No. 08-1214

IN THE

Supreme Court of the United States

GRANITE ROCK COMPANY,

Petitioner,

v.

THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS & TEAMSTERS LOCAL 287,

Respondents.

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

BRIEF OF THE CENTER ON NATIONAL LABOR POLICY, INC. AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER GRANITE ROCK COMPANY

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QUESTIONS PRESENTED

1. Whether Granite Rock Co. is entitled to a judicial proceeding to determine contract formation where it has not consented to arbitration of this issue.

2. Whether a §301(a) action is available against the International Brotherhood of Teamsters in this case in view of the strong public policy in favor of holding parent unions liable for the acts of their locals.

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INTRODUCTION

Pursuant to Supreme Court Rule 37.2(a), the Center on National Labor Policy Inc. ("Center") submits this brief *amicus curiae* in support of Petitioner Granite Rock Co. All parties have given written consent to the filing of this brief.[1]

INTEREST OF THE *AMICUS CURIAE*

The Center is a public interest legal foundation chartered to provide legal assistance to individuals whose statutory and constitutional rights in the labor arena have been violated by powerful, organized interests such as labor unions and governmental entities.

The Center, as a public-interest organization, believes that the individual rights of consumers, taxpayers, workers, and public citizens are paramount to the collective rights of private organizations such as labor unions. The Center has filed briefs amicus curiae advocating the validity of this public policy interest in other cases before this Court, including *Caterpillar Inc. v. Int'l Union, United Automobile Aerospace and Agricultural Implement Workers of America and its affiliated Local Union 786*, No. 96-1925; *Int'l Union, United Mine Workers v. Bagwell*, No. 92-1625; *Koons Ford of Annapolis Inc. v. NLRB*, No. 87-1305; *Schriver v. Pennsylvania Building and Construction Trades Council*, No. 80-1257; and *New York Telephone Co. v. N.Y.S. Department of Labor*, No. 77-961.

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[1]Letters of consent have been filed with the Clerk of Court. Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that this brief was not prepared, written, funded or produced by any person or entity other than *amicus curiae* or its counsel.

The parties to this case will focus on the arbitrability of the issue of contract formation and the availability of a cause of action under §301(a) of the Labor Management Relations Act ("LMRA"), 29 U.S.C. §185(a), on the facts herein. Equally important, however, and critical to establishing the context for evaluating these questions, are the strong public policies in favor of protecting federal statutory and constitutional rights through judicial proceedings, particularly in labor cases, and in holding parent unions liable for the acts of their locals.

The Center's commitment to the public interest is at stake in these questions. Beyond these particular issues, however, the Center has an interest in the protection of the right of judicial review, particularly in labor cases, and in the accountability of labor unions generally, both of which are challenged by the unions' positions in this case.

The Center is in a unique position to fully advocate the rights of the public and of those individuals who would suffer from any compromise of the important policies at stake in this case.

The Center's participation will therefore bring to this case a diverse perspective not presently represented and assist this Court in fully considering the public interest.

STATEMENT OF THE CASE

This case arises on a Petition for a Writ of Certiorari to the United States Court of Appeals for the

Ninth Circuit. *Granite Rock Co. v. Int'l Brotherhood of Teamsters, Freight Construction, General Drivers, Warehousemen & Helpers Local 287 (AFL-CIO) et al.*, 546 F.3d 1169 (9th Cir. 2008), which affirmed in part and reversed and remanded in part decisions of the United States District Court for the Northern District of California.

STATEMENT OF FACTS

Before the expiration of a collective bargaining agreement between Granite Rock Co. and Local 287 on April 30, 2004, the parties began negotiations, and Rome Aloise, the administrative assistant to the General President of the International Brotherhood of Teamsters ("IBT") (who represented the interests of IBT and other local unions affiliated with the IBT in the negotiations) advised Local 287 that certain provisions of the agreement were inadequate. *See* 546 F.3d at 1171.

In June 2004, after a collective bargaining agreement between Granite Rock Co. and Local 287 expired, Local 287 members went on strike. *See ibid.* There was a new collective bargaining agreement which contained a "no-strike" clause and required the parties to arbitrate "[a]ll disputes arising under this agreement." *See id.* at 1171-72. At the conclusion of the successful bargaining session Local 287's business representative George Netto told Granite Rock Co. that they would stop picketing but also raised the topic of a "back-to-work" agreement to provide for the terms under which the parties would return to work, including liability for actions taken during the strike. *Id.* at 1171. The new agreement was allegedly ratified on July 2, 2004, *see id.* at 1171-72,

but this is disputed, *see id.* at 1172.

On July 5, 2004, Aloise and Local 287 members instructed workers not to return to work the next day. On July 6, 2004, Netto demanded a back-to-work agreement which would explicitly shield Local 287, its members and IBT from any liability arising from the strike. Granite Rock Co. refused to sign such an agreement, and Local 287 continued its strike. *Ibid.*

Granite Rock Co. sued Local 287 for breach of contract and IBT for tortious interference with contract, both in the Northern District of California and under §301(a) of the Labor Management Relations Act ("LMRA" or "Labor Act"), 29 U.S.C. §185(a). The district court granted IBT's motion to dismiss under Fed. R. Civ. Proc. 12(b)(6), on the ground that Granite Rock Co. had failed to state a claim against it under §301(a), and Granite Rock Co. timely appealed. However, the district court denied Local 287's motion to compel arbitration of the question of contract ratification, and Local 287 timely appealed. *Ibid.*

The United States Court of Appeals for the Ninth Circuit affirmed the dismissal of the claims against IBT, *id.* at 1176, but reversed the denial of Local 287's motion to compel arbitration of contract ratification, *id.* at 1172.

SUMMARY OF ARGUMENT

The court of appeals' ordered arbitration to decide the existence of a collective bargaining agreement between the parties, where Granite Rock Co. had not consented to arbitration of this question. The presumption from this Court's jurisprudence arising from *AT&T Technologies,*

Inc. v. Communication Workers, 475 U.S. 643 (1986), and *First Options of Chicago, Inc.*, 514 U.S. 938, 944 (1995), is not in favor of an arbitrator ruling on his/her own jurisdiction. This question raises numerous issues, conflicts with this Court's applicable decisions on the arbitrability of arbitrability; the applicability of state law under Section 301 of the Labor Act on the arbitrability of arbitrability, the doctrine of severability, and how broad may an arbitration clause be read, as set forth in *AT&T Technologies, Inc.*, and whether such a case may depend on the applicability of the Federal Arbitration Act, 9 U.S.C. §§1 *et seq.*, to this case.

The Ninth Circuit's decision is contrary to core considerations under the Labor Act and is based on a misapplication of this Court's precedent, resolution of which may require reconciliation of this Court's previous decisions.

The interpretation of a broad arbitration clause, again in conflict with the decisions of other federal circuit courts and California and other state courts of last resort as well as of this Court, follows a dangerous tendency among other courts to produce an order to arbitrate arbitrability in a dispute *which itself may not be arbitrable.*

The other issue in this appeal concerns the court of appeals' interpretation of §301(a), contrary to the statutory purpose of repose in the legislative history, to *eliminate* Granite Rock Co.'s remedy against the international union. While resolving the conflict among the federal circuit courts regarding the availability of a §301(a) action for tortious interference with a collective bargaining

agreement, this Court should take into account the strong public policy remedy in favor of holding parent unions (and third parties) liable for the acts of their locals (agents) that interfere with stable collective bargaining relationships the Congress unquestionably chose to protect and preserve.

These important questions are ripe for review.

REASONS FOR GRANTING THE PETITION

I. ALL PARTIES ARE ENTITLED TO A JUDICIAL PROCEEDING TO DETERMINE THE THRESHOLD QUESTION WHETHER A CONTRACT EXISTS BEFORE ARBITRATION CAN PROCEED.

In collective bargaining it is settled that a union's agreement not to strike may be exchanged as the *quid pro quo* for a grievance-arbitration provision. *Boys Markets, Inc. v. Retail Clerk's Union, Local 770*, 398 U.S. 235, 248-49 (1970); *Reichold Chemicals, Inc.*, 277 N.L.R.B. 639, 640 (1985), or as a condition of reaching agreement. *Shell Oil Co.*, 77 N.L.R.B. 1306, 1308 (1948). In the absence of a collective bargaining agreement, parties may exercise self-help and economic weapons, such as lock-outs or strikes. *H.K. Porter Co. v. NLRB*, 397 U.S. 99, 109 (1970). Importantly, the Court observed that, "[i]t cannot be said that the Act forbids an employer or a union to rely ultimately on its economic strength to try to secure what it cannot obtain through bargaining." 397 U.S. at 109.

In the present case, Local 287 went on strike

against Granite Rock Co. asserting no agreement and engaged in strike behavior against the Company which clearly demonstrated that the Union believed no collective bargaining agreement with a no-strike clause had been reached with the Company. Since the existence of an agreement was in question, reinforced by the unions' economic behaviors, Granite Rock Co. sued to enforce compliance with the agreement.

The Ninth Circuit's decision requires this Court's review to resolve numerous conflicts now created, including a well-developed conflict between other courts of appeals, decisions of the Supreme Court, decisions of state courts on the federal question, including California, and the federal common law involving labor contracts. Each of these conflicts are discussed below.

A. The Court of Appeals Finding That the Existence of an Arbitration Provision Within a Contested CBA Is Within the Province of an Arbitrator to Decide, Necessitates this Court's Review.

The federal policy supporting arbitration has been settled as an issue for judicial determination and not an arbiter, unless the parties clearly and unmistakably provide otherwise. In this case, however, the court of appeals misapplies the law and decides this important federal question in a way which conflicts with this Court's applicable decisions and decisions in other federal and state courts.

In *AT&T Technologies Inc.* v. Communication Workers, 475 U.S. 643, 648-49 (1986), vacating a decision

which had affirmed an order for arbitration of arbitrability, this Court reaffirmed that,

> arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit. This axiom recognizes the fact that arbitrators derive their authority to resolve disputes only because the parties have agreed in advance to submit such grievances to arbitration [citations omitted].

Accord, Litton Financial Printing Division v. NLRB, 501 U.S. 190, 208 (1991) ("a party cannot be forced to arbitrate the arbitrability question" (citation omitted)) (reversing portion of decision which had refused to enforce Board's order that certain grievances were not arbitrable); *see also Mendez v. Puerto Rican Int'l Companies Inc.*, 553 F.2d 709, 711 (3d Cir. 2009).

Therefore, "the question of arbitrability – whether a collective-bargaining agreement creates a duty for the parties to arbitrate the particular grievance – is undeniably an issue for judicial determination." *See AT&T Technologies Inc.*, 475 U.S. at 649; *accord*, *Litton Financial Printing Division*, 501 U.S. at 208 ("[w]hether or not a company is bound to arbitrate, as well as what issues it must arbitrate, is a matter to be determined by the court"); *see also 14 Penn Plaza LLC v. Pyett*, 129 S. Ct. 1456, 1473 (2009) (rejecting respondents' argument that "the particular CBA at issue here does not clearly and unmistakably require them to arbitrate their ADEA claims" where "respondents did not raise these contract-

based arguments *in the District Court or the Court of Appeals*" (emphasis added)); *Local Union No. 898 of the Int'l Brotherhood of Electrical Workers, AFL-CIO v. XL Electric Inc.*, 380 F.3d 868, 870 (5th Cir. 2004) ("the question of arbitrability is a question for the court") (affirming refusal to enforce arbitration award where contract was not in effect). Similarly, a disagreement about whether an arbitration clause in a concededly binding contract applies to a particular type of controversy is also for the court to decide. *See AT&T Technologies Inc.*, 475 U.S. at 652.

Local 287's dispute of the ratification date of the new collective bargaining agreement raises a question of arbitrability because its dispute affects whether or not there was a contract in effect during the continuation of the strike on and after July 5, 2004. Since Granite Rock Co. (and also the International Brotherhood of Teamsters, which was not a party to the agreement) never agreed to arbitrate this particular issue, the court of appeals decision in this case conflicts with *AT&T Technologies Inc.* and *Litton Financial Printing Division.*

AT&T Technologies Inc., 475 U.S. at 649, holds that "*[u]nless the parties clearly and unmistakably provide otherwise*, the question of whether the parties agreed to arbitrate is to be decided by the court, not the arbitrator" (emphasis added). The court of appeals at A-16; 546 F.3d at 1177 n.4, reaches its result in this case by disregarding this holding, relying instead on the subsequent, more general and contrary language in *AT&T Technologies Inc.* that,

> [a]n order to arbitrate the particular

> grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.

By relying on the wrong language from *AT&T Technologies Inc.*, the court of appeals has decided this important federal question in this case in a way which conflicts with this Court's clearly applicable decision in that case.

This Court reaffirmed *AT&T Technologies Inc.*'s more specific holding that the court should decide arbitrability in *First Options of Chicago, Inc.*, 514 U.S. at 944: "*Courts should not assume that the parties agreed to arbitrate arbitrability unless there is clear and unmistakable evidence that they did so*" (emphasis added, citations omitted) (affirming finding that arbitrability was subject to independent review by the courts).

In *First Options of Chicago, Inc.*, 514 U.S. at 943, this Court also confirms the principles that "[i]f ... the parties did not agree to submit the arbitrability question itself to arbitration, then the court should decide that question just as it would decide any other question that the parties did not submit to arbitration, namely, independently" (emphasis omitted) and that "arbitration is simply a matter of contract between the parties; it is a way to resolve those disputes – but only those disputes – that the parties have agreed to submit to arbitration."

The ruling of the Ninth Circuit circumscribes these important markers by overlooking the policy this Court directed to be implemented. The Ninth Circuit improperly drew up the requirement that an independent challenge to an arbitration clause must be asserted to obtain a judicial ruling. A-14, 18. This very condition is contrary to the long line of decisions from this Court and the federal circuit courts and must be resolved.

B. The Ninth Circuit's Ruling Implements a Change in Federal Policy Contrary to Decisions in the Federal Courts of Appeals and in State Courts.

Concurrent state court jurisdiction under Section 301 of the Labor Act and the FAA also requires this Court to consider the arbitrability conflict issue as applied by the state courts.

A ground for granting a writ of certiorari is a conflict between a decision of the court of appeals and the highest court of a state on a federal question. *See Johnson v. California*, 545 U.S. 162, 164 (2005) (certiorari granted because of a conflict between the 9th Circuit and the Supreme Court of California over jury challenges in criminal trials). The court of appeals' opinion below disregards California state decisions on federal labor law.

Importantly, Congress did not foreclose state court jurisdiction to enforce collective bargaining agreements under Section 301(a), but intended the enactment to "*supplement* and not to encroach upon, the pre-existing jurisdiction of the state courts." *Boys Markets, Inc. v. Retail Clerk's Union, Local 770*, 398 U.S. 235, 245 (1970).

Recognizing that "a certain diversity exists among the state and federal systems in matters of procedural and remedial detail, *id.* at 246, the "relative uniformity" in the federal and state court systems was to prevail, *id.*, and therefore "Congress deliberately chose to leave the enforcement of collective agreements 'to the usual process of the law,'" *Arnold v. Carpenters District Council of Jacksonville.* 417 U.S. 12, 16 (1974), quoting *Dowd Box Co. v. Courtney*, 368 U.S. 502, 513 (1962), which meant that Section 301 claims "may be brought in either state or federal courts." *Id.*[2]

First Options of Chicago, Inc., *id.* at 944, instructs that "when deciding whether the parties agreed to arbitrate a certain matter (including arbitrability), courts generally ... should apply ordinary state-law principles that govern the formation of contracts," but there is no indication in this case that the court of appeals considered California state law.

In California, "[t]he arbitrability of a dispute may

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[2]The state courts have indeed handled labor contract cases under Section 301 and applied the prevailing arbitration standards to them. *See e.g.,Peters v. Rivers Edge Min., Inc.*, --- S.E.2d ----, 2009 WL 804116 (W.Va.,2009); *Kostecki v. Dominick's Finer Foods, Inc. of Illinois*, 361 Ill.App.3d 362, 836 N.E.2d 837, 843 (Ill.App. 1 Dist. 2005); *Oil, Chemical and Atomic Workers Intern. Union, AFL-CIO v. Sandvik*, 102 Wash. App. 764, 10 P.3d 470, 474 (Wash App. Div. 3, 2000); *Warehouse, Processing, Distribution Workers Union, Local 26 v. Hugo Neu Proler Co.*, 65 Cal.App.4th 732, 76 Cal.Rptr.2d 814 (Cal.App. 2d Dist. 1998); *International Longshoremen's and Warehousemen's Union Local 8 v. Pacific Maritime Ass'n*, 133 Or.App. 245, 889 P.2d 1358 (Or.App. 1995); Local Lodge No. 1426, *Intern. Ass'n of Mach.& Aerospace Workers, AFL-CIO v. Wilson Trailer Co.*, 289 N.W.2d 608 (Iowa 1980).

itself be subject to arbitration *if the parties have so provided in their contract*," but this is "unusual" and still requires the court to decide this question:

> [E]ven when the parties have conferred upon the arbiter the *unusual* power of determining his own jurisdiction, the court cannot avoid the necessity of making a certain threshold determination of arbitrability, namely, whether the parties have in fact conferred this power on the arbiter.

McCarroll v. Los Angeles County District Council of Carpenters, 315 P.2d 322, 333 (Cal. 1957), *cert. denied*, 355 U.S. 932 (1958) (emphasis added) (affirming state court injunction against challenge that issue should have been referred to arbitration).

So California law, contrary to the court of appeals in this case, presumes that the court will decide arbitrability:

> Whatever the merits of the procedure, we think it sufficiently outside the usual understanding of the relations of court and arbiter and their respective functions to assume that the parties expected a court determination of arbitrability unless they have clearly stated otherwise.

Id. at 334.

A California court could not have found that the parties had authorized the arbitrator to determine arbitrability in this case without first finding that they had

formed a contract, but the court of appeals in this case refers this issue to the arbitrator instead. The court of appeals' opinion in this case therefore decides this important federal question in a way which may conflict with this Court's decision in *First Options* and those of numerous state courts.

C. This Court Should Resolve the Implicit Applicability of the FAA to Labor Cases and the Inherent Tension in National Policy Between Resolving Commercial and Labor Disputes.

This Court should settle the important question whether the FAA and its requirement to consider state law apply to a case like this as the Ninth Circuit presumes, and it appears that there would be a conflict among the federal circuit courts on this issue. The Ninth Circuit applied FAA caselaw to reach its result in the instant case.

It is well established that "the substantive law to apply in suits under §301(a) is *federal* law, which the courts must fashion from the policy of our national labor laws." *See Textile Workers Union of America v. Lincoln Mills of Alabama*, 353 U.S. 448, 456 (1957) (emphasis added). "Federal interpretation of the federal law will govern, not state law." *Id.* at 457; *see also United Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564, 567 (1960) (decrying "preoccupation with ordinary contract law" in Labor Management Relations Act case). But, *First Options of Chicago, Inc.* (and also *Mendez*) arise under the FAA, as do at least four of the decisions which are critical to the court of appeals' opinion in this case, *see Buckeye Check Cashing Inc. v. Cardegna*, 546 U.S. 440, 443 (2006);

Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 397 (1967); *Nagrampa v. MailCoups Inc.*, 469 F.3d 1257, 1263 (9th Cir. 2006); and *Teledyne Inc. v. Kone Corp.*, 892 F.2d 1404, 1410 (9th Cir. 1989).

Since *these are not §301 or even labor law cases*, it is impossible to determine whether they should control this case without resolving the conflict among the federal circuit courts on the same important matter regarding whether the FAA applies to §301 cases, *cf. Int'l Chemical Workers Union v. Columbian Chemicals Co.*, 331 F.3d 491, 494 (5th Cir. 2003) ("when reviewing a case involving a CBA and arising under Section 301, courts are not obligated to rely on the FAA"); *Coca-Cola Bottling Co. of New York Inc. v. Soft Drink and Brewery Workers Union Local 812, Int'l Brotherhood of Teamsters*, 242 F.3d 52, 53 (2d Cir. 2001) ("[w]e hold that in cases brought under Section 301 ..., the FAA does not apply") (rejecting jurisdictional challenge based on FAA); *with Briggs & Stratton Corp. v. Local 232, Int'l Union, Allied Industrial Workers of America (AFL-CIO)*, 36 F.3d 712, 715 (7th Cir. 1994), *reh'g denied*, 1994 WL 716867 (7th Cir. 1994), *cert. denied, United Paperworkers Int'l Union, AFL-CIO v. Briggs & Stratton Corp.*, 514 U.S. 1126 (1995) ("our circuit is among the minority that ... applies the Arbitration Act to most collective bargaining agreements").

This Court should, but it does not appear that it has yet settled this important question of federal law. In *Textile Workers Union of Am.*, "[a]lthough the Court decided the enforceability of the arbitration provisions in the collective-bargaining agreements by reference to §301 of the Labor Management Relations Act, 1947, 29 U.S.C. §185," "it did not reject the Court of Appeals' holdings that

the arbitration provisions would not otherwise be enforceable pursuant to the FAA." *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 41 (1991) (Stevens, J., dissenting). *See William B. Gould IV, Kissing Cousins?: The Federal Arbitration Act and Modern Labor Arbitration*, 55 Emory L.J. 609, 640-43 (2006) ("there is now both division and doubt on the issue").

Of course, the 5-4 decision in *Circuit City Stores Inc. v. Adams*, 532 U.S. 105, 119 (2001), also does not settle either the applicability of the FAA to §301 cases or whether a collective bargaining agreement constitutes an employment contract. Section 2 of the FAA makes written agreements to arbitrate valid "in any maritime transaction or a contract evidencing a transaction involving commerce; Section 1 exempts certain employment contracts from the FAA.[3]

In fact, organized labor abandoned its opposition to the FAA on the assumption that it did not apply to labor law, see *id.* at 126-27 (Stevens, J., dissenting) ("The legislation was reintroduced in the next session of Congress with Secretary Hoover's exclusionary language added to [9 U.S.C.] §1, and the amendment eliminated organized labor's opposition to the proposed law").

Professor Gould discusses the importance of

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[3]*See also* Hearings on S.4213 and S.4214 Before the Subcommittee on the Judiciary of the Senate Judiciary Committee, 67th Cong., 4th Sess. 9 (1923) ("not intended to be an act referring to labor disputes, at all"); *quoted in* S. Cole, *Incentives and Arbitration: The Case Against Enforcement of Executory Arbitration Agreements Between Employers and Employees*, 64 UMKC L. Rev. 449, 466 (1996).

whether a collective bargaining agreement constitutes an employment contract and is therefore within the scope of the FAA, with respect to matters such as the expeditiousness of arbitration and the availability of discovery and judicial review which may affect many cases other than this one. *See* Gould, *supra*, at 644-50.

If the FAA applies to this case, an issue which this Court needs to decide, then the court of appeals' disregard of *First Options of Chicago, Inc.*'s instruction to consider state law amounts to the decision of an important federal question in a way which conflicts with an applicable decision of this Court. Since the issue in *Teledyne Inc.* was whether the contract was ever finalized, the Ninth Circuit was incorrect in that case, *see* 892 F.2d at 1410, to rely on *Prima Paint Corp.* By relying on *Buckeye Check Cashing Inc.* and *Prima Paint Corp.*, the Ninth Circuit repeats the error it already made in *Teledyne Inc.* *See* Jonathan M. Strang, *The Chicken Comes First: Who Decides if an Arbitrator Has Jurisdiction to Arbitrate?*, 16 Fed. Circuit B.J. 191 (2006).

II. AN LMRA §301(a) ACTION IS AVAILABLE AGAINST THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS IN THIS CASE IN VIEW OF THE STRONG PUBLIC POLICY IN FAVOR OF HOLDING PARENT UNIONS LIABLE FOR THE ACTS OF THEIR LOCALS.

Notwithstanding the conflict among the federal circuit courts regarding the availability of a §301(a) action for tortious interference with a collective bargaining

agreement, the goal of §301(a) is labor stability and there is a strong public policy in favor of holding parent unions liable for the acts of their locals. The court of appeals' denial of a contractual or tort remedy in this case is contrary to this statutory purpose and public policy by eliminating any remedy which Granite Rock Co. could apply for from the district court against the international union.

Congress enacted §301(a) in 1947 following a period of increased strikes. S. Rep. No. 105, 80th Cong., 1st Sess., p.2 (1947); *accord*, H. Rep. No. 245, 80th Cong., 1st Sess., p.4. "During the last few years, the effects of industrial strife have at times brought our country to the brink of general economic paralysis." H. Rep. No. 245 at 3.

Labor stability has been the goal of §301(a) from the beginning, S. Rep. No. 105 at 15-16:

> In the judgment of the committee.... We feel that the aggrieved party should also have a right of action in the federal courts .... If unions can break agreements with relative impunity, then such agreements do not tend to stabilize industrial relations .... Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract.

The existence of a tort as well as a contract remedy advances this goal substantially by protecting the contract and signifying "society's interest in contractual integrity

and thus augments the extent to which existing contracts will appear reliable and will tend to structure a market economy." John Danforth, *Tortious Interference With Contract: A Reassertion of Society's Interest in Commercial Stability and Contractual Integrity*, 81 Colum.L.Rev. 1491, 1511 (1981) (citation omitted).

But for §301(a), Granite Rock would have had a remedy against the International Brotherhood of Teamsters under California state law for its interference with the collective bargaining agreement according to the Ninth Circuit. *See Quelimane Co. v. Stewart Title Guaranty Co.*, 960 P.2d 513, 530-31 (Cal. 1998). But, §301(a) preempts state tort as well as contract claims which involve interpretation of a collective bargaining agreement. *See Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 220 (1985). Contrary to Congress' clear intent, the court of appeals in this case therefore has left Granite Rock Co. without a remedy against the international union.

The court of appeals expressly acknowledges the conflict among the circuit courts regarding the availability of a §301(a) action for tortious interference with a collective bargaining agreement. *See* 546 F.3d at 1174-75. While resolving this conflict, this Court should take into account the strong public policy in favor of holding parent unions liable for the acts of their locals. Decisions from numerous circuit courts reflect this policy.

In *Westmoreland Coal Co. Inc. v. Int'l Union, UMWA*, 910 F.2d 130, 136 (4th Cir. 1990), the court affirmed relief against an international union in a §301(a) case based in part on statements by individual union officials, and specifically distinguished this Court's decision

in *Carbon Fuel Co. v. UMWA*, 444 U.S. 212, 216-18 (1979):

> *Carbon Fuel Co.* is distinguishable. There, the Supreme Court held that an international union which neither instigates, supports, ratifies, nor encourages "wildcat" strikes by local unions cannot be held liable for the actions of the locals. The court was careful to distinguish the situation in *Carbon Fuel Co.* from one in which a local union takes actions, authorized by the parent union, which violate a contract.

Numerous other decisions also have recognized the liability of international or other parent unions for the acts of local unions. *See, e.g., NLRB v. Int'l Union, UMWA*, 727 F.2d 954, 956 (10th Cir. 1984) (international union was responsible for violations by district and local unions); *NLRB v. National Assn. of Broadcast Employees and Technicians, AFL-CIO, Local 31*, 631 F.2d 944, 953 (D.C. Cir. 1980)(international union responsible for prohibited activities of local union); *Alexander v. Int'l of Operating Engineers, AFL-CIO*, 624 F.2d 1235, 1241 (5th Cir. 1980); *Allen v. Int'l Alliance of Theatrical, Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO*, 338 F.2d 309, 317-19 (5th Cir. 1964); *NLRB v. Millwrights' Local 2232, District Council of Houston and Vicinity*, 277 F.2d 217, 220-22 (5th Cir. 1960), *cert. denied*, 366 U.S. 908 (1961); *Selby-Battersby & Co. v. NLRB*, 259 F.2d 151, 156 (4th Cir. 1958), *cert. denied, Baltimore Building and Construction Trades Council v. Selby-Battersby & Co.*, 359 U.S. 952 (1959).

In *Dowd v. Int'l Longshoremen's Assn., AFL-CIO*,

975 F.2d 779, 785 (11th Cir. 1992), a secondary boycott case affirming an injunction against an American union which had allegedly violated the National Labor Relations Act by inducing Japanese unions to pressure importers not to import certain items, the court references "the liberal application of agency concepts appropriate in the labor context" and specifically notes that in labor cases *an agency or joint venture relationship may exist even where some of the elements required in an ordinary tort or contract dispute are absent. Id.* at 91.[4]

Further, the *Dowd* court's citation to *Cagle's Inc. v. NLRB*, 588 F.2d 943, 947-48 (5th Cir. 1979) (where employer encouraged Chamber of Commerce director to campaign against formation of union and failed to effectively disavow such interference, employer was responsible for director's conduct even though director was not employer's formal agent); and *Star Kist Samoa Inc.*, 237 N.L.R.B. 238 (1978) (employer was responsible for anti-union activities of community organization, even where it had no right to demand or control the actions of the community organization).

Even an international union's mere awareness of the conduct and failure to repudiate an agent's acts may create responsibility. *Dowd*, 975 F.2d at 785 n.4, *citing Soft Drink Workers Union, Local No. 812*, 304 NLRB No.

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[4]In fact, the liability of an international union has been recognized by the Ninth Circuit in remedy for breaches of contractual responsibilities delegated to its local union. In *NLRB v. Int'l Longshoremen's and Warehousemen's Union*, 210 F.2d 581, 584-85 (9th Cir. 1954), the court enforced a Board order that an international union was responsible for the unfair labor practices of a local union under "a general principle of agency law."

22 (1991) (where union was aware of unfair labor practices by member on behalf of union and failed to repudiate conduct, union was responsible for member's actions); and *Service Employees Union, Local No. 87*, 291 NLRB 82 (1988) (picketers acted as agents of union, based upon union's apparent endorsement and ratification, even absent evidence that union actually initiated or endorsed picketing); *see also Alexander v. Local 496, Laborers' Int'l Union of North America*, 177 F.3d 394, 409 (6th Cir. 1999), *cert. denied*, 528 U.S. 1154 (2000) ("where an agency relationship exists, international unions are not only vicariously liable, they have an affirmative duty to oppose the local's discriminatory conduct"); *Myers v. Gilman Paper Corp.*, 544 F. 2d 837, 851 (5th Cir. 1977), *reh'g denied*, 556 F.2d 758 (5th Cir. 1977), *cert. dismissed, Local 741, Int'l Brotherhood of Electrical Workers, AFL-CIO v. Myers*, 434 U.S. 801 (1977) (international union is liable for a local union's discrimination where a "sufficient connection" exists between the two).

The liability of a parent national union has been upheld specifically with respect to the acts of a local union during bargaining. In *Riverton Coal Co. v. UMWA*, 453 F.2d 1035, 1042 (6th Cir. 1972), *cert. denied*, 407 U.S. 915 (1972), the court, remanding for entry of judgment in favor of plaintiff corporations against a national union, states that the,

> UMW, having the power to correct the unlawful action of the local union, and deciding to accept the benefit of it instead of taking appropriate action to halt the strike as it was required to do under the contract, thereby induced and encouraged both the

1964 and the 1966 strike.

Similarly, in *Sheet Metal Workers' Int'l Assn., AFL-CIO v. NLRB,* 293 F.2d 141, 149 (D.C. Cir. 1961), *cert. denied,* 368 U.S. 896 (1961), the court enforced a Board order that an international union was responsible for the unfair labor practices of local unions, including the requirement of certain provisions in collective bargaining agreements. The acts creating liability need not be great. In *Int'l Bhd. of Electrical Workers, AFL-CIO v. NLRB,* 487 F.2d 1113, 1128 (D.C. Cir. 1972), the court affirmed the Board's conclusion that an international union had committed unfair labor practices merely by its routine disposition of an appeal and retention of records regarding a local union's disciplinary actions.

And, the policy favoring liability is so strong that

> where a union affirms prior conduct performed on its behalf, the union may be responsible for the unfair labor practices of another even where the conduct did not bind the union at the time it occurred.

Dowd, 975 F.2d at 786, *citing Service Employees Union, Local No. 87,* 291 NLRB 82 (1988); and *Sheet Metal Workers Union, Local No.2,* 203 NLRB 954, 956 (1973).

All of this, of course, is merely a specific application of the general rule that third parties may not disrupt labor relationships. *See NLRB v. Denver Building & Construction Trades Council,* 341 U.S. 675, 689 (1951) ("[i]t was an object of the strike to force the contractor to terminate Gould & Preisner's subcontract") (reversing

judgment which had set aside Board order against trades council); *Wells v. Int'l Union of Op. Engrs, Local 181*, 303 F.2d 73, 75 (6th Cir. 1962) ("defendants' activities were secondary in nature and were engaged in for the purpose of inducing the Transit-Mix employees not to deliver concrete to the Tye & Wells job site and, therefore, in turn to force Tye & Wells to breach its contract with the United Construction Workers") (affirming judgment against unions for secondary boycott). Yet the court of appeals has effectively endorsed IBT's disruption in this case, contrary to the purpose of §301(a).

CONCLUSION

Wherefore, the Center on National Labor Policy Inc. respectfully requests this Court to grant the Petition for the purpose of reversing the decision of the United States Court of Appeal for the Ninth Circuit.

Respectfully submitted,

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