracts. When states have varying drug testing procedures players will naturally gravitate towards signing with teams that are located in states with more lenient drug-testing statutes. See e.g., Partee v. San Diego Chargers Football Co., 668 P.2d 674, 678 (Cal. 1983) (finding that inconsistent state laws could "fragment the league structure on the basis of state lines"). For example, if Texas state law allowed drug testing policies that mandated three positive tests before suspension while New York law required only one, players would be more likely to sign with the Texas Rangers over the New York Yankees. Unlike other industries where unions are not competing directly with each other, here, every player and every team is in direct competition for wins and money; any artificial advantage created by the Court will have an adverse effect on the integrity and fairness of the league.

Inconsistency has already been created by the current litigation because other players not subject to the DATWA and do not have the same rights as Respondent Wilson in this case. The Respondent is able to continue playing while awaiting a final decision by this Court while other players are not provided with the same opportunity.

(R. at 12). This not only gives more rights to Respondent than are provided by the CBA, but also provides his employer, the Minnesota Twins, a competitive advantage over other teams because they still have use of Respondent's services to help win games during litigation. This inequitable treatment of the players illustrates the necessity for the Policy within the CBA to be controlled by Section 301 of the LMRA. Integrity and fairness, without which would make our national pastime subject to criticism from fans wishing to enjoy an honest and fair athletic contest, is a crucial factor this Court should look to when making the decision to preempt the DATWA in favor of Section 301.

For these reasons this Court must overturn the Circuit Court decision and find Section 301 of the LMRA preempts the claims asserted by the Respondents because public policy necessitates that a uniform drug testing policy within the MLB in order to ensure fairness and integrity of the game.

II. THE UNITED STATES COURT OF APPEALS FOR THE FOURTEENTH CIRCUIT WAS INCORRECT IN VACATING THE ARBITRATION AWARD IN FAVOR OF THE MLB BECAUSE ARBITRATION AWARDS MAY ONLY BE VACATED WHEN THEY VIOLATE THE FEDERAL ARBITRATION ACT OR FALL WITHIN THE NARROW PUBLIC POLICY EXCEPTION.

A. An Arbitration Award May Be Vacated If It Falls Within the Scope of Section 10 of the Federal Arbitration Act.

The arbitration award must be confirmed because it complied with the requirements of Section 10 of the Federal Arbitration Act (hereinafter FAA). An arbitrator's award may only be vacated for the reasons enumerated in the FAA. Crawford Group, Inc. v. Holekamp, 543 F.3d 971, 976 (8th Cir. 2008). The FAA permits a court to review an arbitrator's award only if the award was "procured by corruption, fraud, or undue means," or if the arbitrators were guilty of misconduct or otherwise exceeded their contractually granted authority. 9 U.S.C.A. §§ 10(a)(1)-(4). Even when a

court is permitted to review an arbitrator's decision, the court's review is "exceptionally narrow." Coca-Cola Bottling Co. v. Teamsters Local Union No. 688, 959 F.2d 1438, 1440 (8th Cir. 1992). Arbitrators are given the utmost respect and deference, and their awards must be confirmed by a court so long as the arbitrators are even questionably acting within the scope of their authority. Stark v. Sandberg, Phoenix & von Gontard, P.C., 381 F.3d 793, 798 (8th Cir. 2004). The Federal Arbitration Act prescribes four specific situations where a court may vacate an arbitral award: (1) where the award was obtained by "corruption, fraud, or undue means," (2) where the arbitrator's were clearly partial or corrupt, (3) where the arbitrators were guilty of misconduct or misbehavior causing prejudice, or (4) where the arbitrators exceeded their powers or failed to exercise them. 9 U.S.C.A. §§ 10(a)(1)-(4).

In MidAmerican Energy Co. v. International Brotherhood of Electrical Workers Local 499, the court found an arbitrator's decision is not reviewable where the decision is based in part on the parties' fraudulent conduct. 345 F.3d 616, 617 (8th Cir. 2003). In that case, an employee working at a liquid natural gas storage facility disabled the safety devices that he was trusted with maintaining and left the plant while on duty. Id. at 617. The employee was subsequently fired, but his employment was reinstated in an arbitration award. Id. The company argued the employee lied while under oath during the arbitration hearing regarding his whereabouts, and therefore the award should be reversed as it was procured by "fraud" within the meaning of Section 10(a)(1) of the Federal Arbitration Act. Id. The court found that Section 10(a)(1)'s fraud provision "serves as grounds for vacating an arbitration award if the offended party proves the fraud by clear and convincing evidence" and shows that it was "materially related to an

arbitration issue." Id. at 622. Despite this presence of clearly conflicting and dishonest witness testimony, the court found no fraud as the decision of an arbitrator who has not exceeded or abused their authority is almost always upheld. Id. at 619.

Like in MidAmerican Energy, the arbitrator here found that Dr. Larson properly exercised his discretion under the Policy. (R. at 16). The Respondents cannot prove – and in fact do not plead – any corruption, fraud, or arbitrator misconduct, as required by the Federal Arbitration Act. (R. at 16-17). The court's review of the arbitrator's decision is exceptionally narrow and given substantial deference. Here, the arbitrator's decision complied with Section 10 of the Federal Arbitration Act, and must be confirmed by this court.

B. An Arbitration Award May Be Vacated If There Is an Explicit, Well-Defined, Dominant Public Policy to Which the Arbitrator's Decision Runs Contrary.

The arbitration award must be confirmed because it does not run contrary to any clearly identifiable public policy. A court is permitted to vacate an arbitration award if it violates an explicit, "well-defined and dominant" public policy that can be sufficiently identified by reference to existing "laws and legal precedents." W.R. Grace & Co. v. Local Union 759, 461 U.S. 757, 766 (1983). Here, enforcement of the arbitral award would not conflict with any generally accepted or well-defined public policy, nor would it sanction the breach of duties owed by parties in a fiduciary relationship.

1. Enforcement of the arbitral award in this case would not violate any clearly defined or articulable public policy.

In Delta Air Lines, Inc. v. Air Line Pilots Ass'n, 861 F.2d 665, 668 (11th Cir. 1988), the court vacated an arbitration award that clearly violated a distinct and socially important public policy. A pilot working for Delta Air Lines flew a plane while

intoxicated and disconnected the cockpit recording devices to evade detection of his inebriation. Id. at 667. Once a blood-alcohol test proved that the pilot was in fact drunk while operating the plane, the air line fired him. Id. However, in what the Eleventh Circuit deemed a "confusing opinion," an arbitrator reinstated his employment. Id. at 668. The court reversed this award as a clear violation of public policy, cataloguing a list of federal and state laws identifying drinking while operating an airplane as dangerous and intolerable. Id.; see also, Iowa Elec. v. Local Union 204, 834 F.2d 1424, 1427 (8th Cir. 1987) (finding an arbitrator's award reinstating an employee who violated federal safety requirements at a nuclear power plant to be clearly contrary to dominant public policy).

Similarly, in Ace Electrical Contractors v. International Brotherhood of Electrical Workers, Local 292, 414 F.3d 896, 897 (8th Cir. 2004), the court reversed an arbitration award as violating an explicit public policy against age discrimination. A CBA required that one of every five electrical workers in unionized shops be at least fifty years of age. Id. at 897. Ace Electrical Contractors laid off two workers in Minnesota over the age of fifty, and an arbitrator found that this violated the CBA, requiring Ace to reinstate those employees. Id. at 898. However, the Minnesota Human Rights Act prohibited employment decisions from being made on the basis of age. Id. In addition to the Act, the commissioner of the Minnesota Department of Human Rights issued a detailed opinion stating the age requirement provision of the CBA violated the Act. Id. The court there reversed the arbitrator's decision, relying on the law, as well as the supplemental clarification issued by the commissioner in showing that the opinion clearly violated public policy. Id.; see also, Muschany v. United States, 324 U.S. 40 (1945), holding

relevant public policy must be determined by reference to laws and legal precedents, not by reference to general consideration of public interests).

Unlike the catalogue of laws and legal precedent presented in Delta Air Lines and Ace Electrical, here the Respondents cannot point to any authority showing the arbitrator's decision violated public policy. Further, any argument regarding public policy in this instance favors the MLB and the decision made by the arbitrator.

2. Enforcement of the arbitral award in this case would not circumvent any duties owed by parties in a fiduciary relationship.

The CBA was negotiated between the MLBPA and the Commissioner of the MLB, two sophisticated organizations. In this equally bargained-for agreement, the parties approved several important provisions. First and foremost, the Policy places the burden on the individual players to be aware of all substances they put into their bodies. (R. at 8). The player's personal responsibility for their health and physical integrity is so great that the MLBPA agreed to a rule of strict liability. (R. at 8). There is virtually no excuse for a positive test result. Second, the Policy specifically states the purpose and intent of the rules and regulations regarding banned substances. (R. at 8-9). Illegal and prohibited substances threaten the integrity and fairness of the sport, as results and standings are distorted by the unfair physical advantages that come from using performance-enhancing drugs, and individual players may potentially be harmed by dangerous side-effects.

In this case, both the CBA and Policy clearly placed the burden on individual players to take responsibility for what goes into their bodies. Just as steroids and other banned substances threaten the integrity of the game of baseball, vacating the arbitrator's award here will threaten the integrity of CBAs.

i. There is no fiduciary relationship between the MLB and individual players.

There is no fiduciary relationship between the MLB and individual players in this case, and therefore the League owed no fiduciary duties to the players. Despite the clarity of language and purpose in the Policy and equality of bargaining power in the CBA, the Respondents still attempt to argue that the MLB has a fiduciary relationship with the individual players, and that the corresponding duties that arise out of this relationship were breached. A fiduciary relationship exists between parties where there is a long-standing association of trust and confidence that requires one party to give advice for the benefit of another within the scope of their relationship. Lumbermens v. Franey, 388 F.2d 292, 305-306 (S.D.N.Y. 2005).

Fiduciary relationships and their corresponding duties are not assumed by the creation of an advice hotline. Walton-Floyd v. U.S.O.C., 965 S.W.2d 35, 40 (Tex. Ct. App.-Houston [1st Dist.] 1998). In Walton-Floyd, the appellant was an amateur athlete who used a carbohydrate supplement that was not on a list of banned substances provided by the International Association of Athletics Federation (hereinafter I.A.A.F.). Id. at 36. The I.A.A.F. publishes a list of banned substances, and included a notice with the publication stating "this list is not complete. It is the athlete's responsibility to check the status of all medications. Call the United States Olympic Committee's hotline…." Id. The appellant called the hotline about the carbohydrate supplement on several occasions, and the hotline said that the supplement was not on the banned list. Id. However, the hotline operator did not say that it was safe to use, nor did they provide any assurances that the supplement would not result in a positive test. Id. After failing a drug test the appellant sued, claiming among other things that the United States Olympic Committee

and the I.A.A.F. owed them a duty to exercise reasonable care because they established the information hotline. The court disagreed, finding instead that the I.A.A.F. did not assume a fiduciary duty simply because they created an information hotline. Id. at 40.

Like in Walton-Floyd, Respondent Wilson took a supplement that was not explicitly named on the banned substance list and subsequently failed a drug test. Further, in both cases the responsibility of knowing what an athlete was consuming was placed upon the individual athlete. However, unlike the appellant in Walton-Floyd, there is no evidence in the record to indicate that the Respondent even attempted to call the hotline regarding SpeedShot. Just as no fiduciary relationship existed Walton-Floyd, no fiduciary relationship between the MLB and players exists here. If the court were to impose such a relationship, it would create a slippery slope whereby the terms of the CBA are ignored and previously distributed burdens of supplement testing would be shifted back to the MLB. Responsibility for knowing what players put into their bodies is squarely placed on the players. (R. at 8). The record does not show that the CBA required the MLB to be in constant contact with individual players regarding any suspicious product on the market, or to notify them in the event the MLB received affirmative information regarding banned substances. If the MLB had agreed to bear such a heavy burden, then Dr. Larson's conduct may be evaluated differently; however, there is no fiduciary relationship between Major League Baseball and individual players, and thus the award must be confirmed.

ii. Even if there was a fiduciary relationship between the MLB and individual players, there is no discernable explicit, well-defined, dominant public policy that would require the arbitrator's award to be vacated.

No fiduciary relationship or corresponding duties exist between the MLB and individual players with regard to a player's usage of prohibited substances and other performance-enhancing drugs. However, even if such a relationship did exist, there is no discernable explicit, well-defined, dominant public policy that would allow a court to vacate the arbitrator's award. Rather, public policy arguments favor a confirmation of the arbitrator's award.

Considerations of explicit, "well-defined and dominant" public policy that can be found by reference to accessible "laws and legal precedents" may constitute grounds to vacate an arbitrator's award. W.R. Grace, 461 U.S. at 766. Examples of these "well-defined and dominant" public policies in the law include employment discrimination, drunk-driving or flying, and safety measures at nuclear power plants. Ace Elec., 414 F.2d at 896; Delta Air Lines, 861 F.2d at 668; Iowa Elec., 834 F.2d at 1427. These public policies are easily discernable by reference to laws and regulations. Respondents cannot point to any existing rules regarding fiduciary duties between sports teams and individual players who abuse illegal substances.

However, confirming the arbitrator's award does support three important policy considerations. First, confirming the award respects a contractual agreement to arbitrate. The MLB and the MLBPA knowingly and intelligently entered into the CBA, whereby both parties agreed to all of its terms. An agreement to arbitrate is elective, and the MLBPA has signaled their trust in arbitration as an appropriate forum for dispute resolution by signing the CBA. (R. at 4-5). Second, confirming the award affirms an

important and bargained-for delegation of responsibility of the players. The Policy adopted an approach of strict liability, forcing the individual players to be accountable for both their health and integrity. (R. at 8). The players were warned throughout the Agreement and Policy to be responsible for what goes into their body. Finally, confirming the award avoids the unnecessary and possibly prohibitive assumption of testing responsibilities by Major League Baseball. The costs of testing every drug that a player requests information on would be tremendously costly and burdensome. To avoid such costs, the MLB contracted with the Player's Association to shift some costs and burdens to the individual players.

By affirming this award, this Court will respect a bargained-for provision of a contractual agreement that clearly places the burden on individual players to be sure they know what goes into their bodies. With no discernable explicit, well-defined, dominant public policy to the contrary, this arbitrator's award must be affirmed.

CONCLUSION

For the above reasons, Petitioner respectfully requests that this Court reverse the decision of the United States Court of Appeals for the Fourteenth Circuit and affirm the decision of the United States District Court for the Southern District of Tulania finding that Section 301 of the LMRA preempts Respondents' state law claims under the Minnesota DATWA and that enforcement of the arbitrator's award is not contrary to pubic policy.

Respectfully Submitted,

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Team 45

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