

IN THE
SUPREME COURT OF THE UNITED STATES OF AMERICA

MAJOR LEAGUE BASEBALL,
Petitioner,

v.

KEVIN WILSON;
MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,
Respondent.

On Writ of Certiorari from the United States
Court of Appeals for the Fourteenth Circuit.
Case No. 09-214

BRIEF FOR PETITIONER

QUESTIONS PRESENTED

- I. Whether the Circuit Court erred by allowing a Major League Baseball player's claim under Minnesota's Drug and Alcohol Testing in the Workplace Act, which challenged his suspension under a collectively bargained for drug policy applicable nation-wide to all team, was not preempted by Section 301 of the Labor Management Relations Act?

- II. Whether the Circuit Court erred by vacating the arbitrator's decision, which upheld Major League Baseball's choice to issue general warnings concerning the dangers of energy-boosting supplements instead of product-specific warnings regarding the presence of banned drugs, when the arbitrator's decision did not violate any specific or explicit public policies?

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STATEMENT OF THE CASE

Should one state alone be allowed to dictate anti-doping policies for a national professional sports organization? Uniformity is paramount when professional sports teams are independent. Major League Baseball now asks this Court to uphold the integrity of its drug policies, in the face of opposition from the baseball players' association and a player who himself consumed a banned drug and sought preferential treatment under Minnesota's state law.

Kevin Wilson, a baseball player for the Minnesota Twins and a member of the Major League Baseball Players Association ("Players Association"), attempted to seek favored treatment after he was suspended for fifteen games for testing positive for Clomiphene – a steroid-masking anti-estrogen banned under the drug policy. (R. at 3, n.1).

The Policy

Wilson's voluntarily decision to consume a product containing Clomiphene triggered this case, as Wilson's ingestion of the steroid-masking substance violated the strict-liability provisions of the Policy on Anabolic Steroids and Related Substances ("Policy") adopted by Major League Baseball Players Association and Major League Baseball.

In 2007, the Players Association and Major League Baseball ("MLB") freely bargained for and agreed to incorporate the drug policy into the collective bargaining agreement ("CBA") applicable nation-wide to all of MLB's thirty member teams. (R. at 1). The Policy plainly warned players that they would be held strictly liable for drug use regardless of intent. (R. at 1). The Policy's language clearly and unequivocally provided that players alone "are responsible for what is in their bodies," and further instructed that "this Policy adopts an approach of strict liability, meaning that *positive test results will not be excused because a player was unaware he was taking a Prohibited Substance.*" (R. at 1) (italics added).

The Policy provided a 15-25 game suspension for first-time violators of its strict-liability terms. (R. at 2). Sanctioned athletes were permitted to appeal to a neutral arbitrator. (R. at 2). In the event that a player challenged his suspension to an arbitrator, the Policy provided that the arbitrator's decision would be "the full, final, and complete disposition of the appeal and will be binding on all parties." (R. at 2).

The Policy also created a hotline to provide players "confidential and accurate information about these products, including their ingredients, effects, and adverse reactions." (R. at 2). However, the memorandum publicizing the Policy explicitly stated that "[u]sing the Hotline will not excuse a positive test result." (R. at 2). Players were thus on notice that they alone were individually responsible for substances they elected to consume. (R. at 2).

Dr. John Larson, the Plan Administrator, held discretionary power to oversee the Policy's drug-testing procedures, reported any positive test results to the Commissioner for discipline, and educated the players about the Policy's implementation. (R. at 2, 15). Dr. Ray Finkle aided Dr. Larson in implementing the Policy. (R. at 2). Neither Doctor was affiliated with the Commissioner's office or any MLB club. (R. at 2).

MLB's Warnings Against Energy Supplements

Due the inherent risks with energy enhancers, MLB issued multiple warnings against the use of all energy-boosting supplements, such as SpeedShot. (R. at 4). Still, despite warnings, Wilson voluntarily consumed SpeedShot, which contained Clomiphene. (R. at 4). Clomiphene was not listed as an ingredient on the SpeedShot label. (R. at 3). In 2007, Drs. Larson and Finkle and Mr. Andrew Birch, the Vice President of Law and Labor Policy for MLB, learned that SpeedShot contained Clomiphene. (R. at 3). In response, MLB prohibited all teams and players from engaging in any business with SpeedShot's distributor. (R. at 3).

Suspensions Upheld at Arbitration

After his suspension Wilson appealed to an independent and neutral arbitrator, who upheld the sanctions. (R. at 2). Despite the agreement for final and binding arbitration, Wilson and the Players Association sued in Minnesota state court. (R. at 5). They claimed the Policy violated Minnesota's Drug and Alcohol Testing in the Workplace Act ("DATWA"), and that it was unenforceable as a matter of public policy. (R. at 5).

Wilson and the Players Association also attacked the arbitration award as against public policy, in an attempt to circumvent their contract to entrust the arbitrator with the final and binding decision making power. (R. at 5). Meanwhile, the four other players charged with the same offense each abided by the CBA's terms and served their respective 15 game suspensions.

Procedural Path

After the suit commenced, MLB successfully removed the action to the United States District Court for the Southern District of Tullahoma. (R. at 5). On MLB's motion for summary judgment, the District Court dismissed the litigation based on two grounds. First, the District Court held Section 301 of the federal Labor Management Relations Act preempted the DATWA claims. (R. at 19). Second, the court found that the neutral arbitrator abided by the essence of the collectively bargained for Policy controlling between the parties. (R. at 19). It noted that the Policy, as interpreted by the arbitrator, was valid and complied with public policy because it did not encourage a breach of the fiduciary duty to disclose information to the players. (R. at 20). Following the District Court's reasoned decision, the Fourteenth Circuit Court of Appeals reversed on both issues.

This Court should now reverse the Circuit Court because the Minnesota law directly conflicts with Section 301 of the Labor Management Relations Act. Moreover, the Circuit

Court's decision to vacate the arbitrator's decision damaged the contract controlling between all the parties to hold the arbitrator's resolution as final and binding. The court should have enforced the contract provisions because the Policy itself aligned with public policy. Reversal would thus support the importance of the freedom to contract for a collective bargaining agreement, as it applies to all thirty MLB teams.

STANDARD OF REVIEW

When reviewing a circuit court's order confirming or vacating an arbitration award, the court's questions of law are reviewed *de novo*. *Stark v. Sandburg, Phoenix & von Gontard, P.C.*, 381 F.3d 793, 798 (8th Cir. 2004) (citing *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 947-48 (1995)).

SUMMARY OF THE ARGUMENT

The Circuit Court's decision to allow the claims to proceed under Minnesota law was an error that will potentially cause disjointed anti-doping policies among all MLB teams. Where one state's law is either intended to or has the effect of favoring one team of the league over another, then a uniform law should apply to ensure the fair treatment of all teams and all players. Therefore, Section 301 must trump DATWA to avoid the "disruptive influence [of] individual contract terms" and "[f]ragmentation of the league structure on the basis of state lines." *Partee v. San Diego Chargers Football Co.*, 668 P.2d 674, 678 (Cal. 1983).

Preemption under Section 301 reinforces the importance of relationships freely bargained for and created by a collective bargaining agreement. Here, the parties' legal relationship is defined by the Policy, which is a part of the CBA. Whether MBL owed Wilson an affirmative duty to disseminate product-specific information cannot be answered absent analysis of the parties' legal relationship.

Section 301 preempts because resolution of the claim is inextricably intertwined with interpretation of the CBA. Resolution of this claim depends on whether the Policy complies with DATWA. To answer this, the court must carefully interpret the Policy provisions and compare that interpretation with DATWA's minimum requirements. Such comparison between the Policy and DATWA requires an interpretation of both the Policy provisions and DATWA requirements.

The Circuit Court further exceeded its judicial power by vacating the arbitrator's decision because the parties bargained for final and binding arbitration and the Policy itself did not violate public policy. The Policy controlling between the parties provided MLB and Dr. Larson the discretion to disseminate general warnings to players concerning the inherent dangers in using energy boosting supplements. Based on the Policy, MLB and its officials did not owe players a fiduciary duty to disclose product-specific information to prevent players from ingesting banned substances. Because MLB did not breach any fiduciary duties owed to players, the arbitrator rightfully enforced the Policy's strict-liability terms by upholding Wilson's suspension.

ARGUMENT

I. THE CIRCUIT COURT ERRED BY NOT FINDING PREEMPTION WHEN RESOLUTION OF A MAJOR LEAGUE BASEBALL PLAYER'S CLAIM IS INEXTRICABLY INTERTWINED WITH INTERPRETATION OF THE COLLECTIVE BARGAINING AGREEMENT.

Section 301 of the Labor Management Relations Act preempts state law claims alleging violations of a collective bargaining agreement. *Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 103-04 (1962) (preempting state law to resolve an employer's claims against union for unauthorized strike when collective bargaining agreement required arbitration). Section 301 applies to "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . or between any such labor organizations. . . ." 29 U.S.C. § 185(a). Section 301 preempts when state law claims are

“substantially dependent upon analysis of the terms” or “inextricably intertwined” with consideration of the provisions of a collective bargaining agreement. *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 219-20 (1985).

In *Lueck*, an employee alleged that his employer and insurer breached their duty to act in good faith towards his disability claims made under a collective bargaining agreement. 471 U.S. at 206. The employee argued that state tort law applied to resolve the claim. *Id.* at 206-207. But, this Court held that Section 301 preempted because any implied and express duties to timely pay disability benefits arose under and were defined by the collective bargaining agreement. *Id.* at 218.

The *Lueck* court reasoned that the employee’s disability claims arose under the terms of the agreement, so the employer’s and insurer’s duties to pay or reject in good faith also arose under the agreement. *Id.* at 215. Thus, regardless whether an express or implied duty was breached, the CBA’s interpretation was required. Hence, preemption was proper to uniformly construe the agreement.

Finding no preemption, in *Lingle v. Norge Division of Magic Chef, Inc.* this Court considered an Illinois employee’s claim for damages following discharge for filing a worker’s compensation claim when the collective bargaining agreement provided a contractual remedy for discharge. 486 U.S. 399, 401 (1988). While the employer pursued the contractual remedy of arbitration, the employee sued alleging retaliatory discharge. *Id.* at 402-403. This Court resolved a conflict among the Second, Third and Tenth Circuits in holding that Section 301 did not preempt. *Id.* at 403.

The *Lingle* court reasoned that interpreting the collective bargaining agreement was not necessary because the claim could be resolved by examining the employee’s and employer’s

conduct in the discharge. *Id.* at 407. Analysis of the same facts to resolve the state law claim and interpret the collective bargaining agreement does not make the claim and agreement dependent. *Id.* at 408. Therefore, the state law claim was independent of the CBA. *See also Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246 (1994) (finding no preemption when employee's claim of retaliatory discharge for whistleblowing was independent of the collective bargaining agreement because the claim was based upon employer's behavior outside the agreement).

A. Section 301 Preempts Because the DATWA Claim is Inextricably Intertwined with the Policy.

The claim is inextricably intertwined with the Policy because the claim cannot be resolved without interpreting the Policy, which is incorporated in the CBA. Only through interpreting the Policy can the court determine whether the Policy's terms comply with DATWA. But first, it is necessary to determine what DATWA requires.

1. *DATWA requires interpretation of the Policy.*

DATWA requires certain minimum information to be part of a Minnesota employer's drug policy. MINN. STAT. § 181.952(1). DATWA does not require employers to have a drug policy. *See generally* MINN. STAT. § 181.957. But, if there is a drug policy, then DATWA applies. MINN. STAT. § 181.951(1)(b). Similarly, a claim under DATWA could not arise without a drug policy. Therefore, the Policy and its terms begin the analysis of whether the Policy complies with DATWA.

Such examination depends upon interpreting, understanding, and comparing the Policy's terms to DATWA's requirements. Here, the drug policy itself is a triggering condition to a DATWA claim. Absent the condition, the claim could not arise. Likewise, absent interpretation of the Policy's terms the claim could not be resolved. When such interpretation is necessary, as here, preemption under Section 301 is proper.

A claim is inextricably intertwined when it cannot be resolved without interpreting the terms of the collective bargaining agreement. *Lueck*, 471 U.S. at 220. Here, the claim is that the Policy provisions do not comply with DATWA’s minimum requirements. (R. at 6). Two sets of requirements, one each under the Policy and DATWA, will require this Court to construe the Policy by comparing and contrasting each set of requirements. This is because DATWA defers to the Policy when random drug tests are conducted on professional athletes under a collective bargaining agreement. *See* MINN. STAT. § 181.951(4) (2009) (an employer may randomly test “only if . . . the professional athlete is subject to a collective bargaining agreement [and] only to the extent consistent with the collective bargaining agreement). Thus, resolution of this claim is inextricably intertwined with the Policy because the court must interpret whether the random testing complied with the Policy as mandated by MINN. STAT. § 181.951(4) (2009). This warrants preemption under Section 301.

2. *DATWA’s Minimum Standards Require Policy Interpretation.*

The DATWA claim is also inextricably intertwined with the Policy because DATWA prescribes only minimum standards for a permissive drug policy. DATWA does not “limit . . . [a] policy that meets or exceeds and does not otherwise conflict with” DATWA. MINN. STAT. § 181.955(1). To resolve whether the Policy “meets or exceeds and does not otherwise conflict with” DATWA naturally requires a careful analysis and comparison of the Policy provisions to the DATWA requirements. *See, e.g. Gore v. Trans World Airlines*, 210 F.3d 944, 951 (8th Cir. 2000) (finding preemption by distinguishing *Norris* when *Norris*’ claims were based on state whistle-blowing laws while *Gore*’s claims required arguing “the meaning of standards or duties created and defined by the governing collective bargaining agreement”).

Similar to *Gore*, here the resolution of the claim cannot occur without analysis of the Policy. Reviewing the Policy determines the standards created and adhered to by MLB in conducting the drug testing. In turn, those standards are compared against DATWA's minimum requirements, thereby verifying that the Policy complies with DATWA. Thus, the DATWA claim is "inextricably intertwined" with the Policy and preemption is necessary.

3. *Preemption is Proper Because Resolution of a Claim for Breach of Fiduciary Duty is Substantially Dependent Upon Consideration of the Policy Terms.*

Section 301's purpose is fulfilled when relationships created by a collective bargaining agreement are enforced by "an evolving federal common law grounded in national labor policy." *Lueck*, 471 U.S. at 211 (quoting *Bowen v. United States Postal Service*, 459 U.S. 212, 224-25 (1983)). The relationship between contractual parties is defined by the CBA's terms. *See Lueck*, 471 U.S. at 218. Adhering to the premise of Section 301, preemption is proper to promote uniform interpretation of the CBA by a central federal court. *See Livadas v. Bradshaw*, 512 U.S. 107, 122 (1994) (citing *Lucas Flour*, 369 U.S. at 103-104).

Here, the parties' legal relationship is defined by the Policy, which is a part of the CBA. Whether MLB owed to Wilson any fiduciary duties cannot be answered absent analysis of the parties' legal relationship. *See, e.g. United Steelworkers of Am. v. Rawson*, 495 U.S. 362, 371 (1990) (state law tort action based on alleged negligence in the inspection of a mine preempted because the *duty to inspect the mine arose solely out of the collective bargaining agreement*) (italics added); *accord Livadas*, 512 U.S. at 122-123 (merely "relabeling" as a tort suit is insufficient to find preemption when the suit is properly a breach of a collective bargaining agreement); *Karnes v. Boeing Co.*, 335 F.3d 1189, 1195 (10th Cir. 2003) (Henry, C.J. concurring) (noting that a statutory claim based upon a breach of contract would be preempted).

In *Lueck*, Section 301 preempted because resolving the claim for a breach of the duty of good faith required construction of the CBA and any express or implied duty that arose from the CBA. Likewise here, any duty to convey information to the players arose from the Policy, which is a part of the CBA. Thus, the claim for a breach of fiduciary duty is “inextricably intertwined with consideration of the terms of the [Policy].” *Lueck*, 471 U.S. at 220). Because the claims “relating to what the parties to a labor agreement agreed . . . must be resolved by reference to uniform federal law,” these claims are preempted by section 301. *Lueck*, 471 U.S. at 211.

4. *The Collective Bargaining Agreement Must Be Construed Because this Claim is Not Purely Factual.*

Unlike *Lingle* and *Norris*, where a “purely factual” analysis without construction of the CBA was sufficient to resolve the claim, here the claim for breach of fiduciary duty would not exist without the CBA’s terms. The state law in *Lingle* prevented retaliatory discharge and required substantive duties of the employer outside the agreement. *Lingle*, 487 U.S. at 407; *see also Livadas*, 512 U.S. 107 (1994) (finding no preemption when employee’s claim required court to merely “look to” the collective bargaining agreement to calculate the rate of pay).

In contrast, MLB’s duties, if any, arose solely from the CBA. *See Lingle*, 486 U.S. at 409-410; *but see Bogan v. Gen. Motors Corp.*, 500 F.3d 828, 832-833 (8th Cir. 2007) (finding no preemption when an employee’s tort claims for intentional infliction of emotion distress required only interpretation of the employer’s factual conduct and not a provision of the collective bargaining agreement).

Thus, before this Court can determine whether any duties were breached, the scope of any duties must be determined. This requires an interpretation of the CBA’s terms concerning what, if any, duties arose. Accordingly, preemption is appropriate under Section 301 because the claim can only be resolved by construing the CBA to decide what, if any, duties existed.

B. Preemption By Section 301 is Necessary to Uniformly Interpret and Fairly Apply Collective Bargaining Agreement to Maintain the Integrity of Major League Baseball.

Preemption by Section 301 ensures the “uniform interpretation of collective bargaining agreements” and “promote[s] the peaceable consistent resolution of labor-management disputes.” *Lingle*, 486 U.S. at 404. “[D]ifferent meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements.” *Id.* at 404 n.3 (quoting *Lucas Flour Co.*, 369 U.S. at 103). “[P]ossibly conflicting legal concepts might substantially impede the parties’ willingness to agree to contract terms providing for final arbitral or judicial resolution of disputes.” *Id.*

1. *Uniformity is Paramount When Major League Baseball Teams and Players Are Interdependent.*

Section 301 should preempt Minnesota state law because the Policy was collectively bargained for, and the parties agreed to apply the Policy uniformly to all of MLB’s 30 member clubs spread across approximately 25 different states. The nature of professional sports leagues is such that teams across the several states depend upon each other to play their games. This is unlike a traditional company or entity conducting business in multiple states from various locations or offices. Comparing MLB to a typical multi-state company, MLB depends upon fairly matched teams competing amongst themselves to determine a World Series Champion. This competition depends upon players competing against each other under uniform rules.

For example, if baseball was played under one set of rules in Texas while a different set of game rules applied in Massachusetts, chaos would result when determining the World Series Champion because two games under different guidelines cannot be fairly compared. Similarly, MLB teams cannot function competitively without standardized rules applicable nation-wide.

Where one state’s law either is intended to or has the effect of favoring one team over another, then a uniform law should apply to ensure the fair treatment of all teams and all players. “A statute that directly controls commerce occurring wholly outside the boundaries of a State exceeds the inherent limits of the enacting State's authority and is invalid regardless of whether the statute's extraterritorial reach was intended by the legislature.” *Healy v. Beer Institute, Inc.*, 491 U.S. 324, 336 (1989).

Section 301 must trump DATWA because the disparate treatment among teams that depend upon fair application of uniform rules will impair MLB’s ability to conduct business. Therefore, where such intense interdependence exists, uniformity is paramount to prevent separate and potentially conflicting state laws. Here, uniformity is best achieved by finding that Section 301 preempts DATWA.

2. *The Minnesota Legislature Recognized the Importance of Uniformity to Maintain the Integrity of Major League Baseball.*

The Minnesota Legislature never intended for DATWA to apply across the country, nor would the State Legislature’s power extend that far. Nor did the Minnesota Legislature intend for DATWA to apply to performance-enhancing or masking drugs such as Clomiphene. *See* MINN. STAT. § 181.950(4) (defining “drug” as substances listed in MINN. STAT. § 152.01(4) and 152.02 none of which include Clomiphene). But, the Minnesota Legislature recognized the importance of uniformity to maintain the integrity of professional sports.

From 1987 when DATWA was initially passed until 2005, employers could randomly drug test any employee. DATWA, 2005 Minn. Sess. Law Serv. ch. 133, sec. 1, § 181.951(4) (West) (codified as amended at MINN. STAT. § 181.951(4) (2009)). In 2005, the Minnesota Legislature amended DATWA to permit random drug testing of only two groups: “employees in

safety-sensitive positions” and professional athletes “subject to a collective bargaining agreement[s] permitting random testing.” *Id.*

Even then, DATWA deferred to the interpretation of a collective bargaining agreement because rather than permitting random testing of *any* professional athlete, a professional athlete may be randomly tested only when he is “subject to a collective bargaining agreement permitting random testing.” MINN. STAT. § 181.951(4) (2009). So, instead of permitting random drug testing of professional athletes under DATWA, the Minnesota Legislature recognized the need for uniformity. Thus, they deferred to the “extent consistent with the collective bargaining agreement” for that uniformity. *Id.*

3. *Absent Uniformity Through Preemption Some Teams Could Be Unfairly Disadvantaged or Advantaged.*

Here, four other players from teams outside Minnesota suffered suspensions for ingesting Clomiphene. But, they did not have recourse to a state law action. This allowed Wilson to play under the temporary restraining order when his fellow league players had no alternative but to serve their suspensions. Were this type of scenario to repeat itself in on a wider scale, entire teams could be unable to compete while their fellow league members receive disparate treatment under localized state-law claims. Discrepancy could also exist for Minnesota players if there was no nation-wide Policy, but DATWA still applied to Minnesota players. Then those players could be left sitting on the bench while their fellow league members in other states could play.

Section 301 must preempt DATWA to avoid the “disruptive influence [of] individual contract terms.” *Lucas Flour*, 369 U.S. at 103. Such uniformity through preemption will prevent “[f]ragmentation of the league structure on the basis of state lines.” *Partee v. San Diego Chargers Football Co.*, 668 P.2d 674, 678 (Cal. 1983). Therefore, DATWA must defer to “interpretive uniformity and predictability” under Section 301. *Trustees of the Twin City*

Bricklayers Fringe Benefit Funds v. Superior Waterproofing, Inc., 450 F.3d 324, 334 (8th Cir. 2006) (finding Section 301 preempted because determining whether contractor justifiably relied on oral assurances allegedly given to it by the Union required construing the CBA's terms).

4. *Uniformity is Not a Slippery Slope.*

Applying uniform laws over separate states will promote interstate commerce. Professional sports leagues are interdependent upon member clubs for the success of the league as a whole because teams do not compete against themselves. Rather, teams depend upon each one another for things such as competition, rankings and scores. Without such contests among member clubs, MLB would not exist.

This is unlike an employer with operations or offices in multiple states because these employers do not compete against other locations or offices of the same company for the sake of the company as a whole. MLB is unique in that its 30 member teams essentially comprise a single company. So, it is necessary to consistently apply uniform laws over individual states' laws when construing a collective bargaining agreement, as this will not overly favor federal law in traditional business practices.

II. THE ARBITRATOR'S DECISION MUST BE ENFORCED BECAUSE THE PARTIES CONTRACTED FOR A FINAL AND BINDING ARBITRATION AND THE POLICY ITSELF COMPLIES WITH PUBLIC POLICY.

The Federal Arbitration Act ("FAA") governs the arbitrator's findings in this case, which may only be set aside for reasons enumerated under the FAA. 9 U.S.C. §§ 10(a)(1)-(2); *Crawford Group, Inc. v. Holekamp*, 543 F.3d 971, 976 (8th Cir. 2008). Courts generally favor insulating arbitration agreements from judicial review based on federal statutes regulating labor-management relations. *United Paperworkers International Union v. Misco*, 484 U.S. 29, 37

(1987). These statutes “reflect a decided preference for private settlement of labor disputes without the intervention of government.” *Id.*

The law is well-settled that even when a court deems the arbitrator’s results as incorrect, it may not vacate the award unless it violates a specific and well-defined public policy. *See Delta Air Lines, Inc. v. Air Line Pilots Ass’n, Int’l*, 861 F.2d 665, 670 (11th Cir. 1988) (“An arbitrator's result may be wrong. . . Yet, it may not be subject to court interference. The offending arbitrator's award which properly results in our setting it aside must be so offensive that one is to be seen only rarely.”); *Iowa Elec. Light & Power Co. v. Local Union 204 of the IBEW*, 834 F.2d 1424, 1427 (8th Cir. 1987) (“the decision of an arbitrator who has not exceeded his contractual authority is almost always upheld”).

Therefore, here, the Circuit Court exceeded its judicial power by vacating the arbitration award because (1) the parties contracted for final and binding arbitration and (2) the arbitrator’s decision to enforce the Policy’s provisions did not violate an explicit public policy.

A. Federal Policy Favors Enforcement of Arbitration Awards.

The Players Association and MLB explicitly agreed to submit disagreements to an arbitrator for review. This Court should now uphold the resulting award based on a strong federal policy favoring the finality of an arbitrator’s decision in a labor dispute. *Misco*, 484 U.S. at 38 (“If courts were free to intervene . . . the speedy resolution of grievances by private mechanisms would be greatly undermined.”).

Indeed, this Court previously explained that courts are “limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator . . . [T]he moving party

should not be deprived of the arbitrator's judgment, when it was his judgment and all that it connotes that was bargained for." *Id.* at 36 (quoting *Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 567-568 (1960) (italics added)).

1. *The Arbitrator's Decision Should be Final and Binding.*

In this case, the CBA's language was clear and unambiguous. Because the Players Association and MLB agreed to it, they are bound by it. *Coca-Cola Bottling Co. of St. Louis v. Teamsters Local Union No. 688*, 959 F.2d 1438, 1440 (8th Cir. 1992). Consequently, the arbitrator's findings against Wilson and the Players Association should be enforced because the arbitrator acted with fidelity to the CBA's terms. *Id.* at 1442.

There is no dispute that the parties to this action entrusted a neutral arbitrator to use his judgment to resolve all conflicts arising out of the Policy. Both the Players Association and MLB further agreed that the arbitrator's decision would final and binding.

The Circuit Court should not have permitted Wilson and the Players Association to circumvent the contract they freely bargained for without proving that the arbitrator failed to reach his conclusion by interpreting only the plain meaning of the contract's terms. *See Eastern Assoc. Coal Cos. v. United Mine Workers of Am.*, 531 U.S. 57, 62 (2000)(quoting *Misco*, 484 U.S. at 38 (“[A]s long as an honest arbitrator is even arguably construing or applying the contract and acting within the scope of his authority,’ the fact that ‘a court is convinced he committed serious error does not suffice to overturn the decision.’”)).

But, by refraining from challenging the argument, Wilson and the Players Association concede that the arbitrator acted within the scope of his contractually delegated authority. The record is further absent of any facts to suggest that the arbitrator acted with bias, or that MLB procured the award through use of any fraudulent, corrupt, or undue mechanisms. *See* 9 U.S.C.

§§10(a)(1)-(2) (courts may only set aside an arbitration award that “was procured by fraud, corruption, or undue means,” or when “there was evident partiality in the arbitrators”).

Hence, this Court should infer that the arbitrator reached a reasoned decision within the scope of the authority provided under the CBA. Accordingly, the most proper holding now is to bind the parties to the arbitrator’s decision. Indeed, this conclusion is one that is most faithful to the bargain the Players Association and MLB formed.

B. The Circuit Court Exceeded Its Judicial Power by Vacating the Arbitrator’s Decision Because the Policy Incorporated in the Collective Bargaining Agreement Did Not Violate Public Policy.

Based on the strong federal policy favoring the enforcement and finality of arbitration awards, the Circuit Court was permitted to play only a limited role when asked to review the arbitrator’s decision. *Misco*, 484 U.S. at 36; *see also Coca-Cola Bottling Company of St. Louis*, 959 F.2d at 1440 (“courts’ review of arbitration awards is exceptionally narrow”).

The Circuit Court did not possess the broad judicial power to set aside awards as against public policy. *Misco*, 484 U.S. at 43. Instead, it could only refuse to enforce the CBA if its terms violated public policy or the arbitrator’s enforcement of the CBA conflicted with explicit legal standards. *Id.* Here, it was inappropriate for the Circuit Court to disturb the arbitrator’s decision because it “[drew] its essence from the collective bargaining agreement’ and [was] not based on the arbitrator’s ‘own brand of industrial justice.’” *Holmes v. National Football League*, 939 F.Supp. 517, 524 (N.D. Tex. 1996), (citing *Exxon Corp. v. Baton Rouge Oil & Chem. Workers Union*, 77 F.3d 850, 853 (5th Cir. 1996) (quoting *United Steelworkers of Am. v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960))).

Accordingly, the Circuit Court erred by vacating the arbitrator’s decision on the basis of public policy because Wilson and the Players Association failed to prove (1) the CBA’s terms

violated public policy or (2) that the award itself explicitly conflicted with specific legal precedent. *W.R. Grace & Co. v. Rubber Workers*, 461 U.S. 757, 766 (1983); *Misco*, 484 U.S. at 43.

1. *The Policy's Terms Do Not Violate Public Policy.*

There is no argument that any of the Policy's terms, including the strict-liability provision that formed the basis of the arbitrator's decision, violate public policy. Indeed, Wilson and the Players Association attack the actual enforcement of the arbitrator's findings under the Policy. Thus, because the parties to this action do not challenge the validity of the Policy's terms, this Court should conclude that all specific terms comply with public policy.

2. *The Policy Itself Abides With Fiduciary Duties Standards.*

Wilson voluntarily ingested SpeedShot after explicit and repeated warnings by MLB that energy supplements were dangerous and contained substances that could violate the Policy's strict-liability rule. Regardless, Wilson and the Players Association insist that the Policy itself violated public policy by somehow allowing MLB and MLB officials to breach fiduciary duties to disclose information to the players specifically regarding SpeedShot's harmful ingredients.

As agreed by both the District Court and the Circuit Court, in order for Wilson the Players Association to prevail on their public policy argument, they must prove that MLB and its physicians (1) owed fiduciary duties to the players, (2) such duties were breached, (3) those fiduciary duties rest in an explicit public policy, and (4) the arbitrator's decision violated that explicit public policy by failing to punish the breach of the fiduciary duties.

- a. *A Fiduciary Relationship Did Not Exist Because the Players Could Not have Reasonably Relied on MLB or MLB Officials to Disclose Specific Information About SpeedShot's Ingredients.*

Wilson's suspension was not excusable on the grounds that MLB or MLB officials breached their fiduciary duties, because a fiduciary relationship mandating disclosure of all the harmful ingredients in SpeedShot did not exist. A fiduciary relationship is one of on-going trust and confidence between the parties, where one party has a duty to act or give certain advice for the benefit of the other party based upon scope of the specific relationship. *United Feature Syndicate, Inc. v. Miller Features Syndicate, Inc.*, 216 F.Supp.2d 198, 218 (S.D.N.Y. 2002). When defining the perimeters of a fiduciary relationship and any corresponding duties, the court must analyze all the available facts to determine if one party placed confidence in another and reasonably relied in the other's superior expertise and knowledge. *Lumbermens Mutual Casualty Co. v. Franey Muha Alliant Insurance Serv.*, 388 F. Supp.2d 292, 305 (2005).

Admittedly, as a physician charged with educating players about the dangers of drugs, Dr. Larson possessed superior expertise and knowledge about the safety of energy-boosting supplements. But, the element of reasonable reliance is necessary when deciding whether a fiduciary relationship existed. *Id.*

In *Callahan v. Callahan*, for instance, a fiduciary relationship existed because the plaintiff reasonably relied on information the defendant, an attorney, provided to her regarding a property's value. 127 A.D.2d 298, 300-301 (N.Y.App.Div. 1987). A long history of friendship between the plaintiff and the attorney, coupled with the attorney's superior knowledge regarding the property's value, formed a basis of a trust relationship that justified the plaintiff's reliance on the attorney's inaccurate and misleading statements. *Id.*

The court in *Callahan v. Callahan* did not have information indicating that the plaintiff unreasonably relied on the attorney's statement. In direct contrast, this case presents a multitude of facts that show Wilson did not reasonably rely on Dr. Larson to provide him with all available information about the prohibited substances in SpeedShot.

All players, for example, were repeatedly warned that they were each strictly liable for any substance that went into their bodies. The players were further told that they could not rely on the information provided by the Hotline to excuse a positive test result. Thus, despite any confidence Wilson placed in either the Policy administrators or the Hotline's information, as a player he was fully aware that he could not depend on any available information to escape the strict-liability responsibilities delegated to him alone under the Policy.

Hence, the Circuit Court erred in finding a fiduciary duty to disclose under the Policy. This is because there was a complete absence of a contractual based fiduciary relationship or facts that would have caused a reasonable player to rely on the Hotline or the information disseminated by MLB and Dr. Larson when deciding to consume prohibited energy supplements.

b. Fiduciary Duties Were Not Breached.

Even if a fiduciary relationship existed, Wilson and the Players Association, as parties claiming that MLB and MLB officials failed to disclose material information, were required to prove the nature of the fiduciary relationship entitled them to know the exact information that was omitted. *Grandon v. Merrill Lynch Co.*, 147 F.3d 184, 189 (1998). Furthermore, even if a fiduciary relationship existed, the law is well-settled that a claim for breach of fiduciary duties fails without facts indicating a breach of such duties. *Lumbermens Mutual Casualty Co.*, 388 F. Supp.2d at 304.

In *Grandon v. Merrill Lynch Co.*, the Second Circuit explored whether a duty to disclose existed in the context of over-the-counter securities bonds' markups. 147 F.3d at 192-194. The court held that even when there was not a statute regulating disclosure of markups on municipal securities, an implied duty to disclose existed when the markups were excessive. *Id.*

In reaching its holding, the *Grandon* court acknowledged that it "might be unduly burdensome to require [fiduciaries] to disclose markups on bonds in every case." *Id.* at 193. But, it reasoned that imposing an implied duty of disclosure was appropriate based on strong legal precedent allowing victims of markups to pursue either administrative actions for fraud or a private cause of action for an implied failure to disclose certain markups. *Id.*

Here, as in *Grandon*, no identified statutes or regulations impose a duty to disclose on MLB or any of its officials. Moreover, the parties did not bargain for contractually based duties under the Policy. Undeniably, under the Policy's terms MLB was not obliged to issue any product-specific warnings. For the duty to disclose to operate here the *Grandon* case thus informs us that an implied duty must exist.

However, in *Grandon* the court found an implied duty to disclose markup information based on similar legal precedent enforcing disclosure. Unlike *Grandon*, there is no binding case law applicable here that supports the finding that MLB and its physicians were absolutely required to disclose every ingredient in SpeedShot to the players. In fact, case law actually indicates that athletic governing bodies do not owe a duty to disclose whether a particular supplement is dangerous, if that supplement itself is not on a list of banned supplements. *Walton-Floyd v. United States Olympic Committee*, 965 S.W.2d 35, 39-40 (Tex. App. 1998).

In *Walton-Floyd v. United States Olympic Committee*, the United States Olympic Committee, the coordinating body for amateur athletics, established a hotline similar to that

implemented by MLB under the Policy. *Id.* at 36. The hotline provided athletes with information regarding whether a particular supplement was listed on a list of prohibited drugs. *Id.* The plaintiff, an Olympic runner, contacted the hotline to determine whether a carbohydrate supplement was banned. *Id.* After being told the supplement was not on the banned list, the plaintiff voluntarily consumed the substance. *Id.* Subsequently, after a positive drug test, she learned that the carbohydrate contained amphetamines. *Id.*

On a motion for summary judgment, the court in *Walton-Floyd* held that the Olympic Committee owed no duties to the plaintiff, as there was no express or implied statutory private cause of action to enforce purported duties. *Id.* at 39-40. Additionally, the plaintiff failed to establish a duty of care through common law precedent. *Id.* at 40.

The underlying circumstances *Walton-Floyd* case addressed are analogous to those here. Like the plaintiff in *Walton-Floyd*, Wilson relied on the hotline to provide information regarding a supplement. Here and in *Walton-Floyd*, the hotline operator accurately notified the athletes that a particular supplement was not on a banned list. In neither case, however, did the operator inform the athletes that the substances were safe to consume.

Similar to *Walton-Floyd*, MLB and the doctors lacked an express or implied duty to disclose information to athletes through the hotline. Moreover, Wilson and the Players Association wholly failed to establish a common law duty that required MLB or its officials to disclose information regarding the ingredients in particular supplements to the players.

Therefore following *Walton-Floyd*'s rationale, this Court should find that MLB and its officials did not breach any duties to Wilson because there was never any operative statutes mandating disclosure, nor was there any binding common law precedent creating a duty to disclose SpeedShot's specific ingredients to the players.

c. *Explicit Public Policies Were Not Violated.*

“It is hard to imagine how an arbitration award could violate a public policy . . . without actually conflicting with positive law.” *Eastern Assoc. Coal Corp. v. United Mine Workers of Am.*, 531 U.S. at 68 (Scalia, J., concurring). In this case, the Circuit Court’s exceeded its judicial power in vacating the arbitrator’s decision because it neglected to recognize any established affirmative law or clear, definite, or overriding public policy that the Policy violated.

The question that arises when an arbitration award is attacked through the use of the very narrow public policy exception is whether the policy in question violated some explicit public policy. *MidAm. Energy Co. v. Int’l Bd. Of Elec. Workers Local 499*, 345 F.3d 616, 620 (8th Cir. 2003). A policy may violate public policy if the policy itself either violated explicit statutory or regulatory provisions, or could likely result in significant harm to employees’ safety. *Id.*

i. *The Policy Itself Does Not Violate Any Statutory or Regulatory Laws.*

In *W.R. Grace & Co. v. Rubber Workers*, this Court set forth the framework used to determine whether an award should be set aside as against public policy. 461 U.S. at 766. This Court explained that an arbitration award cannot be disregarded unless it conflicted with established laws and legal precedents. *Id.* Indeed, courts must identify an “explicit”, “well-defined”, and “dominant” public policy violated by the Policy. *Id.*; accord *Misco*, 484 U.S. at 43; *Eastern Assoc. Coal Corp.*, 531 U.S. at 62. “General considerations of supposed public interests,” even when founded on common-sense, are insufficient to permit court to set vacate arbitration awards based on a valid collective bargaining agreement’s terms. *W.R. Grace & Co.*, 461 U.S. at 766.

In *Delta Air Lines, Inc. v. Air Line Pilots Associated*, for instance, the Eleventh Circuit held that a collective bargaining agreement was against public policy because it provided an

arbitrator the power to determine whether an airline may allow an intoxicated pilot to operate an aircraft. 861 F.2d at 674. In reaching its holding, the court identified specific statutes in operation in all fifty states that prohibited driving a vehicle while intoxicated. *Id.* at 673. The court further noted a long line of cases in which courts have upheld those statutes. *Id.*

Here, Wilson and the Players Association have not met the standard established in *W.R. Grace* and its progeny. In contrast to the numerous statutes and cases identified by the *Delta Air Lines, Inc.* court, Wilson and the Players Association fail to identify a single law that controls the fiduciary duty analysis or which was violated by arbitrator's enforcement of the Policy's strict-liability provisions.

Thus, the Circuit Court exceeded its judicial power in vacating the arbitrator's findings because Wilson and the Players Association were "unable to identify any statutory or regulatory provision that evidence an explicit public policy that would be violated if the arbitrator's award was enforced" and hence failed to satisfy the requirements necessary to invoke the narrow public policy exception. *MidAm. Energy Co.*, 345 F.3d at 620.

ii. *The Policy Does Not Endanger the Players' Health and Safety.*

Courts have regularly upheld arbitration awards that are cognizant of safety concerns. *MidAm. Energy Co.*, 345 F.3d at 621. The Policy in place here recognized that importance of MLB players' health and safety. MLB's deep concern for the players' physical well-being is evidenced by the establishment of the confidential Hotline, which dispensed accurate information to players to help them decide whether to take certain substances that could be harmful to their health.

Additionally, Dr. Larson's was available and willing to speak with players personally about any concerns the players may have regarding the ingredients in controlled substances. Dr.

Larson and MLB also advised players that they should not ingest energy supplements because the label may not contain all its ingredients. MLB provided repeated warnings to players that energy supplements contained harmful chemicals that violated the Policy's provision. Finally, MLB expressly banned players from doing business with SpeedShot's manufacturer because the product was dangerous and posed a risky health hazard.

While Wilson may not have taken SpeedShot if he had actual knowledge that it contained Clomiphene, he presents no evidence to indicate that he would not have used another energy booster to reach his desired result. As the District Court pointed out, another energy booster could also have contained banned substances. Thus, MLB's general warnings to avoid energy supplements were entirely reasonable, as the whole industry was problematic to players' health.

Issuing product-specific warnings may have been, as a matter of common-sense, more beneficial to the players' health. However, the Circuit Court erred and should be reversed because MLB took great strides to protect the players' well-being; and, even if the Circuit Court's judgment was rooted in common-sense, it was not founded on a specific public policy mandating disclosure of ingredients to prevent harm to players.

d. The Arbitrator's Decision was Proper Because the Policy Complied with Public Policy and MLB and MLB Officials Did Not Breach Fiduciary Duties.

Without a breach of fiduciary duties, Wilson and the Players Association do not have a meaningful claim that the arbitrator's decision violated public policy. *See Lumbermens Mutual Casualty Co.*, 388 F.Supp.2d at 304. The Circuit Court thus erred in finding that the arbitrator's interpretation of the Policy condoned a violation of public policy, as the Policy is enforceable and MLB and its officials did not breach any fiduciary duties.

CONCLUSION

For the reasons stated, this Court should reverse the Circuit Court's errors and find that (1) Section 301 preempts the DATWA claim and (2) the arbitrator's decision was final and binding, and rightfully complied with all public policy considerations.

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Respectfully Submitted,

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