NO.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does a federal court have jurisdiction to determine whether a collective bargaining agreement was formed when it is disputed whether any binding contract exists, but no party makes an independent challenge to the arbitration clause apart from claiming it is inoperative before the contract is established?

2. Does Section 301(a) of the Labor-Management Relations Act, which generally preempts otherwise available state law causes of action, provide a cause of action against an international union that is not a direct signatory to the collective bargaining agreement, but effectively displaces its signatory local union and causes a strike breaching a collective bargaining agreement for its own benefit?

CORPORATE DISCLOSURE STATEMENT

Granite Rock Company has no parent company, and no publicly held company owns 10% or more of its stock.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Granite Rock Company respectfully petitions for a writ of certiorari to review a judgment of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The Ninth Circuit opinion, *Granite Rock Company v. International Brotherhood of Teamsters, Local 287*, appears at 546 F.3d 1169 (9th Cir. 2008). The opinions of the District Court regarding arbitration and Section 301 jurisdiction are unreported. Copies of the Ninth Circuit opinion and all relevant District Court orders are in the Appendix.

JURISDICTION

The Ninth Circuit entered its opinion on October 22, 2008. The court denied rehearing *en banc* on December 30, 2008. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 301(a) of the Labor-Management Relations Act ("LMRA") provides:

> Suits for violations of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States

> having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a). A complete copy of the statute is appended.

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

Granite Rock produces concrete and other building materials. Granite Rock has facilities throughout Northern California, employs about 800 employees, and maintains labor contracts with more than fifteen unions. Granite Rock has been in business since 1900. (Appendix ("A.") 37,111-12.)

On July 2, 2004,[1] Granite Rock (also the "Company") and Teamsters Local 287 (the "Union," the "Local," or "Local 287") reached a "tentative agreement" for a successor collective bargaining agreement after an all-night bargaining session. Granite Rock and the Union agreed the proposed contract would only become binding if and when ratified by employees. Local 287 business agent, George Netto, promised to hold a vote later that morning and recommend ratification. The proposed contract contained a no-strike provision[2] and a

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[1] All dates refer to 2004, unless otherwise stated.

[2] Section 22 of the parties' agreement is entitled "Strikes And Lockouts." It provides:

> There will be no strikes, including unfair labor practice strikes, sympathy strikes, slowdowns, stoppages of work or picketing by the Union or employees and there will be no lockouts by the

provision for arbitrating disputes "arising under" the agreement.[3] (A.38-40,134-35,176-79,181-82.)

On July 2, within hours after negotiations concluded, the Union took down its pickets and held a membership vote. The bargaining unit voted to accept the tentative agreement. Several employees told Granite Rock the agreement was ratified (the "Agreement"), and the strike was over. (A.22,39-40.)

Throughout negotiations, the International Brotherhood of Teamsters (the "IBT" or "International Union") guided Local 287's actions.[4]

> Employer during the term of this Agreement, except as otherwise provided for herein. However, it will not be considered a violation of this Agreement and an employee will not be permanently replaced for refusing to pass through or work behind a lawful primary picket line established at any Employer property by a union, which picket line has been sanctioned by the Joint Council of Teamsters No. 7, and also approved by the Bay Area Building Material Teamsters Committee, after fifteen (15) full working days of both withholding services and primary picketing at the Employer facility. . . .

(A.134-35,181-82.)

[3] Section 20 of the parties' agreement is entitled "Grievance Procedure" and provides, in relevant part: "All disputes arising under this agreement shall be resolved in accordance with the [Grievance] procedure," which includes arbitration as the third step. (A.176-79.)

[4] The District Court dismissed Respondent IBT under FRCP 12(b), ruling as a matter of law. The facts regarding the IBT, as recited below, are from the Third Amended Complaint. (A.110-26.) All allegations in the Complaint must be presumed true and viewed in the light most favorable to Granite Rock. *See, e.g., Johnson v. Jones*, 515 U.S. 304, 313 (1995); *Pakootas v. Teck Cominco Metals, Ltd*, 452 F.3d 1066, 1069 (9th Cir.

IBT agent Rome Aloise provided strategic information to the Local, including a document comparing Teamster bargaining agreements in the region. Aloise also proposed bargaining meetings and stated he had authority to negotiate without the Local's approval. (A.114-15, 117-19.)

The first telephone call Netto made after reaching the Agreement on July 2 was to Aloise. Aloise, acting on behalf of the IBT, instructed Netto that Local 287 must not honor the Agreement unless and until Granite Rock agreed to a hold-harmless side letter to the Agreement. (A.117-22.)

Following Netto's call to Aloise, Local 287 claimed ratification had not occurred. Local 287 announced it would not allow the employees to ratify the contract until Granite Rock entered a separate hold-harmless agreement. Thus, through Local 287, the IBT sought new concessions, demanding the Company hold all local *and international* unions harmless for strike misconduct. At the IBT's direction and inducement, the Union supported its demand by threatening a Company-wide strike.

Granite Rock rejected the demand, expressing its understanding that employees already ratified the Agreement, which contained a no-strike clause. (A.116-19.)

The next day, the IBT and Local 287 began a Company-wide strike, involving numerous facilities, hundreds of employees, and several other Teamster locals. During the strike, IBT agent Aloise

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2006). Additional facts regarding Local 287 appear in the jury verdict and factual stipulations. (A.22-24,29-30,37-39.)

maintained constant communication with Local 287 and directed its actions. Aloise told Granite Rock he independently had authority to resolve the dispute. Aloise rallied other local Teamster unions to support the strike. The IBT supplied strike benefits to keep Local 287 members on the picket lines and financially supported Local 287 with a $1.2 million ($1,200,000.00) loan.

The IBT was not a signatory to the Agreement. Nonetheless, the IBT caused the subsequent strike and did so to obtain an immunity agreement for its own benefit. The strike occurred during Granite Rock's busiest season, inflicting substantial injury on the Company, its employees, and their families in an amount dramatically exceeding the net worth of the undercapitalized Local Union. (A.119-20.)

II. PROCEDURAL HISTORY

A. District Court Proceedings.

When the IBT/Local 287 strike recommenced after July 2, Granite Rock immediately filed a Complaint in federal court, seeking a "*Boys Market* Injunction" to prevent further damages.[5] Local 287 prevented issuance of an injunction by denying ratification occurred, and thus no binding agreement was formed. The District Court agreed, denying the injunction request and allowing the strike to continue.

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[5] Under *Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235 (1970), federal courts may enjoin a strike *if* the dispute over which the strike occurs is arbitrable under a collective bargaining agreement.

Near the end of the strike in September, Granite Rock revived its lawsuit after one Union member came forward with a sworn statement that ratification occurred on July 2. The Company continued the lawsuit, now seeking damages.

Based on initial discovery, the Company added claims against the IBT for causing the strike. (A.124-25.) However, the District Court dismissed the IBT, interpreting Section 301(a) solely as granting jurisdiction for claims against labor contract signatories. The court severed the IBT claim for immediate appeal under Federal Rule of Civil Procedure 54(b). (A.61-81.)

Local 287 continued to claim no contract existed. After the strike ended and an injunction was no longer relevant, however, Local 287 also moved for arbitration. (A.41.) Based on *AT&T Technologies v. Communication Workers*, 475 U.S. 643 (1986), the District Court ruled arbitration was improper without first determining whether any contract existed. The court found that "parties can only be required to submit to arbitration if they agreed to so submit," noting:

> [Local 287's] argument that the dispute is subject to the grievance and arbitration provisions of the contract, rather than court adjudication, is misplaced at this time. The provisions of the contract would only be binding if there was a contract in the first place; yet, Defendant claims the contract was never ratified. . . . ***Defendant cannot avail itself of arbitration while at the same time insisting that the agreement***

> ***was never ratified.*** *. . . [A] material issue of fact remains over the existence of the contract.*

(A.97-104 (emphasis added).)

The District Court ordered a jury trial to determine whether an agreement existed beginning July 2. (A.41-60,82-96.) After six days of trial, the jury unanimously found (1) a vote by bargaining unit employees occurred on July 2; and (2) the employees voted *to accept* the tentative agreement, creating a binding contract. (A.22-23.) Accordingly, at the time the Union resumed its strike for additional concessions, a no-strike agreement existed.

The next steps in the lawsuit would be to determine whether the strike violated the no-strike clause and, if so, calculate the damages. Granite Rock sought to have these issues decided by a jury, but the District Court ruled they were arbitrable. (A.82-96.)

B. The Ninth Circuit Decision.

On October 22, 2008, the Ninth Circuit reversed the District Court ruling that it had jurisdiction to determine whether the agreement *existed* as a prerequisite to arbitration. *Granite Rock Co. v. Int'l Bhd. of Teamsters, Local 287*, 546 F.3d 1169 (9th Cir. 2008).[6] The Ninth Circuit held that federal courts only have jurisdiction to

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[6] The Ninth Circuit separately affirmed an NLRB order finding Local 287 committed unfair labor practices (Ninth Circuit case numbers 06-72964 and 06-73444). The IBT was not a party to that action.

determine whether a contract exists *if* "*there is a challenge to the arbitration provision which is separate and distinct from any challenge to the underlying contract.*" *Id.* at 1176-77 (quoting *Teledyne, Inc. v. Kone Corp.*, 892 F.2d 1404, 1410 (9th Cir. 1989)). The court applied *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006) for this holding, although this case did not involve a claim of fraud or any other defense alleging an existing contract was void or voidable. *See id.* at 1178.

The Ninth Circuit further held that an arbitration clause covering "[a]ll disputes arising *under*" an agreement "is broad enough to cover [a] dispute over contract *formation....*" *Granite Rock*, 546 F.3d at 1177 (emphasis added). The court concluded whether any contract was formed should have been decided by an arbitrator, rendering the jury verdict moot. The grounds for this holding was that neither party distinctly challenged the arbitration clause.

The Ninth Circuit affirmed dismissal of Granite Rock's Section 301(a) claim against the IBT for contractual interference. Doing so, the Ninth Circuit acknowledged a Circuit split. *Granite Rock*, 546 F.3d at 1174-75 & n.2 (recognizing Third Circuit permits such claims). The court's holding narrows Section 301 jurisdiction, reasoning that no cause of action could exist against the IBT because it had no express rights or duties under the Agreement. *Id.* at 1173-74. Although Granite Rock must prove a breach of the Agreement to prevail against the IBT, the court held any claim would solely amount to "mere reference" to the Agreement, not sufficient for

jurisdiction. *Id.* at 1173. The Ninth Circuit also took issue with the label of "tortious interference" as a viable cause of action under Section 301. *Id.* at 1175. The court acknowledged Section 301 "can be read as a 'congressional mandate to the federal courts to fashion a body of common law to be used to address disputes arising out of labor contracts,'" but declined to do so. *Id.* (quoting *Allis-Chalmers v. Lueck*, 471 U.S. 202, 209 (1985)). The Ninth Circuit opined, "[i]f Congress did not provide a remedy for Granite Rock directly against the IBT on its asserted tortious interference claim, then that is an issue to be addressed by Congress...." *Id.* at 1176.

Granite Rock requested *en banc* review, which the Ninth Circuit denied on December 30, 2008. App., 106-07. (A.106-7.) This petition timely follows.

REASONS FOR GRANTING THE PETITION

Both issues raised in this Petition present factors the Court weighs heavily in deciding whether a case warrants review. Each presents a pronounced Circuit divide. Each presents major changes to the dynamics of labor relations. Moreover, the holding requiring parties to arbitrate contract *formation* challenges will impact *all* contract negotiations in which parties agree they will arbitrate subsequent disputes if a binding contract is reached. This applies to commercial contracts as well as labor contracts. This Court should grant review to reconcile conflicting lower court decisions about threshold arbitrability determinations and the scope of Section 301(a) jurisdiction to prevent labor disputes.

I. SUPREME COURT REVIEW OF THE NINTH CIRCUIT'S DECISION REQUIRING ARBITRATION OF CONTRACT FORMATION ISSUES IS ESSENTIAL TO HARMONIZE THE CIRCUITS AND PREVENT REJECTION OF ARBITRATION AGREEMENTS.

The Ninth Circuit now holds that federal courts must compel arbitration anytime an arbitration agreement appears in a *disputed* contract, *without a prior judicial determination that any binding contract containing an arbitration clause exists.* This decision poses danger for labor relations and all commercial contracts and *directly conflicts* with other Circuits. In an era when arbitration agreements are standard clauses in labor contracts following the *Steelworkers* trilogy,[7] this Court must establish a uniform rule.

A. A Circuit Split Exists Regarding Whether Federal Courts Have Jurisdiction To Determine If A Contract Exists Even If No Party Separately Challenges The Validity Of The Arbitration Clause.

This Court should resolve the current division regarding the boundaries of federal courts determining arbitrability. Over the years, two distinct lines of Supreme Court jurisprudence have emerged. One addresses arbitrability questions that

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[7] *United Steelworkers of Am. v. Am. Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of Am. v. Enterprise Wheel & Car Corp.*, 363 U.S. 594 (1960).

federal courts decide before compelling arbitration. *See John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543 (1964) (whether party is bound by agreement containing arbitration clause is "threshold question" for court); *AT&T Tech. v. Comm. Workers*, 475 U.S. 643, 649 (1986) ("Unless 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"); *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995) (ambiguous issue in contract must not be deferred to arbitration when it concerns arbitrability); *Howsam v. Dean Witter Reynolds*, Inc., 537 U.S. 79 (2002) (distinguishing procedural defenses, such as a statute of limitations, which are arbitrable, from contract formation issues, which may not be deferred to an arbitrator unless parties clearly and unmistakably agree). These cases emphasize that arbitration is a matter of contract, and hold that questions about the *existence* and *scope* of an arbitration agreement must be decided *by courts.*

A second line of Supreme Court jurisprudence addresses whether a court or an arbitrator should decide defenses, such as fraud in the factum or fraud in the inducement, that would render an established contract void or voidable. *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967); *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006). These cases hold that, because an arbitration agreement is severable, the arbitrator determines the contract's validity (as opposed to its formation), unless one party separately claims the arbitration clause is invalid. *Prima Paint*, 388 U.S. at 402-04; *Buckeye*, 546 U.S. at 449 ("We reaffirm

today that, regardless of whether the challenge is brought in federal or state court, a challenge to the validity of the contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator"). In *Buckeye*, a case addressing a signed contract which one party claimed was void due to illegality, this Court expressly declined to address whether consent is a judicial or arbitral determination, stating:

> The issue of the contract's validity is different from the issue whether any agreement between the alleged obligor and obligee was ever concluded. Our opinion today addresses only the former, and *does not speak to the issue* decided in the cases cited ... which hold that it is for courts to decide whether the alleged obligor ever signed the contract ....

Buckeye, 546 U.S. at 444 n.1 (internal citations omitted, emphasis added). This case presents the Court with an opportunity to directly address these important issues, resolve the entrenched Circuit divide, and harmonize the *AT&T* and *Prima Paint* lines of arbitration cases, which impact both labor and commercial contracts.

With *Granite Rock*, the Ninth Circuit demonstrated it will continue to apply this Court's arbitration decisions in a manner contrary to every other Circuit. *Although Granite Rock never consented to have an arbitrator decide the existence of an agreement*, the court held it was error for the District Court to determine that a binding contract existed before compelling arbitration. The Ninth

Circuit now holds, as a *general rule*, that courts may not decide *any* contract issues, unless a party separately challenges the arbitration clause. Basically, the Ninth Circuit collapses the *AT&T* and *Prima Paint* lines of cases into a single holding, rather than reading them as covering distinct scenarios.

The Ninth Circuit began departing from other federal appellate courts in *Teledyne, Inc. v. Kone Corp.*, 892 F.2d 1404 (9th Cir. 1989).[8] In *Teledyne*, the defendant argued there was no agreement to arbitrate because the parties never finalized a draft contract containing an arbitration clause. *Id.* at 1410. The Ninth Circuit applied *Prima Paint*, not *AT&T*, and held that a matter must be sent to arbitration "unless there is a challenge to the arbitration provision which is separate and distinct from any challenge to the underlying contract." *Id.*

In this case, the Ninth Circuit held that the *Teledyne* rule is not limited to a narrow set of facts, but applies at all times absent an independent challenge to the arbitration clause. *Granite Rock*, 546 F.3d at 1176-77. The court recognized, "[t]he United States Supreme Court has drawn a distinction between challenges to an arbitration clause and challenges to an entire contract." *Id.* at 1176 (citing *Buckeye*, 546 U.S. at 445-46). However,

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[8] Before *Granite Rock*, the Ninth Circuit characterized *Teledyne* as a "rare case." *Three Valleys Municipal Water Dist. v. E.F. Hutton & Co.*, 925 F.2d 1136, 1142 (9th Cir. 1991). The Ninth Circuit's opinion expanded the *Teledyne* holding, applying it, absent an independent challenge to the arbitration clause, "[w]hether the facts of this case and of *Teledyne* are 'rare' or not...." *Granite Rock*, 546 F.3d. at 1177.

the court interpreted *Buckeye* as presenting a "***general rule***" for *all* arbitration cases, without recognizing this Court's statement in *Buckeye* that it was not addressing cases disputing contractual consent. *See* 546 U.S. at 444 n. 1. Applying *Buckeye* to *all* arbitration cases, the Ninth Circuit effectively curtails virtually all federal jurisdiction for arbitrability determinations when no party independently challenges the arbitration clause.

The Federal Circuit has expressly rejected the *Teledyne* rule that was made the "general rule" in this case. *See Microchip Tech. Inc. v. U.S. Philips Corp.*, 367 F.3d 1350, 1358 (Fed. Cir. 2004) (quoting *Teledyne*, 892 F.2d at 1410). That court rejected the rule established in *Granite Rock* as generally applying, explaining: "*Contrary to the Ninth Circuit's decision in Teledyne*, the responsibility of the judiciary to resolve the gateway dispute of whether an agreement to arbitrate exists is not limited to situations in which there is an independent challenge to the arbitration clause." *Id.* (emphasis added). The Federal Circuit held that whether an arbitration agreement exists remains a judicial determination. *Id.*

This issue has matured. Virtually all other Circuits hold that whether a contract *exists* must be resolved *by the court*, not an arbitrator, regardless of whether the parties independently challenge the arbitration clause. For example, *Sandvik AB v. Advent Int'l Corp.*, 220 F.3d 99 (3d Cir. 2000), a case this Court cited as an exception to *Buckeye*, addressed similar facts and reached an opposite conclusion. In *Sandvik*, the defendant requested arbitration, but also claimed no contract existed

because its agent had no binding authority. *Id.* at 100. The Third Circuit held that contract formation is a judicial determination regardless of which party seeks arbitration.[9] *Id.* at 106. The court soundly rejected the position the Ninth Circuit now adopts, sensibly reasoning:

> [T]here is something odd about referring this matter to arbitrators without a definitive conclusion on the issue whether an agreement to arbitrate actually existed.... Such a ruling would ... allow arbitrators to determine their own jurisdiction, something that is not permitted in the federal jurisprudence of arbitration.

Id. at 111 (citing *First Options of Chicago*, 514 U.S. at 944; *AT&T Tech.*, 475 U.S. at 651).

The other decisions cited in *Buckeye* footnote 1 also hold that whether an agreement exists is a judicial determination. In *Sphere Drake Ins. Ltd v. All Am. Ins. Co.*, 256 F.3d 587 (7th Cir. 1995), the Seventh Circuit held *Prima Paint* does not apply when a party alleges "no contract came into being." *Id.* at 591. "[A]s arbitration depends on a valid contract an argument that the contract does not exist can't logically be resolved by the arbitrator."

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[9] In contrast, the Ninth Circuit holds that "one can consent to arbitration by suing under a contract that includes an applicable arbitration clause." *Granite Rock*, 546 F.3d at 1178. This directly conflicts with the Third Circuit and arguably removes jurisdiction from federal courts for actions ranging from suits seeking strike injunctions to suits to compel arbitration.

Id.; *see also Chastain v. Robinson-Humphrey Co.*, 957 F.2d 851, 856 (11th Cir. 1992) ("[W]hether a party has authority to bind another to an arbitration agreement and whether a party can ratify an arbitration agreement by her conduct — should ordinarily be decided in the trial court before final resolution of a motion to compel arbitration.").

Cases from other Circuits further demonstrate the conflict. *See, e.g., Express Scripts, Inc. v. Aegon Direct Mktg. Servs.*, 516 F.3d 695, 700-01 (8th Cir. 2008) ("district court correctly concluded that *Prima Paint* and *Buckeye* have no application" when one party asserts the agreement containing an arbitration clause is no longer in effect); *Rintin Corp., S.A. v. Domar, Ltd.*, 476 F.3d 1254, 1259 n.3 (11th Cir. 2007) (distinguishing between "challenges to the validity of a contract with an arbitration clause and arguments that a party never consented to such a contract"); *Seawright v. Am. Gen. Fin., Inc.*, 507 F.3d 967, 977 (6th Cir. 2007) (proper for court to determine whether agreement to arbitrate was formed); *Adams v. Suozzi*, 433 F.3d 220, 227-28 (2d Cir. 2005) (court must determine whether parties concluded binding collective bargaining agreement before compelling arbitration); *Will-Drill Res., Inc. v. Samson Res. Co.*, 352 F.3d 211, 216-17 (5th Cir. 2003) ("where a party attacks the very existence of an agreement, as opposed to its continued validity or enforcement, the courts must first resolve that dispute"); *Specht v. Netscape Communs. Corp.*, 306 F.3d 17, 26-27 (2d Cir. 2002) ("It is well settled that a court may not compel arbitration until it has resolved 'the question of the very existence' of the contract embodying the arbitration clause."); *Large v. Conseco Fin. Servicing Corp.*, 292 F.3d 49, 54 (1st

Cir. 2002) (distinguishing between cases challenging contract existence and cases seeking rescission of existing contract); *Glass v. Kidder Peabody & Co., Inc.*, 114 F.3d 446 (4th Cir. 1997) (issues of "substantive arbitrability," including whether "valid agreement to arbitrate exists between the parties" are for court); *Va. Carolina Tools, Inc. v. Int'l Tool Supplies, Inc.*, 984 F.2d 113, 118 (4th Cir. 1993) (dispute about "very existence" of contractual relationship must be decided by court). By applying *Buckeye* to strip federal courts of jurisdiction to determine whether a contract exists *unless* one party independently challenges the validity of the arbitration provision, the Ninth Circuit creates a clear division.

Moreover, the Ninth Circuit now enforces arbitration clauses in "tentative" agreements without first determining if any contractual obligations have arisen. Although Granite Rock and Local 287 stipulated ratification was a condition precedent, the Ninth Circuit held it was error for the District Court to determine whether ratification occurred. That contradicts fundamental labor and contract principles.

For example, in *Adams v. Suozzi*, 433 F.3d 220 (2d Cir. 2005), the Second Circuit held that federal courts may not compel arbitration before determining that conditions precedent to a collective bargaining agreement occurred. The court recognized that when there is a "condition precedent to the formation or existence of the contract itself . . . no contract arises 'unless and until the condition occurs.'" *Id.* at 227 (quoting *Oppenheimer & Co., Inc. v. Oppenheim, Appel, Dixon, & Co.*, 86 N.Y.2d

685, 690 (1995)). The district court had a "duty, to determine whether there ever existed an agreement to arbitrate between the parties." *Id.* Arbitration was properly denied because one condition was not met. *Id.* at 226-27.

The Ninth Circuit holds directly the opposite. In labor relations, it is common for parties to agree upon conditions, such as employee ratification, that must be met before a "tentative agreement" becomes a contract.[10] Analogous conditions are placed on commercial deals. This Court should grant this petition to clarify the scope of judicial determination of contract formation issues.

B. This Case Involves Arbitrability Principles Of Utmost Importance To Labor Relations In Addition To Commercial Contracts.

If allowed to stand, the Ninth Circuit's decision will adversely affect labor relations. The holding also has potential implications beyond the labor context. Relying on authority from outside the labor context, the Ninth Circuit's holding affects virtually all commercial contracts in which parties intend to arbitrate disputes arising under their contract.

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[10] *See, e.g., Hertz Corp.*, 304 NLRB 469 (1991); *Beatrice/Hunt-Wesson, Inc.*, 302 NLRB 224 (1991). Analogously, this Court has instructed that whether a party to a labor contract must arbitrate a grievance after a collective bargaining agreement expired is a *judicial determination*, not an issue for the arbitrator. *Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190, 208-09 (1991).

Initially focusing on labor relations, three disruptions flow from the Ninth Circuit decision. First, no concept is more important to labor peace than arbitration. This Court expressly recognizes arbitration "furthers the national labor policy of peaceful resolution of labor disputes." *AT&T*, 475 U.S. at 651. "The willingness of parties to enter into agreements that provide for arbitration of specified disputes would be 'drastically reduced,' however, if a labor arbitrator had the 'power to determine his own jurisdiction....'" *Id.* (quoting *Schneider Moving & Storage Co. v. Robbins*, 466 U.S. 364, 371-72 (1984) and Cox, *Reflections Upon Labor Arbitration*, 72 Harv. L. Rev. 1482, 1509 (1959)). This holding discourages parties from agreeing to arbitration language because of concern an arbitrator will have power to determine whether an agreement was completed. Arbitration awards have far less reviewability than court decisions.

Second, allowing one party to enforce an arbitration clause without giving effect to the remainder of the agreement would impair labor peace. "The grievance and arbitration procedure is conventionally regarded as the union's compensation for surrendering the right to strike during the period while the agreement is in force -- 'the 'quid pro quo' for an agreement not to strike.'" *Int'l Ass'n of Machinists & Aerospace Workers, Progressive Lodge No. 1000 v. Gen. Elec. Co.*, 865 F.2d 902, 903 (7th Cir. 1989) (quoting *United Steelworkers*, 363 U.S. at 578 n.4). No-strike agreements are vital to economic well-being. To discourage arbitration agreements or to allow unions to avail themselves of arbitration provisions in tentative agreements without giving

effect to the no-strike clause poses a real and serious threat to inter-state commerce.

Third, "tentative agreements" are commonplace in labor negotiations. They greatly decrease the amount of time necessary to complete contracts. Tentative agreements give parties a measure of progress that discourages regressive bargaining. Before the decision below, employers and unions knew they tentatively could agree to provisions, including an arbitration clause, without being bound before negotiations concluded. Allowing unions or employers to dispute that a binding contract exists while availing themselves of arbitration discourages tentative agreements containing arbitration provisions. The Ninth Circuit's opinion that a mere "tentative agreement" on arbitration language can spring to life deters using tentative agreements in labor relations.

The importance of arbitration in the field of labor relations is paramount. The Supreme Court is currently considering whether a collective bargaining agreement may require individual employees to arbitrate all employment-related claims. The pending case of *14 Penn Plaza LLC v. Pyett* (Supreme Court Case No. 07-581), follows a series of decisions strongly supporting arbitration, but recognizing the need to draw boundaries to preserve judicial functions. Article III of the United States Constitution confers judicial powers on impartial judges subject to higher court review. The Ninth Circuit holding takes away a threshold judicial determination and places it in the hands of an interested arbitrator. Determining whether the Ninth Circuit has crossed a jurisdictional line is so

important to the future role of arbitration that this Court's should intervene.

II. TO FULFILL THE PURPOSE OF SECTION 301 AND RESOLVE A LONGSTANDING CIRCUIT SPLIT, THIS COURT SHOULD REVIEW THE NINTH CIRCUIT'S DECISION PROVIDING IMMUNITY TO ANY INTERNATIONAL UNION THAT CAUSES A LABOR CONTRACT TO BE VIOLATED.

Over half a century ago, strikes occurring while collective bargaining agreements were in effect threatened the national economy. Congress responded by enacting Section 301(a) to provide uniform federal enforcement of labor contracts. In this case, a non-signatory International Union forced its Local to resume a strike, breaching the newly-approved agreement. The strike inflicted great harm on the Company, as well as employees and their families, all to extort an immunity agreement benefiting the International. By blocking access to the federal courts under Section 301, the Ninth Circuit granted the International the very immunity it attempted to coerce from Granite Rock. This case is a blueprint for international unions and other entities to violate national labor policy with impunity.

Each Circuit has approached the Section 301(a) jurisdictional analysis differently. The Circuit conflict has fully matured with the Ninth Circuit concluding that Congress did not intend to regulate the misconduct of the International, while acknowledging the Third Circuit recognizes a federal cause of action to address the same conduct.

This request for review is anchored on the mandate of a landmark Section 301 decision. In 1957, this Court instructed that Section 301(a) "authorizes federal courts to *fashion a body of federal law for the enforcement of . . . collective bargaining agreements*." *Textile Workers of Am. v. Lincoln Mills*, 353 U.S. 448, 450-51 (1957) (emphasis added). The common law to be created under Section 301 is to be fashioned "from the policy of our national labor laws." *Lincoln Mills*, 353 U.S. at 456-57. When a problem lacks express statutory sanction, the problem is to "be solved by *looking at the policy* of the legislation and *fashioning a remedy that will effectuate that policy*. The range of judicial inventiveness will be *determined by the nature of the problem*." *Id.* (emphasis added). Instructing federal courts to create appropriate remedies, this Court recognized Section 301 as a *gateway jurisdictional statute*. The gaps in substantive law are to be filled by federal common law. The judiciary is to create that law to remedy problems that counteract the legislative purpose. The IBT took over the role of its Local and wrongly caused violation of the no-strike clause agreement for its own benefit. This is exactly the conduct Congress sought to remedy under Section 301.

The express authority to lower courts to fashion Section 301 federal common law makes this Court's oversight essential. This Court has long recognized that national uniformity is particularly important in the field of labor relations: "[I]n enacting § 301 Congress intended doctrines of federal labor law *uniformly* to prevail over inconsistent local rules." *Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 103, 104 (1962) (emphasis added).

The current lack of uniformity between the Circuits threatens inconsistent judgments and even forum shopping in the context of geographically broad, often national, collective bargaining agreements. Strikes affecting interstate commerce are just as likely to cross state (and Circuit) lines as they are to cross county lines. Court guidance on the common law of Section 301 is essential.

A. This Court Interprets Section 301(a) Broadly To Enforce Labor Contracts — A Directive That Circuits Interpret Inconsistently.

The proper scope of Section 301(a) jurisdiction receives multiple interpretations. This Court has provided some important, but as yet incomplete, guidelines. First, as described above, federal courts are instructed to create federal law and remedies to effectuate the policies of Section 301. *Lincoln Mills*, 353 U.S. at 450-57. Second, "§ 301 is not to be given a narrow reading." *Smith v. Evening News Ass'n*, 371 U.S. at 195, 199 (1962). Third, the statutory language does not limit possible parties to federal actions; the word "between" in the language providing federal jurisdiction for all "suits for violations of contracts *between* an employer and a labor organization," does not refer to the status of the parties to the suit. *Smith*, 371 U.S. at 200 (emphasis added); *Wooddell v. Int'l Bhd. of Elec. Workers, Local 71*, 502 U.S. 93 100-01 (1991). Fourth, all that is required for subject matter jurisdiction under Section 301 is that the suit was "filed *because a contract has been* violated." *Textron Lycoming Reciprocating Engine Div. v. United Auto. Workers*, 523 U.S. 653 (1998) (emphasis in

original).[11] Fifth, to ensure uniform interpretation of labor contracts, the preemptive power is so complete that a cause of action "arises under" Section 301 if (1) the suit alleges contract violations; *or* (2) resolving the suit would require a court to interpret the agreement. *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 210, 212, 213 (1985) ("If the policies that animate § 301 are to be given their proper range, however, the pre-emptive effect of § 301 must extend beyond suits alleging contract violations"); *accord Int'l Bhd. of Elec. Workers v. Hechler*, 481 U.S. 851, 858-59 (1987).

This Court, however, has *not yet addressed* whether jurisdiction exists under Section 301(a) for a suit against an entity that did not sign a collective bargaining agreement, but caused a violation of the contract. Lower courts have struggled to apply the Court's guidelines to determine whether subject matter jurisdiction exists under Section 301 to remedy this harm. The need for guidance is clear, the issue has fully matured, and the time to decide this question has arrived.[12] *See United Food & Comm. Workers Union, Local No. 1564 v. Quality Plus Stores, Inc.*, 961 F.2d 904, 906 (10th Cir. 1992)

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[11] In *Textron*, this Court held that Section 301 does not provide jurisdiction for claims that a contract is invalid, *e.g.*, because of fraud. 529 U.S. at 658. In so holding, the Court focused on the fact that no party alleged the contract was violated. The Court did not have occasion to examine a claim that a valid contract was breached because of a third party. This case presents that opportunity.

[12] In 1982, this Court declined to review a case holding directly opposite to the Ninth Circuit's holding. *Newspaper Guild of Wilkes-Barre v. Wilkes-Barre Pub. Co.*, 454 U.S. 1143 (1982). Subsequently, every Circuit has cited *Wilkes-Barre*. A mature Circuit conflict now exists.

(recognizing "a number of circuits have addressed this issue with differing results"); *Int'l Union, United Mine Workers v. Covenant Coal Corp.*, 977 F.2d 895, 897 (4th Cir. 1992) ("The question of whether section 301 of the LMRA confers federal jurisdiction to hear claims against non-signatories of a collective bargaining agreement for tortious interference with that agreement has occasioned a split in the circuits").

An acknowledged and complex Circuit split exists regarding whether Section 301(a) may provide a cause of action against a non-signatory party, such as an international union or parent company, that is able to cause a contract violation because of the influence it has over a signatory. This issue has been directly or indirectly considered by virtually all Circuits, with dramatically different analyses and varied results.

B. The Ninth Circuit Decision Directly Conflicts With Decisions From Other Circuits That Recognize Section 301(a) Jurisdiction For Contractual Interference By Non-Signatories.

The Third Circuit clearly recognizes a Section 301 action for contractual interference by a non-signatory. *Wilkes-Barre Publishing Co. v. Newspaper Guild of Wilkes-Barre, Local 120*, 647 F.2d 372, 381 (3d Cir. 1981), *cert. denied*, 454 U.S. 1143 (1982). In that case, an employer sued a non-signatory international union for inducing a breach of a labor contract. *Id.* at 376. The court "analyze[d] the problem in terms of *the need to enforce a collective bargaining agreement*" and held that Section 301(a) jurisdiction "reaches not only suits on

labor contracts, but *also suits seeking remedies for violations of such contracts*." *Id.* at 380, 381 n.6 (emphasis added). The Third Circuit emphasized, "[t]he label attached to the remedy as tort or contract is not dispositive of the scope of federal common law which under Section 301(a) it is our responsibility to create." *Id.* at 381. In the Third Circuit, "a claim of tortious interference with a labor contract" is "recognized as stating a claim under the federal common law of labor contracts." *Id.* at 379.

The Third Circuit's holding built upon its own prior conclusion that "[i]t is but a small step further [from the Court's holding in *Smith*] that the same federal common law of collective bargaining agreements permits a suit against [the non signatory party], and the [signatory party] which allegedly acted in concert for the destruction of the value of the bargained-for and vested contract rights." *Nedd v. United Mine Workers*, 556 F.2d 190, 197 (3d Cir. 1977).

"The law of the Eleventh Circuit on this topic is unclear." *Covenant Coal Corp.*, 977 F.2d at 897 n.2. In *United Association of Journeymen and Apprentices v. Georgia Power Co.*, 684 F.2d 721 (11th Cir. 1982), the Eleventh Circuit recognized a claim for "tortious interference with a collective bargaining agreement." *Id.* at 725. The court reasoned that the "national interest in a uniform body of labor relations law requires that the plaintiff's claim be judged by principles of federal law . . . ." *Id.* The court "agree[d] with the reasoning of the Third Circuit in *Wilkes-Barre*" that the label of the remedy as tort or contract is irrelevant to the common law that federal courts are responsible for

creating. *Id.* "A holding that tortious interference with a collective bargaining agreement is not a matter governed by federal law would leave open the possibility of lack of uniformity in scope of obligation which the Court in *Lucas Flour* sought to prevent." *Id.* at 725-26.

The Eleventh Circuit has never expressly overruled *Georgia Power*. Despite the *Georgia Power* conclusion that claims alleging interference with labor contracts are federal in nature, however, the Eleventh Circuit contradicted that decision in *Xaros v. U.S. Fidelity & Guarantee Co.*, 820 F.2d 1176 (11th Cir. 1987). Without referencing *Georgia Power*, the Eleventh Circuit held in *Xaros* that Section 301 provides jurisdiction "only against those who are parties to the contract in issue." *Id.* at 1181. *Georgia Power* indicates the Eleventh Circuit would recognize the cause of action under a reading of Section 301 to include suits against parties who have not directly signed a labor contract.

The Ninth Circuit's holding in *Granite Rock* directly conflicts with Third Circuit, and arguably Eleventh Circuit, law. The Ninth Circuit recognized the divide by acknowledging the Third Circuit has "adopted Granite Rock's position." *Granite Rock*, 546 F.3d at 1174 (emphasis added).[13] Virtually

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[13] The Ninth Circuit's statement that "[t]he only circuit to have adopted Granite Rock's position is the Third," is misleading at best. *Granite Rock*, 546 F.3d at 1174. What emerges from carefully reviewing the case law is long-standing fragmentation in need of direction on the proper scope of Section 301(a). For example, the Second Circuit has favorably cited Third and Eleventh Circuit decisions permitting contractual interference claims under Section 301(a), but rejected this claim under the Railway Labor Act (45 U.S.C. §§ 151-188). *Baylis v. Marriott*

every other Circuit has implicitly or explicitly considered this issue. The differing results stem from the Circuits' use of *widely differing analyses to determining Section 301 jurisdiction and fashioning federal common law and remedies.* This demonstrates compelling need for Supreme Court review.

C. Reflecting Fundamental Differences And Confusion, The Circuits Are Divided About Whether Section 301(a) Ever Provides Jurisdiction For Claims Against Non-Signatories.

Even after *Smith* and *Wooddell*, some Circuits continue to focus on the *status of the parties*, rather than the nature of the action, to determine whether jurisdiction exists. The status of the parties is the sole determinant in the Fourth Circuit, which generally prohibits Section 301 claims against any entity that did not sign a collective bargaining agreement, regardless of the nature of the claim. *Int'l Union, United Mine Workers v. Covenant Coal*, 977 F.2d 895, 897 (4th Cir. 1992) (holding international union could not bring Section 301 action against company causing its contractors to repudiate collective bargaining agreements simply

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Corp., 843 F.2d 658, 664 (2d Cir. 1988). Before *Granite Rock*, the Fourth Circuit cited the Ninth Circuit as already allowing a claim of contractual interference under Section 301. *Int'l Union, United Mine Workers v. Covenant Coal Corp.*, 977 F.2d 895, 897 (4th Cir. 1992) (citing *Painting & Decorating Contractors Ass'n v. Painters & Decorators Joint Comm.*, 707 F.2d 1067, 1070-71, n.2 (9th Cir. 1983)). There is even less consistency in the analyses employed by each Circuit.

because the company "was not a party to any agreement with the Union").

Similarly, the Tenth Circuit has held that "section 301 does not establish subject-matter jurisdiction for a federal common law claim of tortious interference against an entity that is not a signatory to the contract." *United Food & Commercial Workers Union, Local No. 1564 v. Quality Plus Stores, Inc.*, 961 F.2d 904, 906 (10th Cir. 1992). In *Quality Plus*, the court barred a union from suing a third party creditor for allegedly causing an employer to violate a labor contract, holding that "section 301 does not establish subject-matter jurisdiction for a federal common law claim of tortious interference against an entity that is not a signatory to the contract." *Id.* In rejecting the claim, the court misinterpreted the language of Section 301 as precluding jurisdiction when "[t]here is no collective bargaining agreement *between the parties to the action*." *Id.* (emphasis added); *compare with Smith*, 371 U.S. at 200 (word "between" in Section 301(a) does not refer to status of parties). In large part, the Tenth Circuit was precluded from recognizing contractual interference claims by interpreting the statute as excluding suits against non-signatories. The Tenth Circuit also distinguished *Wilkes-Barre*, which, as in this case, involved an international union having the power to influence a signatory. *See also Serv., Hosp., Nursing Home & Pub. Employees Union, Local No. 47 v. Commercial Prop. Servs., Inc.*, 755 F.2d 499, 501 (6th Cir. 1985) (distinguishing *Wilkes-Barre* as, like the IBT in this case, involving a "co-venturer in an enterprise which allegedly breached the collective bargaining agreement"). The manner in which the

Tenth Circuit distinguished *Wilkes-Barre* indicates it may have reached a different result from the Ninth Circuit if addressing facts similar to this case.

The Seventh Circuit has also rejected contractual interference claims against non-signatories based on a reading of Section 301 as providing jurisdiction only for suits against parties to a labor contract. *Loss v. Blankenship*, 673 F.2d 942 (7th Cir. 1982). However, that Circuit has now moved away from focusing on the status of the parties. *Teamsters Nat'l Auto. Transporters Indus. Negotiating Comm. v. Troha*, 328 F.3d 325, 330 (7th Cir. 2003). In *Troha*, the court moved to a focus on the "nature" of the action rather than the status of the parties, explaining:

> In general we have viewed this authorization to create federal law under § 301 as limited to disputes between signatories of the collective bargaining agreement.... But this rule is not absolute. Indeed, the limitation is more aptly described not in terms of parties but in terms of the purpose of a lawsuit.... *When the purpose of the lawsuit effectuates the goals of § 301, then it is appropriate for federal common law to embrace such suits.* The Court in *Lincoln Mills* explained the reason for authorizing the creation of federal common law in this area: The legislation does more than confer jurisdiction in the federal courts over labor organizations. It expresses a federal policy that federal courts should

> enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained in only that way.

Id. at 330 (extending Section 301 jurisdiction to actions against third parties to enforce arbitration subpoenas). Using this test, a contractual interference claim like that alleged against the IBT would be viable.

Like *Wilkes-Barre*, most circuits have now found it necessary to permit jurisdiction over non-signatories in at least some contexts. *See also Carpenters Local Union No. 1846 v. Pratt-Farnsworth, Inc.*, 690 F.2d 489 (5th Cir. 1982) (affirming jurisdiction over non-signatory engaged in unlawful non-union double-breasted operations with signatory employer); *Am. Fed. of TV & Radio Artists v. WJBK-TV*, 164 F.3d 1004 (6th Cir. 1999) (relying on *Wilkes-Barre* to enforce arbitration subpoena against non-signatory).

Federal courts urgently need guidance on the scope of Section 301 jurisdiction. In many of the decisions rejecting Section 301 contractual interference claims, the only basis was a flawed reading of the statute to preclude *any* Section 301 suits against non-signatories. The Ninth Circuit historically allowed Section 301 suits against non-parties. *Painting & Decorating Contractors Ass'n v. Painters & Decorators Joint Comm.*, 707 F.2d 1067, 1071 (9th Cir. 1983). Nevertheless, in *Granite Rock*, the Ninth Circuit blindly followed Circuits barring actions against non-signatories. 546 F.3d at 1174 (following *Covenant Coal Corp.*, 977 F.2d at 897; *Carpenters Local Union No. 1846 v. Pratt-*

Farnsworth, Inc., 690 F.2d 489, 501 (5th Cir. 1982); *Serv., Hosp., Nursing Homes & Public Employees Union, Local No. 47 v. Commercial Prop. Servs., Inc.*, 755 F.2d 499, 506 (6th Cir. 1985); *Loss*, 673 F.2d at 948; *Quality Plus*, 961 F.2d at 906). The Court should grant review to determine whether this narrowed the scope of Section 301 jurisdiction in a way that contradicts the *Lincoln Mills* mandate.

D. The Circuits Have Divided On Whether Contractual Interference Claims Arise Under Section 301 Because They Require Determining Whether A Labor Contract Was Violated.

Another source of inconsistency and confusion amongst federal courts is defining the federal common law action for contractual interference under Section 301 and whether a contractual interference claim "arises under" Section 301 when such a claim cannot be resolved without adjudicating whether a labor contract was breached. Section 301 preempts state claims that require interpreting any term of a collective bargaining agreement, such as its no-strike language. *See Lueck,* 471 U.S. at 212, 220. Applying this directive, Circuit division has occurred, with some Circuits holding a contractual interference claim arises under Section 301 because the claim requires proving a labor contract was breached, and others applying different analyses.

One of the most fundamental common law maxims is that "for every wrong, there is a remedy." *See, e.g., Marbury v. Madison*, 5 U.S. 137, 163 (1803) ("[I]t is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is

invaded."). With *Granite Rock*, the Ninth Circuit has left a wrong without a remedy. In *Milne Employees Ass'n v. Sun Carriers, Inc.*, 960 F.2d 1401 (9th Cir. 1992), the Ninth Circuit held that Section 301 preempts California tort claims for contractual interference because proving a contract breach is an essential element under California law. *Id.* at 1412. Therefore, Granite Rock was precluded from seeking a remedy in California state court. While the Ninth Circuit held that interpretation of the Agreement was not necessary, it was the only Circuit to do so in a state in which proving a breach of contract is a required element.

The Eleventh Circuit held differently in *Georgia Power*. The court emphasized one would have to "defy reason" to conclude that a claim of tortious interference with a labor contract does not substantially depend upon analyzing the terms of that contract. *Ga. Power*, 684 F.2d at 725. Therefore, state tort claims were preempted. *Id.*

In contrast, the Sixth Circuit, applying Ohio law which does not require proving a breach of contract, struggled to hold that Section 301 does not preempt Ohio tort claims for contractual interference. *Dougherty v. Parsec, Inc.*, 872 F.2d 766, 771 (6th Cir. 1989) (stating "it would not further the policies of either the Congress in enacting the federal labor statutes, or the Supreme Court . . . to give a third party who has allegedly interfered with a labor contract what effectively amounts to immunity").

The Seventh Circuit decision in *Loss v. Blankenship*, cited in the decision below, assumed the wrong would not be left without a remedy

because Section 301 would not preempt a state cause of action. 673 F.2d at 948. The court disagreed with the court's conclusion in *Wilkes-Barre* that contractual interference must be addressed under Section 301 because of the need for uniform contract interpretation, stating: "We fail to see, however, in what way the need for uniformity dictates a holding that tortious interference with contract is actionable under § 301." *Id.* This Court subsequently decided *Lueck*, holding that claims requiring interpretation of a collective bargaining agreement *are* preempted by and arise under Section 301.

In this case, the court failed to even acknowledge that the Ninth Circuit holds that Section 301 preempts California tort claims for interference with a collective bargaining agreement. *See Milne*, 960 F.2d at 412. Narrowly reading this Court's mandate to fashion appropriate remedies as "a mandate to create a federal common law of labor contract interpretation, not an independent body of tort law[,] the Ninth Circuit holds that "[a]ny 'gap' that might exist in Congress's labor law design is ... not for us to fill." *Granite Rock*, 546 F.3d at 1175. In doing so, the court has left Granite Rock with no remedy and allowed the IBT to violate the purpose of the LMRA with impunity.

E. Congress Intended Section 301(a) To Promote Labor Peace, A Matter of Great National Importance That Is Thwarted If Entities With The Power To Influence Signatories, Such As International Unions, Are Immune.

The Company-wide strike Granite Rock and its employees suffered in 2004 is precisely the harm

Congress enacted Section 301(a) to prevent. The Ninth Circuit's decision, however, permits an international union to subvert the agreements of its local unions to extract further promises. In this case, the International's goal was full immunity; the Ninth Circuit provided that.

The Ninth Circuit decision lays out an immunity plan for unions: Have a local union with few assets sign the collective bargaining agreement; make sure the international union is not a signatory; have the international union cause and conduct economic warfare against the employer; have the international union claim no liability under Section 301 because it did not "sign" the collective bargaining agreement; have the international union also claim immunity from state court prosecution *based on Section 301* preemption. The result: A blueprint for industrial chaos, not peace, and exactly the interference with interstate commerce that Section 301 was enacted to prevent.

That result is unjustifiable and contrary to the legislative intent, and this Court's interpretation of Section 301. If allowed to stand, the Ninth Circuit's holding will cause uncertainty during the term of a collective bargaining agreement regarding recurring economic disputes. This is not speculation. This is a description of what occurred in the labor dispute underlying this case and what will occur for other employers if this decision stands.

This Court has long recognized that Congress enacted Section 301 to promote enforcement of collective bargaining agreements by providing a federal forum, common law, and appropriate remedies. *Lincoln Mills*, 353 U.S. at 453.

While the complex split between Circuits has evolved and matured for more than two decades, the Ninth Circuit brings this controversy to a boil. More than any other decision, it provides a blueprint for economic self-interest without regulation or restraint. One needs to look no further than the financial community to see the harm that can be caused by unchecked economic power inspired by self-interest. Here, an international union used great economic force to attempt to extort a written assurance of immunity. Millions of dollars of harm occurred not just to a business that employs 800 people, but to union members and families. Without the intervention of this Court, the law of the Ninth Circuit will stand as an announcement that Congress failed in the passage of Section 301(a) to provide a remedy for reaching a wrongdoer that maliciously causes a breach of a labor contract for its own gain.

III. CONCLUSION

Supreme Court review is necessarily reserved for conflicting Circuit Court decisions and matters of national importance. In this case, both holdings reflect mature and explicit Circuit Court conflicts. National importance is inherent in defining the reach of arbitration and in protecting a uniform national labor policy. This case calls for review not just because of divided Circuits and importance, but also because the Ninth Circuit now judicially categorizes blatant wrongdoing as beyond the reach of law. In passing Section 301(a), Congress clearly stated its purpose to prevent economic warfare during the term of a labor contract. The current case is a quintessential example of the wrong Congress sought to remedy. Accordingly, Granite Rock respectfully requests that this Court grant review.

Respectfully Submitted,

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