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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SBA

CV 11 1937

CAMERON WORRELL, MICHAEL HAYNES, and JOE ODOM,

Plaintiffs/Petitioners,

v.

NATIONAL FOOTBALL LEAGUE MANAGEMENT COUNCIL and CHICAGO BEARS,

Defendants/Respondents.

Case No.

COMPLAINT AND PETITION TO VACATE ARBITRATION AWARD

Plaintiffs/Petitioners Cameron Worrell, Michael Haynes, and Joe Odom (collectively "Plaintiffs/Petitioners"), for their Complaint and Petition to vacate an arbitration award against Defendants/Respondents the National Football League Management Council ("NFLMC") and Chicago Bears ("Bears") (collectively "Defendants/Respondents"), allege as follows:

NATURE OF THE PROCEEDING

1. This is an action pursuant to Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, to vacate the Arbitration Award (the "Award") issued by National Football League ("NFL") System Arbitrator Rosemary Townley ("Arbitrator Townley") on April 21, 2011 in the arbitration captioned *In the Matter of the Arbitration between National Football League Management Council/Chicago Bears and National Football League Players Association/Joe Odom, Michael Haynes, and Cameron Worrell.* A true and correct copy of the Award is attached hereto as Ex. A.

2. The Award holds that Worrell, Haynes, and Odom, former NFL players, effectively waived the right to obtain workers' compensation benefits under California's workers' compensation statute and waived their right to file for workers' compensation benefits in California. The Award requires Worrell, Haynes, and Odom to cease and desist from arguing, in California's workers' compensation courts, that they are entitled to benefits under California law pursuant to California's workers' compensation statutes. Under the Award, Worrell, Haynes, and Odom must withdraw their claims in California.

3. For three independent reasons, the Award must be vacated. *See Comedy Club, Inc. v. Improv W. Assocs.*, 553 F. 3d 1277, 1290 (9th Cir. 2009); *Sprewell v. Golden State Warriors*, 266 F.3d 979, 986 (9th Cir. 2001); *Int'l Union, United Mine Workers of Am. v. Marrowbone Dev. Co.*, 232 F.3d 383, 388-89 (4th Cir. 2000); *Am. Postal Workers Union AFL-CIO v. U.S Postal Serv.*, 682 F.2d 1280, 1284, 1286 (9th Cir. 1982); *Cal. Pac. Med. Center v. Serv. Emp. Int'l Union*, No. C 06 4685 SC, 2007 WL 81906, at *6-7 (N.D. Cal. Jan. 9, 2007),

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aff'd, 300 F. App'x 471, 473-74 (9th Cir. 2008); *Nat'l Football League Players Ass'n v. Pro-Football*, 857 F. Supp. 71, 76 (D.D.C. 1994).

4. *First*, the Award offends California public policy. Virtually every state workers' compensation statute, including California's, makes clear that contracts waiving workers' compensation benefits are illegal and contrary to public policy. No less than the California Supreme Court and the United States Supreme Court have held that, pursuant to California statutory law, an employee cannot waive his right to seek workers' compensation benefits in California. The California Workers' Compensation Appeals Board ("WCAB") has ruled that any provision of an employment agreement between an NFL Player and Club that purports to limit the NFL Player's ability to pursue workers' compensation benefits in California is void and unenforceable. The state's Attorney General has also issued an Opinion that explains that an agreement attempting to waive an employee's workers' compensation benefits is "obviously against public policy." Yet, the Award holds that those Bears players, such as Haynes, Odom and Worrell, who may seek workers' compensation benefits under California law have, through the National Football League Collective Bargaining Agreement ("Expired CBA"),[1] effectively waived their right to seek unwaivable workers' compensation benefits under California law or in California. The Award thus forces an illegal result, is contrary to public policy, and hence ought to be vacated.

5. *Second*, the Award makes a mockery of federal law, by ignoring Supreme Court precedent establishing that unions and management may not bargain away state-created employee rights. The Supreme Court has ruled that, as a matter of federal labor law, a union and an employer may not waive state laws that protect the health, safety and welfare of workers, including workers' compensation laws. While under federal labor law unions and management may contract to afford workers *greater* benefits than those available under state laws, they may *not* contract to take such state benefits away. The Arbitrator ignored this settled federal labor law and

[1] The National Football League Players Association ("NFLPA") decertified as a union and the National Football League Collective Bargaining Agreement expired. The Award here arose from a grievance that was prosecuted before the CBA expired.

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effectively ruled that the NFLPA and the National Football League Management Council ("NFLMC") waived the rights of players for the Bears, such as Odom, Haynes and Worrell, to seek workers' compensation benefits under California statutory law or to file for such benefits in California. The Award, if not vacated, would mean that every NFL Player who agreed to a purported non-California choice of law and/or choice of forum provision in their NFL Player Contract waived the statutorily non-waivable rights, protections and privileges of California's workers' compensation statute. This result is clearly contrary to Supreme Court precedent and basic principles of federal labor law.

6. *Third*, the Award is inconsistent with the Full Faith and Credit Clause of the U.S. Constitution, which allows California to apply its workers' compensation laws to the exclusion of other state's laws, even if, as here, the employee and employer agreed to waive protections afforded by California's statutory law. The Award precludes California from applying its own law to claims brought properly within its jurisdiction. The Arbitrator lacked the constitutional authority to preclude the application of California law to this case in violation of the Full Faith and Credit Clause and thus exceeded the scope of her powers.

JURISDICTION AND VENUE

7. This action arises under Section 301 of the LMRA, as the award was made pursuant to a collective bargaining agreement.[2]

8. This Court has subject matter jurisdiction in this action pursuant to 28 U.S.C. § 1331, in that it arises under Section 301 of the Labor Management Relations Act, ("LMRA"), 29 U.S.C. § 185.

9. Venue is proper in this court under 28 U.S.C. § 1391 and 29 U.S.C. § 185.

[2] Section 301 of the LMRA, rather than the Federal Arbitration Act ("FAA"), provides federal courts with jurisdiction over labor arbitration awards. *See Sprewell*, 266 F.3d at 986 ("Section 301 empowers this court to review an arbitration conducted under the terms of a collective bargaining agreement."); *San Diego Cnty. Dist. Council of Carpenters of United Bhd. of Carpenter & Joiners of Am. v. Cory*, 685 F.2d 1137, 1141 (9th Cir. 1982) (noting that Congress did not intend for the FAA to be used to review arbitration awards involving collective bargaining agreements). However, the law relative to the FAA governs cases brought under Section 301 with respect to arbitral awards. *Granite Rock v. Int'l Bhd. of Teamsters*, 130 S. Ct. 2847, 2857, n.6 (2010).

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INTRADISTRICT ASSIGNMENT

10. Pursuant to Local Rule 3-2(c), there is no specific basis for assignment to a particular location or division of the Court.

PARTIES

11. Michael Haynes was a professional football player and member of the NFLPA. Haynes was employed by the Bears between 2003-2006.

12. Joe Odom was a professional football player and member of the NFLPA. Odom was employed by the Bears between 2003-2006.

13. Cameron Worrell was a professional football player and member of the NFLPA. Worrell was employed by the Bears between 2003-2007 and again between 2008-2009.

14. Haynes, Odom and Worrell filed workers' compensation claim before the WCAB in the State of California. Each player, in his respective application, alleged that he was injured in California or that he incurred injuries which were aggravated in California.

15. The NFLMC is the exclusive bargaining representative of present future and employer member clubs of the NFL, including the Bears.

16. One of the 32 franchises in the NFL, the San Francisco 49ers, is headquartered in Santa Clara, California. Another two of the NFL's franchises, the San Diego Chargers and the Oakland Raiders, are also headquartered in California. The NFL derives revenue from throughout the State of California through advertising, ticket sales, merchandising and broadcasting revenue.

17. Upon information and belief, the Bears is incorporated in Delaware and is a member franchise of the NFL.

18. The Bears regularly conducts business in California and actively scouts and recruits players in California. The Bears derives revenue from the State of California through advertising, ticket sales, merchandising and broadcasting revenue.

FACTUAL BACKGROUND

Agreements Governing NFL Players And NFL Teams

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19. The parties were bound by a collective bargaining agreement negotiated between the NFLMC, on behalf of the NFL teams, and the NFLPA, on behalf of all NFL players. Article IX of the Expired CBA contains an arbitration provision, which mandates that all disputes involving the enforcement or interpretation of the Expired CBA be submitted to final and binding arbitration before a mutually selected arbitrator. Pursuant to the arbitration provision, a "non-injury grievance" may be initiated by a player, a member team, the NFLMC or the NFLPA by filing a written notice to the opposing parties.

20. All NFL teams and players were bound by the standard player contract, the NFL Player Contract, negotiated between the NFLPA on behalf of players and the NFLMC on behalf of teams ("NFL Player Contract"). The NFL Player Contract is contained within and part of the Expired CBA, although NFL Clubs and NFL Players may add to the NFL Player Contract. Paragraph 33 of Haynes' NFL Player Contract, Paragraphs 28 and 30 of Worrell's NFL Player Contracts, and Paragraphs 29 and 31 of Odom's NFL Player Contracts, respectively, constitute the purported choice of law/choice of forum provisions that Defendants/Respondents and the Arbitrator interpret as effectively waiving the Players' right to obtain workers' compensation benefits under California's workers' compensation statute and waiving their right to file for workers' compensation benefits in California.

21. NFL players who are injured and unable to play professional football may be entitled to a number of benefits under the Expired CBA, the NFL Player Contract and state law. Among these benefits are state workers' compensation benefits.

Petitioners' WCAB Cases and Respondents' Arbitration

Michael Haynes

22. On or around September 16, 2009, Haynes filed an application for workers' compensation benefits before the WCAB in the state of California.

23. On November 11, 2009, the Bears and the NFLMC filed a grievance with Arbitrator Townley, pursuant to Article IX of the Expired CBA. The grievance claimed that

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Haynes' application for workers' compensation benefits in California violated a purported forum selection clause in the NFL Player Contract.

24. On or around March 2, 2010, Haynes re-filed an application for workers' compensation benefits before the WCAB in the state of California.

25. In July 2010, the Bears filed a notice of denial of claim in the WCAB that denied all liability for Haynes' claims because, among other things, California purportedly does not have jurisdiction over the claims.

Joe Odom

26. On or around March 11, 2010, Odom filed an application for workers' compensation benefits before the WCAB in the state of California.

27. In March 2010, the Bears filed a notice of denial of claim in the WCAB that denied all liability for Odom's claims because, among other things, California purportedly does not have jurisdiction over the claims.

28. On April 28, 2010, the Bears and the NFLMC filed a grievance with Arbitrator Townley, pursuant to Article IX of the Expired CBA. The grievance claimed that Odom's application for workers' compensation benefits in California violated a purported forum selection clause in the NFL Player Contract.

Cameron Worrell

29. On or around March 31, 2010, Worrell filed an application for workers' compensation benefits before the WCAB in the state of California against the Bears, New York Jets and Miami Dolphins.

30. In April 2010, the Bears filed a notice of denial of claim in the WCAB that denied all liability for Worrell's claims because, among other things, California purportedly does not have jurisdiction over the claims.

31. On May 4, 2010, the Bears and the NFLMC consolidated the grievances against Haynes and Odom and amended the consolidated grievance to add Cameron Worrell. The

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grievance claimed that Worrell's application for workers' compensation benefits in California violated a purported forum selection clause in the NFL Player Contract.

32. On December 9, 2010, the Dolphins sought to have Worrell's claims added to the Miami Dolphins' Petition for Consolidation and Stay for Lack of Jurisdiction filed against certain Dolphins' former players.

33. On December 14, 2010, Worrell's application for workers' compensation benefits was consolidated with certain former NFL Players' workers' compensation cases pending against the Dolphins.

34. The arbitrations against Haynes, Odom and Worrell proceeded while the WCAB cases remained pending. The WCAB cases are still pending.

The Award

35. Arbitrator Townley issued an award on April 21, 2011, sustaining the Consolidated Grievance in part and denying it in part. She held:

> Players Haynes, Odom and Worrell are to cease and desist the pursuit of their Workers' Compensation claims in the State of California through the withdrawal of such claims before the applicable tribunal.

See Ex. A at 29.

THE AWARD MUST BE VACATED AS CONTRARY TO CALIFORNIA LAW AND PUBLIC POLICY

36. The Award is illegal under California law and clearly contrary to California public policy.

37. The Award, contrary to Cal. Labor Code § 5000, effectively holds that the NFLPA and NFLMC contractually waived the right of Haynes, Odom and Worrell to seek workers' compensation benefits under California Labor Code § 3600 or to file for workers' compensation benefits in California.

38. California Labor Code § 3600 provides that "[l]iability for the compensation provided by this division . . . shall, without regard to negligence, exist against an

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employer for any injury sustained by his or her employees arising out of and in the course of the employment . . . where the following conditions of compensation concur," without regard to whether the employee belongs to a union.

39. The statute confers a right on employees that cannot be waived through contract. *See* Cal. Labor Code § 5000; *see also id.* § 2804 ("Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State").[3]

40. For nearly a century, the California Supreme Court has recognized that employees cannot waive their right to seek workers' compensation through contract. In *Alaska Packers' Association v. Industrial Accident Commission of California*, 1 Cal. 2d 250 (1934), *aff'd*, 294 U.S. 532 (1935), for example, the California Supreme Court held that the predecessor statute to Labor Code § 5000 prohibited an employee from waiving his right to seek workers' compensation benefits in California. The Court ruled:

> The attempted selection of the Alaska [workers' compensation] act as the governing law in section 11 of the contract is not available to the petitioner. *A contract attempting to avoid the liability imposed by the California act is invalid.*

Id. at 260; *see also Hines v. Indus. Acc. Comm. of State of Cal.*, 182 Cal. 359, 359 (1920) ("in view of the provisions of [the predecessor statute to Labor Code § 5000], petitioner cannot avail himself of the [release] agreement relied on").

41. The California Supreme Court's decision in *Alaska Packers* was appealed to the United States Supreme Court, and the Court issued an expansive decision that affirmed the California Supreme Court's interpretation of Labor Code § 5000. *Alaska Packers Ass'n v. Indus. Accident Comm'n of Cal.*, 294 U.S. 532, 55 S. Ct. 518 (1935). The Supreme Court held that California had a legitimate public interest in controlling the employer-employee relationship and

[3] Furthermore, Section 3202 of the California Workers' Compensation statute mandates that all provisions of the statute "shall be liberally construed by courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment."

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that it did not exceed its constitutional power by prohibiting a waiver of workers' compensation rights designed to promote the health and safety of employees. In *Alaska Packers*, an employer and employee agreed in writing that all workers' compensation disputes would be resolved under Alaskan law. However, California Labor Code § 5000 (known at the time as Section 27(a)) provided then (as it does today) that California's workers' compensation statute was not waivable. *Id.* at 539. The Supreme Court held that Section 5000 was valid and enforceable, and that employees covered by the California workers compensation statute could not waive their statutory rights. *Id.* at 543. *Alaska Packers* establishes beyond doubt that the California statute is valid and enforceable and that an employment agreement purporting to waive the employee's rights under California's workers' compensation statute is void as a matter of law.

42. The rule announced in *Alaska Packers* continues to apply with full force today. In *Bowen v. Workers' Compensation Appeals Board*, 73 Cal. App. 4th 15, 26-27 (Cal. Dist. Ct. App. 1999), the California Court of Appeals relied upon the "landmark case" *Alaska Packers* and held that an employer could *not* rely on "a contract clause to defeat an employee's claim for benefits" because doing so "would violate section 5000 prohibiting contracts exempting employers from liability under California Workers' Compensation Act . . . ." *Id.* at 26-27.

43. In *Booker v. Cincinnati Bengals, Inc.*, Case No. ANA0401410, Slip. Op., at 16 (WCAB 2009), which was vacated on other grounds, a California workers' compensation judge refused to enforce a provision of Booker's NFL Player Contract that allegedly conferred the state of Ohio with exclusive jurisdiction.[4] The court explained:

> An injured worker may not waive his right to receive workers compensation benefits under the California Labor Code by contract or agreement, expressed or implied per Labor Code § 2804. Labor Code § 5000 states in part: *"no contract, rule, or regulation shall exempt the employer from liability for the compensation fixed by this division."* Any provision of the employment agreement between Mr. Booker and the Bengals which purports to limit the

[4] The decision was vacated in order to further develop the record regarding whether the Bengals were permissibly self-insured under Labor Code § 3700.

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> applicant's ability to pursue workers' compensation benefits in the state of California is *void and unenforceable*.

Id. at 16 (emphasis added).

44. The Attorney General of the state of California has also explained California's strong public policy against the waiver of an employee's right to seek workers' compensation benefits. Indeed, more than fifty years ago, the Attorney General stated that the attempted waiver of an employee's right to seek workers' compensation is obnoxious to public policy and thus void:

> *In the case of an attempted waiver of workmen's compensation benefits, any such agreement is not only obviously against public policy*, but is specifically prohibited by statute. Section 5000 of the Labor Code provides, in part: "No contract . . . shall exempt the employer from liability for the compensation fixed by this division . . . ."
>
> It might be noted in passing that *in private employment any agreements to waive employees' rights against their employer for injury or death, etc., are void, as against public policy.*

22 Op. Atty. Gen. 205, Dec. 4. 1953.

45. Despite the clear public policy of the state of California -- as explained by state statutes, the California Supreme Court, the Court of Appeals, the WCAB, and the Attorney General -- the Award effectively holds that the NFLPA and NFLMC contractually waived the right of Haynes, Odom and Worrell to seek workers' compensation benefits under California Labor Code § 3600 or to file for such benefits in California. Such a holding does violence to California's public policy. If the Award is not vacated, Bears players who have the right under California law to seek workers' compensation will be denied that right on the basis that such rights were waived, even though the right to seek workers' compensation benefits is an unwaivable right under California law.

THE AWARD MUST BE VACATED

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AS CONTRARY TO FEDERAL LABOR LAW

46. The Award requires a result that is contrary to federal labor law and must be vacated.

47. Under California Labor Code § 3600, injured workers who are subject to the statute have the right to file, in a California court, state law claims for California workers' compensation benefits. These rights cannot be waived. California Labor Code § 5000 provides: "No contract, rule, or regulation shall exempt the employer from liability for the compensation fixed by this division . . . ."

48. The Award purports to negate unwaivable state law rights, on the basis of a collective bargaining agreement, but that is a clear perversion of settled federal labor law. *See Livadas v. Bradshaw*, 512 U.S. 107, 123, 114 S. Ct. 2068 (1994) (a collective bargaining agreement could not supplant state employee benefits law because principles of federal pre-emption "cannot be read broadly to preempt nonnegotiable rights conferred on individual employees as a matter of state law").

49. Under federal labor law preemption, collective bargaining agreements that provide *greater* benefits to employees preempt inconsistent state laws. *See Lodge 76, Int'l Ass'n of Machinists & Aerospace Workers v. Wis. Emp't Relations Comm'n*, 427 U.S. 132, 138, 96 S. Ct. 2548 (1976).[5] Unions thus can, and often do, bargain for benefits in excess of those minimum benefits (such as minimum wages, termination benefits, injury benefits, and the like) required by state law.

[5] *See also Nelson v. Victory Elec. Works, Inc.*, 338 F.2d 994 (4th Cir. 1964), *aff'g* 227 F. Supp. 404, 406 (D. Md. 1964) (collective bargaining agreement provision whereby the employer agreed to provide workers' compensation benefits equivalent to those provided in the District of Columbia even when the employees were injured while working outside of the District held to govern injury suffered in Maryland despite inconsistent Maryland workers' compensation laws, which provided that "[n]o employer or employee . . . shall exempt himself from the burden or waive the benefit of this article by any contract . . ."). As explained by the district court in *Nelson*: "it is entirely competent for an employer and an employee by express contract to supplement benefits under the Act or to relax its restrictions or requirements in favor of the employee." *Nelson*, 227 F. Supp. at 407, *aff'd* 338 F.2d 994 (4th Cir. 1964) (citation omitted).

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50. However, it is axiomatic that a union and employer may *not* contract to take away from employees state law benefits that improve employees' health, safety or welfare. The "floors" for such employee benefits, which are not waivable under state law, may not be waived by a union and the employer, just as they cannot be waived by an individual employee and his or her employer. As stated by the Supreme Court:

> Minimum state labor standards affect union and nonunion employees equally, and neither encourage nor discourage the collective-bargaining processes that are the subject of the NLRA . . . . [M]andated-benefit laws are not laws designed to encourage or discourage employees in the promotion of their interests collectively; rather, they are in part "designed to give specific minimum protections to individual workers and to ensure that each employee covered by the Act would receive" the mandated health insurance coverage.
>
> *It would further few of the purposes of the Act to allow unions and employers to bargain for terms of employment that state law forbids employers to establish unilaterally.* "Such a rule of law would delegate to unions and unionized employers the power to exempt themselves from whatever state labor standards they disfavored." It would turn the policy that animated the Wagner Act on its head to understand it to have penalized workers who have chosen to join a union by preventing them from benefiting from state labor regulations imposing minimal standards on nonunion employers.

See Met. Life Ins. Co. v. Massachusetts, 471 U.S. 724, 755-56, 105 S. Ct. 2380 (1985) (citations omitted; emphasis added); *see also Livadas*, 512 U.S. at 123; *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 412 (1988) ("pre-emption should not be lightly inferred in this area, since the establishment of labor standards falls within the traditional police power of the State") (citation omitted); *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 257 (1994); *Alaska Packers*, 294 U.S. at 543.

51. In *Contract Servs. Network v. Aubry*, 62 F.3d 294, 298-99 (9th Cir. 1995), the court held that a collective bargaining agreement which provided workers' compensation benefits from an ERISA fund could not pre-empt California's workers' compensation statute:

> [T]he California law involved here applies to all private employers without regard to any collective bargaining agreement that may govern other employment matters. *The law cannot be undercut by collective bargaining or other means, nor does the law frustrate*

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> *the purpose of Congress.* As a result, we find that the NLRA does not preempt California Labor Code § 3700. Plaintiffs [also] argue that California's workers' compensation law is preempted by the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 *et seq.*, which governs the enforcement of arbitration agreements. Plaintiffs also argue preemption under the Labor Management Relations Act (LMRA) § 301. Section 301 governs claims "founded directly on rights created by collective bargaining agreements, and also claims 'substantially dependent on analysis of a collective bargaining agreement.'" Application of state law is preempted by § 301 of the LMRA only if such application requires interpretation of a collective bargaining agreement. There is neither a dispute over the rights established in a collective bargaining agreement, nor a private agreement to arbitrate at issue in this case. *Therefore, neither the LMRA nor the FAA preempts the application of California Labor Code § 3700.*

Id. at 299 (citations omitted) (emphasis added). The Award must be vacated because it is contrary to the Ninth Circuit's holding in *Contract Services* that a collective bargaining agreement cannot preempt state workers' compensation benefits. *See also Nevada v. Contract Servs. Network, Inc.*, 873 F. Supp. 385, 392-94 (D. Nev. 1994) (same).

52. Following these settled rules, an arbitration award that requires an employee to forfeit rights he would otherwise be permitted to exercise under state workers' compensation laws is contrary to law, illegal, and must be vacated. *See United Paperworkers Int'l Union v. Allied Paper, Inc.*, Civ. No. F 86-425, 1987 WL 33822, at *3-4 (N.D. Ind. May 29, 1987), *amended by* 1987 WL 33823 (N.D. Ind. Sept. 23, 1987) (ruling that an arbitration award reinstating an injured employee, but only on the condition that the employee would not file a workers' compensation claim, was "illegal" because Indiana law (like California law) precluded an agreement between an employer and employee for the latter to forgo workers' compensation benefits under state law). *See also Nevada*, 873 F. Supp. at 392-93.

53. Arbitrator Townley ignored this settled law and thus the Award must be vacated. Parties to a collective bargaining agreement may not require that employees forgo accepting employee benefits mandated by state law. Indeed, the Supreme Court has made clear that federal labor law preemption cannot require that result. Yet, the Award here does precisely that. It effectively precludes Haynes, Odom and Worrell from pursuing their workers'

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compensation rights under California law or in California. *See* Award, at 29. The Award thus forces Haynes, Odom and Worrell to waive their unwaivable right to seek benefits in California. By erroneously purporting to strip union members who qualify for California workers' compensation benefits of their state-created rights, the Award violates basic principles of federal labor law and must be vacated.

THE AWARD VIOLATES THE FULL FAITH AND CREDIT CLAUSE OF THE UNITED STATES CONSTITUTION

54. The Full Faith and Credit Clause of the United States Constitution allows California to ignore contrary laws from other states, and prohibits other states from trying to foist its laws upon California, as the Award does here. In effectuating this unconstitutional result, the Arbitrator exceeded her powers by manifestly disregarding the law. Indeed, the Award completely ignores the Full Faith and Credit Clause and its prohibition against imposing the law of Illinois upon the state of California.

55. In *Alaska Packers*, the United States Supreme Court addressed the operation of the Full Faith and Credit Clause on conflicting California and Alaska statutes, where an employer sought to preclude an employee from resolving a California workers' compensation claim under California law in favor of Alaska law. As the Court recognized, "[t]o the extent that California is required to give full faith and credit to the conflicting Alaska statute, it must be denied the right to apply in its own courts a statute of the state, lawfully enacted in pursuance of its domestic policy." *Alaska Packers*, 294 U.S. at 545. *Alaska Packers* confirms that, under the Constitution, California, as a sovereign government, is free to apply its own workers' compensation law, even if the employee and employer agreed otherwise. The Award disregards this basic constitutional premise.

56. In *Pac. Employers Ins. Co. v. Indus. Accident Comm'n of Cal.*, 306 U.S. 493, 59 S. Ct. 629 (1939), the Supreme Court was asked to resolve a tension between a Massachusetts statute waiving an employee's right to seek benefits in another state, and a California statute (Section 5000 -- the same one here), which deemed any such waiver to be void.

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The Supreme Court held that, consistent with the U.S. Constitution, California law prevailed. Under *Pacific Employers,* a state may apply its own laws, and it is unconstitutional for another state to try to project its laws across state lines, even if the laws conflict. The Award seeks to expressly project Illinois law across state lines by prohibiting California from applying its own laws to Haynes, Odom and Worrell's California workers' compensation claims. That result flatly contradicts the Supreme Court's holding in *Pacific Employers.*

57. Significantly, the United States Supreme Court has upheld the right of an Illinois employee to file a workers' compensation claim in another jurisdiction. In *Industrial Commission of Wisconsin v. McCartin*, 330 U.S. 622 (1947), an employee was injured in Wisconsin under a contract of employment with an Illinois employer. The employee filed for workers compensation benefits in both states, and the employer challenged the Wisconsin filing after it settled the Illinois claim. The Supreme Court ruled for the employee finding that there was "nothing in the [Illinois workers' compensation] statute or in the decisions thereunder to indicate that it is completely exclusive, that it is designed to preclude any recovery by proceedings brought in another state for injuries received there in the course of an Illinois employment." *Id.* at 627-28.

58. As the Supreme Court explained, "enforcement of the full faith and credit clause, without regard to the statute of the forum, would lead to the absurd result that, wherever the conflict arises, the statute of each state must be enforced in the courts of the other, but cannot be in its own." *Pacific Employers*, 306 at 501 (quoting *Alaska Packers*, 294 U.S. at 547). The Award unconstitutionally and erroneously elevates the interests of Illinois above those of California by "preclud[ing California] from prescribing for itself the legal consequences of acts within it." *Pacific Employers,* 306 U.S. at 504-05. This is precisely what the Supreme Court ruled unconstitutional in *Pacific Employers.*

COUNT I

VACATUR OF ARBITRATION AWARD/BREACH OF CONTRACT

59. Plaintiff/Petitioners repeat and reallege Paragraphs 1-58 as if set forth fully herein.

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Los Angeles, CA, 90071-1530,

60. Plaintiffs/Petitioners Worrell, Haynes and Odom move to vacate the award issued by Arbitrator Townley on April 21, 2011.

61. Arbitration awards may be vacated when the award runs counter to public policy. *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 986 (9th Cir. 2001); *Am. Postal Workers Union AFL-CIO v. U.S Postal Serv.*, 682 F.2d 1280, 1284, 1286 (9th Cir. 1982); *Cal. Pac. Med. Center v. Serv. Emp. Int'l Union*, No. C 06 4685 SC, 2007 WL 81906, at *6-7 (N.D. Cal. Jan. 9, 2007), *aff'd*, 300 F. App'x 471, 473-74 (9th Cir. 2008); *Nat'l Football League Players Ass'n v. Pro-Football*, 857 F. Supp. 71, 76 (D.D.C. 1994).

62. Arbitration awards may also be vacated when the arbitrator manifestly disregards the law. *See Comedy Club, Inc. v. Improv W. Assocs.*, 553 F. 3d 1277, 1290 (9th Cir. 2009); *Am. Postal Workers*, 682 F.2d at 1284.

63. The Award clearly violates two important public policies. *First*, the Award violates California law and public policy, which makes clear that employees may not waive workers' compensation benefits. Despite that clear public policy, the Arbitrator ruled that the Expired CBA constitutes a waiver of such benefits. *Second*, the Award makes a mockery of federal law, by ignoring Supreme Court precedent establishing that unions and management may not bargain away state-created employee rights. The Award's holding -- that Haynes, Odom and Worrell effectively bargained away the right to seek workers' compensation benefits under California law or to file for such benefits in California -- clearly violates these basic principles of federal labor law.

64. The Arbitrator exceeded her powers, and thus manifestly disregarded the law, by precluding California from applying its law in violation of the Full Faith and Credit Clause.

65. Because the Award contravenes important public policies and the Arbitrator manifestly disregarded the law, the Award must be vacated.

WHEREFORE, in accordance with Section 301 of the LMRA, 29 U.S.C. § 185, Plaintiffs/Petitioners request that this Court (1) vacate the Award requiring Haynes, Odom and

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Worrell to cease and desist pursuing their workers' compensation claims in California and requiring them to withdraw such claims before the applicable tribunal, and (2) grant such other and further relief as the Court may deem just and proper.

Dated: April 21, 2011

DEWEY & LeBOEUF LLP

By:_____
Matthew M. Walsh

Attorneys for Plaintiffs/Petitioners
CAMERON WORRELL, MICHAEL HAYNES and JOE ODOM

Dewey & LeBoeuf LLP
333 South Grand Avenue; Suite 2600
Los Angeles, CA, 90071-1530,

EXHIBIT A

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In the Matter of the Arbitration Between
The Chicago Bears and the National Football
League Management Council

- and -

Michael Haynes, Joe Odom, Cameron Worrell and
The National Football League Players Association

Players' Contracts, Par. 22 & 33
Workers' Compensation
(Choice of Law/Choice of Forum)

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Before: Rosemary A. Townley, Article IX,
Non-Injury Grievance Arbitrator

Appearances: For the NFL Management Council
Brook F. Gardiner, Esq., Labor Counsel
NFLMC
Cliff Stein, Esq., General Counsel,
Chicago Bears

For the Players/NFLPA
Richard A. Berthelsen, General Counsel
NFLPA
Gilbert W. Gordon, Esq.
Gordon, Rappold & Miller, LLC

Hearing: June 3, 2010, Halas Hall-Conway Park
Lake Forest, Illinois

OPINION AND AWARD

BACKGROUND

Three grievances were filed by the NFL Management Council ("Management Council" or "NFLMC") and the Chicago Bears Football Club, Inc. ("Bears" or "Club")(collectively "Grievants" or "Club") against former Bears Players Michael Haynes, Joe Odom and Cameron Worrell (the "Players") and the NFL Players Association ("NFLPA" or "Union") under Article IX, Non-Injury Grievance Arbitration of the 2006-2012 collective bargaining agreement ("CBA") and Paragraph 19, "Disputes" of the NFL Players' Contracts ("Players' Contracts" or "Contracts").

All three Players entered into one or more Player Contracts with the Club between 2003 and 2008. In 2009 and 2010, the Players filed claims for workers' compensation benefits with the California Workers' Compensation Appeals Board ("WCAB") seeking benefits under the

California Workers' Compensation Act. The Club and the NFLMC filed Article IX Non-Injury grievances against Haynes and Odom by letters dated November 11, 2009 and April 28, 2010, respectively, and against Worrell on May 4, 2010, amending the grievance. It was claimed that all Players violated their contracts by "improperly pursuing claims against the Bears under the workers' compensation laws of the State of California in violation of his NFL Player Contract" citing to Paragraph 33 in each of the grievances. The NFLPA denied the grievances, stating that the Provision at issue "purports to waive any and all rights (the Players) may have to file a Workers' Compensation claim in California and/or to obtain benefits" and that it is "null and void and unenforceable under California and federal law."

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT ("CBA") AND NFL PLAYERS' CONTRACT

CBA

Article IX, Section 8-Non-Injury Grievance Arbitration

* *

Section 8. Arbitrator's Decision and Award . . .(T)he decision of the arbitrator will constitute full, final and complete disposition of the grievance, and will be binding upon the player(s) and Club(s) involved and the parties to this Agreement; provided, however, that the arbitrator will not have the jurisdiction or authority: (a) to add to, subtract from, or alter in any way the provisions of this Agreement or any other applicable document; or (b) to grant any remedy other than a money award, an order of reinstatement, suspension without pay, a stay of suspension pending decision, a cease and desist order . . . . .

* * *

Article LIV : WORKERS' COMPENSATION

Section 1. Benefits: In any state where workers' compensation coverage is not compulsory or where a Club is excluded from a state's workers' compensation coverage, a Club will either voluntarily obtain coverage under the compensation laws of that state or otherwise guarantee equivalent benefits to its Players. In the event that a Player qualifies for benefits under this section, such benefits will be equivalent to those benefits paid under the compensation law of the state in which his Club is located.

PLAYERS' CONTRACTS (APPENDIX C OF CBA)

19. DISPUTES. During the term of any collective bargaining agreement, any dispute between Player and Club involving the interpretation or application of any provision of this contract will be submitted to final and binding arbitration in accordance with the procedures called for in any collective bargaining agreement in existence at the time the event giving

rise to any such dispute occurs.

* * *

22. LAW. This contract is made under and shall be governed by the laws of the State of ILLINOIS.

* * *

33. Jurisdiction and Governing Law. The parties hereto acknowledge that this Player Contract has been negotiated and executed in Illinois; that should any dispute, claim or cause of action (collectively "dispute") arise concerning rights or liabilities arising from the relationship between the Player and the Club, the parties hereto agree that the law governing such dispute shall be the law of the State of Illinois. Furthermore, the exclusive jurisdiction for resolving injury related claims shall be the Illinois Industrial Commission of the State of Illinois, and in the case of Workers Compensation claims the Illinois Workers Compensation Act shall govern.

POSITION OF THE PARTIES[1]

The Club/NFLMC

The Club argues that the Players have breached the clear terms of Paragraph 22 and 33 of their Player Contracts by filing claims for workers' compensation benefits in California under California law because their Contracts state that each shall pursue such claims "exclusive[ly]" in Illinois and pursuant to the Illinois Workers' Compensation Act."

The Club avers that any argument that California law alters their contractual promises should be rejected, because the "law of the shop" requires the Arbitrator to enforce the terms of the Contracts, which are indisputably governed by Illinois law. It points to Tennessee Titans v. Bruce Matthews (2010)(Sharpe, Arb.)("Matthews") maintaining it involved similar language in a Player's Contract where Tennessee law was to apply and similar circumstances because the player filed a workers' compensation claim in California. The arbitrator found the player breached his Player's Contract by pursuing his claim in California and under its law, resulting in a cease and desist order the result of which is now the law of the shop.

It points out that Matthews has been confirmed by the Federal District Court in Southern California, *National Football League Players' Association v. National Football League*

[1] The position statements include those submitted both before and after the issuance of the *National Football League Players' Association v. National Football League Management Council*, No. 10 CV1671, 2011 WL 31068 (S.D.Cal. Jan. 5, 2011)("*Matthews Order*" or "*Court Order*").

Management Council, No. 10 CV1671, 2011 WL 31068 (S.D.Cal. Jan. 5, 2011)("*Matthews Order*" or "*Court Order*") and thus has taken on preclusive effect because it involves the same parties and a "materially similar contract provision," citing to the Elkouri treatise[2] at 600 and various circuit court cases.[3] It also maintains that the only ground upon which the NFLPA attempted to avoid the precedential impact of Matthews in its post-hearing brief was to argue that it was "erroneously decided, not finally resolved and still subject to a federal challenge . . . ." (NFLPA Post-Hearing Brief, p. 16). This position is no longer tenable, it argues, because the federal court confirmation of Matthews further confirms that it is the law of the shop and controlling in this case.

Nor does the NFLPA appeal of the *Matthews Order* to the 9th Circuit Court of Appeals alter the fact that Matthews remains the law of the shop, citing to NFL precedent, Denver Broncos v. Lelie at 24 (2007) (Das, Arb.)(although a prior decision "was unsuccessfully challenged in Fed District Court in Fla . . . absent a controlling court decision compelling a finding that the analysis and rationale in Williams is legally indefensible, it is the law of the shop").[4] In light of the express and binding procedures concerning arbitration decisions set forth in Article IX of the CBA, Arbitrator Sharpe's decision bears no relationship to the pending motion to vacate.

The Club also argues that had Arbitrator Sharpe relied upon the NFLPA's interpretation of California and federal law, rather than the unambiguous choice of law provisions, it is likely that his award would have been vacated on the basis of failing to draw its essence from the parties' agreement, citing to *United Steelworkers of America*, 363 U.S. 593, 597 (1960). It maintains that the NFLPA is requesting that the Arbitrator not merely "look to outside law" for assistance in "determining the sense of the agreement" but to replace the agreement with the NFLPA's understanding of "outside law" which would not survive court review.

The Club further points out that the *Matthews Order* interpreted *Alaska Packers Ass'n. v. Indus. Accident Comm'n of Cal.*, 294 U.S. 532 (1935) ("*Alaska Packers*") and held that with

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[2] F. Elkouri & E. Elkouri, HOW ARBITRATION WORKS 435, 436 (6TH ed. BNA, 2003)("Elkouri treatise")

[3] *Longshoremen (ILA) Local 1351 v. Sealand Service*, 214 F. 3d 566 (5th Cir. 2000); *John Morrell & Co. v. Food and Commercial Wokers Local 304A*, 913 F.2d 544 (8th Cir. 1990).

[4] The Club also cites *Pac. Sw. Airlines*, 76 Lab. Arb. Rep. (BNA) 197, 200 (1981) (Ross, Arb.) that held the filing of a motion to vacate an arbitration award in a federal court did not serve as a stay of the implementation of the award, as the contract between the parties provided that arbitration awards were to be "final and binding" and thus ignoring the award essentially would be a modification of the contract.

respect to California Labor Code §5000 there is no "blanket policy" against contractual agreements applying the workers' compensation laws of a state other than California because "California law does not provide an explicit, well-defined, and dominant public policy barring all contractual waivers of California workers compensation." (Supp. Brief, p.4-5, citing *Matthews Order* at 5;7). The Club further points out that the *Matthews Order* concluded that there was no "explicit, well-defined, and dominant public policy, or violation of federal law that specifically militated against the arbitrator's award" and thus confirmed it.

The Club maintains the Players' California workers' compensation claims violate the plain language of their Contracts because Paragraphs 22 and 33 are unambiguous and must be enforced in accordance with its plain meaning, citing to the Elkouri.[5] It also contends that NFL arbitrators routinely enforce contractual provisions where, as here, the contract language at issue is "clear on its face" citing Denver Broncos v. Kennison (2003) (Wittenberg, Arb.)("Kennison") and Detroit Lions v. Rogers (2008) (Das, Arb.)("Rogers").

The Club says that Paragraph 33 contains both choice of law and choice of forum language, while the provision in Matthews was only a choice of law. In light of the inclusion of both types of clauses, the California claims of the Players in this matter violate both their choice of law and choice of forum provisions. The Club does not dispute that Article LIV of the CBA contains provisions governing certain injury-related claims, but contends that these provisions do not provide the exclusive method of resolution for all injury-related claims.

The Club also contends that if Paragraph 33 voids all claims before the Illinois Industrial Commission, such act would contravene well-settled principles of contract construction which require arbitrators to give preference to interpretations "giv[ing] effect to all provisions" of a contract rather than those that "render . . . [certain] provision[s] meaningless or ineffective . . . ." citing Elkouri at 463; *Walsh v. Schlecht*, 429 U.S. 401, 408 (1977). Nor may the meaning of a single clause be determined in isolation, but must be discerned by reading the entire provision as a whole, referring to the contract maxim of *"noscitur a sociis"* ("a word takes on coloration from its association with accompanying words") citing Elkouri at 469. When the "provision as a whole" principle is applied here, there can be no conclusion other than Paragraph 33 constitutes a choice of law and a choice of forum provision, according to the Club.

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[5] Elkouri at 435-436.

The Club maintains that the more reasonable interpretation of Paragraph 33 is that the provision governs injury-related claims not otherwise governed by the CBA. It also claims that when the provision is read as a whole, it becomes apparent that the first sentence provides a choice of law clause and the second sentence provides the "exclusive jurisdiction" for resolving injury-related claims, including injury-related claims for workers' compensation. Giving effect to the entire provision is even more critical here in light of the testimony that the intent of the provision was to ensure the Club would litigate all workers' compensation claims against the team only in Illinois. This interpretation is consistent with the NFLPA's practice of advising players to contact workers' compensation attorneys located in the state where their team is based. (Post-hearing deposition of Agent Elbert Lee ("Lee Dep.") at 25:17 - 26:24), as well as in Article LIV, Sec 1 of the CBA.

Moreover, it says, Paragraph 33, a choice of law provision, is consistently enforced under Illinois law where, as here, the chosen state has a "substantial relationship to the parties" and no state has a "materially greater interest in the litigation" than the chosen forum state pursuant to a multi-factor test, citing *Old Republic Ins. Co. v. Ace Prop. & Cas. Ins. Co.*, 906 N.E.2d 630, 636 (Ill. Ct. App. 2009) and *Labor Ready, Inc. v. Williams Staffing, LLC*, 149 F. Supp. 2d 398, 405-07 (N.D. Ill. 2001). The Club maintains that the multi-factor test weighs in favor of applying Illinois law because the Players all resided in Illinois while playing for the Bears, performed the vast majority of their services for the Bears in Illinois, and agreed to their contracts in Illinois while residing in Illinois. It claims that the fact that Player Worrell may have agreed to certain of his Player Contracts while residing in California does not change the analysis, as the balance of the factors favors upholding the Illinois choice of law provision, citing *Engis Corp. v. Engis Ltd.*, 800 F. Supp. 627, 631 (N.D. Ill. 1992).

The Club maintains that the "greater material interest test" set forth in *Integrated Genomics, Inc. v. Kyrpides*, No. 06 C 6706, 2010 WL 375672, at *7 (N.D. Ill. Jan. 26, 2010), also supports its position (were an Illinois company and Illinois resident to enter contract in Illinois, with Illinois choice of law and non-compete provisions, the court will not void the non-compete provision due to a California statute prohibiting such provisions). In that case, the court concluded, "because Illinois, not California, has the most significant relationship to the contract and the parties, the court will apply Illinois law to the breach of contract claim despite

California's strong public policy against covenants not to compete." *Id. see also Int'l Surplus Lines Ins. Co. v. Pioneer Life Ins. Co. of Ill.*, 568 N.E.2d 9, 16 (Ill. Ct. App. 1990).

It notes that Illinois courts generally apply a six factor test when determining whether a forum selection clause should be enforced as "reasonable" and all of the relevant factors support enforcement in this matter. It also argues that the record contains no evidence that the Players' Contracts were procured by "fraud or overreaching" or that unequal bargaining power existed between the Club and the Players, citing *Calanca v. D&S Mfg. Co.*, 510 N.E.2d 21, 23 (Ill. Ct. App. 1987); *M/S Brfemen v. Zapata Off-Shore Co.*, 407 U.S. 1, 10 (1972); *Wilkinson Co. v. Krups N. Am., Inc.*, 48 F. Supp. 2d 816, 819 (N.D. Ill. 1999). A party seeking to invalidate such a provision must provide evidence to overcome this presumption, such as that the agreement is so "seriously unreasonable" as to effectively "deprive[] [the challenging parties] of their day in court," citing *Yamada Corp. v. Yasuda Fire & Marine Ins. Co.*, 712 N.E. 2d 926, 930-931 (Ill. Ct. App. 1999), or that the clause is "unjust, or . . . invalid for such reasons as fraud or overreaching," *M/S. Bremen*, 407 U.S. at 15; *see also Dace Int'l, Inc. v. Apple Computer, Inc.*, 655 N.E.2d 974, 978-79 (Ill. Ct. App. 1995) (enforcing forum selection clause where clause was reasonable and challenging party presented no evidence of fraud).

The Club says that under Illinois law, the Players have failed to "sustain [their] heavy burden" to invalidate the forum selection clauses in their contracts, citing *Friedman v. World Transp., Inc.*, 636 F. Supp 685, 690 (N.D. Ill. 1986); *see also Calanca*, 510 N.E.2d at 24 (upholding forum selection clause); *United Equitable Life Ins. Co. v. Trans Global Corp.*, 679 F. Supp. 769, 773 (N.D. Ill. 1988) ("Illinois courts will enforce contractual choice of forum and choice of law provisions"); *Welch v. Nightingale Nurses LLC*, No. 07-08-0305-CV, 2009 WL 1531497, at * 3-4 (Tex. Ct. App. June 2, 2009) (upholding as reasonable forum selection clause that required employee to file for workers' compensation benefits in Florida).

It says that the issue is not whether Illinois Law prohibits the Players from seeking benefits in another state, but whether the Players' Contracts prohibit them from seeking benefits in another state, under another state's laws, and whether the Players have breached those contracts by seeking benefits in California and under California law.

Nor do the Players' Contracts require them to forego workers' compensation, as their contracts do not deprive them of "minimum (state law) standards," in contrast to the holding of the U.S. Supreme Court in *Alaska Packers Ass'n. v. Indus. Accident Comm'n of Cal.*, 294 U.S.

532 (1935) ("*Alaska Packers*") where the Alaska worker would have lost all workers' compensation benefits if the Court found that he was not covered by the California statute. It points out that in the instant matter at least two of the three Players received workers' compensation benefits under Illinois law prior to filing their claims in California. Even if California law was relevant here, and it is not, the Players have not demonstrated that it would preclude enforcement of their contracts or otherwise excuse their breach. The reliance on *Alaska Packers* for the proposition that employees have the right to file a California workers' compensation claim despite agreeing to a contractual provision that says otherwise misconstrues the limited holding of *Alaska Packers*. The Court noted that it was not considering "what effect should be given to the California statute [and its enforcement] . . . were [the parties'] relationship to California such as to give it a lesser interest in protecting the employee by securing for him an adequate and readily available remedy." *Id.* at 543. In this matter, at least two of the players received workers' compensation benefits under Illinois law prior to bringing their California claims.

The Club maintains that the Players argument is misplaced that their Contracts are unenforceable because the provision at issue requires them to forego workers' compensation benefits in California. It says the Players' contracts do not deprive them of "minimum [state law] standards" as forum selection clauses dictating where employees can litigate workers' compensation claims, such as those at issue here, are not a waiver of rights, but simply constitute the selection of a particular jurisdiction in which they may recover benefits, citing *Welch*, 2009 WL 1531497. Similarly, employees who agree to choice of law provisions do not waive their right to obtain workers' compensation benefits, but merely elect to apply the workers' compensation laws of another jurisdiction., citing *Shields v. K.A.T. Transp.*, 53 P.3d 1242, 1247 (Kan. Ct. App. 2002) (concluding that an employee who signed an Indiana choice of law provision governing workers' compensation benefits "did not contract out of [Kansas] protection, but simply chose that of another jurisdiction").

Any reliance by the Players on *Livadas v. Bradshaw*, 512 U.S. 107 (1994)("*Livadas*") for the proposition that a collective bargaining agreement cannot supplant minimum state law protections should be rejected, as that case dealt with whether an employee's claim under a California labor statute was preempted by Section 301 of the Labor Management Relations Act, and not whether employees could individually negotiate contractual provisions in which they

promised to resolve their workers' compensation claims under a particular state's laws. *Id.* at 122-24.

It further contends that the NFLPA's attempt to inject California law into this dispute constitutes an impermissible attempt to alter the provisions of the Players' Contracts that are incorporated into the CBA as Appendix C. It says NFL arbitral precedent establishes that the Arbitrator does not have the authority to rewrite the terms of the parties' bargain under Art. IX, Sec. 8. Therefore, an arbitrator has the obligation to enforce the provisions of individually negotiated contractual provisions, citing Matthews; New York Jets v. Pope (2008) (Townley, Arb.); Owens v. Philadelphia Eagles (2008) (Das, Arb.); Miami Dolphins v. Williams (2004) (Bloch, Arb.). The Arbitrator must confine her review to the interpretation of the bargained-for provisions, and must enforce the parties' bargain regardless of how a workers' compensation tribunal may interpret a particular state's workers' compensation laws.

The Club also cites the NFLPA v. Dallas Cowboys and Houston Texans (2005) (Das, Arb.) ("Texas Workers's Comp") as precedent in this matter. It says this case explored the tension between the CBA and Texas workers' compensation law and a claim by the Union that certain actions taken by the Clubs in accordance with Texas workers' compensation law violated the CBA. The arbitrator held that Texas workers' compensation law did not govern the issue of whether the Texas Clubs were violating the CBA. Arbitrator Das explained that the arbitrator could not "dictate how the appropriate state authority should treat" actions taken by the parties pursuant to state workers' compensation law, but rather that he was limited to interpreting and applying "the terms of the CBA." Id. at 22.

Similarly, the Club claims, the matter of the NFLPA v. Buffalo Bills, New York Jets, and Carolina Panthers, at 20 (2007) (Das, Arb.) ("Bills/Jets/Panthers") involved the intersection of state law with a provision in the NFL Player Contract providing for certain "offsets" to clubs of workers' compensation benefits paid to players. Arbitrator Das recognized the principle that the interpretation of "state workers' compensation laws is a matter to be decided in the appropriate state or federal forum, not arbitration under the CBA" and decided only the meaning of the contractual provision at issue. *Id.*; *see* Matthews at 15 (rejecting argument that a California workers' compensation tribunal could properly decide which state's law to apply as "unfaithful to the Player's obligation under [his contract] to apply Tennessee law").

It maintains that these arbitration decisions constitute the "law of the shop," and this Arbitrator is bound to follow them. *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 581-582 (1960) ("The labor arbitrator's source of law is not confined to the express provisions of the contract, as the industrial common law - the practices of the industry and the shop - is equally a part of the collective bargaining agreement although not expressed in it."). *see also E. Assoc Coal Corp. v. United Mine Workers, Dist_17*, 531 U.S. 57, 62 (2000) (holding that arbitrator's properly issued award "is not distinguishable from the contractual agreement").

Any claim by the Union that the Club entered improper settlements of Players Haynes' and Worrell's Illinois workers' compensation claims must be regarded as irrelevant and lacking support in the record, according to the Club. Further, it maintains that the record shows that both Players were represented by counsel when negotiating any settlements that were supported by adequate consideration. Even if the Union could demonstrate that the settlements were somehow invalid - which they cannot - such a finding would not alter or excuse the Players' clear breach of their Player Contracts.

It also points to NFL arbitration precedent that holds, as here, when a party violates a provision in the Player Contract or CBA, the Arbitrator has authority to issue a cease and desist order, as did Arbitrator Sharpe when confronted with an almost identical situation in Matthews at 18. Arbitrator Sharpe ordered that the player "cease and desist from attempting to persuade the California tribunals to apply California law in violation of [his] Player's contract" and further ruled that the player was required to withdraw from the California proceedings should the California tribunal decline to apply Tennessee law in accordance with the player's contract. *Id.* In issuing a cease and desist order, Arbitrator Sharpe relied on past NFL precedent concluding that such an order is appropriate where a party's actions under a state workers' compensation law contravene the requirements in the CBA. *See* Matthews at 15, n. 13 (citing Texas Workers' Comp., noting that Arbitrator Das issued a cease and desist order where the clubs' actions taken pursuant to state law violated the CBA). Furthermore, Arbitrator Sharpe specifically rejected the player's argument that California courts should determine whether to apply California law, finding an arbitrator has "jurisdiction . . . . to determine liability and the appropriate remedy" in such a case. *Id.* at 17.

It maintains that such an order is the precise relief the Club seeks here and this Arbitrator would be compelled to follow the same remedy in order to uniformly enforce the terms of the

CBA and the Players' Contracts. See Texas Workers' Comp. at 16, 22 ("My authority as the Arbitrator in this case is derived from the CBA. As the parties' designated contract reader, I am empowered - and required - to determine whether the [] actions protested in this grievance violated the CBA . . . . "); Matthews, at 17.

If the Arbitrator concludes that the Players' Contracts contain only a choice of law provision then, as in Matthews, the Players should be ordered to cease and desist from arguing for the application of California law to their claims for workers' compensation benefits, or they should be required to dismiss their claims. Matthews, at 18. If it is found that the relevant language in the Players' Contracts consists of choice of law and choice of forum provisions, then it requests an order requiring the Players to cease and desist from pursuing their workers' compensation claims in California and under California law and that they be ordered to dismiss their California claims with prejudice.

The Club and Management Council also request that the Arbitrator retain jurisdiction over this grievance until such time as the Players have complied with the cease and desist order and to calculate and award the total fees and costs incurred by the Club in defending against the Player's California workers' compensation claims.

Arguments of the Players/NFLPA

The NFLPA argues that the Player Contracts cannot serve as "licenses" to violate state and federal labor law. California [6]as well as virtually every state, including Illinois, [7]has statutes whereby workers' compensation laws are unwaivable by private agreement, a proposition repeatedly upheld by the California Supreme Court and the United States Supreme Court. Since 1934 the California Supreme Court recognized the California statute that prohibited an employee from waiving his right to seek workers' compensation benefits in California, citing *Alaska Packers Association v. IAC (Palma),* 1 Cal 2nd 250; 34 P.2d 716 (1934) ("*Palma*") ("Under California law a contract between parties could not be used to exempt the employer from liability under California law . . . .) As a result, employers cannot evade state workers' compensation

[6] The California Workers' Compensation statute states: "No contract, rule, or regulation shall exempt the employer from liability for the compensation fixed by this division . . . California Labor Code, Section 5000 ("Section 5000").
[7] 820 ILCS 305/23.

laws with releases, waivers, and choice-of-law/choice-of-forum provisions, in contravention of the policy underlying the principles of providing workers with no-fault coverage.

California's Statute §5000 also has been viewed by the courts as that of establishing "minimum labor standards" that cannot be lessened, diminished, or compromised by employers or employees. In *Alaska Packers*, the U. S. Supreme Court found unlawful an attempt to waive an employee's right to file for workers' compensation protection in California. This case is applicable as the Club seeks an award that would enforce a player's purported waiver of non-waivable statutory workers' compensation rights that would be illegal under California statutory law.

Four years after the *Alaska Packers* case was decided, the U.S. Supreme Court again addressed the state preemption issue in *Pacific Employers Insurance Co. v. Industrial Accident Commission of California*, 306 U.S. 493 (1939) ("*Pacific Employers*"). In *Pacific Employers*, the Court held that the state of California had the ". . . . constitutional authority . . . . to legislate for the bodily safety and economic protection of employees injured within it," adding that "[f]ew matters could be deemed more appropriately the concern of the State in which the injury occurs or more completely within its power." *Id.* at 503.

The NFLPA further contends that this principle of pre-emption has been extended to collective agreements between unions and employers, citing *Metropolitan Life Ins. Co. v. Commonwealth of Mass.*, 471 U.S. 724, 725 (1985); *Livadas*, 512 U.S. 107, 123 (1994); and *Contract Services Network, Inc. v. Aubry*, 62 F.3d 294, 299 (9th Cir. 1995). The California law involved here applies to all private employers without regard to any collective bargaining agreement that may govern other employment matters.

The NFLPA maintains that other case law supports the proposition that a finding that an employee be required to forfeit rights that otherwise may be exercised under state workers' compensation laws would be contrary to law and must be vacated, citing to *United Paperworkers Int'l Union v. Allied Paper, Inc.*, Civ. No. F 86-425, 1987 WL 33822, at *3-4 (N.D. Ind. May 29, 1987), *amended by* 1987 WL 33823 (N.D. Ind. Sept. 23, 1987) ("*United Paperworkers Int'l Union*").

The NFLPA avers that these principles have been specifically applied to professional athlete cases in California to preclude athletes from waiving California's unwaivable statutory right to seek workers' compensation benefits in that state, citing to *Brache v. Tampa Bay Storm*

(Cal. Case No. ADJ1908964) ("*Brache*") that was recently upheld by the Workers Compensation Appeals Board of California, thereby making that ruling the law of the entire state. *Brache v. Tampa Bay Storm*, WCAB (Case No. ADJ1908964) (August 30, 2010).

The NFLPA points to another workers' compensation decision in California, *Vaughn Booker v. Cincinnati Bengals* (October 6, 2009) ("*Booker*") that it characterizes as "most relevant" as it involves an NFL player filing in California and the Workers' Compensation Judge refusing to enforce the provision in Booker's Player Contract allegedly conferring the state of Ohio with exclusive jurisdiction finding that: "An injured worker may not waive his right to receive workers' compensation benefits under the California Labor Code by contract or agreement, expressed or implied, . . . (citing Code § 5000)" Id. at 16 (vacated on other grounds). It says that if the State of California is willing to strike down an NFL Player Contract's clause which purports to require filing in the Club's home state, it would do so in the present Players' Contracts that involves a choice of law clause only.

The NFLPA points to the case of the *Cincinnati Bengals v. Abdullah*, No. 1:09-CV-738, 2010 WL 1857270 (S.D. Ohio, Apr. 28, 2010), in which the Bengals sued up to 20 players contending that they violated their NFL Player Contracts by seeking Workers' Compensation benefits in California. The state trial court granted the Bengals a Temporary Restraining Order and then a Preliminary Injunction enjoining the players from proceeding with their claims in California. The matter was removed to federal court, where the preliminary injunction was dissolved, default judgments against the players were vacated and the Bengals were compelled to arbitrate their disputes. The NFLPA reasoned that the court "strongly signal(ed)" that the players had a right to seek benefits in California, regardless of any purported waiver in the Player Contract. (*Id.* at *5-6)

The NFLPA also notes that Elkouri stated that the applicability of external, substantive law is to be decided by the arbitrator unless the parties have limited the arbitrator in that regard, *Id.* at 488-89, which has not been done here. It points out that the treatise also advises that "clearly defined law will usually be given more consideration than unsettled and uncertain law or rules based on controversial views as to what should be public policy." *Id.* at 496. Along these lines, it says, the State of Illinois provides a "clearly defined law" to support the Players' right to file claims in California. Section 1(b)(3) of the Illinois Workers' Compensation Act states clearly and unequivocally that an Illinois employee can file a workers' compensation claim in

any state where he or she claims to have been injured, which is the case for all three players in the present case.

It further contends that the Arbitrator is not bound by and should reject Arbitrator Sharpe's decision in Matthews, as it is not controlling, was "wrongfully decided," and is "non-precedential." The NFLPA claims that Arbitrator Sharpe ignored both the laws of the state of California and prior decisions of the U.S. Supreme Court in his holding. Although he found the disputed clause to be a choice of law clause only, his remedy served to confine Matthews to pursuing compensation benefits in the State of California while forcing him to withdraw that claim if and when the California court chose to apply California law instead of Tennessee law. *Id.* at 18. This award produced a nonsensical result.

The NFLPA further argues that the confirmation of the award by the Federal Court in the Southern District in California should be irrelevant to this instant award, because the Court "expressly ruled that it would not 'hear claims of factual or legal error' and would confine itself to reviewing only "the procedural soundness of the arbitral decision" citing to Slip. Op. at 3. (NFLPA Supp. Brief, p. 2)

In light of this finding, the Court did not hold that Matthews was correct, or made sense, or that it was constrained by the factual findings and legal understanding of the arbitrator. It maintains that it will be appealing the *Matthews Order* to the Ninth Circuit Court of Appeals and that it would be inappropriate for this Arbitrator to rule in favor of the Club based upon the findings of Matthews; rather, there is an independent duty of the arbitrator to assess the merits of the grievance and issue a ruling based upon her independent analysis citing to the *Code of Professional Responsibility For Arbitrators Of Labor-Management Disputes.*[8]

The NFLPA says that the *Matthews Order* was based upon the "confused speculation" that the player "may not be eligible for benefits in the first instance" which is unfounded, citing again to *Brache* that held that under federal law, a worker may not waive workers' compensation benefits through a collective bargaining agreement. Also it points out that in *Booker*, the California Workers' Compensation Board found the provision in a veteran NFL Player's Contract with the Bengals that prohibited him from filing in any state but Ohio to be void and unenforceable in California, relying in part upon Labor Code §5000. Both *Brache* and *Booker*

[8] "An arbitrator must assume full personal responsibility for the decision in each case decided." *See* http:www.naarb.org/code.hmtl, Sec. (2)(G)(1).

establish that California courts will not enforce a professional football player's waiver of right to seek workers' compensation benefits.

As the *Matthews Order* was recently issued and still under challenge in the U.S. Circuit Court of Appeals, the NFLPA says, Matthews cannot be regarded as controlling arbitral precedent or the "law of the shop" citing In the Matter of Arena Football League, LLC et al v. Arena Football League Players Association, (2009) (Clark, Arb.)("[I]t is generally agreed that labor arbitrators acting within their respective jurisdictions are not strictly bound by the principles of *stare decisis* and *res judicata*.").

It cites to Elkouri at 596-97, noting that courts have held that "black letter" law concerning arbitration awards, as enunciated by the U.S. Supreme Court in *W.R. Grace & Co. v. Rubber Workers Local 759*, (footnote omitted) is that they are not entitled to the same precedential effect as judicial decisions, nor are they considered to be conclusive or binding in subsequent arbitration cases involving the same contract language, but different incidents or grievances. As the CBA is silent as to the binding nature of any arbitral precedents, the Arbitrator may issue her own ruling without concern as to any precedential effect from the Matthews Award or *Order*.

The NFLPA further contends that the proper construction of Paragraph 33 in the Players' Contracts that it is a "choice of law" clause and allows for the filing of workers' compensation claims in California, thereby precluding Illinois as the exclusive forum for filing the players' claims, citing to *Hines v. Indus. Acc. Comm. of State of Cal.*, 182 Cal. 359, 359 (1920).

It notes that in *Bowen v. Workers' Compensation Appeals Board*, 86 Cal. App. 4th 15, 26-27 (Cal. Dist. Ct. App. 1999 ("*Bowen*"), the California Court of Appeals relying on *Alaska Packers* held that an employer could not rely on "a contract clause to defeat an employee's claim for "benefits" because doing so "would violate Section 5000 prohibiting contracts exempting employers from liability under California Workers' compensation Act . . . . *Id.* at 26-27.

The NFLPA avers that Paragraph 33 of the Players' Contracts impacts upon the choice of law question only in their workers' compensation claims, and not the choice of forum, with the latter requiring that the substantive law of the state in question be applied to the issue in dispute. It points out that a clause mandating the parties to file suit in New York as a choice of forum clause requires that the parties must file suit in New York, but that the judge can apply any state's law to the controversy as required by New York's choice of law rules, citing *Ming Hsu v.*

Vtek Energy, Inc., 2007 WL 1232056, *3n. 3 (N.D. Cal. April 26, 2007); *Anderson v. Canarail, Inc.*, 2005 U.S. Dist. Lexis 22455, *7-8 (S.D.N.Y. October 6, 2005); *Aon Corp. v. Utley*, 863 N.E.2d 701, 706 (Ill App. 1st Dist. 2007); *Cummings v. Caribe Marketing & Sales Co., Inc.*, 959 F. Supp. 560, 564 (D.P.R. 1997). The NFLPA says the Club ignores these elementary principles of law in the instant matter.

It also maintains the Club failed to include a choice of forum provision in Paragraph 33 of the Respondent Players' Contracts regarding workers' compensation claims. Even though the clause contains the word "jurisdiction" it does so in a manner that relates only to "injury-related claims" and not "Workers' Compensation" claims. The language on its face, therefore, requires the application of "the Illinois' Workers Compensation Act" in the case of "Workers Compensation Claims" which is a statute that does not preclude the players from filing workers' compensation claims against the Club in California or any other state. If the Club intended to make Illinois the exclusive forum or jurisdiction for workers' compensation disputes under the Players' Contracts, then this clause could have clearly stated so, although such a clause would been nonetheless would have been void.

The NFLPA says that any argument that workers' compensation claims are a subset of "injury related claims" would be ambiguous at best and thus should be interpreted against the Club, since its attorney testified that he drafted the clause. The first part of the clause in the second sentence is also a nullity since relevant provisions of the CBA and the standard NFL Player Contract require that the arbitration procedures of the CBA be the "exclusive jurisdiction" for "injury-related claims," citing Articles X and XII, Paragraph 19 of the NFL Player Contract,[9] and not the Illinois Commission, since the CBA "supersedes any conflicting provision in a player's contract." It says, therefore, that there can be no "exclusive jurisdiction" vested in the Illinois Commission in this case, even for "injury related claims" as that term is used in the "Jurisdiction and Governing Law" clause of the Respondent Players' Contracts.

The application of Illinois law to the Players' claims fully supports their California filings, as is demonstrated by a series of cases beginning with the U.S. Supreme Court's decision in *Ohio v. Chattanooga Boiler & Tank Co.*, 289 U.S. 439 (1933). Justice Brandeis, writing for

[9] 19. DISPUTES. During the term of any collective bargaining agreement, any dispute between Player and Club involving the interpretation or application of any provision of this contract will be submitted to final and binding arbitration in accordance with the procedures called for in any collective bargaining agreement in existence at the time the event giving rise to any such dispute occurs.

the U.S. Supreme Court, held that "(t)he [Tennessee] statute does not preclude recovery under the law of another state." *Id.* at 443. The NFLPA maintains that it has been made clear by the U.S. Supreme Court ever since 1933 that, if the "internal laws" of a state permit employees in that state to file workers' compensation claims in other states, the employee cannot be precluded from doing so, citing *True v. Amerail Corp.*, 584 S.W. 2nd 794 (Tenn. 1979).

The NFLPA also contends that in a case even more relevant to the grievances here, the U.S. Supreme Court upheld the right of an Illinois employee to file a workers' compensation claim in another jurisdiction. In *Industrial Commission of Wisconsin v. McCartin*, 330 U.S. 622 (1947), an employee was injured in Wisconsin under a contract of employment with an Illinois employer and the employee filed for workers' compensation benefits in both states. The U.S. Supreme Court found for the employee, . . . (and relying on its prior ruling in *Chattanooga Boiler*). . . "Only some unmistakable language by a state legislature or judiciary would warrant our accepting such a construction. Especially is this true where the rights affected are those arising under legislation of another state and where the Full Faith and Credit provision of the United States Constitution is brought into play." (*Id.* at 628).

In the present case, it says, the "unmistakable language" of the Illinois Section 1(b)(3) of the Illinois Workers' Compensation Act allows for the filing of benefits in another state by a person employed in Illinois.[10] The NFLPA maintains that all three of the Players have stated in their California workers' compensation claims that they were injured in California or that they incurred injuries that were aggravated in California and thus are clearly qualified to file in California pursuant to the Illinois Workers' Compensation Act. It also argues that two of the Respondent players - - Odom and Worrell - - had "contracts for hire" with the Club that were made in California, as their agents were located in California when their contracts were negotiated.

It emphasizes that the "manipulations" by the Club's attorneys in this case intentionally deprived Players Haynes and Worrell of their Illinois benefits by mislabeling salary payments as workers' compensation settlements in their Illinois workers' compensation cases. Such actions resulted in Player Worrell paying for his own workers' compensation benefits in Illinois because

[10] An employee or his dependents under this Act who shall have a cause of action by reason or any injury, disablement, or death arising out of and in the course of his employment may elect to pursue his remedy in the State where injured or disabled, or in the State where the contract for hire is made, or in the State where the employment is principally localized.

he accepted $150,000 of salary that he would have otherwise received under his old contract. Instead, that amount was used to extinguish his right to receive any Illinois Workers' Compensation benefits. Also, the Club forced Player Haynes to accept workers' compensation benefits of $250 as a "settlement" based upon payment of two "game checks" representing two-seventeenths of Haynes' salary for the season in question. While the settlement was based wholly on salary, the Club's General Counsel insisted that ". . . in exchange for the nominal consideration of $250 . . . ." Haynes would also have to give up all of his Illinois workers' compensation benefits. As Stein testified, he believed Haynes would have a claim to those benefits "because he had injuries with us at some point in his career"

The NFLPA maintains that in both Haynes's and Worrell's cases, the Club's General Counsel directed the Club's workers' compensation counsel to prepare written submissions to the Illinois Industrial Commission. Both Players agreed to "settlements" of workers' compensation claims that they themselves had never filed, although they appeared "pro se" at the hearings. They received settlement money based upon payment of salary under their contracts and not pursuant to the Workers' Compensation Act in Illinois or in any other jurisdiction.

In view of the foregoing, the NFLPA and Players Michael Haynes, Joe Odom and Cameron Worrell request that the Arbitrator enter an order denying the grievances in this case for the reasons that: (1) The "Jurisdiction and Governing Law" clause of the Respondent Players' Contracts is in violation of both Section 5000 of the California statute and rulings of the U.S. Supreme Court interpreting that statute; and/or that (2) Both the clause itself and the law of Illinois permit the players to file workers' compensation claims in another state.

OPINION

Based upon the evidence of record and the arguments of the parties, the grievances of the NFLMC/Club are sustained, with the requested remedy denied in part. Players Haynes, Odom and Worrell did not violate Paragraph 22 of their Players' Contracts, the choice of law provision, as Illinois law does not preclude the filing of workers' compensation claims in states other than Illinois. Paragraph 33 of the Contracts, however, does preclude filing for Workers' Compensation claims outside the State of Illinois, as that paragraph vests "exclusive jurisdiction" to the State of Illinois with respect to such filings. Accordingly, it is hereby declared and ordered pursuant to Article IX, Section 8 of the collective bargaining agreement, that Players Haynes,

Odom and Worrell are to cease and desist the pursuit of their Workers' Compensation claims in the State of California through the withdrawal of such claims before the applicable tribunal. If they are to pursue Workers' Compensation claims, they are ordered to comply with the language set forth in Paragraphs 33 of their Players' Contracts.

The findings in this matter are two-fold. First, Matthews is the "law of the shop" and the *Matthews Order* has raised it to the level of "preclusive effect" on the instant matter. Second, even absent the preclusive effect of Matthews, the Players breached Paragraph 33 of their Contracts when read as a whole required filing workers' compensation claims in the State of California.

"The Law of the Shop"

With respect to the question of whether Matthews is the law of the shop, there can be no question that it dealt with substantially similar provisions at issue in this matter- - the interpretation of choice of law and choice of forum provisions in an NFL Player's Contract - - when that player files a workers' compensation claim in California. In both Matthews and the instant matter, the same parties proffered nearly identical legal arguments with respect to the impact, if any, of NFL precedent, state statute, and federal law, among other authorities. It is well-settled by NFL precedent and case law that under the foregoing circumstances the "law of the shop" has been created.

With respect to NFL precedent, perhaps the most explicit and direct guidance regarding the status of an NFL arbitration award once confirmed by a federal court has been provided by Arbitrator Shyam Das[11] in Lelie (2007). Arbitrator Das held that an arbitration decision must be considered the "law of the shop" if found to be "legally defensible" in court as follows:

> The Williams decision was unsuccessfully challenged in Federal District Court in Florida on the issue of liquidated damages. *Absent a controlling court decision compelling a finding that the analysis and rationale in Williams is legally indefensible, it is the law of the shop.* The parties are free to change that "law" by agreement, as they have done in certain respects in the 2006 CBA. (Emphasis added)(Award at 25).

[11] Arbitrator Shyam Das has issued a number of NFL decisions regarding the interplay of the CBA and state workers' compensation statutes and therefore is relied upon nearly exclusively in this instant decision with respect to precedent on this issue.

The *Matthews Order* did not find the Matthews Award to be "legally indefensible" for a number of reasons. First, it held that Matthews did not "manifestly disregard[ed] the Full Faith and Credit Clause of the United States Constitution . . . [under the legal standard of] . . . the manifest disregard exception."[12] (*Order* at 5). Second, it held that the Full Faith and Credit Clause was not disregarded because the U.S. Supreme Court's decisions in *Alaska Packers* and *Pacific Employers Insurance Co.* underscored the "[i]mportance of determining each states' interest in the matter before determining whether one state should apply the law of another." (*Order* at 10). Third, it found that Matthews was not "contrary to public policy" with respect to California Labor Code §5000 because it found that "[e]xisting law does not provide an explicit, well-defined, dominant public policy explicitly militating against the arbitration award preventing Matthews from obtaining relief under California law." It concluded from this reasoning that "[t]he fact that California's policy is limited to certain situations belies the existence of a blanket policy."(*Order* at 8).

Accordingly, the language of the *Order* leads to the reasonable conclusion that the Court found Matthews to be "legally defensible." Under the reasoning of Lelie, therefore, Matthews must be considered to be the "law of the shop." Furthermore, Matthews has taken on "preclusive effect" because of the issuance of the *Matthews Order*, as noted in the Elkouri treatise at 600[13] (when a subsequent arbitration decision involves the same parties and a "materially similar contract provision" it has "preclusive effect"[citations omitted]). Moreover, this principle of "preclusive effect" has been confirmed by various federal circuit courts of appeals.[14]

There is further NFL precedent in the area of workers' compensation and the law of the shop regarding the supremacy of the language of the CBA over workers' compensation statutes. In Bills/Jets/Panthers, which dealt with the question of how certain dollar offsets to clubs would

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[12] The Arbitrator recognizes that the "[p]arties and the Court agree that the arbitrator did not consider the Full Faith and Credit clause when rendering its decision. (citation to motion omitted). Plaintiff takes it a step further and argues that the failure to consider is a manifest disregard of the law and warrants vacatur. (Citation to motion omitted). But this argument is flawed; while it references the legal standard, it ignores the actual law. It is not clear from the record "that the arbitrator []recognized the applicable law and then ignored it." Comedy Club, 553 F .3d at 1290. Thus, the Court cannot vacate the arbitration award on this basis." (*Order* at 4-5).

[13] There can be no question that both parties, who relied upon this treatise throughout their briefs, have recognized this authority as well regarded in the area of labor-management relations and law.

[14] *Longshoremen (ILA) Local 1351 v. Sealand Service*, 214 F. 3d 566 (5th Cir. 2000); *John Morrell & Co. v. Food and Commercial Wokers Local 304A*, 913 F.2d 544 (8th Cir. 1990).

be handled in state workers' compensation matters, and whether the arbitral precedent on this question was the law of the shop, Arbitrator Das held as follows, in relevant part:

> Where the application of state law turns on what is provided in the CBA, there is an issue as to whether a state tribunal is free to interpret a provision in the CBA -- in this case Paragraph 10 - - on its own without regard to what arbitrators have held or to the law of the shop as determined by arbitrators. In each of these instances, however, the preemption issue is one to be decided by the courts.
>
> What can appropriately be done here, however, is to issue a declaration that: Freeman holds that Paragraph 10 of the NFL Player Contract provides only for a time offset, and not for a dollar-for-dollar offset; that this is a benefit or right to the player, as well as the Club; and that this is the law of the shop under this CBA and is binding on all the Clubs. . . . *the NFLPA has a legitimate interest in obtaining such a declaration because the parties have agreed that the arbitrator, not a court or other tribunal, is to be the final determiner of what a provision in the CBA means and what constitutes the law of the shop.* (Emphasis added)(Award at 21-22).

Arbitrator Das has made clear, through a "declaration" in Bills/Panthers/Jets, that a "law of the shop" exists with respect to the primacy of the workers' compensation provisions, as opposed to any state workers' compensation law. He also held that the duty of the NFL arbitrator was to uphold the language of the CBA, even if such an act requires ordering the Clubs to cease and desist the implementation of state law, a action that he did not "take lightly." This case makes obvious that the role of the arbitrator is one of "gatekeeper of the CBA" when faced with a choice of applying that language or that of state statutes.

Finally, with respect to the "law of the shop" issue, the NFLPA argues that the *Order* made clear that it covered only the "procedural soundness of the arbitral decision" and that the Union shall be appealing the Court's *Order* to the Ninth Circuit Court of Appeals. It reasons, therefore, that the Order was not, in sum and substance, a decision of court of last resort. As a result, it maintains, this Arbitrator is free to conduct her own review of the statutes and case law as the Court failed to do so.

In this Arbitrator's opinion, once a party subjects itself to the jurisdiction of a federal court for the review of an arbitration award and the appeals process is in motion, as is the case here, then an arbitrator is obligated under NFL arbitral authority and well as federal case law to

defer to the courts on questions of state, federal and constitutional interpretation. Moreover, it is common sense that in the "pecking order of expertise" on these subject matters, the opinion of a federal district court judge, whose decisions often constitute federal case law, should carry more weight than that of a labor and employment arbitrator once the appeal process has been triggered.

Moreover, if a party believes that a federal district court judge's decision is in error with respect to the interpretation of federal law, public policy and the U.S. Constitution, then the aggrieved party has the opportunity to challenge that judge's opinion at a higher level of judicial expertise, as has been done here.

Paragraphs 22 and 33

Assuming *arguendo* that Matthews and the *Court Order* did not serve as "preclusive effect" upon this matter, the evidence of record is nonetheless persuasive that the Players' Contracts had been violated by a filing for workers' compensation in the state of California, in light of the language of Paragraph 33 of those Contracts.

As a threshold issue, the primary role of an Arbitrator in an Article IX, Section 8 matter is worth addressing, in light of the arguments raised by the parties on that question. In 2005, Arbitrator Das set forth the parameters of that role in NFLPA v. Dallas Cowboys and the Houston Texans ("Texas Clubs") in which he held, in relevant part:

> My authority as the Arbitrator in this case is derived from the CBA. As the parties' designated contract reader,[15] I am empowered - - and required - - to determine whether the Clubs' actions protested in this grievance violate the terms of the CBA, and, if they do, to determine the appropriate remedy, consistent with the limitations set forth in Article IX, Section 8. (Award at 16).

The role of "contract reader" is one that must be assumed when interpreting the provisions of a CBA. In this matter, it is the actions of the Players under their Contracts and not under the CBA that are disputed by the Club; however, the same reasoning applies with respect to the primary role of an arbitrator when interpreting the NFL Player Contract that is part of the

[15] Arbitrator Sharpe followed the reasoning of Arbitrator Das in the Matthews Award when he held that "as the parties contract reader, the Arbitrator's responsibility is to interpret and enforce the contractual obligations undertaken by the parties." (Award at 14).

CBA and is incorporated therein as part of Appendix C. My authority is the same, therefore, with respect to the power to interpret the individually negotiated terms under the Player Contract.[16] Moreover, under Article IX, Section 8 of the CBA, the Arbitrator's authority has limits, as she does "[n]ot have the . . . authority . . . to add to, subtract from, or alter in any way the provisions of this Agreement or any other applicable document."

Arbitrator Das, who has issued a number of decisions in workers' compensation matters, further clarified the role of the arbitrator when dealing with cases where the language of the CBA is at variance with state statutory language. In NFLPA v. Dallas Cowboys and Houston Texans (2005)(Das, Arb.)("Texas Workers' Comp."), Das held that Article LIV of the CBA "trumped" the Texas Workers' Compensation law with respect to the election of workers' compensation benefits. In that case, the Clubs were directing injured players to elect coverage either under the Texas statute or the CBA, which was an action in accordance with state law. Das held that the language of the CBA would control over state law as follows, in relevant part:

> I do not lightly direct the Texas Clubs to cease taking action that conforms to the provisions of state law, but I do not see how the Clubs' action in requiring injured players to make the disputed election can be squared with the terms of the CBA, which I am compelled to follow." (Award at 22).

Furthermore, in another case involving workers' compensation, Arbitrator Das in NFLPA v. Buffalo Bills, New York Jets, and Carolina Panthers (2007)("Bills/Jets/Panthers") commenting on his Texas Workers' Comp. decision, said that he recognized "[t]hat the arbitrator did not have the authority to determine what the consequences of the decision would be in a state workers' compensation proceeding. That does not mean that there would be no consequences, but it does mean they would have to be determined in a different forum." (Award at 18).

It is clear from the NFL precedent set forth in the foregoing workers' compensation cases that any interpretation of state workers' compensation law is to be left to state or other authorities and not to the arbitrator, who is confined to the interpretation of the provisions of the CBA and the Players' Contracts.

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[16] Matthews v. Tennessee Titans (Sharpe, Arb.)(2010)(enforcing individually negotiated contractual provisions is obligation of Article IX arbitrator); see also New York Jets v. Pope (2008)(Townley, Arb); Owens v. Philadelphia Eagles (2008)(Das, Arb.); Miami Dolphins v. Williams (2004)(Block, Arb.).

Now the disputed language of the Players' Contract, Paragraphs 22 and 33, when read as a whole, provide the applicable choice of law and a choice of forum language to be applied to this dispute. Paragraph 22, "Law" states that: "This contract is made under and shall be governed by the laws of the State of Illinois." Such language is clear and unambiguous that the law of Illinois applies to the Player Contracts. It is noted, however, that Section 1 (b)(3) of the Illinois Workers' Compensation Act provides for the filing of benefits in another state by persons employed in Illinois. Accordingly, there is no prohibition under Paragraph 22 standing alone for a player with the Club to file a workers' compensation claim in California.

It is Paragraph 33, "Jurisdiction and Governing Law" that forms the basis for the finding that the Players agreed to be limited by Contract to the filing of their claims in the State of Illinois. This paragraph is comprised of two sentences, with the first serving essentially as a restatement of the choice of law found in Paragraph 22, while the second sentence addresses the choice of forum question.

The first sentence states, in relevant part, that "[s]hould any dispute , claim . . . . arise concerning rights or liabilities arising between the relationship between the Player and the Club, the parties hereto agree that the law governing such dispute *shall be the law of the State of Illinois*." (Emphasis added). Although this sentence essentially repeats the choice of law language found in Paragraph 22, it reinforces in simple language that the parties specifically agreed that the law of Illinois shall apply to "any dispute." A workers compensation claim constitutes a "dispute" and thus is subject to the law of Illinois.[17]

The second sentence of this Paragraph, however, contains two phrases that must be read as a whole, as well as read as an integrated part of the entire Paragraph, in order to provide a reasonable interpretation. When such is done, the meaning of the sentence based upon certain contract interpretive principles leads to the conclusion that the sentence is a choice of forum provision as it discusses "exclusive jurisdiction" for all "disputes" being that of the "Illinois Industrial Commission"[18] whether such claims be "injury related" or "Workers' Compensation claims governed by the Illinois Compensation Act."

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[17] Again, it is recognized that the Illinois Workers' Compensation Act provides for the filing of claims by Illinois employees in states other than Illinois.

[18] As noted by the NFLMC/Club in its brief, the Illinois Industrial Commission has changed its name to the "Illinois Workers' Compensation Commission." 820 ILCS 305/13.

In her role as the "reader of the contract" this Arbitrator began her analysis of Paragraph 33 with a reliance on certain of the well-accepted maxims of contract interpretation, an approach supported by the courts and arbitrators when attempting to determine the meaning of contested language. The arbitral adoption of the "preference to the reading as whole" principle[19] when analyzing the meaning of provisions found in collective bargaining agreements has been emphasized in the Elkouri treatise as follows: "The primary role in construing a written instrument is to determine, not alone from a single word or phrase, but from the instrument as whole, the true intent of the parties, and to interpret the meaning of a questioned word, or part, with regard to the connection in which it is used, the subject matter and its relation to all other parts or provisions (citation to arbitration decisions omitted)." Elkouri at 462.

Similarly, in the Elkouri treatise, there is a second contract interpretative principle relied upon by courts and arbitrators when determining the meaning of disputed contract language known as "*noscitur a sociis*" that is described as "a word takes on coloration from its association with accompanying words." Elkouri at 469. The application of this principle to both the meaning of the second sentence, as well as Paragraph 33 in its entirety, results in a linking of the phrases contained in these sentences such as the "law of the State of Illinois"; "exclusive jurisdiction of the Illinois Industrial Commission"; as well as "Workers' Compensation claims." When these "accompanying" phrases are "associated" with each other, the conclusion is one of a "single thread of thought" running through the sentence of an "exclusive jurisdiction" for all injury related and Workers' Compensation claims under the Illinois Industrial Commission and pursuant to Illinois law.

Furthermore, this "reading of the whole" approach is consistent with the principle set forth in the U.S. Supreme Court's decision in *Walsh v. Schlecht*, 429 U.S. at 408, that held when interpreting a contract it is preferable to give "[e]ffect to all provisions" of a contract instead of arriving upon an interpretation that would "render . . . [certain] provision[s] meaningless or ineffective...." *Id.* In addition to the application of the foregoing contract construction principles, the ordinary sentence construction cannot be overlooked, as the first phrase of the second

[19] As noted in the Elkouri treatise, *Id.* at 462, the *Restatement (Second) of Contracts* §202 (1981) provides as follows, in relevant part: "Meaning is inevitably dependent on context. A word changes meaning when it becomes part of a sentence, the sentence when it becomes part of a paragraph. A longer writing similarly affects the paragraph . . .Where the whole can be read to give significance to each part, that reading is preferred . . . .

sentence refers to the "exclusive jurisdiction of the Illinois Industrial Commission" with respect to "injury related claims" which is then followed by the conjunctive "*and*" with immediate reference to "Workers' Compensation claims and the Workers' Compensation Act."[20] (Emphasis added). The simple or plain construction of this sentence is that the "exclusive jurisdiction" of the "Illinois Industrial Commission" applies both to "injury related claims" *and* to "Workers Compensation claims" as well.

Moreover, the claim in the Club's post-hearing brief that the NFLPA had a practice of advising players to contract workers' compensation attorneys located in the state where their team is located, based on the post-hearing deposition testimony of Agent Elbert Lee, was unrefuted.[21] This claim supports the proposition that a state-based approach to the filing and payment of workers' compensation benefits is consistent with the language of Article LIV, Section 1 of the CBA. This language requires if a club is located in a state where workers' compensation coverage is not compulsory or the Club is excluded from it, "[a] Club will either voluntarily obtain coverage *under the compensation laws of the state* or otherwise guaranteed equivalent benefits to its Players . . . . (and that) . . . . such benefits will be equivalent to those benefits paid *under the compensation law of the state in which his Club is located.*" (Emphasis added).

Also, Article LIV serves as some indication that the parties' recognized a nexus between the Club's home location and the workers' compensation benefits due to players who are eligible to collect those benefits in that state. The Arbitrator does not view the existence of Article LIV in the CBA to be evidence that Paragraph 33 is "null and void" as essentially argued by the NFLPA. There is a certain overlap of coverage among the provisions found in the CBA and a Player's Contract, such as those covering injury grievances, club rules, and disputes. Moreover, the provisions of the Players' Contract clearly state that if there is conflict between the two documents, the CBA shall prevail. There is no conflict here between Paragraph 33 and Article LIV of the CBA.

This Arbitrator agrees with the Club that the issue is not whether the Illinois law allows an Illinois employee to file for a workers' compensation claim in California, as it is clear that

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[20] As noted in Random House/Webster's Grammar, Usage and Punctuation Guide at 62 (2001), "coordinating conjunctions" include the word "and" serve to "connect(s) sentence parts (individual words, phrases, or clauses) of *equal rank.*" (Emphasis added).

[21] Post-hearing brief of the Club/NFLMC, p. 17, "Lee Dep." at 25:17 – 26:24).

Section 1 (b)(3) of the Illinois Workers' Compensation Act permits an Illinois employee to file claims in another state. The question is whether their NFL Player Contracts prohibit them from filing in California once they have contracted to choice of law and choice of jurisdiction provisions that require them to file such claims in Illinois. The Players agreed in their Contracts to limit themselves to the exclusive jurisdiction of Illinois when filing workers' compensation claims which is a bargained-for provision.

Accordingly, the foregoing reasons establish the basis for the conclusion that Paragraph 33 of the Players' Contracts require that if a player files a workers' compensation case, he must do so pursuant to the law of the State of Illinois and be subjected to the "exclusive jurisdiction" of the Illinois Industrial Commission, now known as the Illinois Workers' Compensation Commission

In addition, in order to invalidate a forum selection clause, the challenging party must assume a "heavy burden." *Friedman* at 636 F. Supp. 690 (N.D. Ill. 1986). Moreover, certain Illinois case law supports the finding that the choice of forum clause in the Players' Contracts in Illinois is a "reasonable" one, as it meets a majority of the multi-factor test set forth in Calanca, 510 N.E.2d at 23-24, because the Players' Contracts make clear that (1) Illinois law "[g]overns the formation and construction of the contract"; (2) the Club is and has been located during the relevant time period in Illinois; (3) the Players executed and performed their Contracts by playing for the Club in Illinois;[22] and (4) the Club negotiated for the "exclusive jurisdiction" forum of Illinois and would incur additional expense by representing the Club in fora other than Illinois; and (5) there is no evidence that the Players' Contracts were procured by "fraud or overreaching" or that unequal bargaining power existed between the Players who were represented and the Club.[23]

Along similar lines, the Player Contracts' choice of law and forum provisions would be supported by other Illinois case law, one involving the "materially greater interest" test, whereby factors such as: "(1) the place of contracting; (2) the place of negotiation of the contract; (3) the place of performance; (4) the location of the subject matter of the contract; and (5) the domicile,

[22] The fact that certain of Player Haynes' Contracts were signed by his agent outside of Illinois is not a material factor with respect to meeting the test.

[23] There was testimony and records produced by the NFLPA at the hearing that the Club's General Counsel, as well as its outside counsel for workers' compensation claims, essentially forced Player Worrell and Haynes to accept their earned salaries as settlement for their filed Illinois worker compensation claims. Such allegations are unavailing as the record is unrefuted that the Players were both represented at the time of the claimed incidents.

residence, nationality, place of incorporation and place of business of the parties, all weigh in favor of the Club, pursuant to T-Bill Option Club v. Brown & Co. Secs. Corp., No. 88 C 8461, 1990 WL 103584, at *3 (N.D. Ill. July 2, 1990), *citing Restatement (Second) of Conflict of Laws* § 188 (1971).

Nor is there any evidence that the Players would be deprived of their opportunity to file for workers' compensation benefits or be expected to waive such benefits; rather, they are being held to their contractual promise to apply for the benefits in the forum of the State of Illinois. As a result, there is no deprivation of "minimum [state law] standards" because the issue is one only of forum selection and identification of the locale of where the employee will be granted the right to vindicate any claim. *See Welch v. Nightingale Nurses,* 2009 WL 153197, at *4 (a contractually agreed upon Florida forum selection clause is upheld as it "does not deprive [the plaintiff] of her day in court; it simply compels her to have her day in court in a forum previously agreed to by the parties.")

Finally, in light of Matthews, a similar remedy is adopted, taking into account the different factors regarding the forum selection clause that lead to the arbitral retention of jurisdiction to ensure that Tennessee law would be applied to any claim filed in California, as well as this Arbitrator's interpretation of the language of Article IX, Sections 8 and 10.

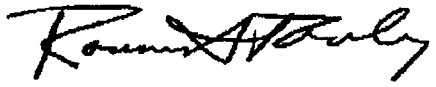
With respect to the requested remedy by the Club, this Arbitrator does not find any authority in Article IX, Section 8 or Section 10 for the following: the retention of jurisdiction over a matter until proof of the ordered remedy is produced; the imposition of a cease and desist remedy "with prejudice" or the awarding of legal costs and fees to the Clubs in the defense of the workers' compensation claims in California. The foregoing remedial claims are therefore denied.

Once the Arbitrator issues an Award, the parties are well aware that it is to be followed and jurisdiction over the matter is extinguished, absent consent from the parties, which did not occur in this matter.

AWARD

Based upon the evidence of record and the arguments of the parties, the grievances of the NFLMC/Club are sustained, with the requested remedy denied in part. Players Haynes, Odom and Worrell did not violate Paragraph 22 of their Players' Contracts, the choice of law provision, as Illinois law does not preclude the filing of workers' compensation claims in states other than Illinois. Paragraph 33 of the Contracts, however, does preclude filing for Workers' Compensation claims outside the State of Illinois, as that paragraph vests "exclusive jurisdiction" to the State of Illinois with respect to such filings.

Accordingly, it is hereby declared and ordered pursuant to Article IX, Section 8 of the collective bargaining agreement, that Players Haynes, Odom and Worrell are to cease and desist the pursuit of their Workers' Compensation claims in the State of California through the withdrawal of such claims before the applicable tribunal. If they are to pursue Workers' Compensation claims, they are ordered to comply with the language set forth in Paragraphs 33 of their Players' Contracts.



April 21, 2011
Larchmont, NY

Rosemary A. Townley, Esq.
Article IX, Non-Injury Grievance Arbitrator