S245607

IN THE

SUPREME COURT OF CALIFORNIA

GEORGE MELENDEZ, et al.,
Plaintiffs and Petitioner,

v.

SAN FRANCISCO BASEBALL ASSOCIATES, LLC
Defendant and Respondent,

AFTER A DECISION BY THE COURT OF APPEAL
FIRST APPELLATE DISTRICT
CASE NO. A149482

RESPONDENT'S ANSWER BRIEF ON THE MERITS

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
NANCY PRITIKIN (SBN 102392)
BABAK YOUSEFZADEH (SBN 235974)
KARIN DOUGAN VOGEL (SBN 131768)
BRIAN S. FONG (SBN 262846)
Four Embarcadero Center, 17th Floor
San Francisco, California 94111-4109
TELEPHONE: 415.434.9100
FACSIMILE: 415.434.3947
EMAIL: npritikin@sheppardmullin.com
EMAIL: byousefzadeh@sheppardmullin.com
EMAIL: kvogel@sheppardmullin.com
EMAIL: bfong@sheppardmullin.com

Attorneys for Defendant and Respondent
SAN FRANCISCO BASEBALL ASSOCIATES, LLC

S245607

IN THE

SUPREME COURT OF CALIFORNIA

GEORGE MELENDEZ, et al.,
Plaintiffs and Petitioner,

v.

SAN FRANCISCO BASEBALL ASSOCIATES, LLC
Defendant and Respondent,

AFTER A DECISION BY THE COURT OF APPEAL
FIRST APPELLATE DISTRICT
CASE NO. A149482

RESPONDENT'S ANSWER BRIEF ON THE MERITS

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
NANCY PRITIKIN (SBN 102392)
BABAK YOUSEFZADEH (SBN 235974)
KARIN DOUGAN VOGEL (SBN 131768)
BRIAN S. FONG (SBN 262846)
Four Embarcadero Center, 17th Floor
San Francisco, California 94111-4109
TELEPHONE: 415.434.9100
FACSIMILE: 415.434.3947
EMAIL: npritikin@sheppardmullin.com
EMAIL: byousefzadeh@sheppardmullin.com
EMAIL: kvogel@sheppardmullin.com
EMAIL: bfong@sheppardmullin.com

Attorneys for Defendant and Respondent
SAN FRANCISCO BASEBALL ASSOCIATES, LLC

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Cal. Rules of Court, Rules 8.208)

The following entities have either an ownership interest of 10 percent or more in the party filing this certificate (Cal. Rules of Ct., rule 8.208(e)(1)), or a financial or other interest in the outcome of the proceedings that the justices should consider in determining whether to disqualify themselves (Cal. Rules of Ct., rule 8.208(e)(2)):

1. Bay Ball, Inc.
2. Grand Slam Baseball LP
3. Charles B. Johnson Trusteed IRA

Dated: July 12, 2018 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By: 

NANCY PRITIKIN
BABAK YOUSEFZADEH
KARIN DOUGAN VOGEL
BRIAN S. FONG

Attorneys for Defendant and Respondent
SAN FRANCISCO GIANTS
BASEBALL ASSOCIATES, LLC

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Federal Cases

State Cases

INTRODUCTION

At issue here is whether plaintiff George Melendez's claims for final wages under Labor Code section 201 require interpretation of, or substantially depend on or are intertwined with, the collective bargaining agreement between Melendez's union and the Giants (CBA), such that his claims are preempted under Section 301 of the Labor Management Relations Act (Section 301 or LMRA). Defendant San Francisco Baseball Associates, LLC (the Giants)[1] moved to compel arbitration of Melendez's claims, in part, on the basis that the claims are preempted by federal law and therefore are exclusively a matter for arbitration. The Court of Appeal agreed with the Giants and reversed the trial court's denial of the Giants' motion. The Court of Appeal decision should be affirmed.

The parties and the lower courts all agree that Melendez's claims for final wages and waiting time penalties depend on whether Melendez was "discharged" within the meaning of section 201. Melendez works year-round as a security guard for the Giants at AT&T Park, and has done so continuously since 2005. Even he does not allege he was fired or otherwise affirmatively terminated from his employment. Instead, Melendez purports to rely on the principle, enunciated by this Court in *Smith v. Superior Court* (2006) 39 Cal.4th 77 (*Smith* or *L'Oreal*), that an employee hired for a specific assignment or specified time period is automatically discharged when that assignment or period ends.[2]

---

[1] The Giants are erroneously sued as San Francisco Giants Baseball Club LLC. At the time of the underlying motion, the appropriate entity was San Francisco Baseball Associates L.P. Since then, the entity has undergone restructuring and is now the San Francisco Baseball Associates, LLC.

[2] This brief identifies the principle enunciated in *Smith*—that an agreement for a fixed term or duration will naturally end at the conclusion of that term, without any affirmative action of the parties—as a "contractual discharge."

Invoking *Smith*, Melendez alleges he is employed to work for short assignments or time periods (such as a homestand, a season, or a single event), and is automatically "laid off" after completing each such assignment or period. He then argues that each such "layoff" is a form of discharge under Labor Code section 201. But what Melendez terms as a "layoff" is just the passage of time between scheduled shifts in an ongoing employment relationship. The Giants hired Melendez as a continuous employee who can only be discharged for cause, as reflected by the terms of the CBA. He has never been discharged or laid off; to the contrary, he has worked in every pay period reflected in the record.

Ultimately, however, this appeal does not concern whether Melendez or the Giants are right about the duration of the Melendez's employment—it is about *how* that question is answered. If answering the question requires interpretation of the CBA, or depends on or is intertwined with the CBA for its resolution, then it must be resolved in arbitration under Section 301 principles, as the Court of Appeal held.

Smith, which defines discharge under Labor Code section 201, and on which Melendez bases his theory, repeatedly ties the principle of contractual discharge to terms of the parties' employment, including what the employee was "hired for" in the first instance. Here, the CBA is "the sole and exclusive Agreement concerning the wages, hours and working conditions of all bargaining union employees." (AA 171.) And as the Court of Appeal noted, the CBA contains several provisions that provide insight as to the duration that security guards were "hired for" (e.g., provisions regulating scheduling, discharge (for cause only), seniority, vacations, holiday pay, and health and welfare issues, among others). Thus, under *Smith*, to determine if Melendez's employment is continuous, or if he was employed only for "specific assignments" (like homestands) as he claims, a trier of fact must analyze the parties agreement—the CBA.

Faced with this reality, Melendez takes a different approach: he simply presumes the answer to dispute at issue, arguing that all time between his scheduled shifts are "layoffs," which amount to "discharges" under Labor Code 201. Starting with that premise, the CBA is irrelevant to Melendez because he was (by his definition) laid off or discharged whenever there was a break in his schedule. Thus, he proposes that the Court simply count the days between his scheduled shifts to determine if there has been an automatic "layoff." In so doing, however, Melendez is no longer seeking application of *Smith* or contract principles but he is requesting a radical deviation from both. He invites this Court to create a new type of "discharge," in the form of implied temporary layoffs, which are automatically triggered after the passage of an arbitrarily set number of days or the completion of intermediary assignments during an *ongoing* employment relationship. The Court should decline this invitation, as it runs counter to well-established case law (including *Smith*), basic contract principles, many decades of legislation, and public policy, not to mention it leads to absurd and illogical results.

Instead, the Court should apply *Smith*, under which Melendez has to prove that the Giants and Melendez's union agreed to create an assignment-based or duration-based employment relationship for security guards (i.e., a fixed term employment), such that they would be automatically discharged at the end of each homestand, event, or baseball season. As the Court of Appeal held, such a showing cannot be made without resort to the CBA, the parties' exclusive agreement on the terms and conditions of employment, thereby triggering Section 301 preemption.

The opinion of the Court of Appeal should be affirmed and the matter remanded to the trial court for further proceedings to enforce Section 301 preemption.

FACTUAL AND PROCEDURAL BACKGROUND

A. Relevant Facts

As the Court of Appeal recognized, although the parties strongly disagree about the application of legal principles, the facts are not disputed. (See *Melendez v. San Francisco Baseball Associates LLC* (2017) 16 Cal.App.5th 339, 342.)

1. The Giants and AT&T Park

San Francisco Baseball Associates, LLC is a multi-faceted business enterprise headquartered at AT&T Park in San Francisco. Its principal business is the exhibition of Major League Baseball games at AT&T Park, where the Giants baseball team plays 81 regular season home games from April to October of each year. Each of these games is typically played in a series of 6-10 games in a row, known as a "homestand." (AA 157–158.) As a multi-purpose venue, AT&T Park is open almost every day of the year, and hosts hundreds of activities and events in addition to baseball games (e.g., ballpark tours, private parties, concerts, fundraising events, youth clinics, fantasy camps and other sports such as football, rugby and even ice-skating). (AA 158.) As a high-profile, public assembly facility, AT&T Park is staffed with security 24 hours each day, seven days per week. Melendez works as one of these year-round security guards.

2. Melendez

Melendez has been continuously employed by the Giants as a security guard at AT&T Park since March 2005. (AA 156–157.) The Giants have never fired Melendez or purported to lay him off, nor has he ever resigned. (AA 156.) To the contrary, Melendez (like other security guards) routinely works year-round, at baseball and non-baseball events, both during and between baseball seasons. (AA 156–157.) For example,

Melendez worked in every pay period during the last full year leading up to this lawsuit (2015), plus every pay period of the following year until the Giants filed their Motion to Compel Arbitration at the end of May, 2016.[3] (*Ibid.*)

Like all AT&T Park security guards, Melendez is a member of the Service Employees International Union, United Service Workers West of San Francisco (the Union). (AA 156–158.) The Union is the sole collective bargaining agency for security personnel employed by the Giants at AT&T Park. (AA 160.) The CBA is the sole and exclusive agreement governing the terms and conditions of employment for security guards. (AA 160, 171.)

3. The CBA's express and implied terms

The CBA contains express and implied provisions reflecting the parties' intent as to the duration of their employment relationship. For example, the CBA creates a process for the hiring and unionization of new security guards, who must join the Union within 31 days after hire. (AA 164.) Like nearly every collective bargaining agreement, the CBA only allows the Giants to discipline or discharge its security guards "for cause." (AA 169; see *Pugh v. See's Candies, Inc.* (1981) 116 Cal.App.3d 311, 320, disapproved on another ground by *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 351 (*Guz*) ["Under most union contracts, employees can only be dismissed for 'just cause,' and disputes over what constitutes cause for dismissal are typically decided by arbitrators chosen by the parties."].) Similar to other labor contracts, the CBA also contains a comprehensive

[3] These are the only time periods reflected in the record. Melendez has never presented any evidence of missed pay periods or other gaps in his employment with the Giants.

grievance and arbitration procedure for disputes regarding the interpretation or application of the CBA. (AA 169.)

Among its other express terms, the CBA classifies security guards by seniority based on the number of hours worked in the previous one, five or 10 years, without regard to homestands or seasons. (AA 160–163.) Each security guard's seniority affects his or her pay rate, eligibility for benefits, and scheduling priority. (AA 164–169.) For example, certain security guards accrue between two to four weeks of paid vacation annually, based on their classification and number of "full years of service." (AA 164.) Similarly, certain security guards are entitled to health benefits if they worked 120 hours in the prior month, without regard to the month being during or after the baseball season. (AA 166.) Guards are free to (and do) sign up for their own schedules, but the Giants have discretion in scheduling employees, subject to restrictions in the CBA, such as requiring breaks, establishing minimum hours for each scheduled shift, requiring overtime, and prioritizing employees with seniority. (AA 160, 165.)

The CBA also contains implied provisions developed and evidenced by custom and past practice between the Giants and the Union. For example, AT&T Park security guards (1) do not turn in their uniforms or badges at the end of homestands or baseball seasons; (2) do not reapply for work or submit new hire paperwork at the beginning of each homestand or baseball season; (3) are not terminated by the Giants at the end of each homestand or baseball season; (4) remain on the Giants' payroll between homestands and baseball seasons, and (5) are paid within the regular pay cycle for each pay period in which they work. (AA 157.)

B. Procedural History

1. Melendez filed suit in superior court

After working for the Giants continuously from 2005 to the present, Melendez sued the Giants for the purported failure to pay him "final wages" upon "discharge."[4] (AA 16–23.) Despite alleging he was discharged multiple times each year, Melendez continues to be employed by the Giants, and is routinely scheduled to work year-round.

Accordingly, Melendez does not allege in his First Amended Complaint (FAC) that he has ever been affirmatively discharged. Instead, Melendez bases his theory of recovery on *Smith*, *supra*, 39 Cal.4th at pp. 93–94, where this Court held that discharge under Labor Code sections 201

---

[4] This matter stems from one of two companion cases involving Labor Code sections 201 and 203 claims by AT&T Park security guards based on the contractual discharge theory articulated in *Smith*. On April 16, 2013, former security guard Wilfredo Rivas filed a putative class action complaint based on the theory that he was discharged from employment at the end of every baseball season. (AA 9–14.) Rivas was employed by the Giants as a security guard at AT&T Park from 2000 until August 2012, when his employment was terminated for misconduct after a physical altercation with a coworker. (AA 34.) On November 25, 2015, while the *Rivas* matter was pending, Melendez filed the present matter (represented by the same counsel representing Rivas), making the same allegations but adding claims for discharges purportedly at the end of each homestand and at the end of each event held at AT&T Park. (AA 16–23.) The Giants brought a motion to dismiss Rivas on the ground that Rivas lacked standing due to a settlement of a prior wage and hour case. (AA 29–43.) The trial court granted the Giants' motion in part and disqualified Rivas as class representative, but provided his counsel leave to locate a suitable representative. (AA 83–84.) The trial court then ordered the parties in *Rivas* and *Melendez* to meet and confer on the possibility of a consolidated complaint. (AA 84–85.) The parties ultimately stipulated to the filing of a consolidated complaint under the *Rivas* case number (CGC-13-530672) with Melendez designated as the putative class representative in both matters. (AA 316.) The consolidated complaint has not been filed, as the cases were stayed pending the resolution of this appeal. (AA 380.)

and 203 "may be satisfied either when an employee is involuntarily terminated from an ongoing employment relationship or when an employee is released after completing the specific job assignment or time duration for which the employee was hired." Melendez alleges he has been employed "intermittently" by the Giants "for periods of limited and specific duration" such that he is automatically "laid off" (which he equates with discharge) each time he completes an "assignment" (e.g., a homestand or single concert) or "time period" (e.g., a season).[5] Effectively, Melendez claims he is discharged between each scheduled work assignment, no matter how much or little the time between them. (AA 21.)

2. The Giants moved to compel arbitration

The Giants dispute Melendez's allegation that he worked "for any "specific job assignment or time duration," and assert they have continuously employed him since March 2005 without firing him or laying him off. The Giants also maintain that resolution of this dispute—in essence, a dispute over the duration of Melendez's employment—requires examination of the parties' intent and agreement as to the terms of that employment, which here is exclusively memorialized in the CBA. Accordingly, the Giants timely moved to compel arbitration on the ground that resolution of Melendez's claims requires analysis or interpretation of the CBA to determine if a discharge had actually occurred, thereby triggering Section 301 preemption.[6] (AA 92–176.)

---

[5] As discussed below, Melendez does not allege he was "hired for" (or contracted to work for) any specific assignment or time period.

[6] The Giants also moved on the ground Melendez's claims fall within the scope of the arbitration provision of the CBA under Federal Arbitration Act and California Arbitration Act principles. Only the Section 301 preemption issue is under review by this Court.

In opposing the Giants' motion to compel arbitration, Melendez did not point to any facts supporting his allegation that he was employed as an "intermittent employee" who was automatically discharged after each homestand, baseball season, and event between homestands and seasons (amounting to dozens of discharges per year). Instead, like here, Melendez simply presumed he was employed for specific assignments or durations, and all of his breaks between scheduled assignments were "discharges" (or as he now calls them, "layoffs") such that the only matter before the court was to simply count the days between scheduled shifts and calculate damages.

The trial court confined its preemption analysis to a narrow issue: whether a specific provision of the CBA "has any connection ... to whether plaintiffs here were or were not terminated, the core (if not only) factual issue pertinent to the statutory claims." (AA 256.) Using this narrow approach, the trial court concluded Section 301 preemption did not apply to Melendez's claims because they arose from statute (not the CBA), and there was no express term of the CBA governing termination that required interpretation or application. The trial court denied the motion to compel arbitration and the Giants timely appealed. (AA 253–259, 322–323.)

3. Proceedings on appeal

The Court of Appeal unanimously reversed the trial court and held Melendez's claims were preempted under Section 301. (*Melendez, supra*, 16 Cal.App.5th 339.) Like the trial court, the Court of Appeal recognized the "underlying legal issue, as all parties recognize, is whether plaintiffs were 'discharged' within the meaning of Labor Code section 201." (*Id.* at p. 346.) Unlike the trial court, however, the Court of Appeal determined: "[w]hile resolution of the controversy may not turn on the interpretation of any specific language in the CBA, it does not follow that the meaning of

the CBA is irrelevant to the outcome of the dispute." (*Ibid.*) Citing directly to *Smith*, the Court of Appeal found "to determine whether the conclusion of a baseball game or season or other event constitutes a discharge as interpreted in [*Smith*], it is necessary to first determine the terms of employment." (*Ibid.*, citing *Smith, supra*, 39 Cal.4th 77.) Applying *Smith's* holding, the Court of Appeal concluded that "[i]t is essential to determine, therefore, whether the CBA provides for employment of security guards for only a single game or homestand or season or other event, or whether the agreement contemplates extended employment from season to season, event to event, year to year, recognizing that not every day will be a day of work. If the latter, there is no termination of employment, and therefore no 'discharge,' at the conclusion of each baseball game, homestand, season or other event." (*Ibid.*)

The Court of Appeal went on to hold that "[a]lthough no provision of the CBA provides an explicit answer, the duration of the employment relationship must be derived from what is implicit in the agreement. There are numerous provisions from which inferences may logically be drawn," including provisions dealing with the classification of employees, hiring of new guards, specification of paid holidays, and discharge for cause, among others. (*Id.* at pp. 346–347.)

This Court granted Melendez's petition for review, limiting review to the following issue:

> Whether plaintiffs' statutory wage claim under Labor Code section 201 requires the interpretation of a collective bargaining agreement and is therefore preempted by section 301 of the Labor Management Relations Act. [7]

---

[7] At the same time, the Court denied the Labor Commissioner's request to depublish the Court of Appeal opinion.

As discussed further below, whether Melendez and putative class members were ever discharged under Labor Code section 201 depends upon interpretation of the CBA; or at a minimum, resolution of the dispute "substantially depends on" or is "inextricably intertwined with" an analysis of the express or implied CBA. As such, the analysis is preempted by the LMRA.

LEGAL BACKGROUND

A. Standard of Review

The trial court's order refusing to compel arbitration is reviewed de novo. (See *Parada v. Superior Court* (2009) 176 Cal.App.4th 1554, 1567.) "When the issues regarding federal preemption involve undisputed facts, it is a question of law whether a federal statute or regulation preempts a state law claim," subject to de novo review. (*Cellphone Termination Fee Cases* (2011) 193 Cal.App.4th 298, 311, citing *Smith v. Wells Fargo Bank, N.A.*, 135 Cal.App.4th 1463, 1476.) Similarly, whether the doctrine of complete federal preemption applies is a question of law reviewed de novo. (*Hood v. Santa Barbara Bank & Trust* (2006) 143 Cal.App.4th 526, 535.)

B. The Powerful, Preemptive Force of Section 301 Preemption

Section 301 of the LMRA provides that "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . may be brought in any district court of the United States having jurisdiction of the parties. . . ." (29 U. S. C. § 185(a).) Section 301 expresses a "congressional mandate to the federal courts to fashion a body of federal common law to be used to address disputes arising out of labor contracts." (*Allis-Chalmers Corp. v. Lueck* (1985) 471 U.S. 202, 209, citing *Textile Workers* v. *Lincoln Mills* (1957) 353 U.S. 448.) To further that goal, where "resolution of a state-law claim depends upon the meaning of a collective-bargaining agreement, the

application of state law (which might lead to inconsistent results since there could be as many state-law principles as there are States) is pre-empted and federal labor-law principles—necessarily uniform throughout the Nation—must be employed to resolve the dispute." (*Lingle v. Norge Div. of Magic Chef* (1988) 486 U.S. 399, 405–406.)

Since most labor contracts call for arbitration to resolve disputes, federal preemption assures that such disputes "remain firmly in the arbitral realm." (*Lingle*, *supra*, 486 U.S. at p. 411.) "A rule that permitted an individual to sidestep available grievance procedures would cause arbitration to lose most of its effectiveness, . . . as well as eviscerate a central tenet of federal labor contract law under § 301 that it is the arbitrator, not the court, who has the responsibility to interpret the labor contract in the first instance." (*Id.* at p. 411, quoting *Lueck*, *supra*, 471 U.S. at p. 220.) Thus, if Section 301 preemption applies, the matter is exclusively one for arbitration under federal law. (*Levy v. Skywalker Sound* (2003) 108 Cal.App.4th 753, 762; accord *Lingle*, *supra*, 486 U.S. at p. 411 ["judges can determine questions of state law involving labor-management relations only if such questions do not require construing collective-bargaining agreements."].)

At its core, Section 301 preempts any state law claim based on or governed by a collective bargaining agreement. (*Franchise Tax Board of Calif. v. Construction Laborers Vacation Trust for So. Calif.* (1983) 463 U.S. 1, 23; see also *Sciborski v. Pacific Bell Directory* (2012) 205 Cal.App.4th 1152, 1164.) "[T]he preemptive force of Section 301 is so powerful that it displaces entirely any state cause of action for violation of a collective bargaining agreement . . . and any state claim whose outcome depends on analysis of the terms of the agreement." (*Newberry v. Pacific Racing Ass'n* (9th Cir. 1988) 854 F.2d 1142, 1146, citing *IBEW v. Hechler* (1987) 481 U.S. 851, 859.)

Whether preemption applies involves a two-step analysis. (*Burnside v. Kiewit Pacific Corp.* (9th Cir. 2007) 491 F.3d 1053, 1059; *Sciborski, supra*, 205 Cal.App.4th at p. 1164.) "First, the court should evaluate whether the claim arises from independent state law or from the collective bargaining agreement." (*Sciborski, supra*, 205 Cal.App.4th at p. 1164.) Here, the parties agree that Melendez's section 201 claims are founded on rights established by independent state law and not from the CBA. That fact, however, is not dispositive. Claims can be preempted even if founded on independent state law. (*Cramer v. Consol. Freightways, Inc.* (9th Cir. 2001) 255 F.3d 683, 693; *Sciborski, supra*, 205 Cal.App.4th at pp. 1164–1165; *Newberry, supra*, 854 F.2d at p. 1146; *Young, supra*, 830 F.2d at p. 996; *Ruiz v. Sysco Food Services* (2004) 122 Cal.App.4th 520, 529.) The United States Supreme Court has held that a state may "create a remedy that, although nonnegotiable, nonetheless turned on the interpretation of a collective-bargaining agreement for its application. Such a remedy would be preempted by § 301." (*Valles v. Ivy Hill Corp.* (2005) 410 F.3d 1071, 1081–1082, quoting *Lingle, supra,* 486 U.S. at p. 407, n. 7.) Similarly, "if a law applied to all state workers but required, at least in certain instances, collective-bargaining agreement interpretation, the application of the law in those instances would be pre-empted." (*Lingle, supra,* 486 U.S. at p. 407, n. 7.)

So, even if the claim arises from independent state law, the second step of the analysis must be addressed: the court must determine "whether the claim requires 'interpretation or construction of a labor agreement.'" (*Sciborski, supra*, 205 Cal.App.4th at p. 1164, internal citation omitted; see *Burnside, supra*, 491 F.3d at p. 1059 ["If, however, the right exists independently of the CBA, we must still consider whether it is nevertheless 'substantially dependent on analysis of a collective-bargaining agreement.'"] quoting *Caterpillar, Inc. v. Williams* (1987) 482 U.S. 386,

394.) A claim requires interpretation or construction of a labor agreement if: (1) "the application of state law require[s] the interpretation of a collective bargaining agreement, or substantially depend[s] upon analysis of the [collective bargaining agreement]" (*Newberry, supra*, 854 F.2d at p. 1147); (2) "evaluation of the claim is inextricably intertwined with consideration of the terms of the labor contract'" (*Young v. Anthony's Fish Grottos, Inc.* (9th Cir. 1987) 830 F.2d 993, 999, citing *Lueck, supra*, 471 U.S. at p. 213); *or* (3) "permitting the state law claims to proceed would infringe upon the arbitration process established by the collective bargaining agreement" (*Ruiz supra*, 122 Cal.App.4th at p. 529, quoting *Tellez v. Pac. Gas and Elec. Co.* (9th Cir. 1987) 817 F.2d 536, 537–538). If the answer to *any* of these questions is yes, then the claim is preempted by Section 301. (*Burnside, supra*, 491 F.3d at p. 1059.)

As a Union member, Melendez is bound by the terms of the CBA between the Union and the Giants. (See *Florio v. City of Ontario* (2005) 130 Cal.App.4th 1462, 1466 ["a member of a bargaining unit is bound by the terms of a valid collective bargaining agreement"].) Accordingly, he is subject to the broad scope of Section 301 and, where it applies, he must pursue his remedies under the mechanisms set forth in the CBA. (*Avco Corp. v. Machinists* (1968) 390 U.S. 557, 561.)

C. California Labor Code Provisions Governing Wage Payments

To establish his sole substantive claim for waiting time penalties under Labor Code section 203,[8] Melendez must prove the Giants willfully failed to pay him timely final wages upon discharge as required by Labor

[8] The parties agree that Melendez's claim under the California Private Attorneys General Act (PAGA), is wholly derivative of his Labor Code § 201 et seq. claim.