

STATEMENT OF JURISDICTION

Petitioner Major League Baseball (“MLB”) seeks review of the decision of the United States Court of Appeals for the Fourteenth Circuit, which reversed the judgment of the district court below. R. 2-14. This case concerns section 301 of the Labor Management Relations Act, codified at 29 U.S.C. § 185, as well as a determination of whether an arbitration award should be upheld. MLB timely filed the petition for review. This Court has jurisdiction to review the judgment of the United States Court of Appeals for the Fourteenth Circuit pursuant to 28 U.S.C. § 1254.

STANDARD OF REVIEW

The applicable standard of review in determining whether the grant of summary judgment was proper is de novo review.

OPINIONS

The opinion of the United States District Court for the Southern District of Tullahoma is reproduced at R. 1-1 – 1-20. The opinion of the United States Court of Appeals for the Fourteenth Circuit is reproduced at R. 2-1 – 2-14.

STATUTORY PROVISIONS

This case involves questions as to whether the state law claims brought under Minnesota’s Drug and Alcohol Testing in the Workplace Act (DATWA) may be preempted under Section 301 of the Labor Management Relations Act (“Section 301”) and whether the arbitration award must be vacated.

INTRODUCTION

Appellee, Kevin Wilson (“Wilson”), is employed by the Minnesota Twins, L.L.C., which is not a party here, and is a member of the Major League Baseball Players Association (the “MLBPA”), the other Appellee in this suit. Collectively, Wilson and the MLBPA will be referred to as (“Appellees”). (R. at 1-1). Appellees are attempting to challenge his rightful suspension under the collective bargaining agreement (“CBA”) and the included drug policy by

attempting to show that their claims are not preempted by Section 301. (R. at 1-6 – 1-14) Additionally, Appellees are attempting to sway this Court to find that the Arbitrator’s award not have been upheld because it was in violation of public policy because Major League Baseball (the “MLB”) is responsible for monitoring everything on the market so that they may tell grown men whether it is okay to ingest the product. (R. at 1-14 – 1-20).

STATEMENT OF THE FACTS

Appellees are attempting to show that they should not have been suspended for using substances that are prohibited under their collectively bargained for Policy that has a strict liability rule. In 2007, the MLBPA and the MLB formed a CBA which includes the MLB Policy on Anabolic Steroids and Related Substances (“Policy”). (R. at 1-1). This Policy is not vague or unambiguous in any way. Under the Policy, MLB players are strictly prohibited from using numerous “Prohibited Substances,” including but not limited to various performance enhancing drugs and “Other Anti-estrogens, including Clomiphene, Cyclophenil, and Fulvestrant.” *Id.* The Policy clearly states that “players are responsible for what is in their bodies.” *Id.* Furthermore, the Policy states “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.” *Id.* Thus, whether the player intentionally ingests a Prohibited Substance is a moot issue because “a positive test result will not be excused because it does not result from an intentional use of a Prohibited Substance. *Id.* Players with confirmed positive test results are subject to discipline by the Commissioner as outlined in the Policy. *Id.* First time offenders will be suspended for a minimum of fifteen (15) games, not to exceed twenty-five (25) games. (R. at 1-1 – 1-2). Under the Policy, “Players 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.” (R. at 1-2).

Dr. John Larson is the physician and the Independent Administrator who directs the Policy. *Id.* Dr. Larson’s duties under the Policy includes overseeing drug-testing procedures, reporting any positive test results to the Commissioner, and providing education to the players regarding the Policy’s implementation. *Id.* Dr. Ray Finkle is the “Consulting Toxicologist” who aids in the implementation of the policy. *Id.* Neither Dr. Larson nor Dr. Finkle are affiliated with the Commissioner’s office or any MLB club. (Order, 2). The Policy does not impose upon Dr. Larson or Dr. Finkle, the duty to voluntarily contact the players and inform them of every specific product that contains a Prohibited Substance. (R. at 1-1 – 1-6).

In an effort to help the MLB players, the “MLB Supplement Hotline” (the “Hotline”) was developed where the players could freely obtain “confidential and accurate information about these products, including their ingredients, effects, and adverse reactions.” (R. at 1-2). The Policy created an open book of information that was easily accessible to the players; Appellees only needed to ask. (R. at 1-2, 1-16). The purpose of the Hotline was not to take responsibility for the players actions or to serve as player’s parents or personal informants. (R. at 1-2, 1-17). Rather, the purpose was to provide MLB players, coaches, and trainers with an opportunity to *inquire* and obtain information about certain supplements and how they relate to the Policy. (R. at 1-2). Appellees were even cautioned by the MLB in a memorandum stating: “You and you along are still responsible for what goes into your body. Using the Hotline will not excuse a positive test result.” *Id.*

In 2007, the MLB learned that some bottles of SpeedShot, an energy-boosting supplement claiming to provide five (5) hours of energy contained Clomiphene, a substance that

is expressly prohibited in the Policy. (R. at 1-3). David Klein, Director of the Sports Medicine Research Testing Laboratory, informed Dr. Larson and Dr. Finkle that SpeedShot contained Clomiphene on November 14th, 2007. *Id.* The lab director requested that the MLB report to the Food & Drug Administration that bottles of SpeedShot contained Clomiphene; Larson and Andrew Birch, Vice President of Law and Labor Policy for the MLB, had the discretion to refuse to report the information because they had no duty to do so. (R. at 1-3, 1-19).

Appellees were repeatedly warned not to take energy-boosting supplements. (R. at 1-3 – 1-4). Despite the fact that the SpeedShot label does not list Clomiphene as an ingredient, Appellees were warned by the MLB, through the MLBPA that Mega Energy Products, which distributes SpeedShot, is a prohibited energy-boosting supplement company and that players are prohibited from endorsing any of their products. (R. at 1-3). Furthermore, Dr. Larson sent Appellees a memorandum “urging players not to take products or supplements that claim to provide or boost energy.” *Id.* Not only did this warning memorandum reiterate the physical dangers of energy-boosting substances, it also reiterated the Policy’s strict liability rule stating that “if you test positive for a banned substance this constitutes a positive test, regardless of intent to do so.” (R. at 1-3 – 1-4). It is irrelevant that the communications did not specifically mention that SpeedShot contained a banned substance because the MLB had no duty to provide this information. (R. at 1-4, 1-16).

Wilson’s conscious decision to disregard multiple warnings regarding energy-boosting supplements, lead to his fifteen (15) game suspension, the minimum penalty required under the Policy. (R. at 1-3). Wilson tested positive for Clomiphene after taking SpeedShot the morning of a scrimmage. (R. at 1-4). Four other players, Pat Wilson, Manny Rogers, Al Peterson, and Bradley Melton, also chose to take SpeedShot and received the same suspension. *Id.* Appellees

acknowledge that they were warned and that they were aware of the Hotline and the Policy's strict liability rule. *Id.*

After a full hearing where none of the players challenged any aspect of the test, the arbitrator upheld Appellees' suspensions pursuant to the Policy's strict liability rule. (R. at 1-5). The arbitrator found 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." *Id.* More importantly, 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." *Id.* The Policy's strict liability, in conjunction with the multiple warnings, made it simple for the arbitrator to conclude that "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 result would result in a suspension that would not be excused based on a claim of unintentional or inadvertent use." *Id.*

STATEMENT OF THE CASE

Wilson filed suit against the MLB, Dr. Larson, Dr. Finkle, and Andrew Birch in Minnesota state court, alleging that the Policy violated Minnesota's DATWA. *Id.* Wilson sought damages and an injunction against enforcement of the arbitration award. *Id.* A temporary restraining order barring Wilson's suspension was granted but the other players were not able to receive this protection because they were not employed in Minnesota. *Id.* The case was removed to federal court by the MLB and was consolidated with an action brought by the MLBPA seeking to vacate the arbitration awards under the LMRA. The District Court granted the

MLB's for summary judgment on all claims, holding that Wilson's DATWA claims are preempted by Section 301 of the LMRA and that the arbitrator's suspensions must be upheld. (R. at 1-5, 1-16, 1-20). The court of Appeals reversed the judgment of the District Court. (R. at 2-14). This matter is now before this court to determine (1) whether the Court of Appeals was correct in its holding on both counts.

SUMMARY OF THE ARGUMENT

Wilson and the MLBPA's claims must fail on both counts. As to the first claim, an unambiguous state statute requiring that policies be formulated in accordance with the terms of the statute requires Section 301 preemption. By requiring that a drug policy be developed with its requirements in mind, such a policy must be interpreted with the terms of the DATWA in mind to determine whether the policy has been developed in accordance with the language of the statute. The United States Court of Appeals for the Fourteenth Circuit wrongly found that the CBA at issue did not need to be interpreted. As such, this Court should reverse the decision of the court below and find that Wilson's claims are subject to Section 301 preemption because the CBA must be interpreted to determine whether it meets the requirements of the DATWA.

Section 301 preemption is proper where state law claims are dependent upon an analysis of the CBA and the claims advanced are intertwined with the CBA. A central purpose of Section 301 preemption is to maintain the uniform interpretation of labor contracts to avoid differing interpretations. By maintaining a uniform interpretation, industrial peace is advanced and parties may rest assured that there will be predictability and certainty in the analysis of claims arising under labor law contracts.

The petitioner here demonstrates that interpretation of the CBA is necessary to decide if it the CBA is in compliance with the DATWA. In addition, the MLB advances an especial need

for uniform application as it affects individuals in several states and requires a uniform interpretation to assure fair play and the integrity of the sport. Because the CBA must be interpreted to determine if its many subparts are in compliance with the requirements of the DATWA and uniformity is required in its application, the claims advanced by Wilson must be found subject to Section 301 preemption and the decision of the Court below must be reversed.

As to the second claim, Appellee was rightfully denied vacation of the arbitration award because the suspensions do not violate public policy. The MLB does not owe Appellee a duty to inform them of the presence of banned substances in SpeedShot. The MLB repeatedly advised Appellee not to take energy-boosting supplements because they may cause a positive test for a Prohibited Substance. A fiduciary duty does not exist here, however, even if this Court finds that there is a fiduciary duty, it was not breached by telling players only of the risk of energy boosters and not to rely on the supplements list of ingredients because the list might not contain all ingredients.

A party seeking to set aside an arbitration award bears a very high burden and Appellee failed to meet this burden. Appellee's contention that this Court should reverse the arbitrator's award upholding Appellee's suspension is unfounded. The only reason that the arbitration award should be upheld is if a fiduciary duty exists and was breached, that those fiduciary duties are explicit public policy, and that the Policy as interpreted by the arbitrator violated that public policy by condoning a breach of fiduciary duties and Appellee does not show any of the foregoing.

Appellee is not innocent; Appellee failed the drug test because players made a conscious decision as adults to choose to take energy-boosting supplements. The District Court correctly

found that it is irrelevant that the communications did not specifically mention that SpeedShot contained a banned substance because the MLB had no duty to provide this information.

As it is necessary for the Court to look to the terms of the CBA under state law and to maintain uniformity across several states, Section 301 must preempt the claim at hand. For a game known as “America’s pastime,” it is inherently important to those in every state that everyone plays under the same interpretation of the same set of rules to maintain the integrity of the sport. Wilson’s state claim is preempted under Section 301 and the arbitration award should be upheld because it does not run contrary to public policy; thus, this Court must find that the District Court for the Southern District of Tullahoma was correct in its conclusion and reverse the decision of the United States Court of Appeals for the Fourteenth Circuit.

ARGUMENT

I. As the Drug and Alcohol Testing in the Workplace Act requires that drug testing policies meet its minimum standards, claims brought under the Act must be preempted under Section 301 of the Labor Management Relations Act and therefore this Court should find that MLB is entitled to summary judgment on the claims.

a. Applicable Principles

Section 301 of the Labor Management Relations Act states: “Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce ... may be brought in any district court of the United States having jurisdiction of the parties....” 29 U.S.C. § 185(a) (2006). The Supreme Court requires that the law to be applied in suits where § 301 is applicable “is federal law, which the courts must fashion from the policy of our national labor laws.” *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 456 (1957). In addition, federal labor policy is to be looked to in deciding issues covered by Section 301. *Teamsters v. Lucas Flour, Co.*, 369 U.S. 95, 103 (1962). State rules “that

purport[] to define the meaning or scope of a term in a contract suit therefore [are] pre-empted by federal labor law.” *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 210 (1985). To determine whether a state law claim is preempted under Section 301, the analysis must focus upon whether the “claim is inextricably intertwined with consideration of the terms of the labor contract.” *Id.* at 213. State-law claims that are “substantially dependent upon analysis” of a collective bargaining agreement are preempted under Section 301. *Id.* at 220.

DATWA requires employers implementing drug policies in Minnesota to provide:

(1) the employees 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 employee 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 result on an initial screening test; (5) the right of an employee or job applicant to explain a positive test result on a confirmatory test or request and pay for a confirmatory retest; and (6) any other appeal procedures available.

Minn. Stat. § 181.952 subdiv. 1(1)-(6). The statute specifically provides for testing of certain drugs, including controlled substances such as cocaine, marijuana, and methamphetamines, as well as other narcotics. *Id.* §§ 151.01(4), 152.02, 181.950(4)-(5), 181.951(1)(a). Under the language of the DATWA, its terms “shall not be construed to limit the parties to a collective bargaining agreement from bargaining and agreeing with respect to a drug and alcohol testing policy that meets or exceeds, and does not otherwise conflict with, the minimum standards and requirements for employee protection provided in” the Act. *Id.* § 181.955(1). The DATWA also expressly allows for random drug and alcohol testing for “professional athletes if the professional athlete is subject to a CBA permitting random testing but only to the extent consistent with the collective bargaining agreement.” *Id.* § 181.951(4).

b. The language of Minnesota’s Drug and Alcohol Testing in the Workplace Act requires interpretation of the collective bargaining agreement between Major League Baseball and the Major League Baseball Players Association.

The CBA entered into between the MLB and the Major League Baseball Players Association (“MLBPA”) includes several provisions governing virtually all aspects of a player’s employment. The DATWA requires reference to the language of the CBA to determine whether it is in compliance with the Act. This Court should find that Section 301 of the Labor Management Relations Act (“LMRA”) preempts Wilson’s claims under DATWA as the claims must be interpreted with reference to the CBA between the MLB and the MLBPA.

The plaintiff’s claim drives the preemption analysis in that “the need to interpret the CBA must inhere in the nature of the plaintiff’s claim.” *Cramer v. Consolidated Freightways, Inc.*, 255 F.3d 683, 691 (9th Cir. 2001). In determining whether a state-law claim is preempted under Section 301, the analysis must focus upon whether the “claim is inextricably intertwined with consideration of the terms of the labor contract.” *Allis-Chalmers Corp.*, 471 U.S. at 213. “A state rule that purports to define the meaning or scope of a term in a contract suit [] is preempted by federal labor law.” *Id.* at 210. The terms of the CBA with respect to a drug testing policy must “meet[] and exceed[] ... the minimum standards and requirements” of the DATWA. Minn. Stat. § 181.955(1). Claims requiring “interpretation or construction” of a CBA are preempted under Section 301. *Trs. of the Twin City Bricklayers Fringe Benefit Funds v. Superior Waterproofing, Inc.*, 450 F.3d 324, 330 (8th Cir. 2006). To determine whether the claim is sufficiently “independent” to survive Section 301 preemption, a two-step approach is applied. *Bogan v. General Motors Corp.*, 500 F.3d 828, 832 (8th Cir. 2007). First, it must be determined whether the “state-law claim is ‘based on’ the relevant provision of the CBA.” *Id.* Second, it must be determined whether the “claim is ‘dependent upon an analysis’ of the relevant CBA.”

Id. However, “not every dispute concerning employment, or tangentially involving a provision of a collective-bargaining agreement, is pre-empted by § 301 or other provisions of the federal labor law.” *Allis-Chalmers Corp.*, 471 U.S. at 211.

Here, the language of the DATWA requires reference to and interpretation of the CBA entered into. As laid out in the DATWA, a CBA containing a drug testing policy must contain requirements that “meet[] and exceed[]” the requirements of the DATWA. § 181.955(1). With respect to the comprehensive CBA entered into in these circumstances, the DATWA requires the Court to look to and interpret what is required under the CBA and ensure that it is in compliance. The CBA goes further than required under the DATWA and bans both the drugs prohibited under the DATWA and other “Prohibited Substances” relating to those substances that would result in performance enhancement. (R. at 1-1). By requiring the Court to look back to and reference the CBA, the DATWA seeks to define the scope of the drug testing policy and must be preempted under Section 301. *Allis-Chalmers Corp.*, 471 U.S. at 210. Therefore, Wilson’s claims are “inextricably intertwined” with the enforcement of the CBA. *Id.* at 213. For this reason, the Court should find that Wilson’s claims should be dismissed as they are preempted by Section 301.

Furthermore, both the CBA and the DATWA are lengthy documents containing many intricacies. (R. 1-11). As noted by the District Court, the Court would have to examine each subdivision of the DATWA and compare it with the CBA to determine whether the CBA “meets and exceeds” that required by the DATWA. (R. 1-10 – 1-11). Such a lengthy analysis requires an exhaustive review of the CBA and its drug policy and requires analysis and interpretation of the CBA and should be preempted under Section 301 of the LMRA.

A few courts have considered the application of Section 301 to state law claims and drug policies included as part of collective bargaining agreements. *See e.g., Karnes v. Boeing Co.*, 335 F.3d 1189 (10th Cir. 2003); *Thompson v. Hibbing Taconite Holding Co.*, No. 08-868, 2008 U.S. Dist. LEXIS 87045 (D. Minn. 2008).

In *Karnes*, an individual was caught smoking marijuana on his employer's premises and subsequently fired after failing a drug test. *Karnes*, 335 F.3d at 1191. Karnes brought suit "alleging that Boeing violated Oklahoma's Standards for Workplace Drug and Alcohol Testing Act[.]" *Id.* at 1192. The district court found that Karnes' claims were preempted because it was necessary to refer to the terms of the CBA in order to adjudicate his claims. *Id.* at 1193. On appeal, the court determined that his allegation that Boeing violated the Act required reference to the section cited. *Id.* The language of the section required Karnes to "show that Boeing (1) discharged him based on his drug test, and (2) failed to confirm the result through a second test." *Id.* In addition, Karnes alleged that Boeing had not "uniformly applied" the drug policy under the Act. *Id.* Because the statute did not require the court to interpret the CBA to determine whether Boeing was in compliance with the Act, his claims were not preempted under Section 301. *Id.* at 1194.

In *Thompson*, an individual was fired for violating the drug policy of Hibbing Taconite. *Thompson*, 2008 U.S. Dist. LEXIS 87045 at *6-*7. Thompson then brought suit "alleg[ing] that Hibbing Taconite violated the Minnesota Drug and Alcohol Testing in the Workplace Act... and Hibbing Taconite's own drug testing policies." *Id.* at *7. The court found that determining whether Hibbing Taconite violated its own policies required interpretation of the CBA and was therefore preempted. *Id.* at *13. However, "[a]llegations that Hibbing Taconite violated such

non-negotiable state law rights do not require an interpretation of the CBA, and would not be preempted under the LMRA.” *Id.* at *12.

Wilson’s allegations require interpretation of the CBA in order to determine not whether violations have occurred, but whether the overall policy entered into by the MLB and MLBPA is in compliance with the DATWA. Unlike *Karnes*, where the court found that the statute required only that the employer discharged him in violation of the terms of the statute, here the statute itself requires reference to the terms of the CBA to determine whether it is in compliance with the DATWA. *Karnes*, 335 F.3d at 1193. Instead, there is no independent analysis and the many different sections of the DATWA must be consulted to determine if each section is in compliance. Here, as laid out in *Allis-Chalmers*, there is “[a] state rule that purports to define the meaning or scope of a term in a contract suit” and the claim must be preempted under Section 301. *Allis-Chalmers*, 471 U.S. at 210. By requiring the CBA to “meet[] or exceed[]” the requirements of the DATWA, the Court must interpret the CBA to ensure that it meets the requirements of the DATWA. Minn. Stat. § 181.955(1). This is not a case where it is alleged that many violations of DATWA occurred like *Thompson*, but instead a situation where the CBA must be interpreted under the plain language of DATWA. *Thompson*, 2008 U.S. Dist. LEXIS 87045 at *12. This Court must find that Wilson’s claims are preempted because the CBA must be interpreted to determine whether the policy is in compliance with DATWA.

c. The need for uniform interpretation of Major League Baseball’s collective bargaining agreement requires preemption under Section 301.

To maintain the rules governing all players across state lines, it is necessary that the judgment of the court below be reversed. In developing the CBA between the MLB and the MLBPA, thought was given to protect the “integrity” of the game in the best manner possible. The drug policy developed by the MLPBA and the MLB requires that it be uniformly applied

across state boundaries to maintain the policy across all teams in order to ensure that everyone plays under the same rules. This Court should find that Section 301 preempts the state law claims advanced as the CBA must be interpreted uniformly across state lines.

A purpose behind § 301 is to ensure “uniform interpretation of collective bargaining agreements, and thus to promote the peaceable, consistent resolution of labor-management disputes.” *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399, 404 (1988). “The possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements.” *Teamsters*, 369 U.S. at 103. The need to interpret the terms of a CBA requires that state law be preempted to avoid “inconsistent results since there could be as many state-law principles as there are States.” *Lingle*, 486 U.S. at 405-06. “[F]ederal labor-law principles –necessarily uniform throughout the Nation – must be employed to resolve the dispute.” *Id.* “The critical inquiry is whether the practical effect of the regulation is to control conduct beyond the boundaries of the State.” *Healy v. Beer Institute, Inc.*, 491 U.S. 324, 336 (1989).

Of particular relevance is the scope of the CBA. *See Twin City Bricklayers*, 450 F.3d at 333. In *Twin City Bricklayers*, the court looked to other circuit court decisions cited and found that the primary distinguishing factor between the other collective bargaining agreements and the CBA in this case was that the CBA entered into by Superior was unlike the others in that it was statewide and therefore different in “scope and duration.” *Id.* The Court found that this was particularly relevant in considering the policy behind Section 301 preemption, with that being the interest in “uniform interpretation of collective bargaining agreements.” *Id.*

To avoid having the nationwide CBA be interpreted in a different manner by each state where a team plays, Section 301 must preempt Wilson's claims. "The possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements." *Teamsters*, 369 U.S. at 103. If Section 301 is not found to preempt Wilson's claims and those similar to his, the states where teams currently play will likely alter the entire framework of the drug policy and its interpretation. These types of claims must be found to be preempted under Section 301 to require that all professional baseball players abide by the same rules and testing procedures. Not only is this necessary to maintain the integrity of the game, but also to provide for a nationwide CBA governing the entire league to maintain its coverage in the best interests of fair competition.

Here, there is a CBA covering a nationwide league holding games in "approximately twenty-five different states." (R. 1-12). The Court must find that Wilson's claims are preempted under Section 301 in order to maintain one firm set of rules applicable to every player in MLB. Like *Twin City Bricklayers*, where the Court found that the scope and uniform application of a statewide CBA must be maintained and found Section 301 to preempt the claims, here the Court must find that the existence of this drug policy contained in a nationwide CBA be applied uniformly and find that Section 301 preempts Wilson's state law claims. *Twin City Bricklayers*, 450 F.3d at 333.

II. The arbitrator's decision upholding plaintiff's suspension was not in violation of public policy because the MLB did not owe the players a fiduciary duty to issue product specific warnings concerning the presence of banned substances.

Appellee was rightfully denied vacation of the arbitration awards because the suspensions do not violate public policy. Appellee argues that public policy mandates that this arbitration

award be set aside because it condones a breach of a fiduciary duty. The MLB however does not owe Appellee a duty to inform them of the presence of banned substances in SpeedShot. The MLB repeatedly advised Appellee not to take energy-boosting supplements because they may cause a positive test for a Prohibited Substance. A fiduciary duty does not exist here, however, even if this Court finds that there is a fiduciary duty, it was not breached by telling players only of the risk of energy boosters and not to rely on the supplements list of ingredients because the list might not contain all ingredients.

A party seeking to set aside an arbitration award bears a very high burden and Appellees failed to meet this burden. This Court must afford the arbitrator “an extraordinary level of deference” because federal courts do not have the authority to consider the merits of an arbitral award. *Stark v. Sandburg, Phoenix & Von Gontard, P.C.*, 381 F.3d 793, 798 (8th Cir. 2004). The authority of this Court to reverse an arbitration award for failure to comply with the Policy is “exceptionally narrow.” *Coca-Cola Bottling Co of St. Louis v. Teamsters Local Union No. 688*, 959 F.2d 1438, 1440. Federal labor law has a strong public policy in favor of the private resolution of labor disputes without resort to the courts. *Coca-Cola*, 959 F.2d, 1440. It is clear that this Court must confirm the arbitration award so “long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority.” *Stark*, 381 F.3d at 798. Because the Policy requires both parties to submit appeals of discipline decisions to arbitration, this Courts review of the arbitrator’s decision is circumscribed by the Federal Arbitration Act, which allows a court to set aside an award only if it “was procured by fraud, corruption, or undue means,” or when “there was evident partiality in the arbitrators.” 9 U.S.C.A. §§ 10(a)(1)-(2); *Crawford Group, Inc. v. Holekamp*, 543 F.3d 971, 976 (8th Cir. 2008).

The MLB's claim that this Court should uphold the arbitrator's award upholding Appellee's suspension is well founded. This Court is not authorized to reconsider the merits of an arbitral award "even though the parties may allege that the award rests on errors of fact or on misinterpretation of the contract." *Stark*, 381 F.3d at 798. A collective-bargaining agreement is a contract; therefore, a court may not enforce the Policy if it runs contrary to public policy. *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 766 (1983). First, the Court must decide whether the Policy requires disclosure. *Eastern Assoc. Coal Cos. V. United Mine Workers of Am.*, 531 U.S. 57, 62 (2000). Second, the Court must decide whether the Policy, as interpreted by the arbitrator, "violates some explicit public policy" that is "well defined and dominant" and can be "ascertained by reference to laws and legal precedents and not from general consideration of supposed public interests." *W.R. Grace & Co.*, 461 U.S. at 766. Ultimately, this Court must determine whether the policy itself violates public policy. *MidAm. Energy Co. v. Int'l Bd. of Elec. Workers Local 499*, 345 F.3d 616, 620 (8th Cir. 2003).

The only reason that the arbitration award should be upheld is if a fiduciary duty exists and was breached, that those fiduciary duties are explicit public policy, and that the Policy as interpreted by the arbitrator violated that public policy by condoning a breach of fiduciary duties. A fiduciary relationship exists when one party has a duty to act or to give advice for the benefit of the other upon matters within the scope of the relationship. *Lumbermens Mut. Cas. Co. v. Franey Muha Alliant Ins. Servs.*, 388 F.Supp.2d 292, 305 (S.D.N.Y. 2002).

A fiduciary relationship between Appellee and the MLB does not exist. The MLB never had a duty to act or to provide specific advice as to whether SpeedShot contained Clomiphene. The only duty that the MLB undertook was to give advice when players ask. The Policy explicitly states "If you have questions or concerns about a particular supplement or other product,

you should contact Dr. Larson. Appellee never asked Dr. Larson whether SpeedShot contained a Prohibited Substance. Dr. Larson testified that had a player inquired about SpeedShot that he would have told that player that SpeedShot contained Clomiphene. Under the terms of the Policy, Dr. Larson was able to use his discretion regarding this issue. In fact, Dr. Larson issued a general warning regarding energy-boosting supplements rather than about SpeedShot specifically because the entire energy-boosting supplements industry is problematic. Dr. Larson's decision was not outrageous or without any foundation, in fact it was very well reasoned that if he offered specific information regarding SpeedShot the players would come to rely on Dr. Larson to voluntarily provide specific information regarding every product on the market that contains a Prohibited Substance. Such a duty does not exist and Dr. Larson did not want to create one. Furthermore, although the MLB did not specifically inform Appellee that SpeedShot contained Clomiphene, the MLB did however unequivocally inform Appellee that the company which distributes SpeedShot was a banned company. Appellee argues that a fiduciary relationship existed here because confidence has been reposed and betrayed; however, Dr. Larson never betrayed the players as he gave multiple warnings regarding energy-boosting supplements and never had a duty to voluntarily divulge specific information regarding SpeedShot. Even if this Court finds that a fiduciary duty does exist between Appellee and the MLB there can be no claim of a breach of fiduciary duty arising out of Dr. Larson's alleged refusal to divulge specific information concerning SpeedShot because had Appellee asked they would have received this information and his decision was not outrageous or without foundation.

A fiduciary duty exists to divulge specific SpeedShot information because of the MLB's creation of the Hotline, does not exist. The Hotline was put in place by the MLB as a source for players to seek information not to voluntarily offer information to Appellee. Appellee asserts that

one of the players commenced using SpeedShot after the Hotline told him that it was not on the list of banned substances. The Hotline did not however provide the player with false information as SpeedShot however is not on the list of banned substances. The Hotline did however caution the player not to take any energy-boosting supplements by informing him that of the dangers of SpeedShot and that the list of ingredients may omit ingredients. The Policy as written does not contain a requirement that the MLB inform Appellees specifically when an energy-boosting supplement, or any other supplement, is found to contain a banned substance. If Appellees wanted such a responsibility imposed upon the MLB, Appellees should have bargained for it in the Policy.

Appellee is not innocent. They failed the drug test because they made a conscious decision as adults to choose to take energy-boosting supplements. The collectively bargained for Policy does not leave any wiggle room for failed drug test as the Policy holds Appellee strictly liable for what is in their bodies. In Dr. Larson's memorandum to Appellee, "urging players not to take products or supplements that claim to provide or boost energy," he reiterated the physical dangers associated with energy-boosting supplements and the Policy's strict liability rule. It is undisputed and Appellees understood the Policy's rule that "if you test positive for a banned substance this constitutes a positive test, regardless of intent to do so." The District Court correctly found that it is irrelevant that the communications did not specifically mention that SpeedShot contained a banned substance because the MLB had no duty to provide this information.

The arbitrator's award does not jeopardize Appellee's health. It was Appellee's conscious decision to disregard multiple warnings regarding energy-boosting supplements lead to the suspensions, not the MLB's decision not to volunteer specific SpeedShot information.

Cases that Appellee uses to demonstrate vacating arbitration awards on public policy grounds, because the award sanctioned behavior that threatens health and safety, do not present facts that are even somewhat analogous to the facts in the present matter. (R. at 2-11 – 2-12). For example, in *Delta Air Lines, Inc.*, vacation of an award was ordering reinstatement of a pilot who had been discharged after flying passenger plane while intoxicated was rightfully affirmed. This is because it certainly poses a danger to have an intoxicated person flying a plane. No danger is imposed by suspending players for taking prohibited substances, in fact, it protects players who obey the rules. *See, e.g., Delta Air Lines, Inc. v. Air Line Pilots Ass’n, Int’l*, 861 F.2d 665, 674 (11th Cir. 1998). The District Court correctly pointed out that it is likely that Appellees, having been warned not to take SpeedShot in particular, would have turned to a different energy booster and that there is no guarantee that any other energy booster is less likely to have a Prohibited Substance than SpeedShot. Appellee acknowledges that they were warned and that they were aware of the Hotline and the Policy’s strict liability rule. Even after numerous explicit warnings, the adult players still chose to take energy-boosters, which further shows that it is likely that players would most likely have just used another substance if informed about SpeedShot. Appellee has yet to clearly articulate what public policy was violated under New York law.¹ The failure to demonstrate an explicit, well defined, and dominant public policy that requires the disclosure that Appellee asserts, should leave this Court with no doubt that there is not a basis for vacating the arbitration award. *See W.R. Grace*, 461 U.S. at 766.

CONCLUSION

Wilson and the MLBPA’s claims must fail on both counts. First, the state law claims advanced by Wilson are subject to Section 301 preemption because the CBA must be interpreted

¹ New York law governs this issue because the Policy is part of the MLB Collective Bargaining Agreement, which states that to the extent that federal law does not govern, New York State law will govern the CBA.

to determine whether the policy is in compliance with the DATWA. Without looking to the terms of the CBA, it is impossible to determine if the developed policy is in compliance with the Act. The DATWA explicitly requires that the CBA be looked to and therefore Wilson's claim must be found preempted under Section 301. Uniform application is also required in this circumstance to avoid the application of several different interpretations of the drug policy across the states where the MLB conducts business. The MLB's rules must be applied in the same manner to every player on every team. As the CBA is developed between the MLB and the MLBPA, an agreement has been reached that must be honored in the same manner in every state. Based on the foregoing, this Court should reverse the previous judgment and find that Wilson's claims are preempted under Section 301.

Second, The MLB's claim that the arbitration award must be upheld should prevail. The MLB does not owe Appellee a fiduciary duty to voluntarily inform them that SpeedShot contains Clomiphene; therefore, the arbitrator's decision did not run contrary to public policy. The MLB warned Appellee on numerous occasions about the dangers of energy-boosting supplements and not to rely on the supplements list of ingredients as they may not include all ingredients. Furthermore, the MLB specifically advised players that the company that produces SpeedShot is a banned company. Moreover, Appellee was fully aware of the Policy's strict liability rule. Had Appellee not wished to abide by this strict liability rule they should have not agreed to it in the collectively bargained for Policy. Appellee was expressly informed and agreed to via the Policy that "players are responsible for what is in their bodies" and that a "positive test result will not be excused because it does not result from an intentional use of a prohibited substance. Appellee is not innocent, players are adults who violated the collectively bargained for Policy. For the aforementioned reasons, this Court must find that the District Court for the Southern District of

Tulania was correct in its conclusion and reverse the decision of the United States Court of Appeals for the Fourteenth Circuit.