NO.

IN THE
SUPREME COURT OF THE UNITED STATES

VINCENT LYLE BADKIN,

Petitioner

v.

LOCKHEED MARTIN CORPORATION, a Maryland corporation, dba LOCKHEED MARTIN SPACE SYSTEMS COMPANY; and INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, DISTRICT 160 AND LOCAL LODGE 282, a Washington Labor Union,

Defendants

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In this "hybrid § 301" claim brought under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, the Ninth Circuit Court of Appeals "has **so far departed from the accepted and usual course of judicial proceedings as to call for exercise of this Court's supervisory power.**"

1. Badkin filed this court action against Lockheed Corporation for his wrongful termination in breach of the collective bargaining agreement (CBA); and against the Union's for breach of its duty of fair representation for "***handling his grievance arbitrarily, perfunctorily, discriminatorily, dishonestly, and in bad faith with a reckless disregard for Badkin's rights.***"

Badkin testified during his deposition that several months earlier he had problems at work with Lockheed when he had complained about certain hazardous electrical safety violations and that the Union had not supported him against Lockheed at that time.

During the oral arguments at the Court of Appeals, Badkin's attorney focused on the record of the Union's handling his grievance *"arbitrarily, perfunctorily, discriminatorily, dishonestly, and in bad faith with a reckless disregard for Badkin's rights*" by focusing on the Union's contradictory **after-the-fact declaration** on it's allegations why it failed to take the grievance to arbitration even though Badkin never argued about the Union's failure to take the grievance to arbitration – because the Union had secretly settled and agreed with Lockheed and dismissed Badkin's grievance without his knowledge long time earlier.

Yet, in its memorandum ruling, the Court of Appeals misquoted what Badkin was asking in his complaint and incorrectly opined that *"Badkin alleges . . . (2) the Union*

breached its duty of fair representation ***by declining to advance Badkin's grievance to arbitration"*** – even though Badkin never argued about the Union's failure to take the grievance to the arbitration because the Union had already secretly settled with Lockheed and dismissed Badkin's grievance without his knowledge.

2. Badkin could not afford to retain a powerful / expensive law firm for his complaint against the large and powerful Lockheed Corporation and against the Union because he was wrongfully terminated and unemployed with no income.

Instead, Badkin could afford to retain only a solo practice, pro bono attorney, to face such a large corporation and the Union, who could afford powerful law firms.

No reasonable jury would disagree with the proposition that if Badkin could have afforded an expensive/ powerful law firm, the lower courts would not have overlooked the merits of Badkin's grievance and the Union's breach of its duty of fair representation.

The words of Justice Hugo Black apply here: ***"There can be no equal justice where the kind of trial a man gets depends on the amount of money he has."*** **Justice Hugo Black in *Griffin v. Illinois*, 351 U.S. 12 (1956).**

Badkin respectfully asks this Court to grant his petition because the Ninth Circuit Court of Appeals *"has so far departed from the accepted and usual course of judicial proceedings as to call for exercise of this Court's supervisory power."*

LIST OF PARTIES

The parties below are listed in the caption: Vincent Badkin, Petitioner v. Lockheed Martin Corporation, a Maryland Corporation, DBA Lockheed Martin Space Systems Company; and International Association of Machinists and Aerospace

Workers, District 160 and Local Lodge 282, a Washington Labor Union.

CORPORATE DISCLOSURE STATEMENT

There is no parent or publicly held company owning 10% or more of the corporations stock.

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OPINION BELOW

1. The unpublished ORDER of the United States Court of Appeals for the Ninth Circuit, Case No. 19-35524, dated 08/31/2020, Amending the Prior memorandum disposition filed on July 21, 2020, and denying petition for re-hearing, is at APPENDIX A

2. The unpublished Memorandum Disposition filed on July 21, 2020, United States Court of Appeals for the Ninth Circuit, Case No. 19-35524 affirming the summary judgment of the District Court, is at APPENDIX B.

3. The Order Granting Defendants' Motions for Summary Judgment, Case No. C17-5910 BHS, United States District Court Western District of Washington at Tacoma, filed 05/22/19, is at APPENDIX C.

STATEMENT OF JURISDICTION

1. The order of the United States Court of Appeals denying re-hearing was on 08/31/2020.
2. The **Petition for rehearing** was timely filed on **08/04/2020.**
3. A timely **petition for rehearing** was denied by the Court of Appeals on 8/31/2020, and a copy of the order is in Appendix A.
4. An extension of time to file the petition for writ of certiorari was apparently entered by the Supreme Court for all applicants because of the pandemic.
5. The jurisdiction of this court is invoked under 28 USC Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This is a "hybrid § 301" claim under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185 brought by Vincent Badkin against

Lockheed Marietta Corporation for wrongful termination and against his Union for breach of its duty of fair representation.

2. *Vaca v. Sipes* 386 U.S. 171 at 190 (1967): *"A breach of the statutory duty of fair representation occurs only when a* ***union's conduct*** *toward a member of the collective bargaining unit* ***is arbitrary, discriminatory, or in bad faith.*** *"*

3. *Vaca v. Sipes*, 386 U.S. at 191 (1967): *"to ignore a* ***meritorious grievance*** *or process it in a* ***perfunctory fashion****" may be arbitrary.*

4. *Vaca v. Sipes* 386 U.S. 171 at p. 194 (1967): *"In administering the grievance and arbitration machinery as statutory agent of the employees,* ***a union must, in good faith and in a nonarbitrary manner, make decisions as to the merits of particular grievances.*** *See Humphrey v. Moore,* 375 U. S. 335, 349-350; Ford Motor Co. v. Huffman, 345 U. S. 330, 337-339 . . . *the Union might well have breached its duty had it* ***ignored Owens' complaint or had it processed the grievance in a perfunctory manner.***

5. *"Though we accept the proposition that a* ***union may not arbitrarily ignore a meritorious grievance or process it in perfunctory fashion****, we do not agree that the individual employee has an absolute right to have his grievance taken to arbitration regardless of the provisions of the applicable collective bargaining agreement". Vaca v. Sipes,* 386 U.S. at 191, (1967).

6. *"We hold that the rule announced in Vaca v. Sipes, 386 U. S. 171, 190 (1967) — that a union breaches its duty of fair representation if its actions are either "****arbitrary****, discriminatory, or* ***in bad faith****"—applies to all union activity, including contract negotiation. We further hold that a union's actions are arbitrary only if,* ***in light of the factual and legal landscape*** *at the time of the union's actions, the union's behavior is so far outside a "wide range of reasonableness," Ford Motor Co. v. Huffman, 345 U. S. 330, 338 (1953), as to be irrational. Air Line Pilots Association, International v. O'neill et Al. 499 U.S. 65, at 67 (1991).*

7. *"A* ***union is prohibited from ignoring a meritorious grievance*** *or processing that grievance perfunctorily. (citing Vaca, 386 U.S. at 191). . . The trial court properly found that [the unions] failure to notify Stoody was a breach of the Local's duty of fair representation. The judgment against the union was affirmed." Galindo v. Stoody Co.*793 F.2d 1502, 1513 (9th Cir. 1986).

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8. *"There can be* ***no equal justice where the kind of trial a man gets depends on the amount of money he has.***" **Justice Hugo Black in *Griffin v. Illinois,*** 351 U.S. 12 (1956).

STATEMENT OF THE CASE

1. The Court of Appeals has overlooked all of the relevant facts and failed to address to the merits of Badkin's grievance even though it was required to do so by the decisions of the Supreme Court and of the Court of Appeals.

A summary of the facts, the merits of the grievance and the applicable law are attached in the Appendix B (Petition for Panel Rehearing and Petition for Rehearing En Banc); Appendix D (Supplemental Brief of Appellant Vincent Badkin, in the Court of Appeals); and Appendix E (Motion for Judicial Notice and for Leave to File Supplemental Brief by Appellant Vincent Badkin, in the Court of Appeals.

"*A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith.* " *Vaca v. Sipes* 386 U.S. 171 at 190 (1967).

"*In administering the grievance and arbitration machinery as statutory agent of the employees, a union must, in good faith and in a nonarbitrary manner, make decisions as to the merits of particular grievances. See Humphrey v. Moore, 375 U. S. 335, 349-350; Ford Motor Co. v. Huffman*, 345 U. S. 330, 337-339 . . . *the Union might well have breached its duty had it ignored Owens' complaint or had it processed the grievance in a perfunctory manner. Vaca v. Sipes* 386 U.S. 171 at p. 194 (1967).

2. "*There* ***can be no equal justice where the kind of trial a man gets depends on the amount of money he has.***" Justice Hugo Black in *Griffin v. Illinois*, 351 U.S. 12 (1956).

3. A background of the facts and the wrongful termination of Badkin

While employed by Lockheed Corporation, Badkin received a message from his teenage daughter, McKenna, that a male acquaintance (named Perez) was harassing her

over the phone, that she was afraid to be home alone, and she was leaving for a friend's home for her safety. Badkin arrived home to discover that his daughter was gone and that Perez had broken into his house.

With his lawfully owned handgun, Badkin ordered Perez to come out and remain there, and shot into the ground and into the engine of Perez's car several times to stop Perez when Perez tried to assault him with his car and to detain him until the police arrived. Both Perez and Badkin were arrested. Badkin's charge of first degree assault was later dropped. Badkin later entered an Alford plea to gross misdemeanor of unlawful handling of a firearm and the judge ordered for the return of his firearm.

While Badkin was in detention, for 10 days, he could not report his absence to Lockheed within the five days, as required by the Collective Bargaining Agreement (the CBA), **but had McKenna report his absence for him.** Yet, **Lockheed terminated Badkin as having "voluntarily resigned"** with an allegation that he had failed to report within the five days.

(During the oral arguments at the Court of Appeals it became apparent that Lockheed had terminated Badkin in violation of the CBA).

After he was released, Badkin met with Robert Westbrook (Westbrook -- the Union representative). After their meeting, it took three weeks and two days for Westbrook to have Badkin's grievance ready for him to sign – with only a few lines of text. In the grievance form Westbrook inserted a condition that if the charges were dismissed Badkin would be allowed to come back to work with no loss of seniority, to which Badkin agreed.

While waiting for Lockheed to respond to his grievance, two months later, with his email on July 21, 2016, Westbrook urged Badkin to accept a settlement **that he**

would remain as "voluntarily resigned" and that Lockheed would not oppose his unemployment benefits, which Badkin rejected and **asked Westbrook to proceed with his grievance.** Westbrook offered no explanation for his urging to Badkin. In his reply email, Westbrook warned Badkin:

> *"Just keep in mind that there is no guarantee that the Union will take it to arbitration. Our attorney will review and let me know if he thinks the Union would prevail in arbitration after Lockheed provides its formal response to the grievance."* Westbrook offered no explanation for his warning to Badkin.

This email has been the only "explanation" Westbrook provided to Badkin before the Union secretly settled with Lockheed, just two weeks later, on August 8, 2016, and dismissed Badkin's grievance for wrongful termination. Westbrook never disclosed the existence of this secret agreement while misleading Badkin to believe that his grievance was still in process – apparently because the date of August 8 was in conflict with all of his later fabrications as excuses for his agreement to dismiss Badkin's grievance.

While Badkin was still waiting for processing of his grievance, Westbrook made a number of contradictory, inconsistent, and factually impossible "explanations" throughout the "grievance process" without ever informing Badkin that the Union had already signed, on August 8, 2016, and dismissed Badkin's grievance. All of Westbrook's allegations were in conflict with the date of August 8, 2016. (see Appendix D and E).

(After the lawsuit was filed, during his deposition, Badkin testified about his complaints he had with Lockheed a couple of months earlier about certain hazardous electrical safety issues. And in his appeal briefs, Badkin argued that Lockheed had apparently terminated him in retaliation/ retribution for his earlier complaints he had at work with Lockheed, and that the Union had joined forces with Lockheed against him in breach of its duty of fair representation. The citations to the record are provided in Badkin's

Opening Brief, the Reply Brief, as well as his Supplemental Brief in the Appendix).

Finally, in his email on April 26, 2017, Badkin informed Westbrook that he had fulfilled the requirements for his reinstatement and that he was ready to get back to work. Westbrook emailed back and falsely claimed that Lockheed did not think Badkin had fulfilled the conditions for his reinstatement and that Lockheed had closed the file on him. Yet, Westbrook still made no mention of the fact that the Union had already settled and dismissed Badkin's grievance a year earlier.

(During the oral arguments in the Court of Appeals it was fairly clear that Badkin had indeed met the conditions for this return to work -- in addition to the fact that Badkin's termination was in violation of the CBA in the first place).

Frustrated, Badkin's attorney contacted Lockheed's headquarters directly on the East Coast for Badkin's reinstatement but learned, for the first time, that the Union and Lockheed had already signed a settlement agreement a year earlier and dismissed Badkin's grievance, and Badkin received a copy directly from Lockheed, a year after it was signed.

Only after the Complaint was filed in court, more than a year after the Union secretly had "settled" and dismissed Badkin's grievance, Westbrook submitted his declaration, **under penalty of perjury**, and tried to "explain" his reasons for not taking the grievance to arbitration with his additional contradictory, factually impossible, perjured "explanations" (including the conflicts with the August 8 date of the settlement agreement) for the Union's agreement dismissing Badkin's grievance for wrongful termination, and for not taking the grievance to arbitration. (see Appendix B, D, and E for further details).

There has been no offers/counter offers for any negotiations of the grievance before the Union secretly agreed to and dismissed Badkin's grievance.

4. The Union may have the discretion in processing the grievance but it must explain its reasoning for it and must do in good faith. However, Westbrook has done none of it.

"A union's actions are arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a 'wide range of reasonableness,' as to be irrational." Air Line Pilots Ass'n., Inn v. O'Neill, 499 U.S. 65, 67 (1991)." *Pegany v. C&H Sugar Co.*, 201 F.3d 444, at 445,(9th Cir. 1999).

"A union does not breach its duty of fair representation to others as long as it proceeds on some reasoned basis." Peters v. Burlington, 931 F.2d 534, 538 (9th Cir.1990).

"*A union acts arbitrarily when it ignores a meritorious grievance or processes it in a perfunctory fashion*." *Vaca v. Sipes*, 386 U.S. 171, 191 (1967). .

"In determining whether the union's decision was arbitrary, the merits of the grievance and its importance to the employee are relevant to the sufficiency of the union's representation. Robesky v. Qantas Empire, 573 F.2d 1082, at 1092 (1978).

"The more important and meritorious the grievance, the more substantial the reason must be to justify abandoning it. Gregg v. Chauffeurs, 699 F.2d 1015, 1016 (9th Cir.1983).

"The union negligence may breach the duty of fair representation to cases in which the individual interest at stake is strong and the union's failure to perform a

ministerial act completely extinguishes the employee's right to pursue his claim. Here, the individual interest is strong because the grievance concerns a discharge, the most serious sanction an employer can impose. Tenorio v. NLRB, 680 F.2d 598, 602 (9th Cir.1982)." *Dutrisac v. Caterpillar Tractor Co.* 749 F.2d 1270, 1274 (9th Cir. 1983)"

"A union acts `arbitrarily' when it simply ignores a meritorious grievance or handles it in a perfunctory manner." Peterson v. Kennedy, 771 F.2d 1244, 1253-54 (9th Cir. 1985) citing Vaca, 386 U.S. at 191, (1967).

REASONS FOR ALLOWANCE OF THE WRIT

Review is warranted because the Court of Appeals misquoted Badkin's grievance and his complaint and overlooked all of the relevant facts / merits of his grievance and, by doing so, favored large Lockheed Corporation and the Union with their well-known law firms while Badkin could only afford to retain a solo practicing pro bono attorney.

The Court of Appeals has so far departed from the accepted and usual course of judicial proceeding contrary to the usual course of judicial proceedings (and contrary to the existing applicable law) as to call for exercise of this Court's supervisory power.

Otherwise, employees who were wrongfully terminated and unemployed with no money, who cannot afford a well-known law firm, wouldn't dare to take a legal action against their large and powerful former employers with their large and well-know law firms. Badkin, with his solo practice pro bono attorney, should be treated no differently than the treatment the large and powerful Lockheed Corporation (and the Union) with their law firms have received.

CONCLUSION

For the foregoing reasons, the petitioner respectfully requests that the Supreme Court grant review of this petition.

Respectfully submitted.

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APPENDIX

APPENDIX A	Order and Amended Memorandum, dated 08/31/2020, denying petition for re-hearing. U.S. Court of Appeals for the Ninth Circuit, Case No. 19-35524..
APPENDIX B	Petition for Panel Rehearing and Petition for Rehearing En Banc. U. S. Court of Appeals for the Ninth Circuit, Case No. 19-35524.
APPENDIX C	Memorandum Disposition, filed on July 21, 2020, U.S. Court of Appeals for the Ninth Circuit, affirming the summary judgment of the District Court.
APPENDIX D	Supplemental Brief of Appellant Vincent Badkin, In the U.S. Court of Appeals for the Ninth Circuit.
APPENDIX E	Motion for Judicial Notice and for Leave to File Supplemental Brief, in the Court of Appeals. (the motion was granted).
APPENDIX F	Order Granting Defendants' Motions for Summary Judgment, Case No. C17-5910 BHS, United **States District Court Western** District of Washington at Tacoma. Filed 05/22/19.

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