

In The
Supreme Court of the United States

Major League Baseball,
Petitioner,

v.

Kevin Wilson; Major League Baseball Players Association,
Respondents.

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

BRIEF FOR PETITIONER

Attorneys for the Petitioner

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QUESTIONS PRESENTED

- I. WHETHER A MAJOR LEAGUE BASEBALL PLAYER'S CLAIMS UNDER MINNESOTA'S DRUG AND ALCOHOL TESTING IN THE WORKPLACE ACT CHALLENGING A SUSPENSION HANDED DOWN PURSUANT TO A COLLECTIVELY BARGAINED FOR DRUG POLICY SHOULD BE PREEMPTED BY SECTION 301 OF THE LABOR MANAGEMENT RELATIONS ACT.

- II. WHETHER IT WAS APPROPRIATE TO SET ASIDE AN ARBITRATOR'S RULING REGARDING MAJOR LEAGUE BASEBALL'S REFUSAL TO ISSUE WARNINGS REGARDING THE PRESENCE OF A BANNED SUBSTANCE IN SPECIFIC PRODUCTS ON THE BASIS THAT THE RULING VIOLATED PUBLIC POLICY.

SUMMARY OF THE FACTS

Respondent Kevin Wilson is a professional athlete employed by the Minnesota Twins, and a member of Major League Baseball Players Association (hereinafter “MLBPA”), the other Respondent in this case. R. at 1. Since 2007, the MLBPA and its members have been subject to a Collective Bargaining Agreement (hereinafter “CBA”) with the Petitioner, Major League Baseball, which incorporates the official Major League Baseball Policy on Anabolic Steroids and Related Substances (hereinafter “the Policy”). *Id.* The Policy prohibits MLBPA members from using several banned substances. *Id.* One of these substances is an anti-estrogen compound known as Clemiphen. *Id.* The Policy mandates a “strict liability” approach to test results; if a player is found to have a banned compound in their system, “a positive test result will not be excused because a player was unaware he was taking a Prohibited Substance.” *Id.* There are a variety of penalties which may be levied against players who test positive for a banned substance. *Id.* at 2. For any action taken under the Policy, the Policy gives each player the right to have that action reviewed by a neutral arbitrator with the power to make a binding decision. *Id.*

There are two individuals who are given great discretion by the Policy to help police the use of prohibited substances: Dr. John Larson, and Andrew Birch. *Id.* at 2-3. Dr. Larson is a licensed physician and is employed by Major League Baseball as their Independent Administrator in charge of implementing the Policy. The Policy states that “the Independent Administrator will make himself available for consultation with players and Club physicians; oversee violated protocols’ oversee the development of educational materials; participate in research on steroids.” *Id.* at 12. Andrew Birch is the Vice President of Law and Labor Policy for Major League Baseball, and was partially in charge of the Policy-mandated “MLB Supplement Hotline,” (hereinafter “Hotline”) a confidential hotline players can call to obtain information about banned substances. *Id.* at 2-3, 17. The memorandum educating players about the existence of the Hotline clearly pointed out that “you alone are still responsible for

what goes in your body. Using the Hotline will not excuse a positive test result.” *Id.* at 2.

In 2007, it came to Petitioner’s attention that SpeedShot, a type of energy-boosting supplement, contained the banned substance Clomiphene. *Id.* at 3. The label on the shot’s bottle did not state that Clomiphene was an ingredient. *Id.* Petitioner informed the MLBPA that teams could no longer do business with the distributor of SpeedShot and Dr. Larson informed all players of the dangers posed by energy-boosting supplements and reminded them of the strict liability rule pertaining to banned substances. *Id.* at 3-4. Andrew Birch decided that the Hotline should inform players inquiring about SpeedShot that while it was not on the banned substance list, players should not imbibe the drink because the label might not list all of the ingredients. *Id.* at 17.

Respondent Kevin Wilson took SpeedShot prior to a drug test, despite the warnings of Dr. Larson, and the results showed that he had Clomiphene in his system. *Id.* at 4. As a result, Wilson was suspended for fifteen games in accordance with the Policy. *Id.* During the arbitration proceeding, Wilson did not dispute that he had Clomiphene in his system or that he imbibed SpeedShot, and both sides conceded that the issue draws its essence from the parties’ CBA. *Id.* at 4, 15. Additionally, he admitted that he was aware of the warnings associated with SpeedShot and the Policy’s rule that each player is responsible for what is in their body on a strict liability basis. *Id.* at 4. Respondent Wilson instead argued that the Policy should not be enforced because even though he was warned not to drink SpeedShot, Major League Baseball never specifically informed him or any other player which substances SpeedShot specifically contained. *Id.* Despite Respondent Wilson’s arguments, the arbitrator enforced the Policy’s strict liability rule and upheld Wilson’s suspension. *Id.* Respondents Wilson and the MLBPA sued in federal court (after Petitioner had the case removed from Minnesota state court) arguing that the Policy violated Minnesota’s Drug and Alcohol Testing in the Workplace Act (hereinafter “DATWA”) and the federal Labor Management Relations Act (LMRA), and that the arbitration award should be vacated as contrary to public policy. *Id.* at 5. Petitioners moved for

summary judgement on all claims, arguing that Respondent's DATWA claims are preempted by Section 301 of the LMRA and that the award should be upheld. The District Court held in favor of the Petitioner. *Id.* at 19-20. Respondents appealed to the United States Court of Appeals for the Fourteenth Circuit, which reversed the District Court and held that Respondents' DATWA claim is not preempted by Section 301 of the LMRA, and that the arbitration award should be set aside as contrary to public policy. *Id.* at 1-14. Petitioner appealed to the United States Supreme Court and certiorari was granted.

SUMMARY OF THE ARGUMENT

Major League Baseball and the other Petitioner's request that this Court reverse the Fourteenth Circuit and reinstate the order of the District Court dismissing the claims brought by Respondents. This request is made for two primary reasons. First, that Respondent Kevin Wilson's claim for relief under a Minnesota statute is preempted by federal law and should be dismissed, and second, because the remaining claims by the Respondent have no basis in law and were properly dismissed pursuant to Petitioner's motion for summary judgment.

Section 301 preemption involves employment situations where a collective bargaining agreement exists between the parties. This Court has ruled that Congress created a federal interest through Section 301 in deciding these claims and states cannot interfere with the federal jurisdiction. In this case, one of the Respondents has alleged that Petitioner's drug testing practices pursuant to a CBA violate a Minnesota statute. While the suit does not cite the CBA in requesting a remedy from the court, adjudication of the claim would require an examination of the terms and conditions under the CBA and therefore falls under this Court's test for Section 301 preemption.

The Minnesota state claim requires analysis of the CBA because Respondent's have not contested the validity of the positive drug tests but rather are arguing that the results should be excused because of the negligence of Petitioners in failing to warn the players of a particular ingredient existing in an energy supplement. In adjudicating this claim it would be necessary for a trial court to examine the relationships between the Petitioners and Respondents and the duties which arise from these relationships. This would be impossible to do without examining and interpreting the CBA. This would bring the case under Section 301 purview. Additionally, a trial court will be forced to examine the CBA to determine if the procedures laid out by Minnesota law have been followed in order to grant Respondent relief. For example, the Minnesota statute requires exhaustion by a player under a CBA of

other means to obtaining a remedy such as arbitration. To determine if the Respondent in this case meets the exhaustion requirement, which Petitioner contends he did not, it will be necessary for an in depth examination of the arbitration and mediation provisions under the CBA which once again bring Section 301 into play. Finally, Section 301 preemption must be utilized in this case for the important policy purposes the law was enacted for in the first place. Congress intended for uniform enforcement of CBA provisions and this Court has emphasized this important purpose. This end would be frustrated by allowing this state action by Respondent to go forward.

As to the remaining claims by the Respondents, all of these claims were properly dismissed by the trial court under a summary judgment motion because Respondent has no basis under which to attack the arbiter's ruling. Arbitration awards are given tremendous deference under federal statute and case law. Only if the award violates the Federal Arbitration Act can such an award be set aside. Courts hold actions which seek to set aside an arbitration ruling to a very high standard of proof. This standard has not been met in this case. Respondents have been unable to point to any evidence of fraud, corruption, or undue means committed by the arbitrator in this case. Furthermore, Respondents cannot establish that Petitioners had the necessary fiduciary duty to the Respondents to inform them of the supplement which existed in the ingredients of a particular energy supplement. Any fiduciary duty which Petitioners might have owed to the Respondents was clearly met by the actions taken by Petitioners in warning Respondents about the dangers of these energy products.

ARGUMENT

This Court is asked to consider whether the Respondents in this case should be allowed to go forward with their suit against the individual and corporate Petitioners. The Court must decide first whether the statutory claim brought by one of the Respondents pursuant to Minnesota state law is preempted by federal law and second whether the Respondents' contractual claims involving the arbitration ruling should survive summary judgment.

Four individuals and the Major League Baseball Players Association filed suit against the Petitioners although only one individual Respondent, Kevin Wilson, filed suit under the Minnesota Drug and Alcohol Testing in the Workplace Act (DATWA). Wilson was the only Respondent to file suit under the state statute because he was the only player who works in the state of Minnesota. It is this statutory claim which gives rise to the preemption question presented to the Court.

I. The DATWA Claim is Preempted by Section 301 of the LMRA

The preemption issue stems from Section 301 of the Labor Management Relations Act which applies to “[s]uits for violation of contracts between an employer and a labor organization.” 29 U.S.C. § 185(a). Section 301 has been held to mean that federal law exclusively governs suits for breach of a collective bargaining agreement. *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 456 (1957). However, the power of Section 301 does not merely control state-law contract actions but applies to any state-law claim which relies “substantially” on the analysis of a collective bargaining agreement. *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 210, 220 (1985); *United Steelworkers v. Rawson*, 495 U.S. 362, 369 (1990). The justification for such preemption is that “the application of state law . . . may lead to inconsistent results since there could be as many state-law principles as there are States.” *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 406 (1988). Therefore, federal labor law is to be applied in such situations to ensure uniform resolution of disputes. *Id.* Section 301 does not mean

that merely because the parties to a suit are subject to a collective bargaining agreement that the state-law claims are preempted, but merely that state-law actions which require analysis under such a collective bargaining agreement must be decided under federal rather than state law. *Lueck*, 471 U.S. at 211.

The relationship between the Petitioners and Respondents in this case are governed by a CBA. One of the individual Respondents, Kevin Wilson, has alleged a claim under a Minnesota statute known as the Drug and Alcohol Testing in the Workplace Act (DATWA). Minn.Stat. §§ 181.950-957. This statute governs drug and alcohol testing in Minnesota workplaces by imposing “minimum standards and requirements” for employer's drug and alcohol testing programs. *Id.* § 181.955. It is not entirely clear what provision of DATWA Respondent is alleging was violated by Petitioners as the complaint merely alleges that “the defendants have violated the Player’s substantive and procedural rights under the Minnesota Drug and Alcohol Testing in the Workplace Act.” Circuit Court Opinion, p. 6 n.1. For example, DATWA allows employers to conduct random testing of its employees if the employees are involved in safety-sensitive positions or are professional athletes as long as the testing occurs pursuant to a CBA. Minn. Stat. § 181.951 subd. 4. DATWA also requires employees subject to a CBA to exhaust all “applicable grievance procedures and arbitration proceeding requirements under a collective bargaining agreement” before bringing an action under this section. *Id.* § 181.956 subd. 1.

Section 301 preemption has been interpreted by a series of decisions by this Court. This Court has ruled that the federal statute was written by Congress with the intent to do more than simply granting jurisdiction to federal courts when suits involve CBAs but rather “authorizes the federal courts to fashion a body of federal law for the enforcement of these collective bargaining agreements.” *Lincoln Mills*, 353 U.S. at 451. The Court in *Lincoln Mills* looked to the congressional intent behind Section 301 and determined that “state law, if compatible with the purpose of [Section] 301, may be resorted to in order to find the rule that will best effectuate the federal policy. Any state law applied,

however, will be absorbed as federal law and will not be an independent source of private rights.” *Id.* at 457 (citation omitted).

The Court elaborated on this preemption doctrine when it made clear that Section 301 was designed by Congress to displace state law with federal common law. *Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 103-04 (1962). The Court emphasized the critical need for uniformity when CBAs are involved and stated that since federal substantive law must govern in this area, state law would be eliminated as an alternative source of rights. *Id.* The Court has also held that the need for uniformity promoted by Section 301 is furthered by the use of arbitration pursuant to a CBA rather than a state law action. *Lueck*, 471 U.S. at 219-20. Allowing states to adjudicate claims which deal with issues which were interpreted by and arbitrated under a CBA frustrates the policy behind Section 301. *Id.* Section 301 is designed to preempt not just interpretation of a CBA by state law and state courts but also the “legal consequences . . . intended to flow from breaches of that agreement.” *Id.* at 211. “If states allow additional remedies for violation of rights protected under the collective bargaining agreement, they will have redefined the legal consequences fro breaches of provisions of the collective bargaining agreement.” Michelle Smith Nofer, Note, *Preemption of State Law Claims After Lingle v. Norge*, 34 VILL. L. REV. 1035, 1064-65 (1989).

As stated by the District Court in this case, a court must make a two part examination to determine if Section 301 preemption is appropriate. First, a suit alleging the breach of a provision of a CBA must be brought under Section 301 and therefore in federal court. *Lueck*, 471 U.S. at 210. Second, if resolution of the state-law claim “is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract, that claim must either be treated as a § 301 claim . . . or dismissed as preempted by federal labor-contract law.” *Id.* at 220.

A. Resolution of Respondent’s DATWA Claim is Dependent on Analysis of the CBA

Kevin Wilson is claiming that the drug-testing procedures laid out in the CBA between MLB and the MLBPA, which caught him with a substance not allowed under that same agreement, violated his substantive and procedural rights under Minnesota law. To determine if this allegation is true it will be necessary for any court to examine the terms of the CBA. This is true for several reasons. First, DATWA expressly provides that parties can negotiate within a CBA regarding an employer's drug policies. In order to determine if the drug policies within the CBA complied with DATWA will require examination of the terms within the CBA as modified when the current drug policy was added to the contract. This should clearly meet the standard for preemption since it would create exactly the situation this Court wanted to avoid in *Lueck* when it said that Section 301 was designed so that federal law would govern the legal consequences stemming from issues arising out of a CBA. This case is *prima facie* regarding the drug policies as laid out by the CBA for Major League Baseball and it would go against this Court's precedent to allow a state to interfere. Second, the Respondents in this case did not contest the validity of the positive test in arbitration but merely argued that the Petitioners had violated a duty under the CBA to inform them about the contents of a certain product. In order to analyze this claim under DATWA, it is necessary for the court to examine the relationships between the individual Petitioners who allegedly should have informed Respondents about the contents. This will necessarily involve an examination of the CBA before even looking to the requirements under DATWA.

A third reason why it is necessary to review the CBA in determining Respondent's DATWA claim is that allowing this state claim to go forward would fly in the face of this Court's jurisprudence involving uniformity when it comes to litigation involving employment situations governed by a CBA. This is especially true because of this specific employment relationship. This Court has recognized baseball as a unique national industry. *Flood v. Kuhn*, 407 U.S. 258 (1972). Baseball was faced with a national scandal when it was revealed through congressional hearings and a major investigation that a

significant number of MLB players were using performance enhancing drugs. It was this situation which caused the MLB and MLBPA to agree to the new drug policy which was added to the previously agreed to CBA. This essential drug policy is useless if it is not applied to all players and all clubs. If one team or player is treated differently under the policy because of a state statute, the competitive balance which professional sports need to survive will be destroyed.

1. DATWA Expressly Requires Examination of a CBA

As the trial court pointed out, DATWA “mandates” that the court look to the CBA to analyze the drug policies as it relates to the DATWA requirements. Furthermore, the trial court correctly noted that “Wilson’s claim thus cannot succeed 'without interpreting certain terms of the collective bargaining agreement,' to determine whether the terms of the Policy 'meet or exceed' DATWA’s threshold. *Gore v. Trans World Airlines*, 210 F.3d 944, 951 (8th Cir. 2000).” Whatever the purpose of this language within the DATWA statute, the practical effect of this section requires preemption under Section 301. The only way that a DATWA claim is not preempted is if the terms of the CBA can be completely ignored by the court during adjudication of the state claim. If the state statute expressly requires examination of the terms of the CBA then this cannot happen by default and the state statute must be preempted in situations such as presented by this case.

2. Wilson’s Claim Involves Relationship between Parties which is Governed by the CBA

In Respondent's appeal before the MLB arbitrator the substance of Respondent's complaint was not that the positive drug test was defective or invalid, but simply that it should be excused because of a failure of MLB officials to serve their duties to the players. In analyzing Wilson's DATWA claims, namely, that his substantive and procedural rights under DATWA were violated, the trial court will have to look to the claims that Wilson made before the arbitrator. The complaint does not state exactly what

these “rights” are that Wilson is alleging were violated and therefore it must be assumed that Wilson will make the same arguments under Minnesota law as he did to the arbitrator. This case is completely analogous to the decision in *Holmes v. NFL*, 939 F.Supp. 517 (N.D. Tex. 1996). In that case, the player was alleging that he had been involuntarily enrolled in the NFL's drug program and that the drug procedures violated his rights under the CBA and state law. The court found that the state claims were preempted because it was obvious from the player's prior statements before the arbitrator and during his appeal before the commissioner of the NFL that the player's claims were contingent on an interpretation of the CBA. Just as Wilson is trying to do in this case, Holmes tried to creatively plead state law claims which would not require analysis under the CBA. However, both players failed. Holmes was alleging that he was tricked into joining the drug program and Wilson is alleging that he was not told about a particular product by MLB officials as he should have been. Just like the court in Holmes was required to examine the NFL CBA to determine whether Holmes had been misled into agreeing to the drug test in violation of state law, a court will have to analyze the MLB CBA to determine if Wilson's rights under DATWA were violated by MLB official's failure to inform him about the ingredients found in an energy drink. *See also Smith v. Houston Oilers, Inc.*, 87 F.3d 717 (5th Cir. 1996).

3. Respondent’s DATWA Claims Should be Preempted to Promote Uniformity

Section 301 preemption is designed to ensure that CBAs are enforced in the same way throughout the United States. These employment agreements are critical within interstate commerce and there is a strong national interest in keeping consistency among the enforcement of these agreements. The drug policy within the MLB CBA is exactly the type of policy which wilts if not universally enforced. If MLB players and their test results are treated differently state-to-state, it will wreak havoc on a game which is struggling with an image of frequent drug use. If MLB is not able to discipline Minnesota Twins players the same way they discipline players on the other twenty-nine clubs

this will have severe ramifications across the league. This is exactly the situation that this Court has tried to avoid by citing uniformity as a justification for preemption within its Section 301 jurisprudence. This Court has determined that its role in preemption cases is not to pass on the reasonableness of the state statute but rather to determine if the state rule conflicts with or otherwise stands as an obstacle to execution of the full purposes and objectives of federal law. *Livadas v. Bradshaw*, 512 U.S. 107, 120 (1994).

B. If this Court Does Not Reverse the Fourteenth Circuit, Wilson's DATWA Claim Should be Remanded

If this Court does not reverse the Fourteenth Circuit based on the analysis provided above, the Court should remand this case back to the trial court for the following three reasons: first, that the DATWA claim is too vague and ambiguous to properly determine whether analysis of the state claim requires reliance on the terms of the CBA, second, to determine if DATWA even applies in this case since the drug which Respondent tested positive for is not listed as a drug covered by the DATWA statute, and third, to determine if Respondent properly exhausted his claims under arbitration as laid out in the DATWA statute.

1. Remand is Justified because of the Vagueness of Wilson's Claim

A plaintiff must state sufficient facts in a complaint to state a claim for which relief can be granted. In this case, Respondent must state facts sufficient to state a claim under DATWA which would not be preempted by Section 301. Since the preemption analysis requires an examination into what facts and evidence will need to be considered in order to adjudicate the claim, it is necessary for Respondent to plead the facts which demonstrate that there is a state claim which can be decided without analyzing the terms of the CBA. At a minimum, this Court should find that Respondent has

failed to plead sufficient facts to show under what theory they will claiming relief under the DATWA. This is necessary for a proper decision to be made on preemption. The Respondent should be forced to amend his complaint to show how the DATWA cause of action can be decided without being preempted by Section 301.

2. Remand is Justified to Determine if DATWA Applies to a Positive Test for Clomiphene

This case should be remanded back for a determination if the DATWA statute even applies to the drug testing required under the CBA. The trial court found that energy boosters, performance enhancing drugs, and Clomiphene do not fall under the Schedule of drugs covered under the statute. Minn. Stat. §§ 152.01(4), 152.02, 181.950(4)-(5), 181.951(1)(a). If the performance enhancing drugs covered by the section of the CBA being challenged by Respondent's complaint do not fall under the purview of the DATWA requirements, then it would be unnecessary for this Court to make a determination of whether the DATWA claim is preempted under Section 301. If it is found that the drugs being tested under the CBA do bring the testing procedures within the reach of the DATWA definition, then the preemption question will properly be before the Court.

3. Remand is Justified To Determine if Wilson Completed Exhaustion of His Claims as Required by DATWA

Before this Court makes a determination concerning the preemption of the DATWA claim, the trial court should be ordered to determine whether Respondent has satisfied the exhaustion requirements under the statute. Minn. Stat. § 181.956 subd. 1. The statute reads, “[a]n employee or collective bargaining agent may bring an action under this section only after first exhausting all applicable grievance procedures and arbitration proceeding requirements under a collective bargaining agreement. . . .” *Id.* It is possible that Wilson has not exhausted the applicable grievance procedures

under the MLB CBA since it is unclear what he is claiming MLB did to violate the DATWA requirements. It is possible that whatever procedural and substantive rights he is claiming were violated by the MLB can be remedied by looking to the CBA provisions. If this is true, then making a determination as to preemption on the DATWA claim is premature and unnecessary.

II. The arbitrator's award suspending Respondent Kevin Wilson must be upheld because the arbitrator acted impartially, and no explicit public policy was violated by the arbitrator's interpretation of the Policy.

The arbitrator's award suspending Respondent Kevin Wilson must be upheld,¹ as the arbitrator's decision was not procured by fraud, corruption or undue means, and there was no evident partiality demonstrated by the arbitrators. Additionally, the arbitrator's interpretation of the Policy did not violate any explicit public policy. To establish a violation of public policy, the Respondent would have had to show that a fiduciary duty existed between the Respondent Kevin Wilson and MLB, that this duty 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. Since the record does not contain sufficient evidence to show a breach of any fiduciary duty, the district court was correct in granting MLB's motion for summary judgment.

A. General Standards Regarding Court Authority

The standard for overturning an arbitrator's award is set extremely high. A court may set aside an arbitrator's award "only for the reasons enumerated in the [Federal Arbitration Act (FAA)]." *Crawford Group, Inc. v. Holekamp*, 543 F.3d 971, 976 (8th Cir. 2008). The FAA states that a court can vacate a decision made by an arbitrator if the award given by that arbitrator was "procured by fraud, corruption,

¹ The Policy requires that players submit all appeals of discipline decisions to arbitration. R. at 14.

or undue means,” or if “there was evident partiality in the arbitrators.” 9 U.S.C.A. §§ 10(a)(1)-(2). Courts must give the arbitrator an “extraordinary level of deference” and allow the award to stand if “the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority.” *Stark v. Sandburg, Phoenix & von Gontard, P.C.*, 381 F.3d 793, 798 (8th Cir. 2004). If an arbitrator’s award fails to comply with the contract or policy which has been put in place – in this case, the Policy – the court may have authority to reverse it. *Coca-Cola Bottling Co of St. Louis v. Teamsters Local Union No. 688*, 959 F.2d 1438, 1440 (8th Cir. 1992). However, this authority is “exceptionally narrow.” *Id.* More specifically, a court does not have to give deference to an award which does not “draw its essence from the collective bargaining agreement.” *United Paperworkers Int’l Union v. Misco, Inc.*, 484 U.S. 29, 36 (1987). However, both the Petitioner and Respondent agree that the arbitrator’s decision on this issue draws its essence from the Policy. R. at 15.

B. Scope

When determining whether the arbitrator was correct or incorrect in his decisions regarding whether the Policy mandated disclosure, this court may not differentiate between the Policy and the subsequent decisions interpreting it; rather, such decisions are “not distinguishable from the contractual agreement.” *Eastern Coal Cos. v. United Mine Workers of Am.*, 531 U.S. 57, 62 (2000).

C. “Undue Means”: The arbitration award was not procured by fraud, corruption, or undue means, and there was no partiality in the arbitrators

The arbitration award should not be set aside, as it was not procured through any means banned by the FAA. The FAA empowers a court to set aside an arbitration award only when such an award “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). Here, there is no evidence in the record that the arbitrator’s

judgment was effected or swayed in any way, by either party. There is no indication that the arbitrator engaged in any illegal activity involving fraud or corruption, and neither side is arguing that the arbitrator himself was definitively partial to one side or the other. Therefore, because none of the express provisions of the FAA were violated, the arbitration award should not be set aside.

D. Public Policy Violation: The arbitration award does not violate public policy, because no fiduciary duty was breached by Major League Baseball.

The arbitration award does not violate public policy, because no fiduciary duty was breached by Major League Baseball when the decision was made not to specifically inform MLB players that SpeedShot contained Clomiphene. Here, the issue is “not whether any behavior by the parties to the Policy violates public policy, but rather whether the Policy itself violates public policy.” R. at 15 (quoting *MidAm. Energy Co. v. Int’l Bd. of Elec. Workers Local 499*, 345 F.3d 616, 620 (8th Cir. 2003)). If the Policy is found to violate an explicit public policy, the court must not enforce it. *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 766 (1983). The Respondents are arguing that the arbitration award should be set aside due to the “alleged bad conduct” of Major League Baseball when they decided to not inform players about the presence of Clomiphene in SpeedShot. R. at 14. More specifically, Respondents urge the award be vacated because public policy demands that arbitration awards condoning “breaches of fiduciary duties” not be enforced. *Id.* The Respondents must prove several elements in order to prevail upon this theory: “[Respondents] must show that 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.” *Id.* at 16.

Major League Baseball, including its employees Dr. John Larson and Andrew Birch, did not breach a fiduciary duty towards Respondent. Though Larson never issued a specific statement

regarding the presence of Clomiphene in SpeedShot, Larson testified that if a player had enquired about SpeedShot he would have informed the player of the presence of Clomiphene. Therefore, Respondent's allegation that Larson was refusing to divulge information is untrue; Larson clearly stated that any inquiries regarding SpeedShot would have been answered fully and honestly. In his capacity as Major league Baseball's Independent Administrator in charge of implementing the Policy, Larson applied his medical expertise and determined that all energy-boosting supplements posed potential risks to players. In an effort to reduce the chances of players using these supplements, Larson decided to issue a general statement discouraging the use of all such products. The Policy states that "the Independent Administrator will make himself available for consultation with players and Club physicians; oversee violated protocols' oversee the development of educational materials; participate in research on steroids." R. at 12. When Larson decided to educate players of the risks posed by energy-boosting supplements in general, he was properly exercising the authority granted to him by the Policy itself. Because Larson's decision was neither outrageous or without any foundation, Major League Baseball did not breach any fiduciary duty owed to the respondent.

Major League Baseball did not breach any fiduciary duty when it warned players calling the Hotline that the SpeedShot label might not list all ingredients, because the information provided was factually true. There is no rule stating that a sport-related enterprise voluntarily assumes a duty under state law to check the status of all medications in relation to the list of prohibited substances when the enterprise chooses to operate a hotline service for its athletes. *Walton-Floyd v. United States Olympic Comm.*, 965 S.W.2d 35 (Tex. T. App.—Houston [1st Dist.]). Birch, acting as the Vice President of Law and Labor Policy for Major League Baseball, decided that the Hotline would not dispense any information regarding SpeedShot other than the fact that it should not be taken because the label might not list all of the ingredients. R. at 17. This statement is factually true, and once again reflects the legitimate concern of Major League Baseball in combating the use of all energy-boosting supplements.

This represents a service to the players, not a breach of any duty: Players had the opportunity to call the Hotline and if they inquired about SpeedShot they would have been warned that such energy-boosting supplements may contain banned substances. For the Respondent, this unfortunately turned out to be the case, and he tested positive for Clomiphene. This was, however, only after repeated warnings by Major League Baseball that the use of energy boosters could lead to a positive test for banned substances and that the labels on these products might be deceptive. When Respondent imbibed SpeedShot, he took a risk that he had already been told not to take. Therefore, Major League Baseball did not breach any fiduciary duty when it warned players calling the Hotline that the SpeedShot label might not list all ingredients, because the information provided was factually true.

Evening assuming that there was a fiduciary duty breached by Major League Baseball, Respondent has “offered no authority clearly articulating what public policy was violated under New York law.”² R. at 18. Respondent cannot satisfy their burden by showing that the arbitration award merely violates a general public policy; instead, the public policy must be “ascertained ‘by reference to the laws and legal precedents and not from general considerations of public interest.’” *W.R. Grace*, 461 U.S. at 766 (quoting *Muschany v. United States*, 324 U.S. 49, 66 (1945)). The record reflects that no such specific, legally grounded public policy grounds have been put forth by respondent. Instead, they have essentially alleged a general public policy favoring requiring Major League Baseball to divulge more information than even the Policy demands. Since Major League Baseball, including its employees and agents, has violated no public policy grounded in “laws or legal precedent,” and because they have breached no fiduciary duty owed to the Respondents, Respondents’ claim must be dismissed, and the arbitrator’s award upholding the suspension should be upheld.

² As the District Court noted, “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.” R. at 18.

CONCLUSION

This Court should reverse the Fourteenth Circuit and reinstate the District Court's ruling that the DATWA claim filed against Petitioner by Respondent Wilson is preempted by Section 301 of the LMRA and furthermore that the arbitrator's award should be upheld since there was no violation of public policy in finding for MLB. This Court has expressed the viewpoint that the Congressional intent behind Section 301 of the LMRA was to promote universal enforcement of collectively bargained employment agreements by preempting state law in most situations where a CBA is involved. The current case clearly falls under the breadth of cases where preemption makes sense under this Court's line of Section 301 cases. Furthermore, the ruling following arbitration of Respondent's claims was fairly and properly made and should be reinstated. There is no justification under federal law for vacating the ruling in arbitration and to do so would serve to enforce public policy or fairness.