Supreme Court, U.S.
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Supreme Court of the United States

THE NATIONAL FOOTBALL LEAGUE,
Petitioner,

v.

KEVIN WILLIAMS AND PAT WILLIAMS,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a), "[i]f the resolution of a state-law claim depends upon the meaning of a collective-bargaining agreement, the application of state law * * * is pre-empted and federal labor-law principles * * * must be employed to resolve the dispute." *Lingle v. Norge Div. of Magic Chef. Inc.*, 486 U.S. 399, 405-406 (1988).

The question presented is:

Whether, when federal subject matter jurisdiction is not in question, and thus principles of ordinary, rather than complete, preemption are applicable, defenses that require analysis of a collective-bargaining agreement may substantively preempt state-law claims under Section 301, as the Seventh and Tenth Circuits have held, or whether such defenses are categorically irrelevant to preemption analysis, as the Eighth Circuit here and the Ninth Circuit have held.

PARTIES TO THE PROCEEDING

Petitioner, the National Football League, was a defendant in the district court and appellant/cross-appellee in the court below. Dr. John Lombardo and Adolpho Birch were also defendants-appellants/cross-appellees below, but have since been dismissed from the litigation and thus are not petitioners or parties in this Court.

The respondents, Kevin Williams and Pat Williams, were plaintiffs in the district court and appellees/cross-appellants in the court below.

The National Football League Players Association filed a separate lawsuit against the NFL and the National Football League Management Council that was consolidated with this case in the district court and in the court of appeals for purposes of briefing, oral argument and decision. The Association has not sought this Court's review of the court of appeals' decision and neither the Association nor the Management Council is a party before this Court.

RULE 29.6 STATEMENT

The National Football League ("NFL") is an unincorporated association of thirty-two member clubs organized under the laws of New York. The member clubs of the NFL are: Arizona Cardinals Football Club LLC; Atlanta Falcons Football Club, LLC; Baltimore Ravens Limited Partnership; Buffalo Bills, Inc.; Panthers Football, LLC; The Chicago Bears Football Club, Inc.; Cincinnati Bengals, Inc.; Cleveland Browns Football Company LLC; Dallas Cowboys Football Club, Ltd; PDB Sports, Ltd. (d/b/a The Denver Broncos Football Club, Ltd.); The Detroit Lions, Inc.; Green Bay Packers, Inc.; Houston NFL Holdings, L.P.; Indianapolis Colts, Inc.; Jacksonville Jaguars, Ltd.; Kansas City Chiefs Football Club, Inc.; Miami Dolphins, Ltd.; Minnesota Vikings Football, LLC; New England Patriots L.P.; New Orleans Louisiana Saints, L.L.C.; New York Football Giants, Inc.; New York Jets LLC; The Oakland Raiders, L.P.; Philadelphia Eagles, LLC; Pittsburgh Steelers LLC; The St. Louis Rams Partnership; Chargers Football Company, LLC; San Francisco Forty Niners, Limited; Football Northwest LLC; Buccaneers Limited Partnership; Tennessee Football, Inc.; Pro-Football, Inc.

Three of the clubs have parent corporations: KSA Industries, Inc. (Tennessee Football, Inc.); Football Northwest Management, Inc. (Football Northwest LLC); and Washington Football, Inc. and WFI Group, Inc. (Pro-Football, Inc.). No publicly-held company owns ten percent or more of the stock of any of those corporations.

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PETITION FOR A WRIT OF CERTIORARI

The National Football League respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-41a) is reported at 582 F.3d 863. The order of the court of appeals denying rehearing and rehearing en banc, and the accompanying opinions (Pet. App. 66a-76a), are reported at 598 F.3d 932. The decision of the district court (Pet. App. 42a-65a) is reported at 654 F. Supp. 2d 960. The decision of the arbitrator (Pet. App. 77a-91a) is unreported.

JURISDICTION

The court of appeals entered its judgment on September 11, 2009. Pet. App. 2a. The court denied the petition for rehearing and rehearing en banc on December 14, 2009. Pet. App. 75a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Supremacy Clause of Article VI of the Constitution provides that "[t]he Constitution, and the Laws of the United States which shall be made in Pursuance thereof * * * shall be the supreme Law of the Land." U.S. Const. Art VI.

Section 301 of the federal Labor Management Relations Act ("LMRA") provides that "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce * * * may be brought in any district court of the United States having jurisdiction of the parties." 29 U.S.C. § 185(a).

Additional relevant statutory provisions are reproduced at Pet. App. 92a-114a.

STATEMENT OF THE CASE

1. Respondents, members of the NFL Players Association ("Union"), the certified collective bargaining representative of all NFL players, are employed by the Minnesota Vikings, one of 32 teams in the National Football League. Pet. App. 3a. In 2006, the Union and the NFL entered into a nationwide Collective Bargaining Agreement ("CBA") that governs the terms and conditions of the employment of NFL players and establishes procedures for the resolution of employment disputes. *Ibid.*

The CBA incorporates the collectively bargained Policy on Anabolic Steroids and Related Substances ("Policy"). Pet. App. 3a-4a, 115a. The Policy bans players from using a variety of "Prohibited Substances," including steroids and "masking agents," such as diuretics, that can obstruct the detection of steroids. *Id.* at 118a. The Union and the NFL agreed in the Policy that any player who tests positive for a Prohibited Substance is subject to a minimum four-game suspension. *Id.* at 128a. Players may appeal their suspension to an arbitrator.

Under the Policy, the arbitrator's decision constitutes "a full, final, and complete disposition of the appeal" that is "binding on all parties." *Id.* at 132a.

2. In 2008, after taking a dietary supplement known as StarCaps, respondents tested positive for bumetanide, a diuretic that is a Prohibited Substance under the Policy. Pet. App. 7a. As required by the Policy, respondents were ordered suspended for four games. *Id.* at 7a-8a.

Respondents appealed their suspensions pursuant to the arbitration provisions of the Policy. In their appeal, respondents conceded that the test results were accurate. Respondents nevertheless claimed that their suspensions should be vacated on the ground that the NFL had not adequately warned them that StarCaps had been found to contain a banned substance. Pet. App. 86a.

After a full evidentiary hearing, the arbitrator upheld the suspensions. The arbitrator found that the "players used StarCaps at their own risk, did so in the face of repeated warnings about the risks inherent in using supplements in general and weight loss products in particular, and did so knowing that a positive test result would result in suspension and would not be excused based on a claim of unintentional or inadvertent use." Pet. App. 88a.

3. The day after the arbitrator issued his ruling, respondents filed suit in Minnesota state court against the NFL, the Independent Administrator of the Policy, the Policy's consulting toxicologist, and an NFL executive. Respondents asserted state common law claims and sought to enjoin enforcement of the arbitration award upholding their suspensions. Pet.

App. 12a. At the same time, on behalf of respondents and three suspended New Orleans Saints players who had also tested positive for bumetanide, the Union filed a lawsuit in federal court under Section 301 of the LMRA seeking to overturn the arbitration award. *Ibid.*

The NFL removed respondents' suit to federal court. Respondents did not seek to have the case remanded or otherwise oppose federal removal jurisdiction. Nearly a month later, while the case was pending in federal court, respondents amended their complaint in federal court to add claims under (i) the Minnesota Drug and Alcohol Testing in the Workplace Act ("DATWA"), Minn. Stat. § 181.950 *et seq.*, which establishes procedures for workplace drug and alcohol testing, but exempts testing conducted pursuant to a collective-bargaining agreement that "meets or exceeds" the statute's requirements; and (ii) the Minnesota Lawful Consumable Products Act ("LCPA"), Minn. Stat. § 181.938, which regulates the discipline of employees for consuming "lawful consumable products" "off the premises of the employer during nonworking hours," *id.* § 181.938(2), as long as use of the product is not contrary to a "bona fide occupational requirement," *id.* § 181.938(3)(a)(1). Pet. App. 12a.

The district court granted the NFL's motion for summary judgment on the Union's lawsuit, holding that the arbitration award validly suspended the players. Pet. App. 61a. The district court also held that respondents' state common law claims were preempted under Section 301. *Id.* at 51a. The district court held, however, that Section 301 did not

preempt respondents' statutory DATWA and LCPA claims and remanded those claims to state court. *Id.* at 52a, 64a.

4. A panel of the court of appeals affirmed. Pet. App. 1a-41a. It upheld the grant of summary judgment for the NFL on the Union's lawsuit. *Id.* at 3a. It also held that respondents' state common law claims were preempted under Section 301. *Ibid.*

With respect to respondents' state statutory claims, however, the court of appeals held those claims were not preempted by Section 301. Pet. App. 24a, 29a. In reaching that conclusion, the court of appeals looked only to respondents' complaint and ignored the NFL's defenses based on the collective bargaining agreement, holding as a matter of law that defenses simply are "not relevant to [the] [S]ection 301 preemption analysis." *Id.* at 26a.

5. By a 7-4 vote, the court of appeals denied rehearing en banc. Pet. App. 66a-76a. Chief Judge Loken and Judges Colloton, Riley, and Gruender dissented, objecting that the panel's decision had wrongly conflated substantive preemption principles with the jurisdictional doctrine of complete preemption and its corollary, the well-pleaded complaint rule. The dissenting judges explained that no question of federal jurisdiction arose because "[t]he NFL in this case invoked an ordinary preemption defense, based on § 301, against state-law claims that the plaintiffs filed in federal court." *Id.* at 73a. In that context, the dissenting judges reasoned, "[o]rdinary preemption * * * provides a substantive defense to a state law action on the basis

of federal law, in whatever forum the case * * * is litigated." *Ibid.*

The dissenting judges further explained that the panel's failure to maintain the distinction between substantive preemption and the jurisdictional doctrine of complete preemption resulted in its failure to uphold federal labor law, and put the Eighth Circuit in conflict with the law of the Seventh Circuit and with this Court's precedent. Pet. App. 75a ("The procedural distinction between cases involving complete preemption and ordinary preemption, ably explained with reference to by the Seventh Circuit in *Smith v. Colgate-Palmolive Co.*, 943 F.2d 764, 769-71 (7th Cir. 1991), suggests that the * * * panel incorrectly declared the NFL's defenses to the state-law claims irrelevant to the question of ordinary preemption under § 301."). [1]

REASONS FOR GRANTING THE WRIT

This Court's review is needed because the court of appeals' decision expands and deepens a circuit conflict on a question of vital importance to federal

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[1] On remand, the state court enjoined for nearly ten months enforcement of the arbitration award, and conducted a week-long trial with thirteen witnesses where the court heard evidence on the meaning and interpretation of the CBA. On May 6, 2010, the state court ruled that the NFL's compliance with the Policy's terms violated DATWA, but, finding that respondents suffered no harm, entered judgment for the NFL. *Williams v. National Football League*, No. 27-CV-08-29778 (Minn. 4th Dist. Ct. May 6, 2010). The court vacated its injunction, but is currently considering whether to reinstate the injunction pending appeal.

labor law. The Eighth Circuit's holding that defenses based on a collective bargaining agreement are irrelevant to the preemption of state law claims originally brought in federal court squarely conflicts with the law of the Seventh and Tenth Circuits. That conflict arises from deep-seated confusion in the Circuits about the different functions performed by the doctrines of ordinary preemption and complete preemption. The former is a rule of substantive law that gives effect to the Supremacy Clause and, in the labor law context, to Congress's determination that uniformity in the interpretation of collective bargaining agreements is imperative. The complete preemption doctrine, by contrast, addresses federal subject matter jurisdiction in removed cases. They thus are distinct doctrines performing markedly different functions. As the Seventh and Tenth Circuits have held, defenses based on a collective bargaining agreement are irrelevant to the complete preemption (*i.e.*, removability) of state laws claims originally filed in federal court, but are relevant to the ordinary, substantive preemption of state law claims originally brought in federal court.

Over the dissent of its then- and current- chief judges and two other members, the Eighth Circuit has rejected the approach of the Seventh and Tenth Circuits and joined itself to the Ninth Circuit by collapsing the two doctrines, holding that defenses are categorically "not relevant to [the] [S]ection 301 preemption analysis." Pet. App. 26a. Like the Ninth Circuit, the Eighth Circuit equates the jurisdictional non-removability of a case with a rejection on the merits of any preemption defense. That approach is wrong and significantly unsettles labor law. Absent

review by this Court, the Eighth Circuit has opened the door widely to conflicting interpretations and enforcement of a single collective bargaining agreement – as the ensuing state-court injunction against enforcement of the collectively bargained Policy here well illustrates. Yet that is the very problem that Congress enacted the LMRA to prevent. For nationwide collective bargaining agreements, the impact is particularly profound because the conflicting circuit law renders uniform interpretation and operation of the collective bargaining agreement impossible.

I. THE EIGHTH CIRCUIT'S DECISION CEMENTS AN ENTRENCHED AND RECURRING CONFLICT IN THE COURTS OF APPEALS

Under Section 301 of the LMRA, a state-law claim that is "substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract," *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 220 (1985), "must be brought under § 301 and be resolved by reference to federal law," *id.* at 210. That is because uniformity in the administration of collective bargaining agreements is the centerpiece of federal labor law:

> The possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements.

Teamsters v. Lucas Flour Co., 369 U.S. 95, 103-104 (1962).

The Eighth Circuit's decision creates the very disruption against which *Lucas Flour* warned because it widens a circuit split on whether defenses based on a collective bargaining agreement are relevant to Section 301 preemption of state law claims brought in federal court in the first instance. *See Schacht v. Caterpillar, Inc.*, 503 U.S. 926 (1992) (White, Blackmun, J.J., dissenting from denial of certiorari) (discussing the conflict).

A. In conflict with the Eighth Circuit's decision here, both the Seventh and Tenth Circuits have held that, for ordinary questions of substantive preemption, defenses that require analysis of a collective-bargaining agreement must be considered. As the Seventh Circuit has explained, when "plaintiffs * * * ch[o]se to file their state-law claim in federal court" – as respondents did here with their state statutory claims – ordinary preemption analysis "has a different focus than the Supreme Court's attention to the 'well-pleaded complaint rule' in [*Caterpillar, Inc. v. Williams*, 482 U.S. 386 (1987)]." *Smith*, 943 F.2d at 770. In such cases, the Seventh Circuit ruled, a court is "free to resolve th[e] [preemption] question by looking beyond the plaintiffs' complaint to the defenses [that are] assert[ed]." *Ibid.*[2]

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[2] Indeed, when, as here, plaintiffs chose to bring state-law claims in a federal court action, the jurisdictional rationale behind the well-pleaded complaint rule – that the plaintiffs are

The Tenth Circuit has likewise held that, "[i]f a CBA must be interpreted to resolve [a state-law] claim, even if the CBA interpretation is initiated by the defense, the * * * claim [is] preempted by § 301." *Fry v. Airline Pilots Ass'n*, 88 F.3d 831, 838 n.8 (10th Cir. 1996). Like the Seventh Circuit, the Tenth Circuit's decision recognized that precedent from this Court interpreting the complete preemption rule of removal jurisdiction gives plaintiffs "leeway in choosing their forums, not in avoiding preemption." *Ibid.* That holding cannot be reconciled with the Eighth Circuit's decision here.

The wooden rule of irrelevance adopted by the court of appeals in this case, however, does match the law in the Ninth Circuit. In *Sprewell v. Golden State Warriors*, 266 F.3d 979 (9th Cir. 2001), a case where federal jurisdiction was not in dispute, the Ninth Circuit held that a defense based on a collective bargaining agreement was irrelevant to Section 301 preemption because only "[t]he plaintiff's claim is the touchstone [of the preemption] analysis." *Id.* at 991 (internal quotations omitted). In support of its decision, the Ninth Circuit relied upon a complete preemption removal case, underscoring its doctrinal conflation of the removal jurisdiction and substantive preemption questions. *See id.* at 694-695 (citing *Cramer v. Consolidated Freightways, Inc.*, 255 F.3d 683 (9th Cir. 2001)).

Because the Eighth Circuit denied rehearing en banc (by a divided vote), only this Court can bring

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the masters of their complaint for purposes of selecting the forum to resolve their claims – is not even implicated.

uniformity and consistency to this important question of labor law. Indeed, the Eighth Circuit's decision now cements the conflict by removing the Ninth Circuit's status as a lone voice on the irrelevance of defenses. And by thus expanding the conflict, the Eighth Circuit has eliminated the prospect that the courts of appeals will harmonize their law through the rehearing en banc process.

In addition to the ordinary considerations that make the elimination of circuit conflicts appropriate exercises of the Court's certiorari jurisdiction, uniformity in the construction of collective bargaining agreements is a structural imperative of federal labor law. Thus, in this case, both traditional certiorari considerations and the unique need to avoid a checkerboard of federal labor law rules underscore the need for this Court's intervention now.

B. The Court's review is further warranted because the Eighth Circuit's decision (as well as the law in the Ninth Circuit) is in irreconcilable tension with the law of the Third Circuit under the Railway Labor Act, *Capraro v. United Parcel Serv. Co.*, 993 F.2d 328 (3d Cir. 1993). This Court has held that the Railway Labor Act's preemption standard is "virtually identical" to the Section 301 standard, and has adopted the Section 301 framework to resolve claims of Railway Labor Act preemption. *Hawaiian Airlines v. Norris*, 512 U.S. 246, 259 (1994).

Unlike the Eighth Circuit here, the Third Circuit has held that defenses based on a collective-bargaining agreement must be considered as part of the preemption analysis under the Railway Labor

Act. *Capraro*, 993 F.2d at 332; *see also Geddes v. American Airlines, Inc.*, 321 F.3d 1349, 1352-1353 (11th Cir. 2003) ("clarify[ing]" in Railway Labor Act case, "the differences between 'complete' preemption and 'ordinary' preemption," and explaining that, while "a case may *not* be removed to federal court on the basis of a federal defense, including that of federal preemption," "[o]rdinary preemption may be invoked in both state and federal courts as an affirmative defense to the allegations in plaintiff's complaint [and] [s]uch a defense asserts that the state claims have been substantively displaced by federal law").

The position of the Eighth and Ninth Circuits also cannot be reconciled with decisions of other circuits that have recognized the distinction between ordinary preemption and complete preemption under the Employee Retirement Income Security Act, the preemptive force of which "mirror[s] the pre-emptive force of LMRA § 301," *Aetna Health Inc. v. Davila*, 542 U.S. 200, 209 (2004). *See Felix v. Lucent Techs., Inc.*, 387 F.3d 1146, 1158 (10th Cir. 2004) ("The difference between preemption and complete preemption is important."); *id.* at 1156 ("Although courts and parties often confuse [ERISA] § 514 preemption with § 502(a) complete preemption, the Supreme Court has held that the two are distinct concepts."); *Ervast v. Flexible Prods. Co.*, 346 F.3d 1007, 1014 (11th Cir. 2003) ("What is often confused is that [complete preemption and defensive preemption] are two different questions."); *Sonoco Prods. Co. v. Physicians Health Plan, Inc.*, 338 F.3d 366, 371 (4th Cir. 2003) ("In the ERISA context, the doctrines of conflict preemption and complete

preemption are important, and they are often confused.").

In sum, absent review by this Court, preemption law under the Railway Labor Act and ERISA will conflict with – not "mirror" – preemption law under Section 301 of the Labor Management Relations Act, contrary to this Court's precedent.

II. THE EIGHTH CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S PRECEDENT

This Court's review is also warranted because, as the dissenting judges explained, Pet. App. 72a-75a, the Eighth Circuit's decision (joining the Ninth Circuit) cannot be reconciled with this Court's precedent both addressing preemption under the LMRA and demarcating the limited jurisdictional function of the complete preemption rule.

Section 301 of the LMRA preempts state-law claims if their "resolution" "depends upon the meaning of a collective-bargaining agreement." *Lingle*, 486 U.S. at 406. Such claims must be preempted because "federal labor law principles – necessarily uniform through the Nation – must be employed to resolve the dispute." *Ibid.*

"Resolution" of a claim necessarily involves more than analysis of the claimant's pleading, which is the exclusive focus of the complete preemption rule's jurisdictional inquiry. Resolution entails the broader question of the proper substantive disposition of a claim. If resolution of the claim requires construction of the collective bargaining agreement, then, as in *Lingle*, federal labor law, not state law, must govern.

There is no other way to maintain the uniformity in construction of collective bargaining agreements that the LMRA mandates.

That is why, when this Court found no jurisdiction in a removal case based on the presence of a collective bargaining agreement defense in *Caterpillar, supra,* the Court nevertheless held that the question of substantive preemption based on that same defense was to be addressed on remand. 482 U.S. at 398 at n.13. As the four dissenting judges below explained, "if the employer's defense were irrelevant to ordinary preemption, * * * then there would have been no reason for the Court in *Caterpillar* to reserve judgment on the merits of the preemption defense." Pet. App 74a.

Lingle confirms the point in a ruling that is indistinguishable from the case at hand and should have controlled the Eighth Circuit's decision here. In *Lingle* (as here), defendants removed state court claims to federal court on the basis of diversity of citizenship. 486 U.S. at 402. The *Lingle* plaintiffs (like respondents here) did not challenge the removal, so removal jurisdiction (and thus the complete preemption doctrine) was not at issue. *See ibid.* This Court then proceeded to conduct an ordinary preemption analysis to determine whether the plaintiffs' claims were barred. In so doing, the Court expressly included in its analysis whether the employer's defenses would require interpretation of the collective bargaining agreement. *Id.* at 407. If, as the Eighth Circuit held, "the employer's defenses were irrelevant to ordinary preemption analysis, then

there would have been no reason for th[is] Court to consider them" in *Lingle*. Pet. App. 74a.

Lingle, moreover, made clear that its analysis applied fully to state statutory claims like those pressed by respondents here. This Court explained that "a State could create a remedy that, although nonnegotiable," as statutory claims often are, "nonetheless turned on the interpretation of a collective-bargaining agreement for its application." 486 U.S. at 407 n.7. Those claims "would be pre-empted by § 301," as would "a law [that] applied to all state workers but required, at least in certain instances, collective-bargaining agreement interpretation." *Ibid.*

As *Lingle* and this case illustrate, the resolution of state-law claims in employment disputes is often substantially dependent on the interpretation of a collective bargaining agreement. Neither that dependence nor the need for uniformity is lessened because interpretation is required by a defense rather than an affirmative claim. Similarly, the uniformity prescribed by federal labor law cannot exist if there is one rule of substantive preemption in this Court and in the Seventh and Tenth Circuits, and a totally different rule in the Eighth and Ninth Circuits.

III. THE QUESTION PRESENTED IS OF SUBSTANTIAL AND RECURRING IMPORTANCE

The general principle underlying Section 301 preemption is that the interpretation of collective bargaining agreements be "necessarily uniform

throughout the Nation," *Lingle*, 486 U.S. at 406. The court of appeals' decision and the circuit conflict on Section 301's universal application deprives the law of that uniformity, and only this Court's review can restore it.

The Eighth Circuit's decision destroys the orderly and predictable negotiation and administration of collective bargaining agreements that Section 301 is specifically designed to ensure. *Lueck*, 471 U.S. at 211. The court's ruling allows a plaintiff's unilateral control over the pleading of its complaint to avoid preemption even when a collective bargaining agreement would need to be interpreted to resolve the dispute between the parties. That, in turn, allows state courts across the country to interpret collective bargaining agreements inconsistently and to give their terms different meanings, or even to ignore them entirely.

The Court need look no further than the proceedings after remand in this case. The state court promptly enjoined enforcement of the arbitrator's award interpreting and enforcing the collectively bargained Policy, even though that award had been upheld by both the district court and the Eighth Circuit. *See Williams v. NFL*, No. 27-CV-08-29778, slip op. (Minn. 4th Dist. Ct. July 9, 2009). That, in turn, created one collectively bargained rule for NFL players in Minnesota and a different rule under the same collective bargaining agreement for all other NFL players. The court then held a week-long trial with more than a dozen witnesses on whether the NFL is an "employer" for purposes of DATWA, during which it heard evidence on the

meaning and application of the collective bargaining agreement. *See Williams v. NFL*, No. 27-CV-08-29778, at 20 (Minn. 4th Dist. Ct. Feb. 18, 2010) ("The NFL, *through the terms agreed upon in the CBA*, does exercise control over and direct some aspect of Plaintiffs' work as professional football players [and thus] could, perhaps, be a joint employer of Plaintiffs.") (emphasis added); *see also Williams v. NFL*, No. 27-CV-08-29778, at 3-4, 6, 15, 17-19, 21-22 (Minn. 4th Dist. Ct. May 6, 2010) (holding that NFL's administration of the collective bargaining agreement is subject to DATWA based, *inter alia*, on findings about the meaning and operation of the collective bargaining agreement, including a determination that the NFL is the respondents' "employer").[3]

Until the Eighth Circuit ruled, it was axiomatic that any effort to use state law to overturn or enjoin a provision of a collectively bargained agreement would be preempted. The Eighth Circuit's holding to the contrary "strikes at the very core of federal labor policy." *Lucas Flour*, 369 U.S. at 104. Indeed, it

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[3] The trial court granted summary judgment for the NFL on the LCPA claim, concluding that the NFL's prohibition of bumetanide was a "bona fide occupational requirement for professional football players" because, *inter alia*, "the collective bargaining agreement outlines standard minimum pre-season physical examination criteria, regulates pre-season training sessions, and establishes off-season workout rules." *Williams v. NFL*, *supra*, at 37-39. While that decision is undoubtedly correct, that the state court was even considering the issue contravenes the command of this Court in *Lingle* that "interpretation of collective-bargaining agreements remains firmly in the arbitral realm." 486 U.S. at 411.

empowers state courts in each State in which NFL teams operate to issue different decisions on the rights and obligations of the NFL and NFL players under their supposedly national collective bargaining agreement.

The impact of the Eighth Circuit's decision on federal labor law does not stop there.

First, the law in the Eighth and Ninth Circuits now leaves employers whipsawed between obeying state law and violating the terms of a collective bargaining agreement. In this case, federal labor law commands that the NFL enforce the collectively bargained Policy consistent with its text and the arbitrator's award interpreting and applying that text. The respondents' state-law claims insist that the NFL was legally bound not to adhere to the Policy. The state court, in fact, enjoined such compliance. The Eighth Circuit's erroneous preemption decision thus has turned federal labor law from a uniform and stable framework for labor-management relations into a legal Catch-22 in which employers are literally liable if they do comply with the collective bargaining agreement, and liable if they do not.

Second, the Eighth Circuit's decision opens wide the state courthouse door to efforts by the losing parties in labor arbitrations to use state law to rewrite the arbitrator's interpretation of the collective bargaining agreement. That flouts the central role of arbitration in the administration of collective bargaining agreements. *See, e.g.*, *Lueck*, 471 U.S. at 219 ("The need to preserve the effectiveness of arbitration was one of the central

reasons that underlay the Court's holding in *Lucas Flour*."); *Lingle*, 486 U.S. at 411 ("A [preemption] rule that permitted an individual to sidestep available grievance procedures would cause arbitration to lose most of its effectiveness, . . . as well as eviscerate a central tenet of federal labor contract law under § 301 that it is the arbitrator, not the court, who has the responsibility to interpret the labor contract in the first instance.") (citation omitted).

Third, under the Eighth Circuit's ruling, parties to a collective bargaining agreement must now consider the "possibility that individual contract terms might have different meanings under state and federal law," which will "inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements." *Lucas Flour*, 369 U.S. at 103-104. Thus, employers must "try[] to formulate contract provisions in such a way as to contain the same meaning under two or more systems of law which might someday be invoked in enforcing the contract." *Ibid.*

Here, the NFL and the Union now face the daunting task of "trying to formulate contract provisions in such a way as to contain the same meaning under" the laws of the more than two-dozen states that are home to NFL teams. Subjecting uniform and collectively bargained national drug-testing policies to state-by-state modification and alteration defeats the central purpose of such policies, makes collective bargaining over their terms unworkable, and "frustrate[s] the federal labor-contract scheme established in § 301," *Lueck*, 471 U.S. at 209.

Finally, for national sports leagues, enforcing uniform standards of player conduct is indispensable to ensuring a level competitive playing field. *See* Major League Baseball, *et al.* C.A. Amicus Br.; *see also National Collegiate Athletic Ass'n v. Miller*, 10 F.3d 633, 640 (9th Cir. 1993) ("Consistency among members must exist if an organization [like the NCAA] is to thrive, or even exist. Procedural changes at the border of every state would as surely disrupt the NCAA as changes in train length at each state's border would disrupt a railroad."). The piecemeal rewriting, state by state, of a national collective bargaining agreement eviscerates the uniformity and evenhandedness in player qualifications that are essential to national sports leagues.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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