

No. 08-1214

In The Supreme Court of The United States

GRANITE ROCK COMPANY,

Petitioner,

v.

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS & TEAMSTERS LOCAL 287,**

Respondents.

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

BRIEF FOR PETITIONER

ARTHUR R. MILLER
Of Counsel

NEW YORK UNIVERSITY
SCHOOL OF LAW
40 Washington Square South
Vanderbilt Hall 409D
New York, NY 10012
Telephone: 212.992.8147

GARRY G. MATHIASON
Counsel of Record

ALAN S. LEVINS
ADAM J. PETERS
RACHELLE L. WILLS
SOFIJA ANDERSON
LITTLER MENDELSON
650 California Street
20th Floor
San Francisco, CA 94108
Telephone: 415.433.1940

I. QUESTIONS PRESENTED FOR REVIEW

- A.** Does a federal court have jurisdiction to determine whether a collective bargaining agreement was formed when it is disputed whether any binding contract exists, but no party makes an independent challenge to the arbitration clause apart from claiming it is inoperative before the contract is established?
- B.** Does Section 301(a) of the Labor Management Relations Act, which generally preempts otherwise available state law causes of action, provide a cause of action against an international union that is not a direct signatory to the collective bargaining agreement, but effectively displaces its signatory local union and causes a strike breaching a collective bargaining agreement for its own benefit?

CORPORATE DISCLOSURE STATEMENT

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

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PETITIONER'S BRIEF

OPINION BELOW

The Ninth Circuit opinion, *Granite Rock Local 287*, appears at 546 F.3d 1169 (9th Cir. 2008). The opinions of the District Court regarding arbitration and Section 301 jurisdiction are unreported.

JURISDICTION

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

STATUTORY PROVISIONS INVOLVED

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

Suits for violations of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a).

II. STATEMENT OF THE CASE

Since 1900, Granite Rock has been in the business of producing concrete and other building materials. It has facilities throughout Northern California, employs about 800 employees, and maintains fifteen separate labor contracts with more than five unions, including Teamsters Local 287 (the the “Local,” or “Local 287”).¹ Granite Rock has been a union employer for more than 70 years.²

On July 2, 2004,³ in the midst of a strike, Granite Rock (also the “Company” or “Petitioner”) and Local 287 reached a “tentative agreement” for a successor collective bargaining agreement after an all-night bargaining session. (JA 377.) Granite Rock and the Union agreed the tentative agreement would not be binding unless and until it was ratified by bargaining unit employees. (*Id.*) Local 287’s business agent, George Netto, promised to hold a ratification vote later that morning and recommend ratification. (JA 310.)

Within hours of the all-night bargaining session, the Union took down its pickets and held a membership vote.⁴ (JA 377.) The bargaining unit voted to accept the tentative agreement. (*Id.*) Several employees told Granite Rock the agreement was ratified (the “Agreement”), and the strike was

¹ Trial Transcript (“Tr. Trscript.”), Vol. 1 at 113-14, Vol. 2 at 8-9.

² Tr. Trscript., Vol. 2 at 8-9.

³ All dates refer to 2004, unless otherwise stated.

⁴ The parties’ prior agreement expired on April 30, 2004. The Union had been on strike and had been picketing Granite Rock since early June.

over. (JA 133-38.) The new Agreement contained a multi-faceted no-strike provision⁵ and a provision for the arbitration of disputes “arising under” the Agreement.⁶ It also defined the scope of the arbitrator’s authority, stating that “[d]ecisions of the impartial Arbitrator shall be within the scope and terms of the agreement and shall be final and binding . . . provided such decision . . . does not amend any provisions of this agreement.” (JA 434.)

Throughout negotiations, the International Brotherhood of Teamsters (the “IBT” or

⁵ Section 22 of the parties’ Agreement is entitled “Strikes And Lockouts.” It provides:

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

(JA 439.)

⁶ Section 20 of the parties’ Agreement is entitled “Grievance Procedure” and provides, in relevant part: “All disputes arising under this agreement shall be resolved in accordance with the [Grievance] procedure,” which includes arbitration as the third step. (JA 434-37.)

“International Union”) guided Local 287’s actions.⁷ IBT agent Rome Aloise assumed a key leadership role with respect to the Local’s negotiations and provided strategic information to the Local during bargaining including, but not limited to, a document comparing Teamsters bargaining agreements in the region. (JA 308-09.) Aloise also provided advice to Local 287 and instructed it to reject certain bargaining proposals. (*Id.*) He proposed bargaining meetings and stated he had authority to negotiate for the Local without the latter’s approval. (*Id.*)

The first telephone call Netto made after the tentative agreement was reached was to Aloise. (JA-310.) Aloise, acting on behalf of the IBT, instructed Local 287 not to officially ratify the tentative agreement unless Granite Rock agreed to a hold-harmless side letter that would apply to all local and international unions that engaged in strike misconduct. (JA 311-12.)

On July 5, three days after the Agreement was ratified by Union members, Aloise and the Local called Granite Rock employees at their homes and instructed them not to return to work on July 6 to pressure Granite Rock into accepting the hold-harmless agreement. (*Id.*) On July 6, Local 287, at

⁷ The District Court dismissed Respondent IBT under Federal Rule of Civil Procedure 12(b). The facts regarding the IBT, as recited below, are from the Third Amended Complaint. (JA 304-21.) All allegations in the Complaint must be presumed true and viewed in the light most favorable to Granite Rock. *See, e.g., Johnson v. Jones*, 515 U.S. 304, 313 (1995); *Pakootas v. Teck Cominco Metals, Ltd.*, 452 F.3d 1066, 1069 (9th Cir. 2006). Additional facts regarding Local 287 appear in the jury verdict and factual stipulations. (JA 374-80.)

the IBT's direction and inducement, threatened a Company-wide strike. (*Id.*) At the same time, Netto falsely claimed that the tentative agreement had not been ratified on July 2 and stated it would not be ratified unless Granite Rock agreed to hold all local and international unions harmless. (JA 312-13.) The agreement included an exception to permit internal union charges against union members. (JA 383-84.)

Granite Rock rejected the hold-harmless demand, expressing its understanding that the employees ratified the tentative agreement on July 2, which meant there was an Agreement between the parties that contained a binding no-strike clause. (JA-133.)

That day, on July 6, the IBT and Local 287 launched a new Company-wide strike, involving numerous facilities, hundreds of employees, and several other Teamsters locals. Aloise again assumed a key role in causing Local 287 to renew strike activity and in encouraging employees to engage in the new strike. He gave speeches to employees and union representatives and wrote letters rallying the various Teamsters Locals to support the strike. He not only maintained constant communication with Local 287, but dictated its actions. Aloise told Granite Rock he had IBT's authority to resolve unilaterally the dispute. Aloise's activities caused Local 287's breach of the Agreement's no-strike clause. Through Aloise's leadership, the IBT established itself as an entity with the authority and power to end the strike. The IBT also supplied strike benefits to keep Local 287 members on the picket lines and financially supported Local 287 with

a \$1.2 million dollar loan, and thereby exerted actual control over the Local. (JA 308-15.)

Despite its predominant role, IBT did not sign Granite Rock and Local 287's Agreement. Nonetheless, IBT caused the strike that began on July 6 and continued until September 13, and did so to obtain a hold-harmless agreement for its own benefit.⁸ (JA 317.) The strike occurred during Granite Rock's busiest season, inflicting substantial injury on the Company, its employees, and their families in an amount likely exceeding the net worth of the undercapitalized Local Union. (JA 317.)

III. PROCEDURAL HISTORY

A. District Court Proceedings.

When the IBT/Local 287 strike activity recommenced on July 6, Granite Rock immediately filed a complaint in federal court against Local 287, seeking a "*Boys Market* Injunction" to enjoin the strike.⁹ Local 287 opposed the injunction by denying that a collective bargaining agreement existed. Netto falsely testified that the ratification had not

⁸ The strike continued beyond August 22, the date the employees re-ratified the Agreement. (JA 313.)

⁹ Under *Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235 (1970), federal courts may enjoin a strike if the dispute over which the strike occurs is arbitrable under a collective bargaining agreement. Granite Rock contended that the arbitrable issue in this case was Local 287's and IBT's demand to hold its members harmless for conduct during the strike (apart from the effort to secure immunity for IBT and other unions). *See, e.g., Complete Auto Transit, Inc. v. Reis*, 614 F.2d 1110, 1111-12 (6th Cir. 1980); *Cedar Coal Co. v. United Mine Workers of Am.*, 560 F.2d 1153 (4th Cir. 1977).

taken place on July 2. (JA 165-68.) Granite Rock, in the absence of an eye witness to the employee meeting, could not give direct testimony that ratification had occurred. As a result, the District Court denied the injunction request and allowed the strike to continue. (JA 203-11.)

The strike ended in mid-September without Granite Rock agreeing to hold the IBT harmless. Near the strike's end, Granite Rock revived its lawsuit after one bargaining unit member who attended the July 2 ratification vote came forward with a sworn statement that ratification absolutely occurred on July 2 contrary to the Union's repeated denials. (JA 378-80.) This employee came forward after he learned that Netto had falsely claimed under oath that no ratification had taken place. (*Id.*) Granite Rock continued the lawsuit, but no longer sought an injunction because IBT and Local 287 finally abandoned the strike and injunctive relief was no longer appropriate.

Based on discovery, the Company added factual details and claims against IBT for causing the strike. (JA 249-58.) IBT claimed that because it did not sign the collective bargaining agreement with Granite Rock (i.e., it was a "non-signatory"), it was immune from state and federal liability for its actions. (JA 328.) The District Court dismissed the IBT, interpreting Section 301(a) as granting jurisdiction only for claims against labor contract signatories. (JA 322-23.) The court severed the IBT claim for immediate appeal under Federal Rule of Civil Procedure 54(b). (JA 334-40.)

Although Local 287 continued to claim no contract existed, it moved for contractual arbitration

as to the claims brought against it as well as to whether a binding collective bargaining agreement existed. (JA 226-33, 343-62.) Based on *AT&T Technologies, Inc. v. Commc'n Workers of Am.*, 475 U.S. 643 (1986), the District Court ruled arbitration was improper without first determining whether the contract existed. (JA 226-33, 343-62.) The court held that “parties can only be required to submit to arbitration if they agreed to so submit,” noting:

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

(JA 231.) (emphasis added).

The District Court ordered a jury trial to determine whether the Agreement came into being upon ratification on July 2. (JA 246-48.) After six days of trial, the jury unanimously found: (1) a vote by bargaining unit employees occurred on July 2; and (2) the employees voted to accept the tentative agreement. (JA 378-80.) At the time the new strike was commenced by IBT and the Local to obtain a hold-harmless agreement, a no-strike agreement therefore existed.

The next step in the lawsuit was to determine whether the strike violated the no-strike clause and, if so, to calculate the damages. Granite Rock sought to have these issues decided by a jury, but the District Court ruled they were arbitrable. (JA 234-48.)

B. The Ninth Circuit Decision.

Local 287 appealed the unanimous jury verdict to the Ninth Circuit. It raised four issues on appeal, including the issue of whether the court properly refused to compel arbitration of the formation issue. Granite Rock appealed the district court's decision to dismiss IBT from the suit, and its order compelling arbitration of Local 287's breach. The Ninth Circuit consolidated the appeals.

On October 22, 2008, the Ninth Circuit reversed the District Court ruling that it had jurisdiction to determine whether the Agreement existed as a prerequisite to arbitration. *Granite Rock Co. v. Int'l Bhd. of Teamsters, Local 287*, 546 F.3d 1169 (9th Cir. 2008).¹⁰ The Ninth Circuit held that federal courts only have jurisdiction to determine whether a contract exists if “**there is a**

¹⁰ In a separate proceeding, the National Labor Relations Board ruled that Local 287 committed an unfair labor practice by refusing to give effect to the parties' Agreement in order to force Granite Rock to agree to a non-mandatory subject of bargaining, i.e, the hold-harmless agreement covering the IBT and Teamsters locals. *Teamsters Local 287, Int'l Bhd of Teamsters and Granite Rock Co.*, 347 NLRB No. 32 (2006). The Ninth Circuit separately affirmed the NLRB order, finding Local 287 committed unfair labor practices (Ninth Circuit case numbers 06-72964 and 06-73444). The IBT was not a party to either action.

challenge to the arbitration provision which is separate and distinct from any challenge to the underlying contract.” *Id.* at 1176-77 (quoting *Teledyne, Inc. v. Kone Corp.*, 892 F.2d 1404, 1410 (9th Cir. 1989)). The court relied on *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006) for this holding, although this case did not involve a claim of fraud or any other defense alleging an existing contract was void or voidable. *See Granite Rock*, 546 F.3d at 1178.

The Ninth Circuit also affirmed dismissal of Granite Rock’s Section 301(a) claim against IBT. The court acknowledged Section 301 “can be read as a ‘congressional mandate to the federal courts to fashion a body of common law to be used to address disputes arising out of labor contracts,’” but declined to do so. *Id.*

Granite Rock’s request for *en banc* review was denied on December 30, 2008. Granite Rock petitioned this Court for review of the Ninth Circuit’s decision.

IV. SUMMARY OF ARGUMENT

A. Federal Courts Have Authority To Decide Disputes Over Initial Contract Formation Issues.

Arbitration is a matter of contract. Therefore, this Court has held that, absent clear and unmistakable contract language otherwise, federal courts, not arbitrators, have authority to decide whether a binding labor contract was formed. *United Steelworkers of Am. v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 582 (1960); *Int’l Union of*

Operating Engineers, Local 150, AFL-CIO v. Flair Builders, Inc., 406 U.S. 487, 491-92 (1972); *AT&T Technologies, Inc. v. Commc'n Workers of Am.*, 475 U.S. 643, 649 (1986). The decision below disregards this fundamental legal principle.

In this case, Local 287 directed Granite Rock's employees to strike in violation of the Agreement's no-strike provision. Granite Rock sought to enforce the Agreement. In response, Local 287 denied that the Agreement had been formed, but, at the same time, moved to compel arbitration of the formation dispute pursuant to an arbitration provision in the same Agreement. The District Court denied Local 287's motion to compel, and submitted the contract formation dispute to a jury, which unanimously held that the Agreement had been formed.

The Ninth Circuit, citing this Court's decisions in *Buckeye Check Cashing v. Cardegna*, 546 U.S. 440 (2006) and *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967), reversed the district court's ruling, holding that because Granite Rock did not separately challenge the Agreement's arbitration provision, an arbitrator had authority to determine whether the Agreement exists. (JA 60.) Neither *Buckeye* nor *Prima Paint* stand for this proposition. These cases hold that, absent a separate challenge to an arbitration provision, an arbitrator should decide defenses, such as fraud in the factum, that would render an established contract void or voidable. *Prima Paint*, 388 U.S. at 403-04; *Buckeye*, 546 U.S. at 444-45. This Court, moreover, expressly stated that *Buckeye*

does not address initial contract formation issues. *Id.* at 444 n.1.

The Ninth Circuit found that Granite Rock consented to arbitration by filing suit to enforce its contract with Local 287, despite language in the Agreement's arbitration provision limiting an arbitrator's authority to decide disputes "aris[ing] under" the contract. (JA 434.) Nothing in the Agreement suggests that the parties agreed to arbitrate disputes over whether the Agreement existed.

The Ninth Circuit's decision raises multiple public policy concerns. First, for a half century, this Court's labor arbitration jurisprudence provides judicial determination over issues of contract formation. Without the guarantee of such impartial judicial determinations, the use of arbitration will decline and negotiating parties will either avoid arbitration language, significantly narrow the scope of arbitration provisions, or avoid tentative agreements. Finally, if the decision below stands, unions receive an unfair advantage since they may compel arbitration on tentative agreements while simultaneously disregarding a no-strike promise that serves as consideration for arbitration.

**B. A Section 301(a) Action And Remedy
Should Be Recognized To Address Parent
Unions' Inducement Of Strikes Violating
Bargained-For No-Strike Provisions In
Labor Contracts.**

The decision below disregards Section 301(a)'s intent to ensure uniform labor contract enforcement and to promote industrial peace through judicial

enforcement of no-strike and no-lockout provisions. In this case, an international union, IBT, directly induced a violation of Granite Rock and Local 287's labor contract by displacing its local affiliate and instructing employees to strike in its effort to procure an immunity agreement from Granite Rock for its own benefit. The Ninth Circuit erroneously rejected Granite Rock's action against IBT, holding that Section 301(a) does not provide jurisdiction over claims against non-signatories that do not have rights or obligations arising under a labor contract. (JA 49-50.) A cause of action for IBT's causing and inducing a labor contract violation fits squarely within Section 301(a)'s framework and statutory purpose to promote labor peace. *Textile Workers Union of Am. v. Lincoln Mills*, 353 U.S. 448, 551 (1957).

The plain language of Section 301(a) also supports an action against IBT. The statute provides jurisdiction over "suits" for "violation" of a contract "between a labor organization and an employer engaged in interstate commerce." 29 U.S.C. § 185(a). This Court has interpreted Section 301(a) broadly to provide jurisdiction over claims that require interpretation and application of labor contracts. *See Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 209 (1985). Once a plaintiff passes through this jurisdictional gateway, this Court has instructed courts to "fashion a body of federal law for enforcement of . . . collective bargaining agreements." *Lincoln Mills*, 353 U.S. at 551; *Textron Lycoming Reciprocating Engine Div., Avco Corp. v. United Auto Aerospace & Agric. Implement Workers of Am.*, 523 U.S. 653, 658-59 (1998).

Consistent with Section 301(a)'s plain language, Petitioner alleges a "sui[t] for violation" of a contract "between" a labor organization, Local 287, and an employer, Granite Rock, and seeks the same contractual damages from IBT that it could recover from a signatory party. 29 U.S.C. § 185(a). Whether IBT caused a contract violation requires interpretation and application of the language of the contract's multi-paragraph no-strike provision. IBT caused and induced a violation of the contract by directing Local 287 to ignore the contract and directly instructing Petitioner's employees to strike to procure a hold-harmless agreement. But for the actions of IBT, a violation of the contract's no-strike provision would not have occurred.

Public policy also supports Petitioner's claim. For two centuries, this Court has been guided by the maxim "for every wrong, there is a remedy." *Marbury v. Madison*, 5 U.S. 137, 163 (1803). Section 301(a) preempts Granite Rock's state law claim against IBT. *Allis-Chalmers*, 471 U.S. 202, 209 (1985). By refusing to exercise Section 301(a) jurisdiction over Granite Rock's action against IBT for causing and inducing a violation of Granite Rock and Local 287's labor contract, and at the same time, preempting state law actions against IBT, the Ninth Circuit permits IBT to cloak itself with immunity. This decision thus creates a blueprint for industrial chaos - not industrial peace.

V. THE FEDERAL COURT, NOT THE ARBITRATOR, HAS THE AUTHORITY TO DETERMINE WHETHER A BINDING CONTRACT CONTAINING AN ARBITRATION PROVISION WAS INITIALLY FORMED.

Two distinct lines of Supreme Court cases have evolved with respect to arbitration. The first line of cases addresses arbitrability questions, and holds that federal courts must decide the issue before compelling arbitration. *See John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 546-47 (1964) (whether party is bound by an agreement containing an arbitration clause is a “threshold question for the court”); *AT&T Technologies Inc. v. Comm’n. Workers of Am.*, 475 U.S. 643, 649 (1986) (“Unless the parties clearly and unmistakably provide otherwise, the question whether the parties agreed to arbitrate is to be decided by the court, not the arbitrator.”); *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 947 (1995) (ambiguous issue in contract must not be deferred to arbitration when it concerns arbitrability); *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 85-86 (2002) (distinguishing procedural defenses, such as a statute of limitations, which are arbitrable, from contract formation issues, which may not be deferred to an arbitrator unless parties clearly and unmistakably agree). These cases uniformly emphasize that arbitration is a matter of contract, and hold that questions about the existence and scope of an arbitration agreement must be decided initially by the courts.

The second line of Supreme Court jurisprudence holds that an arbitrator should decide defenses, such as fraud in the factum or fraud in the inducement, that would render an established contract void or voidable. *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967); *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006). These cases hold that, because an arbitration provision is severable from the remainder of the contract, the arbitrator determines the contract's validity (as opposed to its formation), unless one party separately claims the arbitration provision is invalid. *Prima Paint*, 388 U.S. at 402-04; *Buckeye*, 546 U.S. at 449. In *Buckeye*, a case addressing a signed contract one party claimed was void due to illegality, this Court expressly declined to address whether contract formation is a judicial or arbitral determination. *Buckeye*, 546 U.S. at 444 n. 1.

In this case, Granite Rock has contended from the outset that once ratification occurred on July 2, the parties had a valid, binding collective bargaining agreement that the Union was obligated to respect. (JA 62-79.) The Union claimed, however, that no collective bargaining agreement existed because there had been no ratification of the tentative agreement. (JA 133, 312-13.) The issue was clear: was a contract formed by ratification on July 2. The District Court, relying on *AT&T Technologies*, correctly determined that the formation issue had to be resolved by the federal court. (JA. 229-31.) After six days, the jury unanimously agreed that on July 2, a collective bargaining agreement was formed when bargaining unit members ratified the tentative agreement. (JA 378-80.) The Union

continues to contest the verdict, claiming, *inter alia*, that an arbitrator should have decided whether the collective bargaining agreement had been formed. The Union's position is wrong and, if adopted by this Court, would deter, not encourage, agreements to arbitrate.

A. It Is Axiomatic That There Can Be No Duty To Arbitrate Absent A Contract Between The Parties.

Time and again, this Court has made clear “arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.” *United Steelworkers of Am. v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 582 (1960). This foundational legal principle recognizes and reflects the truism that “[a]rbitrators derive their authority to resolve disputes only because the parties have agreed in advance to submit such grievances to arbitration.” *AT&T Technologies*, 475 U.S. at 648-49 (1984) (citing *Gateway Coal Co. v. Mine Workers of Am.*, 414 U.S. 368, 374 (1974)). Absent clear and unmistakable evidence to the contrary, the court, not the arbitrator, has the authority to determine whether a contract was formed. *John Wiley & Sons, Inc.*, 376 U.S. at 546-47 (1972).

In *Int'l Union of Operating Engineers, Local 150, AFL-CIO v. Flair Builders Inc.*, 406 U.S. 487 (1972), the employer asserted that the labor contract, containing the pertinent grievance and arbitration provision, was never formed, and that, if consummated, the agreement was subsequently abandoned by the union. *Id.* at 488. The district court concluded that the employer and the union

entered into a binding labor contract. *Id.* at 489. This Court held that the district court properly resolved the parties' dispute over the existence of the contract, stating:

[N]othing we say here diminishes the responsibility of a court to determine whether a union and employer have agreed to arbitration. That issue, as well as the scope of the arbitration clause, remains a matter for judicial decision.

Id. at 491-92 (citing *Atkinson v. Sinclair Refining Co.*, 370 U.S. 238, 241 (1962)).

In *AT&T Technologies*, 475 U.S. at 649, this Court clarified further the federal courts' jurisdiction to determine questions of arbitrability. The issue in *AT&T Technologies* was whether the district court or the arbitrator should determine if the parties' dispute over layoffs was subject to the grievance and arbitration provision. Both parties agreed a collective bargaining agreement existed. Nonetheless, the Court stated:

the question of arbitrability – whether a collective-bargaining agreement creates a duty for the parties to arbitrate the particular grievance – is **undeniably an issue for judicial determination.**

Id. at 649 (emphasis added). Applying that principle, the Court went on to hold that the court, not the arbitrator, must decide whether the layoff

dispute was subject to the agreement's grievance and arbitration provision. *Id.* at 652.

This Court continues to apply its holding in *AT&T Technologies* to decide issues of arbitrability under labor and commercial contracts. In *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 942 (1995), the Court considered who had authority to determine if the parties to a commercial contract consented to arbitrate their dispute over the payment of certain debts. The Court soundly rejected the argument that the court does not have that authority. In doing so, it cautioned, “[c]ourts should not assume that the parties agreed to arbitrate arbitrability unless there is ‘clea[r] and unmistakabl[e]’ evidence that they did so.” *Id.* at 944 (quoting *AT&T Technologies*, 475 U.S. at 649).

Similarly, in *Litton Fin. Printing Div. v. N.L.R.B.*, 501 U.S. 190, 208-09 (1991), the Court considered whether the court or an arbitrator has authority to determine if a party to a collective bargaining agreement must arbitrate a grievance after the agreement expired. Once again, the Court re-affirmed the principle that “arbitration is a matter of consent, and that it will not be imposed upon parties beyond the scope of their agreement.” *Id.* at 201. It further stated “[w]hether or not a company is bound to arbitrate, as well as what issues it must arbitrate, is a matter to be determined by the court, and the party cannot be forced to ‘arbitrate the arbitrability question.’” *Id.* at 208 (quoting *AT&T Technologies*, 475 U.S. at 651). The Court thus held that, absent clear contractual language indicating otherwise, the court – not the arbitrator – has authority to resolve disputes over

the arbitrability of grievances filed after the agreement has expired. *Id.*

In *Green Tree Financial Corp. v. Bazzle*, 539 U.S. 444, 452 (2003), the Court considered who had authority to decide if the parties' arbitration clause permitted class arbitrations. The Court concluded that the arbitrator had that authority, but noted that, "[i]n certain limited circumstances, courts assume that the parties intended courts, not arbitrators, to decide a particular arbitration-related matters" *Id.* It stated:

These limited circumstances typically involve matters of a kind that 'contracting parties would likely have expected a court' to decide. [citation omitted] They include certain gateway matters, **such as whether the parties have a valid arbitration agreement at all** or whether a concedingly binding arbitration clause applies to a certain type of controversy.

Id. (emphasis added) (citing *Howsam*, 537 U.S. 79, 83 (2002)).

The courts of appeal have obediently followed this clear and fundamental principle, and repeatedly have found that issues regarding whether a collective bargaining agreement or commercial contract was initially formed are for the court. For example, in *Sandvik AB v. Advent Int'l Corp.*, 220 F.3d 99, 105 (3d Cir. 2000), the Third Circuit held that when a defendant claimed the contract was not binding because the individual who had signed it on behalf of the defendant lacked sufficient authority,

the defendant could not properly move to compel arbitration of the formation issue on the basis of the contract's arbitration clause.

The court agreed with the plaintiff that when a party claims the contract was never formed, the court, not the arbitrator, must determine whether the contract was binding. *Id.* The Third Circuit dismissed the defendant's argument that, in order for the district court to consider the contract formation dispute, plaintiff must separately challenge the validity of the arbitration agreement. *Id.* at 105. It stated:

[T]he question whether the underlying contract contains a valid arbitration clause still precedes all others because 'arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.'

Id. at 105 (quoting *AT&T Technologies*, 475 U.S. at 648). The Third Circuit reasoned that the defendant cannot simultaneously seek to arbitrate the dispute and claim the contract containing the arbitration clause was never binding. *Id.* at 108. It concluded that to rule otherwise "allow[s] the arbitrator to determine their own jurisdiction, something that is not permitted in the federal jurisprudence [of arbitration], for the question whether a dispute is to be arbitrated belongs to the courts unless the parties agree otherwise." *Id.* at 111.

Similarly, in a case involving whether conditions precedent to the creation of a labor contract had occurred, the Second Circuit correctly

reasoned that “[i]f the contract embodying a purported arbitration agreement never existed, the arbitration agreement itself does not exist.” *Adams v. Suozzi*, 433 F.3d 220, 226 (2d Cir. 2005) (citations omitted). It also stated “[t]he District Court possessed not only authority, but a duty, to determine whether there ever existed an agreement to arbitrate between the parties.” *Id.* (citing *AT&T Technologies*, 475 U.S. at 649). Since nothing in the agreement suggested that the parties intended to permit the arbitrator to determine arbitrability, the Second Circuit affirmed the district court’s decision. *Id.*

In sum, courts overwhelmingly conclude that courts, not arbitrators, must resolve initial contract formation disputes and disputes over arbitrability absent clear and unmistakable evidence that both parties relinquished their right to have the issue decided by a federal judge. Quite simply, if no valid, binding contract exists or, alternatively, the parties never agreed to arbitrate the dispute in question, no basis exists in contract or otherwise to permit the arbitrator to resolve the dispute. Absent clear and unmistakable evidence to the contrary, an arbitrator cannot determine his or her own jurisdiction *AT&T Technologies*, 475 U.S. at 649; *Sandvik AB*, 220 F.3d at 111.

In this case, Local 287 disputed that the Agreement was formed but sought arbitration under that very Agreement. In the face of a contrary jury verdict, Local 287 continues to claim that the Company’s employees never ratified the Agreement. (JA 46-47.) The District Court properly held that, pursuant to this Court’s holding in *AT&T*

Technologies, 475 U.S. at 649, the court, not the arbitrator must decide the issue of formation. (JA 229-31.) The Ninth Circuit’s contrary ruling is erroneous, against this Court’s clear precedent, and inconsistent with other circuit court decisions.

B. Granite Rock Did Not “Clearly And Unmistakably” Agree To Arbitrate The Issue Of Contract Formation.

The Agreement between Granite Rock and Local 287 makes clear that only issues “aris[ing] under” it, not issues of formation, will be arbitrated. *A fortiori*, the Agreement does not contain clear and unmistakable language evidencing that the parties intended an arbitrator to decide contract formation.

The Agreement states in relevant part:

Section 20 – Grievance Procedure

All disputes arising under this agreement shall be resolved in accordance with the following procedure:

...

f. Decisions of the impartial Arbitrator shall be within the scope and terms of this agreement and shall be final and binding upon all the parties provided such decision is specifically limited to the matter submitted and does not amend any provisions of this agreement.

(JA 434-35.)

Use of the phrases “arising under this agreement,” and “within the scope and terms of this agreement,” presuppose that a valid, binding collective bargaining agreement has been formed. (*Id.*) A dispute cannot “**aris[e] under**” nor can decisions made by the arbitrator fall “**within the scope and terms**” of the collective bargaining agreement if it was never formed. (*Id.*) (emphasis added).

Because the language of the collective bargaining agreement’s grievance and arbitration provision pertains to disputes concerning the interpretation and application of the Agreement itself, as opposed to the question of whether it was formed, the Agreement does not permit the arbitration of arbitrability. Accordingly, Granite Rock and the Union did not “clearly and unmistakably” consent to arbitrate whether a contract was created. *AT&T Technologies*, 475 U.S. at 649.

The Ninth Circuit held that Petitioner “implicitly” consented to arbitration by suing to enforce its contract. (JA 60.) Now, in the Ninth Circuit, a party that seeks to enforce a contract with an arbitration provision will be deprived of judicial review of formation. This Court has held the opposite, stating it should be assumed that the parties intended the court, not the arbitrator, to decide this “gateway” issue. *Green Tree*, 539 U.S. at 452.

C. **This Court's Decisions In *Buckeye Check Cashing* and *Prima Paint Corp.* Do Not Address Courts' Authority To Resolve Whether A Contract Was Created.**

In *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006), and *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967), this Court held that, because an arbitration agreement is severable, the arbitrator determines challenges to an admitted contract's validity unless one party separately claims the arbitration clause is invalid. Neither case, however, addressed the courts' jurisdiction to resolve initial contract formation disputes.

In *Buckeye*, this Court expressly distinguished the very issue raised in this case, as follows:

The issue of the contract's validity is different from the issue whether any agreement between the alleged obligor and obligee was ever concluded. Our opinion today addresses only the former, and does not speak to the issue decided in the cases cited by respondents (and by the Florida Supreme Court), which hold that it is for courts to decide whether the alleged obligor ever signed the contract . . . , whether the signor lacked authority to commit the alleged principle, . . . and whether the signor lacked the mental capacity to assent

546 U.S. at 444 n.1 (internal citations omitted) (emphasis added). As such, *Buckeye* has no applicability to this case because the parties' dispute concerns whether a contract was ever created, not whether an acknowledged, existing contract was void or voidable.

In *Prima Paint*, both parties agreed there was a contract for the plaintiff to purchase the defendant's business. 388 U.S. at 397-98. Plaintiff claimed later that the defendant had fraudulently represented its ability to perform its contractual obligations, refused to pay and sought to rescind the contract, claiming it was voidable. *Id.* at 398-99. The defendant moved for a stay pending arbitration, which the district court granted. *Id.* This Court maintained the stay because both parties acknowledged there was an agreement between them and the arbitration clause included arbitration of controversies "relat[ed] to" the contract that both parties agreed had been formed. *Id.* at 406. Thus, the Court acknowledged that a fundamental difference exists between disputes over contractual defenses and disputes over whether a valid, binding contract was ever formed. *Id.*

The questions before this Court in *Prima Paint*, and *Buckeye* concerned the authority to resolve disputes over certain defenses raised to avoid enforcement of contracts that both parties agreed were formed. In both, the parties operated under the respective contracts for a substantial time, but later raised defenses that, if proven successful, would render all, or part, of the contracts void. This Court found that such disputes "relate to" an existing contract, and thus, logic dictates that the

arbitrator, not the court, has jurisdiction to resolve them. Furthermore, in *Buckeye*, 546 U.S. at 444 n. 1, this Court expressly declined to consider the precise issue posed here, i.e., whether courts or arbitrators should decide disputes over whether a valid, binding contract was formed. In doing so, the Court acknowledged that a fundamental difference exists between disputes over contractual defenses and disputes over whether a valid, binding contract was ever formed. *Id.*

Critically, the Court's decisions in *Prima Paint* and *Buckeye* do not abrogate the applicability of *AT&T Technologies* to this case. This Court has repeatedly stated, with respect to the arbitrability of disputes, especially disputes concerning certain gateway issues such as whether the parties formed a binding contract, courts must resolve arbitrability unless "clear and unmistakable" evidence exists indicating that the parties intended to provide that authority to an arbitrator. *AT&T Technologies*, 475 U.S. at 649; *First Options of Chicago*, 514 U.S. at 943; *Howsam*, 537 U.S. at 83; *Litton Fin. Printing Div.*, 501 U.S. at 208-09; *Green Tree*, 539 U.S. at 452. No such evidence exists here.

D. The Decision Below, If Left Undisturbed, Will Discourage Parties From Negotiating And Agreeing To Arbitration Language.

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

Focusing on labor relations, three disruptions to industrial peace flow from the Ninth Circuit decision. First, no concept is more important to labor peace than arbitration. This Court expressly recognizes that arbitration “furthers the national labor policy of peaceful resolution of labor disputes.” *AT&T Technologies*, 475 U.S. at 651. “The willingness of parties to enter into agreements that provide for arbitration of specified disputes would be ‘drastically reduced,’ however, if a labor arbitrator had the ‘power to determine his own jurisdiction...” *Id.* (quoting *Schneider Moving & Storage Co. v. Robbins*, 466 U.S. 364, 371-72 (1984) and Archibald Cox, *Reflections Upon Labor Arbitration*, 72 Harv. L. Rev. 1482, 1509 (1959)). The Ninth Circuit's holding does just that - it gives an arbitrator the power to determine his or her own jurisdiction which, in turn, could be manipulated to serve his or her own best interests. This concern is accentuated by the fact that arbitration awards are far less reviewable than court decisions. *See Major League Baseball Ass’n v. Garvey*, 532 U.S. 504, 509-10 (2001). Indeed, this Court has stated that federal courts may only vacate labor arbitration awards upon a showing that the award “strays from interpretation and application of the agreement and [the arbitrator] effectively ‘dispense[d] his own brand of industrial justice.’” *Id.* at 509 (quoting *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960)). An arbitrator’s “improvident, even silly fact-finding,” will not justify vacating the award. *United Paperworkers Int’l Union v. Misco, Inc.*, 484 U.S. 29, 39 (1987).

Second, allowing one party to enforce an arbitration clause without giving effect to the remainder of the agreement, i.e., the no-strike provision, impairs labor peace. No-strike agreements are vital to the nation's economic well-being. "The grievance and arbitration procedure is conventionally regarded as the union's compensation for surrendering the right to strike during the period while the agreement is in force – "the 'quid pro quo' for an agreement not to strike." *Int'l Ass'n of Machinists & Aerospace Workers, Progressive Lodge No. 1000 v. Gen. Elec. Co.*, 865 F.2d 902, 903 (7th Cir. 1989) (quoting *Warrior & Gulf*, 363 U.S. at 578 n. 4). To allow unions to avail themselves of arbitration provisions without giving contemporaneous effect to the no-strike provision poses a real and serious threat to interstate commerce, and to the very nature of the collective bargaining agreement that has existed for over 50 years. *Lincoln Mills*, 353 U.S. at 455 (1957); *Warrior & Gulf Nav. Co.*, 363 U.S. at 583-84.

Third, "tentative agreements" are commonplace in labor negotiations, and greatly decrease the time necessary to complete contracts. They give parties a measure of progress that discourages regressive bargaining and propels negotiations forward. Before the decision below, employers and unions knew they could tentatively agree to provisions, including an arbitration provision, without being bound before negotiations concluded. Allowing unions or employers to dispute that a binding contract exists while simultaneously availing themselves of arbitration discourages tentative agreements containing such a provision. The Ninth Circuit's holding that a "tentative

agreement” on arbitration language can provide an interested arbitrator jurisdiction to determine that a valid, binding agreement exists and what its terms are jeopardizes the use of tentative agreements in labor relations.

Through its holding, the Ninth Circuit has deprived parties that negotiate labor and commercial contracts from the opportunity to present disputes over a contract’s existence to an impartial judiciary. Article III of the Constitution confers judicial powers on impartial judges subject to higher court review. The Ninth Circuit holding takes away this threshold judicial determination and places it in the hands of an arbitrator. Indeed, the decision below places arbitrators in the untenable position of resolving a dispute where, if the decision is that the contract was not formed, the arbitrator effectively determines that he or she lacked any authority to make that determination. *Sandvik AB*, 220 F.3d at 111 (“were the arbitrators ultimately to decide” that no contract was formed, the arbitrators “will have effectively decided that they have no authority to decide the dispute”). Such a result should not be allowed to stand.

VI. A NON-SIGNATORY INTERNATIONAL UNION THAT DISPLACES ITS AFFILIATED LOCAL AND CAUSES A STRIKE VIOLATING A COLLECTIVE BARGAINING AGREEMENT CANNOT CLOAK ITSELF WITH IMMUNITY FROM SECTION 301(A) OF THE LABOR MANAGEMENT RELATIONS ACT.

During the 1940s, labor strikes posed a substantial threat to the national economy and occurred despite negotiated no-strike provisions in collective bargaining agreements. In the wake of economic uncertainty and patchwork enforcement of collective bargaining agreements, Congress enacted Section 301(a) to provide for uniform federal enforcement of labor contracts. At its core, the statute was intended to promote industrial peace through judicial enforcement of no-strike and no-lockout provisions. *Lincoln Mills*, 353 U.S. at 451; *Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers of Am. v. Lucas Flour Co.*, 369 U.S. 95, 104-05 (1962).

In this case, IBT, a non-signatory to Granite Rock and Local 287's labor contract, caused a strike that breached the no-strike provision in that contract. IBT instigated and directly induced the strike to extort from Granite Rock an immunity agreement benefiting IBT. The strike inflicted substantial harm on Petitioner, its employees, and their families. The Court is asked to recognize a cause of action and provide a remedy under Section 301(a) for IBT's conduct that directly caused a breach of Local 287 and Granite Rock's labor contract for its own benefit.

The Third Amended Complaint details IBT's misconduct. (JA 306-19.) On July 5, 2004, Rome Aloise, acting on behalf of IBT, "called union members at their homes and instructed, authorized, instigated, and encouraged them not to return to work." (JA 311-12.) IBT then directed Local 287 not to honor its new labor contract with Granite Rock. (JA 313.) Assuming control, IBT ignited and sustained a two-month Company-wide strike in violation of the labor contract's no-strike clause. (*Id.*) During this dispute, IBT proclaimed it had authority to settle the unlawful strike. (JA 313-14.) The strike's purpose was not to obtain higher wages or better benefits for employees. It was an attempt to force Granite Rock to grant IBT and other unions full immunity for past misconduct. (JA 313.)

Granite Rock refused to acquiesce and sought relief for IBT's misconduct by filing the instant action for contractual damages¹¹ alleging that IBT, by and through its own direct actions, induced a breach of the contract with Local 287 by displacing Local 287 and directly causing a violation of the no-strike provision of the Agreement between Granite Rock and Local 287 for IBT's own gain. Petitioner respectfully requests that, pursuant to its authority under Section 301(a), this Court recognize a federal common law action and remedy for causing and inducing a breach of a labor contract, providing Granite Rock the ability to seek the same contractual remedies from IBT that would be

¹¹ The Third Amended Complaint requests "damages according to proof," and "[s]uch other and further relief as the Court may deem just and proper." (JA 320.) It does not request punitive or exemplary damages.

available when a signatory union violates a labor contract. Without this relief, the preemptive force of Section 301(a) cloaks IBT with the very immunity it tried to coerce from Granite Rock, and, at the same time, establishes a blueprint for the industrial chaos Congress sought to avoid. Granite Rock's action fulfills the important public policy of ensuring labor peace by holding IBT responsible for its own misconduct.

A. The Plain Language Of Section 301(a) Establishes Jurisdiction Over The IBT As This Case Involves A "Violation" Of A Contract "Between" A Labor Organization And An Employer.

When interpreting a statute, the Court begins with the plain language. *Jimenez v. Quarterman*, 555 U.S. ___ (January 13, 2009), 129 S.Ct. 681, 685, 172 L.Ed.2d 475 ("As with any question of statutory interpretation, our analysis begins with the plain language of the statute."). Section 301(a) of the Labor Management Relations Act provides courts jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce." 29 U.S.C. § 185(a).

"Section 301 is not to be given a narrow reading." *Smith v. Evening News Ass'n*, 371 U.S. 195, 199 (1962). In *Textron Lycoming Reciprocating Engine Div. v. United Auto. Aerospace & Agric. Implement Workers of Am.*, 523 U.S. 653, 657 (1998), this Court concluded that, by use of the word "for" within the phrase "[s]uits for violation of contracts," Congress intended that federal courts exercise jurisdiction over any "suits that claim a

contract has been violated.” Moreover, because the word “between” modifies “contracts,” not “suits,” it does not limit Section 301(a) jurisdiction to claims alleged by or against a signatory to a labor contract. *Smith*, 371 U.S. at 200; *Woodell v. Int’l Bhd. of Elec. Workers, Local 71*, 502 U.S. 93, 100-01 (1991); *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 556 (1976).

In sum, all that is required for subject matter jurisdiction under Section 301(a) is that the suit was: (1) “filed because a contract has been violated,” and (2) the contract in question is “between” an employer and a labor organization. *Textron*, 523 U.S. at 657; *Smith*, 371 U.S. at 200. The plain language of Section 301(a) does not place restrictions on who may sue or be sued based on their signatory status nor does it limit courts’ jurisdiction to only breach of contract claims.

Granite Rock alleged, and later proved, that a contract existed “between” a labor organization, Local 287, and an employer, Granite Rock, subject to federal courts’ jurisdiction. (JA 378-82.) Granite Rock further alleged that this contract was “violated” by a labor organization, IBT, as well as Local 287 when, by their concerted actions, IBT and Local 287 induced and caused a strike prohibited by the contract’s no-strike provision. (JA 304-21.) Petitioner’s claim against IBT is, therefore, a “suit” for violation of a labor contract. 29 U.S.C. § 185(a). Section 301(a)’s plain language supports federal court jurisdiction over Granite Rock’s claim against IBT. *See Lamie v. United States Trustee*, 540 U.S. 526, 534 (2004) (“when the statutory language is

plain,” the Court “must enforce it according to its terms”).

B. This Court’s Decisions Interpreting Section 301(a) Are Consistent With And Support Recognizing A Cause Of Action Against IBT.

In its landmark decision, *Lincoln Mills*, this Court interpreted Section 301(a) to provide federal courts with jurisdiction over any claims that require interpretation and application of labor contracts. 353 U.S. at 451. The Court further instructed that the statute “authorizes courts to fashion a body of federal law for the enforcement of . . . collective bargaining agreements.” *Id.* at 450-51; *Allis-Chalmers v. Lueck*, 471 U.S. 202, 209 (1985). The federal law created under Section 301 is fashioned “from the policy of our national labor laws.” *Lincoln Mills*, 353 U.S. at 456-57. When a problem implicating a labor contract lacks express statutory sanction, this Court has instructed that it is to “be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy. The range of judicial inventiveness will be limited only by the nature of the problem.” *Id.*

Pursuant to its authority under Section 301(a), this Court has fashioned and recognized various federal common law causes of action, and remedies for enforcement of labor contracts. *See Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry*, 494 U.S. 558, 570, 573-74 (1990) (employee claiming a “hybrid” duty of fair representation and breach of contract claim under Section 301 had right to trial by jury even though the claim presented both legal and equitable issues);

Int'l Bhd. of Elec. Workers AFL-CIO v. Hechler, 481 U.S. 851, 863-65 (1987) (court had jurisdiction over union member's state law tortious breach of contract claim for union's alleged failure to enforce safety rules and conduct training required by the collective bargaining agreement and remanding for determination of applicable statute of limitations); *DelCostello v. Int'l Bhd. of Teamsters, et al.*, 462 U.S. 151, 165 (1983) (under Section 301(a) an employee may allege that his or her union breached the duty of fair representation concurrent with a breach of contract claim against his or her employer, and that "[i]f a breach of duty by the union and breach of contract by the employer are proven, the court must fashion an appropriate remedy"); *Int'l Union, United Auto., Aerospace and Agric. Implement Workers of Am. v. Hoosier Cardinal Corp.*, 383 U.S. 696, 707-08 (1966) (adopting six-year statute of limitations for union's claim under Section 301(a) that the employer had violated labor contract). In *Textron*, 523 U.S. at 658-59, this Court again emphasized Section 301(a)'s applicability to suits alleging violations of contract, stating "[t]hat [Section 301(a)] simply erects a gateway through which parties may pass into federal court; once they have entered, it does not restrict the legal landscape they may traverse."

This case concerns a violation of a labor contract that requires interpretation of its multifaceted no-strike provision to determine whether the alleged violation occurred. Granite Rock has established jurisdiction and, thus, the "gateway" has opened through which courts have authority to fashion federal common law to carry out Section 301(a)'s purposes. *Textron*, 523 U.S. at 658.

Holding IBT responsible for displacing Local 287 in its role of enforcing the labor contract, and then causing a strike in violation of Local 287 and Granite Rock's Agreement directly furthers Section 301(a)'s purpose of maintaining labor peace during the term of a labor contract.¹²

C. The Legislative History Of The LMRA And Section 301(a) Support A Federal Cause Of Action Against IBT.

1. Congress Enacted The LMRA To Promote Labor Stability And Prevent The Use Of Economic Force To Resolve Issues Under An Existing Collective Bargaining Agreement.

The "General Provisions" of the LMRA, as enacted, set forth Congress' declaration of the

¹² Petitioner's proposed Section 301(a) action is supported by the allegations in its Complaint and includes proving: (1) IBT had knowledge of Granite Rock and Local 287's Agreement, including the non-strike provision; (2) IBT intentionally instructed members to strike in violation of the contract; (3) IBT induced Local 287 to breach the labor contract; (4) IBT, through its actions, displaced Local 287 triggering the strike that breached the contract (including assumed authority to resolve the strike ending the contract violation); (5) IBT violated the contract; (6) the interpretation and application of the contract is necessary to establish the violation; and (7) damages resulted from the contract violation. *See, e.g., Milne Employees Ass'n*, 960 F.2d at 1411 (setting forth the elements of contractual interference/inducement claims). Petitioner's claim includes some of these elements as well as many more traditional contract violation elements). If necessary, Petitioner can prove also that IBT violated the contract to procure a benefit for itself, and that but for the actions of IBT the strike would not have taken place.

LMRA's purpose and policy to end labor disputes that interfere with commerce:

Industrial strife which interferes with the normal commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights . . .

It is the purpose and policy of this chapter, in order to promote the full flow of commerce . . . to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

29 U.S.C. § 141(b).

When debating the legislation, Congress pointed to staggering increases in strikes and lost hours of work by unionized employees as justification for the legislation. For example, the House reported that the average number of strikes in the United States rose from 753 per year to 3,514 in 1944, and affected an average of 1.5 million employees per year.¹³ Congress also noted an

¹³ H.R. REP. NO. 80-245, at 3-4 (1947) *reprinted in* 1 NLRB, LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947, at 292, 294-95 (1948). All legislative history cited

exponential increase in strikes from 1945 to 1946, during which the approximate days of labor lost in the United States tripled from 38 million to 116 million, and loss of wages for workers involved in strikes reached well over \$1 billion.¹⁴

As the House reported on its initial bill, “[d]uring the last few years, the effects of industrial strife have, at times, brought our country to the brink of economic paralysis.”¹⁵ The Senate drew particular attention to the problem of labor disputes, like the strike waged against Granite Rock, that occurred during the term of a labor contract, stating:

If unions can break agreements with relative impunity, then such agreements do not tend to stabilize industrial relations. . . . Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is

herein is available at <http://www.heinonline.org>.

¹⁴ H.R. Rep. No. 80-245, at 4 (1947) *reprinted in* 1 NLRB, Legislative History of the Labor-Management Relations Act, 1947, at 292, 295 (1948); S. Rep. No. 80-105, at 2 (1947) *reprinted in* 1 NLRB, Legislative History of the Labor-Management Relations Act, 1947, at 407, 408 (1948). The dollar figures discussed here do not account for inflation.

¹⁵ H.R. REP. NO. 80-245, at 3 (1947) *reprinted in* 1 NLRB, LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947, at 292, 294 (1948).

little reason an employer would desire to sign such a contract.¹⁶

The provision analogous to Section 301(a) of the original LMRA, as reported and passed by the House, *Id.* stated, in relevant part:

Equal Responsibility and Liability

Sec. 302. (a) Any action for or proceeding involving a violation of an agreement between an employer and a labor organization or other representative of employees may be brought **by either party** in any district court of the United States without jurisdiction of the parties, without regard to the amount in controversy, if such agreement affects commerce, or the court otherwise has jurisdiction of the cause.¹⁷

The House bill limited actions to signatories. *Id.* The Senate, however, discarded portions of the House bill and passed a version that had no such

¹⁶ S. Rep. No. 80-105, at 16 (1947) *reprinted in* 1 NLRB, Legislative History of the Labor-Management Relations Act, 1947, at 407, 422 (1948) (emphasis added).

¹⁷ H.R. 3020, 80th Cong., at 64 (1947) (as reported by H.R. Comm. On Education And Labor) *reprinted in* 1 NLRB, LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947, at 31, 94 (1948); H.R. 3020, 80th Cong., at 64 (1947) (as passed by the House of Representatives). *reprinted in* 1 NLRB, LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947, at 158, 221 (1948).

limitation. The bill, as reported and passed by the Senate (S. 1126) contained, in relevant part, the following provision:

Suits By And Against Labor
Organizations

Sec. 301. (a) Suits for violation of contracts concluded as the result of collective bargaining between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.¹⁸

The aforementioned language suggests a conscious decision by the Senate to allow suits by and against non-signatories to labor contracts. The bill, as reported by the conference committee, reconciling H.R. 3020 and S. 1126, which was ultimately enacted into law, largely mirrors the original Senate bill.¹⁹ Simply put, the legislative

¹⁸ S. 1126, 80th Cong., at 53 (1947) (as reported by the S. Comm. On Labor and Public Welfare). *reprinted in* 1 NLRB, LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947, at 99, 151 (1948); H.R. 3020, 80th Cong., at 121 (1947) (as passed by the Senate). *reprinted in* 1 NLRB, LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947, at 226, 279 (1948).

¹⁹ H.R. REP. NO. 80-510, at 23 (1947) *reprinted in* 1 NLRB,

history of Section 301(a) supports Petitioner's assertion that Congress intended suits under Section 301(a) to extend beyond signatories to labor contracts.

When debating the amendment to the LMRA permitting "suits for violations of contract," the Senate further observed that, if the bill excluded the amendment, "[t]here are no Federal laws giving either an employer or even the Government itself any right of action against a union for any breach of contract. Thus there is no 'substantive right' to enforce, in order to make the union suable as such in Federal courts."²⁰ Section 301 was designed to fill this gap. The Senate concluded that, "[s]tatutory recognition of the collective bargaining agreement as a valid, binding and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties to such agreements, and will thereby promote industrial peace."²¹

LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947, at 505, 527 (1948).

²⁰ S. REP. NO. 80-105, at 17 (1947) *reprinted in* 1 NLRB, LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947, at 407, 423 (1948).

²¹ *Id.* Even the House minority members opposing parts of the bill recognized the need for legislation, noting that the difficulty in suing unions stemmed from the challenge of reaching union assets due to their unincorporated association status. It stated:

No one can deny that labor unions have engaged in some activities that are so clearly unjustifiable that this Congress can and should legislate against them immediately.

Congress' expressed intent to promote industrial peace supports recognition of the cause of action alleged in this case. Any value and stability that Granite Rock achieved through its Agreement with Local 287 was destroyed by IBT's inducement of the breach. Rarely does the legislative history of a mature, long-standing statute so closely parallel its necessary twenty-first century application.

2. **The Enactment of Section 301(a) Federalized What California Law Already Permitted: Lawsuits Against Labor Organizations For Tortious Inducement/Interference With Contracts As A Cause Of Action.**

When debating the LMRA, the Senate observed that, prior to 1947, some states, including California, provided state law causes of action to hold unions liable for interfering with labor contracts.²² In fact, California recognized

These were covered by the President [Truman] in his State of the Union Message when he urged legislation to prevent . . . (3) **the use of economic force to decide issues arising out of the interpretation or application of existing agreements.**

H.R. Min. Rep. No. 80-245, at 95 (1947) *reprinted in* 1 NLRB, Legislative History of the Labor-Management Relations Act, 1947, at 355, 386 (1948) (emphasis added).

²² S. REP. NO. 80-105, at 17-18 (1947) *reprinted in* 1 NLRB, LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947, at 407, 423-24 (1948) (citing *Deeney v. Hotel & Apartment Clerks' Union*, 57 Cal. App. 2d Supp. 1023, 134 P.2d

interference with contract as a viable cause of action at the time the LMRA passed in Congress. *See Imperial Ice Co. v. Rossier*, 18 Cal.2d 33, 112 P.2d 631 (1941). Prior to the enactment of the LMRA, California employers, like Granite Rock, would have had recourse for non-signatory unions' misconduct that caused violations of labor contracts.²³

By enacting Section 301, Congress did not intend to strip away that right. Rather, it intended to provide a mechanism to enforce labor contracts in every state, not just the state of California. Nothing in the legislative history suggests it intended to limit state law claims for contractual interference and inducement, or otherwise shield non-signatories from liability. In fact, the Senate cited repeatedly California case law as an example of potential remedies for misconduct by unincorporated labor unions.²⁴ Such action suggests that Congress expected California's state law cause of action would be subsumed within Section 301(a)'s jurisdictional mandate.

Granite Rock's proposed cause of action against IBT for causing the breach of the Agreement fits squarely within Section 301(a)'s intent, i.e., the intent to curb labor unrest and strikes in violation of no-strike provisions in labor contracts. The

328, 330-31 (1943) (permitting suit against labor organizations under California Code of Civ. Proc. § 388).

²³ As discussed *infra*, Section 301 preempts state claims that require interpretation of a collective bargaining agreement's terms, such as its no-strike provisions. *See Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 409 (1988).

²⁴ S. REP. NO. 80-105, at 16-18 (1947) *reprinted in* 1 NLRB, LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT RELATIONS ACT, 1947, at 422-24 (1948).

legislative history of Section 301(a) thus supports and is consistent with recognizing a cause of action against a non-signatory (here, an international labor organization) that caused and induced a contract violation. Congress' intent was to facilitate enforcement of labor contracts, not shield non-signatory parties from all lawsuits.

D. Section 301(a) Mandates Federal Courts To Fashion Appropriate Common Law Claims And Remedies Primarily Drawing Upon Contract Law But Occasionally Incorporating Other Legal Principles If Needed To Enforce Labor Contracts.

The Ninth Circuit's decision sets forth a bright line test, improperly narrowing what federal common law causes of action may be recognized under Section 301(a). If the cause of action is based, even in part, on theories of inducement of breach or interference, the Ninth Circuit rejects the action regardless of whether it supports national labor policy, the enforcement of labor contracts, or industrial peace. To reach this conclusion, the Ninth Circuit principally relies on IBT's non-signatory status, finding that it "has no rights or duties under the agreement," and therefore Section 301(a) jurisdiction cannot apply. (JA 49.) The Ninth Circuit's decision, however, is not supported by the statute's language. Its decision erects a false dichotomy between breach of contract and other actions and interprets Section 301(a) narrowly, contrary to this Court's previous pronouncement in *Smith*, 371 U.S. at 200-01.

In effect, the Ninth Circuit holds that because IBT did not sign the Agreement, IBT is absolved

from any and all legal responsibility for its actions that directly deprived Petitioner of the benefit of the bargained-for Agreement's inclusive no-strike provision.²⁵ The no-strike provision is not an ancillary benefit; it is a provision fundamental to Granite Rock's business and to the Agreement's purpose. The no-strike provision ensures industrial peace throughout the term of the contract. In exchange, Granite Rock provided valuable consideration, including improved employee wages, working conditions, and benefits.

Without protection from outside parties whose actions directly induce a breach of a labor contract, employers are left extremely vulnerable and with diminished remedies, especially when the breach is induced by the union's parent labor organization for its own gain. This case serves as a quintessential example. Granite Rock and Local 287 completed negotiations and Local 287's members approved the contract. Thereafter, the IBT instructed members to begin a new strike and directed its Local not to honor its Agreement. Local 287 was in no position to

²⁵ The "Strike and Lockout" provision of the Agreement requires interpretation. (JA 439-40.) It not only prohibits Local 287 from most forms of strikes, it establishes a 15-day waiting period for other types of strikes, with the exception of certain types of strikes if sanctioned by Joint Council of Teamsters No. 7. (*Id.*) The provision requires also affirmative action by Local 287 if employees or a group of employees engaged in the prohibited strike. (*Id.*) Granite Rock believes the strike in this case to be a violation, but a determination must be made about the type of strike engaged in by IBT and Local 287 and members, and whether it was prohibited.

disregard the command of its parent union since, at the time, Local 287 owed IBT approximately \$1.2 million. IBT, therefore, financially “exerted actual control over . . . Local 287.” (JA 315.)

The Ninth Circuit did not dispute the harm caused nor the adverse impact on the national labor policy to promote industrial peace. It disagreed that the no-strike provision imposes a responsibility on a non-signatory labor organization even if that union is able to mandate the contract violation. In this case, IBT effectively displaced Local 287 by directing it to strike and calling employees to instruct them not to return to work. But for IBT’s demand for an immunity agreement, the contract would not have been breached. Nonetheless, the Ninth Circuit read the “plain language” of Section 301(a) to prohibit jurisdiction because “the underlying agreement must have created the rights or liabilities which the parties seek to vindicate by their suit.” (JA 50.) (emphasis omitted). This effectively prohibited consideration of Granite Rock’s explicit no-strike rights under the Agreement.

The fact that Granite Rock’s claim is based, in part, on a theory of inducement/interference should not dissuade this Court from recognizing its cause of action against IBT.²⁶ As alluded to above, the Ninth

²⁶ The action for inducement of a contract violation is well-established, and traces back to Nineteenth Century English courts. *See Lumley v. Gye*, (J. Crompton) 118 Eng. Rep. 749, 752-53 (Q.B. 1853) (“[I]t must now be considered clear law that a person who wrongfully and maliciously, or which, is the same thing, with notice, interrupts the relation subsisting between master and servant by procuring the servant to depart from the master’s service, . . . whereby the master is injured, commits a wrongful act for which he is responsible at law.”).

Circuit’s decision creates an artificial dichotomy between contract and tort law and all other legal principles. As described by one legal commentator, “the body of tort doctrine is . . . ‘a field which pervades the entire law.’ . . . [T]ort law intersects with contract doctrine, and tortious interference [and inducement] claims explicitly unite the two bodies of law.” Rebecca Bernhard, *The Three Faces Of Eve: Tortious Interference Claims In The Employment-At-Will Setting*, 86 Minn. L. Rev. 1541, 1549 (2002).

This Court has authority under Section 301(a) to develop federal common law to ensure uniform enforcement of labor contracts and has already utilized both tort and contract principles to fashion causes of action and remedies to address the specific facts before it.²⁷ See *Hechler*, 481 U.S. 851, 860-61

²⁷ This Court also has recognized causes of action or remedies, sounding in tort and contract, in other contexts, as well. *Dep’t of the Army v. Blue Fox, Inc.*, 525 U.S. 255, 263 (1999) (an equitable lien is a hybrid cause of action, through which a party may seek legal and equitable relief); *The John G. Stevens*, 170 U.S. 113, 125-26 (1898) (recognizing a lien as a hybrid of both tort and contract law). Likewise, state supreme courts and circuit courts have, on numerous occasions, recognized hybrid tort and contract causes of action. *Digicorp, Inc. v. Ameritech Corp.*, 262 Wis. 2d 32, 62 (2003) (permitting party to a contract alleging fraud in the inducement to pursue either tort or contract remedies); *Buckley v. Trenton Saving Fund Soc’y*, 111 N.J. 355, 362 (1988) (“We conclude that the wrongful dishonor is a hybrid cause of action, and that characterizing it as tort or contract is not as important as identifying the elements of the cause of action and the recoverable damages.”); *Stephan v. GAF Corp.*, 242 Kan. 152, 159-60 (1987) (the cause of action for implied warranty sounds in both contract and tort); *Johnson v. Healy*, 176 Conn. 97, 100 (1978) (a warranty claim can be “viewed as a contract action, a tort action, or a hybrid of the

(court had jurisdiction over union member's state law tortious breach of contract claim); *DelCostello*, 462 U.S. at 165 (acknowledging the dual nature of duty of fair representation and breach of contract claims under Section 301); *Vaca v. Sipes*, 386 U.S. 171, 188-89 (1967) (under Section 301(a) an employee may allege that his or her union breached the duty of fair representation concurrent with a breach of contract claim against his or her employer, and that “[i]f a breach of duty by the union and breach of contract by the employer are proven, the court must fashion an appropriate remedy”); *Hoosier Cardinal Corp.*, 383 U.S. 696, 706 (1966) (prescribing six-year statute of limitations for union's claim under Section 301(a)).²⁸

two”). Circuit courts have also acknowledged hybrid causes of action that include elements of contract and tort. *See, e.g., Eckard Brandes, Inc. v. Riley*, 338 F.3d 1082, 1086 (9th Cir. 2003) (a claim for a breach of an employee's duty of loyalty is a “hybrid” of tort and contract; the court reasoned, “[u]nder the Restatement, the employer has a cause of action either in tort or for breach of contract when the employee violates the duty”); *Polo Ralph Lauren, L.P. v. Tropical Shipping & Construction Co., Ltd.*, 215 F.3d 1217, 1220-21 (11th Cir. 2000) (claims under the Carriage of Goods by Sea Act include elements of contract and tort); *Puerto Rico Aqueduct & Sewer Authority v. Constructora Lluch, Inc.*, 169 F.3d 68, 79 (1st Cir. 1999) (upholding the district court's treatment of a tort/contract hybrid claim, stating “[i]n numerous instances, the [district] court used hybrid language that makes it clear that it entertained both contract and tort theories and remedies in this case, and properly so”); *Eisenberg v. Ins. Co. of N. Am.*, 815 F.2d 1285, 1291 (9th Cir. 1987) (breach of the covenant of good faith and fair dealing is an “unusual tort action” because its “hybrid” nature “sounds in tort or contract depending upon the facts of the case”).

²⁸Throughout these proceedings, IBT has cited this Court's decision in *Carbon Fuel Co. v. United Mine Workers of Am.*,

Likewise, circuit courts of appeal have applied other common law theories and remedies to rectify non-signatories' misconduct under Section 301(a). *See Brown v. Sandimo Materials*, 250 F.3d 120, 128 (2d Cir. 2001) (remanding for jury trial on joint and several liability of possible single employer or alter ego non-signatory employer entities in breach of contract action for unpaid pension contributions); *Laborers' Int'l Union of N. Am., AFL-CIO v. Foster Wheel Corp.*, 868 F.2d 573, 577 (3d Cir. 1989) (remanding for a determination on alter-ego status of corporate subsidiaries in a union's efforts to proceed to arbitration against both the signatory and non-signatory entities); *Int'l Bhd. of Elec. Workers, Local 613 v. Fowler Industries*, 884 F.2d 551, 554 (11th Cir. 1989) (remanding for alter-ego and single employer determinations of non-signatory employers in an action alleging breach and tortious interference claims with respect to a pre-hire agreement); *Sheet Metal Workers Int'l Ass'n, Local No. 359 v. Arizona Mech. & Stainless, Inc.*, 863 F.2d 647, 651 (9th Cir. 1988) (remanding an arbitration award enforcement action to determine whether alter-ego or single

444 U.S. 212, 215-16 (1979), and contended that agency principles must apply in order for IBT to have liability. The reliance on *Carbon Fuel* is misplaced. In that case, the employer attempted to recover damages from a signatory international union caused by a wildcat strike instigated by non-signatory locals. *Id.* at 215. This Court declined to hold the signatory international liable, reasoning that it did not "authoriz[e], participat[e] in, or ratif[y]" the strike. *Id.* at 215-16. Unlike the international in *Carbon Fuel*, IBT, a non-signatory, directly induced the strike by instructing employees not to come to work and instructing Local 287 to strike. *Carbon Fuel* is readily distinguishable.

employer doctrines apply, binding the non-signatory employer to the signatory's labor contract).

The Third Circuit has expressly refused to exclude automatically causes of action based, at least in part, on a theory of inducement, if necessary to enforce no-strike provisions in labor contracts against non-signatories.²⁹ In *Wilkes-Barre Publ'g Co. v. Newspaper Guild of Wilkes-Barre, Local 120*, 647 F.2d 372, 381 (3d Cir. 1981), *cert. denied*, 454 U.S. 1143 (1982), the court recognized a claim of tortious interference with contract under Section 301(a) against a non-signatory international union.³⁰ *Id.* at 376. The court “analyze[d] the problem in terms of the need to enforce a collective bargaining agreement” and held that Section 301(a)

²⁹ Likewise, in *Local 472 of United Ass'n of Journeyman and Apprentices v. Georgia Power Co.*, 684 F.2d 721, 725 (11th Cir. 1982) the Eleventh Circuit recognized a claim for “tortious interference with a collective bargaining agreement.” But see *Xaros v. U.S. Fidelity & Guaranty Co.*, 820 F.2d 1176, 1182 (11th Cir. 1987) (holding, without referring to *Georgia Power*, that Section 301 provides jurisdiction “only against those who are parties to the contract in issue”). As briefed extensively below, circuits handle these issues differently. Some limit Section 301(a) only to signatories while others find alternative paths for enforcing contracts involving non-signatories.

³⁰ Granite Rock's action principally draws from contract law principles, and seeks only contractual damages. This Court need not fully adopt the cause of tortious interference recognized by the Third Circuit in *Wilkes-Barre*. While the concept of inducement or interference may be necessary to impute liability to IBT, such liability is established separately by IBT displacing Local 287, taking control of strike activities, and instructing employees and Local 287 to violate the Agreement's no-strike provision. This Court may, in accordance with its authority under Section 301(a) fashion a remedy appropriate to the facts of this case.

jurisdiction “reaches not only suits on labor contracts, **but also suits seeking remedies for violations of such contracts.**” *Id.* at 380 (emphasis added). The Third Circuit emphasized, “[t]he label attached to the remedy as tort or contract is not dispositive of the scope of federal common law, which under Section 301(a), it is our responsibility to create.” *Id.* at 381. “A claim of tortious interference with a labor contract,” is, therefore, “recognized as stating a claim under the federal common law of labor contracts.” *Id.* at 380-81; *see also Nedd v. United Mine Workers*, 556 F.2d 190, 197 (3d Cir. 1977) (“It is but a small step further [from the Court’s holding in *Smith*, 371 U.S. 195] that the same federal common law of collective bargaining agreements permits a suit against [the non-signatory party] which allegedly acted in concert for the destruction of the value of the bargained-for and vested contract rights.”).

As the above evidences, Section 301(a) does not apply only to breach of contract actions. *Lincoln Mills* and this Court’s subsequent decisions do not limit federal common law causes of action and the remedies that can be developed. Federal courts have an ability to create federal common law causes and remedies to ensure uniform enforcement of labor contracts, and impose liability on IBT for its misconduct. *See Vaca*, 386 U.S. at 188-89; *Lincoln Mills*, 353 U.S. at 457. Granite Rock’s proposed action for inducing a breach of a labor contract, seeking only the same contract remedies that may be obtained against a signatory like Local 287, fits squarely within Section 301(a)’s intent to ensure the uniform enforcement of collective bargaining agreements and is consistent with the national labor

law policy to preserve industrial peace.³¹ In this case, IBT's egregious interference with, and

³¹ In effect, Granite Rock seeks parity between employers and unions. Under the law of several circuits, a union may bring a Section 301(a) action against a signatory employer and its non-signatory parent company for violation of contract, and obtain contractual remedies from both pursuant to alter-ego and single employer doctrines. See *Sheet Metal Workers Int'l Assoc., Local No. 359*, 863 F.2d at 651; *Brown*, 250 F.3d at 128; *Fowler Industries*, 884 F.2d at 554. This Court has also applied the single employer doctrine to cases concerning employers' alleged violation of the National Labor Relations Act. See *South Prairie Const. Co. v. Local No. 627, Int'l Union of Operating Engineers, AFL-CIO*, 425 U.S. 800, 802 n.3 (1976) (separate entities constitute a single employer where they comprise an integrated enterprise; controlling criteria are "interrelation of operations, common management, centralized control of labor relations and common ownership"); *Radio & Television Broadcast Technicians Local Union 1264 v. Broadcast Service of Mobile, Inc.*, 380 U.S. 255, 256 (1965).

Because unions are legally separate unincorporated associations with no common ownership or control, alter-ego and single employer doctrine have not been applied to impute liability to non-signatory unions that participate in violations of contract. See, e.g., *Local 159 v. Nor-Cal Plumbing, Inc.*, 185 F.3d 978, 985 (9th Cir. 1999). The only federal appellate case found applying the single employer doctrine to a local union and its international did so when an employee, alleging a Title VII claim, asserted that she was jointly employed by both. *Childs v. Local 18, Int'l Bhd. of Elec. Workers*, 719 F.2d 1379, 1381 (9th Cir. 1983).

Without the ability to reach non-signatory unions like IBT, employers, especially those in the Ninth Circuit, are left with little relief. Petitioner believes its proposed cause of action is one that is consistent with Section 301(a). Should this Court, however, hold that an alternative action, such as the alter-ego doctrine modified to apply to parent/local union is appropriate, Granite Rock's Complaint sets forth sufficient facts to support alternative relief.

direct disregard of, Granite Rock and Local 287's Agreement warrants exercise of federal courts' Section 301 authority to create a federal common law cause of action to address this brazen wrong and preserve industrial peace.

E. Public Policy Mandates That Granite Rock Have A Remedy Under Section 301(a) For IBT's Direct Violation Of The No-Strike Provision In The Contract.

1. Without a Right To Proceed Under Section 301(a), Granite Rock Would Be Without a Remedy For Egregious Violations Of Its Labor Contract's No-Strike Provision.

One of the most fundamental maxims of the common law is that "for every wrong, there is a remedy." *Marbury v. Madison*, 5 U.S. 137, 163 (1803). ("[I]t is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded."). By refusing to permit Granite Rock to proceed against IBT while acknowledging that Granite Rock's state claim against IBT is preempted by Section 301(a), the Ninth Circuit decision effectively deprives Petitioner of any remedy for IBT's misconduct.

The preemptive power of Section 301(a) is so complete that a cause of action "arises under" this section if: (1) the suit alleges labor contract violations; and (2) resolving the suit would require a court to interpret the labor agreement." *See*

Allis-Chalmers Corp., 471 U.S. at 210, 212-13 (1985); *accord Hechler*, 481 U.S. at 858-59. The form of the action is irrelevant. Only the substance of the claim, i.e., whether it alleges contract violations and resolution of the suit requires interpretation of the labor agreement, is relevant. *Allis Chalmers Corp.*, 471 U.S. at 213. As this Court explained:

Questions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement, must be resolved by reference to uniform federal law, whether such questions arise in the context of a suit for breach of contract or in a suit alleging liability in tort. Any other result would elevate form over substance and allow parties to evade the requirements of §301 by relabeling their contract claims as claims for tortious breach of contract.

Id. at 211; *see also United Steelworkers of Am. v. Rawson*, 495 U.S. 362, 371 (1990).

In *Allis-Chalmers*, 471 U.S. at 211, this Court considered whether Section 301(a) preempted an employee's state-law tort action against his employer for the alleged bad-faith handling of disability benefit payments due under a labor contract. The employee asserted that the employer and the disability insurance company intentionally failed to make benefit payments as provided for under the labor contract. The Court concluded that the employee's state tort claim was preempted because the claim was "inextricably intertwined with

consideration of the terms of the labor contract.” *Id.* at 213. *See also Rawson*, 495 U.S. 362 at 371 (“Preemption by federal law cannot be avoided by characterizing the Union’s negligent performance of what it does on behalf of the members of the bargaining unit pursuant to the terms of the collective bargaining contract as a state-law tort.”).

Circuit courts have adhered to the aforementioned principles, holding that interference with contractual relations claims based on alleged violations of labor contracts that require their interpretation are preempted by Section 301(a). *See, e.g., Milne Employee’s Ass’n v. Sun Carriers*, 960 F.2d 1401, 1411-12 (9th Cir. 1991); *Int’l Union, United Mine Workers of Am. v. Covenant Coal Corp.*, 977 F.2d 895, 897-99 (4th Cir. 1992); *Magerer v. John Sexton & Co.*, 912 F.2d. 525, 530-31 (1st Cir. 1990); *Baylis v. Marriott Corp.*, 906 F.2d 874, 877-78 (2d Cir. 1990); *Johnson v. Anheuser Busch, Inc.*, 876 F.2d 620, 624 (8th Cir. 1989). Here, IBT admitted that a state law claim for inducing a contract breach would have been preempted by Section 301(a). (JA 19.)

The foregoing raises the critical question whether Congress intended to create a “gap” under Section 301(a) that would cloak IBT in the immunity it has long sought. National labor law policy and common-sense, however, suggest the answer to the question is “no,” and resoundingly support recognition of a federal common law cause of action under Section 301(a) for IBT’s direct misconduct. Congress clearly intended that Section 301(a) prohibit mid-term strikes that violate a collective bargaining agreement’s no-strike

provision. Providing a mechanism to prevent such strikes was the primary purpose of the statute.

Both IBT and the Ninth Circuit contend that an action against Local 287 supplies Granite Rock's remedy. (JA 19, 54.) Obviously, the displaced Local remains liable under the collective bargaining agreement; however, this begs the question of IBT's liability. The party that caused the breach is IBT, which is now attempting to shield itself from the consequences of its conduct behind an empty shell – an under-funded local that does not have assets sufficient to remedy the harm caused by the strike. *See Complete Auto Transit, Inc. v. Reis*, 451 U.S. 401, 423 n. 10 (1981) (Powell, J., concurring) (“The possibility that the local will be liable may be of little practical benefit, however, because the local is often judgment proof.”). This result is precisely why Section 301(a) was enacted, i.e., to create a uniform body of law for contract enforcement in federal court that reaches both labor unions and employers who engage in misconduct. Recognizing the action against IBT fulfills the core reason for Section 301(a) – it prevents mid-term strikes, and provides Granite Rock a remedy to deter further violations of its Agreement. To suggest that Congress intentionally left this gaping hole in the statute ignores Congress' express purpose for enacting Section 301(a) and defies logic.

The Ninth Circuit views Granite Rock's proposed Section 301(a) action as “extraordinary.” (JA 55.) This characterization not only misstates the nature of the common law claim sought to be recognized, it overlooks the conservative remedy requested. Granite Rock asks that this Court to

fashion a remedy to address the particular conduct engaged in by IBT in a case where a non-signatory effectively displaced a signatory to the labor contract, directly causing violation of the labor contract, and doing so to procure a benefit for itself. Remedies already exist against parent employers as well as joint employers that engage in similar misconduct.³² Granite Rock simply asks the Court to create parity.

IBT defiantly seeks complete immunity from the federal courts, much like the immunity it attempted to coerce from Granite Rock by economic force. It asserts that its third party non-signatory status prevents federal jurisdiction and that a federal common law contractual inducement action should not exist simply because some elements resemble a “tort” instead of a contract claim. At the same time, it admits there is no state law claim because of preemption. (JA 19.) IBT should not be rewarded for its egregious misconduct in directly inducing a violation of a contract and thereby procuring a benefit for itself. Fundamental fairness demands that Petitioner be afforded a remedy.

³²Contrary to IBT’s assertions, this Court should not be concerned that providing Granite Rock a remedy in this case may spur frequent, vexatious litigation filed only to harass international unions. Typically, when confronted with a labor contract violation, the aggrieved party first seeks injunctive relief. *See Buffalo Forge Co. v. Steelworkers of Am., AFL-CIO*, 428 U.S. 397, 407 (1976). Only when a request for injunctive relief fails, as occurred in this case, does it become necessary to seek damages for the contract violation.

2. The Ninth Circuit’s Decision Provides International Unions, Like IBT, A Blueprint for Industrial Chaos And Is The Antithesis Of What Congress Intended.

If allowed to stand, the court of appeals has empowered parent unions to undermine binding, negotiated collective bargaining agreements. It is as simple as one, two, three. First, a local union with few assets signs a collective bargaining agreement. Second, a non-signatory international union wages economic warfare against the employer in direct violation of the no-strike provision in the agreement between the local union and the employer. Third, the international union claims no liability under Section 301 because it did not “sign” the collective bargaining agreement. Simultaneously, the international union asserts immunity from state-law claims based on the rationale that Section 301 preempts any claims that require a court to interpret and otherwise enforce a labor contract.

The result is the antithesis of Section 301’s legislative intent and this Court’s interpretation of federal courts’ mandate under that statute to develop a federal common law consistent with national labor relations policy. *Lincoln Mills*, 353 U.S. at 453. Ultimately, the Ninth Circuit’s holding jeopardizes peaceful labor relations fostered by adherence to collective bargaining agreements, which, in the end, fuels industrial chaos. *Id.* at 455 (Section 301(a) expressed a policy “that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only that way”).

Only this Court can prevent the deleterious consequences of the decision below and its propagation. Granite Rock knows first-hand the pain and economic damage to its business, its customers, and its employees that can be inflicted when a non-signatory parent union effectively destroys a bargained-for no-strike provision. Congress undoubtedly intended to prohibit the violation of collective bargaining agreements in this manner. The Ninth Circuit's decision, however, vitiates Congress' intent and provides international unions a powerful and illicit economic weapon to use against employers that refuse to give in to their demands.

VII. CONCLUSION

For the reasons set forth above, this case should be reversed and remanded to the Ninth Circuit with instructions to reinstate Petitioner's Section 301(a) cause of action against IBT, and to return the case against Local 287 to district court to reinstate the jury verdict.

Respectfully Submitted,

Garry G. Mathiason
Counsel of Record
Alan S. Levins
Adam J. Peters
Rachelle L. Wills
Sofija Anderson
LITTLER MENDELSON
A Professional Corporation
650 California Street, 20th Floor
San Francisco, CA 94108.2693
Telephone: 415.433.1940

Arthur R. Miller
Of Counsel
New York University School of Law
40 Washington Square South
Vanderbilt Hall 409D
New York, NY 10012
Telephone: 212.992.8147