NO. _____

In the
Supreme Court of the United States

RIETH-RILEY CONSTRUCTION CO., INC.,

Petitioner,

v.

OPERATING ENGINEERS' LOCAL 324 FRINGE BENEFIT FUNDS, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 245 (1959), the NLRB has exclusive jurisdiction, and federal courts lack jurisdiction, over conduct that is "arguably subject to § 7 or § 8 of" the NLRA, including an employer's obligation to maintain the status quo under an expired collective bargaining agreement while it negotiates for a new one under Section 8(a)(5). For claims regarding contribution obligations to multiemployer benefit funds, if the obligation is statutory under Section 8(a)(5), the NLRB has jurisdiction; if it is contractual under a plan or collective bargaining agreement, a federal court has jurisdiction under ERISA § 515. *Laborers Health & Welfare Tr. Fund for N. Cal.* v. *Advanced Lightweight Concrete Co.*, 484 U.S. 539, 549 (1988).

Here, the Operating Engineers' Local 324 Fringe Benefit Funds pleaded a contract claim under ERISA § 515 against Rieth-Riley for contributions that, as a matter of undisputed fact and governing law, are statutory status quo obligations under Section 8(a)(5). After determining the substance of the claim with evidence, the district court granted Rieth-Riley's motion to dismiss for lack of jurisdiction. The Sixth Circuit reversed, holding that the district court had jurisdiction to hear the Funds' claim simply because they had labeled it as a § 515 claim. The Sixth Circuit's decision warrants summary reversal.

The question presented, therefore, is:

Whether the Sixth Circuit may disregard the Court's holding that *Garmon* preemption is

jurisdictional, turning not on a claim's labels but, instead, on its substance, and allow a multiemployer fund to plead around *Garmon* preemption, avoid the NLRB's exclusive jurisdiction, and invoke a federal court's jurisdiction simply by labeling its claim as an ERISA § 515 contract claim when evidence shows that, in substance, it is an unfair labor practice claim under Section 8(a)(5) of the NLRA?

PARTIES TO THE PROCEEDING

Petitioner is Rieth-Riley Construction Co., Inc., a large road and highway construction contractor that was the defendant in the proceedings below.

Respondents are the Operating Engineers' Local 324 Fringe Benefit Funds and the Trustees of the Operating Engineers' Local 324 Fringe Benefit Funds. The Operating Engineers' Local 324 Fringe Benefit Funds are seven[1] multiemployer employee benefit plans who were plaintiffs in the proceedings below.

[1] The Operating Engineers' Local 324 Health Care Plan; Operating Engineers' Local 324 Pension Plan; Operating Engineers' Local 324 Retiree Benefit Fund; Operating Engineers' Local 324 Vacation and Holiday Fund; Operating Engineers' Local 324 Journeyman and Apprentice Training Fund; Operating Engineers' Local 324 Labor-Management Education Committee; and Operating Engineers' Local 324 Defined Contribution Plan.

CORPORATE DISCLOSURE STATEMENT

Rieth-Riley is not a subsidiary or affiliate of a publicly owned corporation, and no publicly held company owns 10% or more of Rieth-Riley's stock. No other publicly owned corporation or its affiliate has a substantial financial interest in the outcome of the litigation.

RELATED CASES

Operating Engineers' Local 324 Fringe Benefit Funds, et al. v. *Rieth-Riley Construction Co., Inc.*, No. 2:20-cv-10323-DML-EAS, United States District Court for the Eastern District of Michigan. No judgment entered; order under review entered February 4, 2021.

Operating Engineers' Local 324 Fringe Benefit Funds, et al. v. *Rieth-Riley Construction Co., Inc.*, No. 21-1229, United States Court of Appeals for the Sixth Circuit. Judgment entered August 8, 2022.

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Petitioner Rieth-Riley Construction Co., Inc. respectfully petitions for a writ of certiorari to review and reverse the judgment of the U.S. Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 43 F.4th 617 and is reproduced in the Appendix at App.1. The opinion of the United States District Court for the Eastern District of Michigan is reported at 517 F. Supp. 3d 675 and is reproduced in the Appendix at App.16.

JURISDICTION

The United States Court of Appeals for the Sixth Circuit entered its opinion and judgment on August 8, 2022. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section § 515 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1145, states:

> Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with the law, make such contributions in accordance with the terms and conditions of such plan or such agreement.

Section 8(a)(5) of the National Labor Relations Act ("NLRA"), 29 U.S.C. § 158(a)(5), states:

> It shall be an unfair labor practice for an employer … to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title.

Section 9(a) of the NLRA, 29 U.S.C. § 159(a), states:

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment … .

STATEMENT OF THE CASE

The source of an employer's obligation to contribute to a multiemployer benefit fund determines (1) the fund's substantive remedy for allegedly delinquent contributions; and (2) the forum with jurisdiction to hear the fund's claim. If the employer is obligated to contribute by a "plan" or "collectively bargained agreement," the fund may sue for breach of contract under ERISA § 515 in federal court. If the contribution obligation instead arises from Section 8(a)(5) of the National Labor Relations Act, which requires most employers to comply with the status quo of the terms and conditions of an

expired collective bargaining agreement while the employer and union fulfill their statutory duty to bargain in good faith for a new one, the fund may assert an unfair labor practice claim, which is within the *exclusive* jurisdiction of the National Labor Relations Board ("NLRB").

This rule is longstanding and jurisdictional, borne of this Court's recognition that Congress designated the NLRB as the exclusive forum for the resolution of most labor disputes. *See, e.g.*, *Laborers Health & Welfare Tr. Fund for N. Cal.* v. *Advanced Lightweight Concrete Co.*, 484 U.S. 539, 552 (1988); *San Diego Bldg. Trades Council* v. *Garmon*, 359 U.S. 236, 242 (1959). So when the Operating Engineers' Local 324 Benefit Funds tried to get around this jurisdictional rule by alleging the existence of a contractual contribution obligation that does not (and cannot) exist under the undisputed facts and applicable law, Rieth-Riley Construction Co. invoked *Advanced Lightweight* and *Garmon*, and asked the Eastern District of Michigan to dismiss the Funds' complaint for lack of subject-matter jurisdiction.

In granting Rieth-Riley's motion, the district court recognized that, to determine whether jurisdiction existed, it had to look beyond the Funds' allegation that it was seeking to enforce a "contract" and examine the actual facts of the case. Those facts included that Rieth-Riley had continued to contribute to the Funds after the relevant CBA expired and that the Funds had *rejected* those contributions until Rieth-Riley proved it had a statutory obligation to continue making them. In so doing, the court found, as a factual matter, that the source of Rieth-Riley's

contribution obligation to the Funds is statutory, not contractual. Yet, despite this Court's longstanding characterization and application of *Garmon* as a *jurisdictional* rule that requires a district court to look beyond the pleadings when assessing its jurisdiction, the Sixth Circuit reversed, holding that it was bound by the Funds' labeling of their claims as "contract" claims, enforceable under ERISA § 515.

The Sixth Circuit's decision is flatly inconsistent with this Court's precedent. It also conflicts with the Seventh Circuit's treatment of similar claims under *Garmon* and *Advanced Lightweight*. This case presents the Court with an opportunity to course-correct the Sixth Circuit and clarify that, like in all other circumstances under the NLRA, a multiemployer benefit fund cannot artfully plead around *Garmon* preemption to invoke federal jurisdiction under ERISA § 515. Rieth-Riley respectfully requests that the Court grant its petition for a writ of certiorari to review and reverse the judgment of the U.S. Court of Appeals for the Sixth Circuit.

A. The Legal Framework behind *Garmon* and *Advanced Lightweight*.

1. The NLRA establishes Section 9(a) and 8(f) bargaining relationships.

An employer may not enter into a collective bargaining agreement with a union unless that union has been designated by a majority of its employees as their exclusive bargaining representative. *See, e.g.*, 29 U.S.C. § 159(a); *NLRB* v. *Loc. Union No. 103 Int'l Ass'n of Bridge, Structural and Ornamental Iron Workers, AFL-CIO*, 434 U.S. 335, 344 (1978) ("*Loc.*

Union No. 103"). That can happen in one of two ways. First, a majority of employees may elect the union as their exclusive bargaining representative in an NLRB representation election. 29 U.S.C. § 159(c). Second, an employer may voluntarily recognize the union as its employees' exclusive bargaining representative in a "recognition agreement." *See, e.g.*, *NLRB v Okla. Installation Co.*, 219 F.3d 1160, 1163-64 (10th Cir. 2000).

Once a Section 9(a) relationship is formed, the employer and the union are statutorily obligated by the NLRA to bargain collectively with each other in good faith. *See* 29 U.S.C. § 158(a)(5); *id.* § 158(d). The union generally enjoys a rebuttable presumption of majority support until proven otherwise, so that the duty to bargain in good faith extends even after a collective bargaining agreement expires. *See, e.g.*, *Auciello Iron Works, Inc.* v. *NLRB*, 517 U.S. 781, 787 (1996); *NLRB* v. *Curtin Matheson Sci., Inc.*, 494 U.S. 775, 778 (1990).

When a collective bargaining agreement between an employer and union with a Section 9(a) relationship expires or terminates, "an employer's unilateral change in conditions of employment under negotiation" is as much a violation of its obligation to bargain in good faith as a "flat refusal" to bargain. *NLRB* v. *Katz*, 369 U.S. 736, 743 (1962). Therefore, both sides have a statutory duty under the NLRA to maintain the status quo of the terms and conditions of the predecessor agreement while they fulfill their statutory duty to bargain in good faith for a new one. *See, e.g.*, *Litton Fin. Printing Div.* v. *NLRB*, 501 U.S. 190, 198 (1991); *Advanced Lightweight*, 484 U.S., at

544 n.6. Among other things, a Section 9(a) employer must comply with any fringe benefit contribution obligations under the expired agreement until a new agreement is negotiated. *Advanced Lightweight*, 484 U.S., at 544 n.6.

This obligation to honor the status quo is statutory, not contractual. While the expired agreement defines the parties' statutory status quo obligations, its "terms and conditions no longer have force by virtue of the *contract*." *Litton Fin. Printing*, 501 U.S., at 206 (emphasis added). Instead, the parties' obligations arise *solely* from the NLRA's statutory duty to bargain in good faith. *Ibid.* ("Under *Katz*, terms and conditions continue in effect by operation of the NLRA. They are no longer agreed-upon terms; they are terms imposed by law … .").

Not all collective bargaining relationships are governed by Section 9(a). The NLRA exempts employers in the "building and construction industry" from "the general rule precluding a union and an employer from signing 'a collective-bargaining agreement recognizing the union as the exclusive bargaining representative when in fact only a minority of the employees have authorized the union to represent their interests.'" *Jim McNeff, Inc.* v. *Todd*, 461 U.S. 260, 265 (1983) (quoting *Loc. Union No. 103*, 434 U.S., at 344–345); *see also* NLRA § 8(f), 29 U.S.C. § 158(f). Instead, these employers may negotiate "prehire" collective bargaining agreements with unions that bind the employer and union for the duration of the agreement. *See, e.g.*, *Todd*, 461 U.S., at 267, 271; *Loc. Union No. 103*, 434 U.S., at 341. Collective bargaining agreements between unions

and a construction industry employer are "presumed to be governed by § 8(f)," but that is just a presumption. *Okla. Installation*, 219 F.3d, at 1163–1164. A union may form a Section 9(a) relationship with a construction industry employer, as with any other employer, by "conduct[ing] a Board-certified election or … obtain[ing] the employer's voluntary recognition of the union as the employees' exclusive majority bargaining agent." *Ibid.*

When a Section 8(f) prehire agreement expires, the employer and union have *no* statutory duty under the NLRA to bargain with each other for a new agreement. *See, e.g.*, *Todd*, 461 U.S., at 267; *Loc. Union No. 103*, 434 U.S., at 343; *see also, e.g.*, *DiPonio Constr. Co.* v. *Int'l Union of Bricklayers & Allied Craftworkers, Loc. 9*, 687 F.3d 744, 749 (6th Cir. 2012); *Strand Theatre of Shreveport Corp.* v. *NLRB*, 493 F.3d 515, 519 (5th Cir. 2007). Unlike parties to a Section 9(a) bargaining relationship, then, parties to an 8(f) agreement have *no* statutory duty to maintain the status quo with respect to the terms and conditions of the expired agreement while they negotiate a new one. *See, e.g.*, *Colo. Fire Sprinkler, Inc.* v. *NLRB*, 891 F.3d 1031, 1035–1036 (D.C. Cir. 2018) (contrasting employer obligations upon expiration of collective bargaining agreements under Sections 9(a) and 8(f)).

2. ERISA § 515 provides multiemployer plans a contract claim for contribution obligations.

ERISA § 515, 29 U.S.C. § 1145, provides:

> Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement.

A delinquent employer liable under § 515 must pay the multiemployer plan "the unpaid contributions," "interest on the unpaid contributions," "liquidated damages," and "attorney's fees." ERISA § 502(g)(2), 29 U.S.C. § 1132(g)(2). A § 515 claim is enforceable under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), and a federal court has jurisdiction to hear the claim pursuant to ERISA § 502(e), 29 U.S.C. § 1132(e).

3. The NLRB has exclusive jurisdiction over unfair labor practice claims.

In enacting the NLRA, Congress did more than "lay down a substantive rule of law" governing labor-management relations. *Garner* v. *Teamsters, Chauffeurs & Helpers Loc. Union No. 776 (A.F.L.)*, 346 U.S. 485, 490 (1953). It also "confide[d] primary interpretation and application of its rules to a specific and specially constituted tribunal," the National Labor Relations Board ("NLRB"). *Ibid.* In so doing,

Congress "entrusted administration of the labor policy for the Nation to a centralized administrative agency, armed with its own procedures, and equipped with its specialized knowledge and cumulative experience." *Garmon*, 359 U.S., at 242. This Court has, therefore, long held that when "activity is arguably subject to § 7 or § 8 of the [NLRA], the States *as well as the federal courts* must defer to the exclusive competence" of the NLRB. *Id.*, at 245 (emphasis added).

So-called "*Garmon* preemption," "rest[s] on a determination that in enacting the NLRA Congress intended for the [NLRB] generally to exercise *exclusive* jurisdiction in this area." *Int'l Longshoremen's Ass'n, AFL-CIO* v. *Davis*, 476 U.S. 380, 391 (1986) (emphasis added). *Garmon* preemption is thus a *jurisdictional* limitation on the power of state *and* federal courts, not merely a substantive rule of decision. *See ibid.* ("Since *Garmon* … we have reiterated many times the general pre-emption standard set forth in *Garmon* and the jurisdictional nature of *Garmon* pre-emption … .") (collecting cases). The jurisdictional nature of *Garmon* preemption means, in part, that federal courts may weigh evidence and make factual findings as to whether the conduct at issue is, in fact, "arguably protected or prohibited" by Sections 7 or 8 of the NLRA. *Id.,* at 394. If it is, a court "must" defer to the NLRB and dismiss for lack of jurisdiction. *See Garmon*, 359 U.S., at 245.

Garmon preemption also affects where and how a multiemployer plan may seek to enforce a contribution obligation against an employer. When

that obligation is contractual—that is, when the obligation arises under the terms of a "plan" or "collective bargaining agreement"—it *is not* subject to § 7 or § 8 of the NLRA, and the plan has a cause of action against the employer under ERISA § 515, which a federal court has jurisdiction to hear. But when that obligation is statutory—that is, when it arises from the employer's obligation under Section 8(a)(5) of the NLRA to comply with the status quo of the terms and conditions of an expired collective bargaining agreement while it bargains with the union for a new one—it *is* subject to Section 8 of the NLRA, and the plan has an unfair labor charge for a violation of the NLRA, which lies within the exclusive jurisdiction of the NLRB.

This Court confirmed those jurisdictional rules in *Advanced Lightweight*, holding that, under *Garmon,* federal courts lack jurisdiction to determine whether an employer's failure to make post-expiration contributions to a multiemployer fund when the employer's obligation arises from Section 8(a)(5) of the NLRA. 484 U.S., at 552. That is because if the NLRA "were simply repealed, *in toto*, [the fund] would have no basis whatsoever for claiming that an employer had any duty to continue making contributions to a fund after the expiration of its contractual commitment to do so." *Id.*, at 553. ERISA § 515 applies only to contribution obligations arising under a "plan" or "collectively bargained agreement," not statutes such as the NLRA. *Id.*, at 546–549, 549 n.16.

Thus, *Garmon* preemption requires a taxonomic approach when a multiemployer plan

accuses an employer of failing to make its required contributions to the fund after a collective bargaining agreement has expired. If the employer has a "contractual obligation[] to make contributions," arising from a "plan" or "collectively bargained agreement," the fund may sue under ERISA § 515, in federal court. *Id.*, at 546. If, instead, the employer's contribution obligation arises solely from its statutory status quo obligations under NLRA § 8(a)(5) under the expired collective bargaining agreement, the fund has an unfair-labor-practice claim, within the exclusive jurisdiction of the NLRB. *Id.*, at 543 n.4, 553.

B. Factual History.

Rieth-Riley is a road construction contractor that builds and repairs highways in Michigan. App.5, 18. At all times relevant to this case, Rieth-Riley was a member of a trade association of other road construction employers called the Michigan Infrastructure and Trade Association ("MITA"). App.5–6, 19.

In 2013, MITA's Labor Relations Division negotiated a multiemployer collective bargaining agreement with the International Union of Operating Engineers Local No. 324 ("Local 324"), which the parties called the "Road Agreement." App.5–6, 19. The Road Agreement required Rieth-Riley to contribute to seven multiemployer employee benefit funds, collectively known as the Operating Engineers' Local 324 Fringe Benefit Funds

("Funds"),[2] on behalf of its employees performing work covered by the Road Agreement. App.5–6, 19.

The Road Agreement expired by its own terms on May 31, 2018. App.19. To avoid automatic renewal under the Road Agreement's evergreen clause, MITA and Local 324 jointly terminated the Road Agreement ahead of its expiration. *Ibid.*

Most signatory employers to the Road Agreement, including Rieth-Riley, are "engaged primarily in the building and construction industry" and, thus, are eligible for the Section 8(f) exemption for "pre-hire" agreements, allowing these employers and the union to enter into time-limited bargaining agreements that do not impose any continuing bargaining obligations past the date of expiration. *See infra* section A.1; *see also* App.23–24. Indeed, most signatory contractors to the Road Agreement were Section 8(f) employers and had no duty to bargain with Local 324 for a new agreement after the Road Agreement expired—and vice versa. *Ibid.*

That was not true for Rieth-Riley and Local 324 because, in 1993, they had entered into a recognition agreement that created a Section 9(a) relationship. App.7, 23. But neither side remembered that fact by 2018, when the Road Agreement expired. App.7, 23.

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[2] The Operating Engineers' Local 324 Health Care Plan; Operating Engineers' Local 324 Pension Fund; Operating Engineers' Local 324 Retiree Benefit Fund; Operating Engineers' Local 324 Vacation and Holiday Fund; Operating Engineers' Local 324 Journeyman and Apprentice Training Fund; Operating Engineers' Local 324 Labor-Management Education Committee; Operating Engineers' Local 324 Defined Contribution Plan.

So Local 324 assumed that Rieth-Riley, like most signatory contractors, had no obligation to bargain for a new collective bargaining agreement, or to maintain the status quo with respect to the terms and conditions of the Road Agreement while it did. App.6–7, 20, 23. Rieth-Riley and MITA wanted to bargain for a new agreement, but Local 324 refused. App.6–7, 20, 23.

In the meantime, Rieth-Riley's employees continued to perform the same work they had been performing under the Road Agreement, and Rieth-Riley continued to contribute to the Funds for that work. App.6, 20–21. But in lockstep with Local 324's refusal to bargain with MITA and Rieth-Riley, the Funds refused to accept those contributions after the Road Agreement expired, claiming repeatedly that "no contract existed" between Rieth-Riley and Local 324 or the Funds that allowed or required Rieth-Riley to make them anymore. App.20–21. That refusal stripped Rieth-Riley employees—union members and plan participants—of their bargained-for benefits. App.21. Believing that to be unacceptable, Rieth-Riley offered to enter into a separate participation agreement that would have required Rieth-Riley to continue making contributions to the Funds and, consistent with that offer, continued to submit the contributions (which the Funds returned with a letter explaining that there was no written agreement between Rieth-Riley and Local 324). App.21–22, 30–31. Rieth-Riley also rescinded its power of attorney with MITA. None of it made a difference. App.22. The Funds rejected Rieth-Riley's proposed participation agreement and refused to accept its contributions, all because there was "no

contract" between Rieth-Riley and Local 324 or the Funds after the Road Agreement expired. App.20; *see also* App.21–22, 30–31.

The stalemate continued until October 2018, when Rieth-Riley discovered the original 1993 recognition agreement between it and Local 324. App.7, 23. Rieth-Riley's Section 9(a) bargaining relationship with Local 324 meant that, despite the parties having no contract obligations to each other, Rieth-Riley was statutorily obligated to make, and the Funds were statutorily obligated to accept, Rieth-Riley's post-expiration contributions while Rieth-Riley and Local 324 negotiated for a successor agreement. App.7, 23–24. As the district court found, "[o]nce Rieth-Riley produced evidence of the section 9(a) relationship with Local 324, the Funds immediately began accepting Rieth-Riley's post-expiration contributions," and "[f]rom that point forward, the parties have understood that Rieth-Riley's post-expiration contribution obligations arise solely from Rieth-Riley's statutory status quo obligations under federal labor law." App.23–24.

Ever since, Rieth-Riley and Local 324 have been negotiating for a successor collective bargaining agreement but have yet to strike a deal. App.24. The Funds have never claimed otherwise. Nor have they have ever claimed that they agreed to enter into a new contract with Rieth-Riley after the Road Agreement expired. App.24, 29–30. Instead, they claim that Rieth-Riley unilaterally formed a contract enforceable under § 515 by *offering* to enter into a new agreement after the Road Agreement expired, despite Local 324 and the Funds having rejected each

and every one of Rieth-Riley's offers. App.28–30. The Funds admit that they never accepted, and in fact *rejected*, those offers. App.30. They also admit that they have accepted Rieth-Riley's post-expiration contributions only because they are required to do so by the NLRA. *Ibid.*

C. Procedural History.

The Funds filed suit against Rieth-Riley in February 2020 under ERISA § 515, claiming that Rieth-Riley implicitly entered into a new collective bargaining agreement by honoring its status quo obligations under the NLRA and had breached the collective bargaining agreement by failing to make all contributions required under the Road Agreement. App.25, 27–28, 31. But the Funds did not claim, and have never claimed, that they or Local 324 assented to a new collective bargaining agreement, or that Rieth-Riley has done anything to form a new agreement other than (1) offering to enter into new contracts with Local 324 and the Funds (which offers were unequivocally rejected), and (2) complying with its status quo obligations. App.30.

Because Rieth-Riley's post-expiration contribution obligations arise not from a "plan" or "collectively bargained agreement," but instead from Rieth-Riley's statutory status quo obligations under Section 8(a)(5) of the NLRA, Rieth-Riley moved to dismiss the Funds' complaint for lack of subject-matter jurisdiction. Citing *Advanced Lightweight*, Rieth-Riley argued the Funds' claims to enforce Rieth-Riley's statutory, post-expiration contribution obligations are within the exclusive jurisdiction of the NLRB. App.38.

In support of its motion, Rieth-Riley submitted evidence that Local 324 and the Funds had (1) rejected each of Rieth-Riley's offers to enter into a new contract after the Road Agreement expired; (2) repeatedly insisted that "no contract existed" between Rieth-Riley and Local 324 or the Funds after the Road Agreement expired; and (3) failed to enter into a new contract with Rieth-Riley since Rieth-Riley discovered the 1993 Section 9(a) recognition agreement. App.20–24. Rieth-Riley also presented evidence that the Funds had admitted that they only started accepting Rieth-Riley's post-expiration contributions once Rieth-Riley discovered the 1993 Section 9(a) recognition agreement, and only because they were statutorily required to do so. App.30.

In response, the Funds submitted their own evidence, but they did not dispute any of Rieth-Riley's evidence or factual claims, including that Local 324 never assented to forming a new contract with Rieth-Riley. App.27. The Funds also admitted that they had rejected Rieth-Riley's offer to enter into a new participation agreement after the Road Agreement expired. App.21–22, 30. Their opposition to Rieth-Riley's motion was based on the premise that Rieth-Riley had unilaterally formed a contract by repeatedly offering to enter into a new agreement after the Road Agreement expired, despite Local 324 and the Funds rejecting every one of Rieth-Riley's offers. App.29–30.[3]

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[3] Those offers included, according to the Funds, Rieth-Riley's continued submission of contributions on the Funds' boilerplate remittance forms that referenced obligations under a "current applicable Collective Bargaining Agreement[]." App.22, 31.

The district court weighed the evidence and concluded that, as a factual matter, Rieth-Riley "never entered into another contract with Local 324 or the Funds" after the Road Agreement expired. *Operating Eng'rs Loc. 324 Fringe Benefit Funds* v. *Rieth-Riley Constr. Co.*, 517 F. Supp. 3d 675, 681 (E.D. Mich. 2021), *rev'd*, 43 F.4th 617 (6th Cir. 2022); *see also* App.16. Instead, the district court found that, once Rieth-Riley and Local 324 discovered the 1993 Section 9(a) recognition agreement, "the parties have understood that Rieth-Riley's post-expiration contribution obligations arise solely from Rieth-Riley's statutory status quo obligations under federal labor law." *Rieth-Riley*, 517 F. Supp. 3d at 681; *see also* App.24. Moreover, the court found, "once the Funds began accepting [Rieth-Riley's] contributions, Rieth-Riley's compliance with the statutory status quo obligations did not create an implied contract." *Rieth-Riley*, 517 F. Supp. 3d, at 681; *see also* App.31. The fact that Rieth-Riley had used the Funds' boilerplate remittance forms, which referenced "obligations" under a "current applicable Collective Bargaining Agreement[]," did not change matters according to the court, in part because the Funds had *rejected* Rieth-Riley's contributions made on those same forms for months until Rieth-Riley discovered the 1993 Section 9(a) recognition agreement. *Rieth-Riley*, 517 F. Supp. 3d, at 680-681, 684; *see also* App.31. The district court therefore concluded that the Funds' claims were within the exclusive jurisdiction of the NLRB and dismissed their complaint for lack of subject matter jurisdiction under *Advanced Lightweight*. *Rieth-Riley*, 517 F. Supp. 3d, at 687; *see also* App.38.

The Funds appealed. The Sixth Circuit did not disagree with any of the district court's factual findings and, in fact, "assume[d] Rieth-Riley is right about the contracts; they don't exist." *Operating Eng'rs Loc. 324 Fringe Benefit Funds* v. *Rieth-Riley Constr. Co.*, 43 F.4th 617, 623 (6th Cir. 2022); *see also* App.14. But it concluded that *Advanced Lightweight* did not entitle the district court to look beyond the Funds' conclusory labeling of their claim as a "contract" claim under ERISA § 515. *Rieth-Riley*, 43 F.4th at, 623; *see also* App.12. According to the Sixth Circuit, the existence of a labor contract, as opposed to statutory status quo obligations under the NLRA, is not an "essential jurisdictional fact" that the district court may resolve in considering its own jurisdiction under Rule 12(b)(1). *Rieth-Riley*, 43 F.4th, at 622; *see also* App.13. Instead, the Sixth Circuit characterized "the presence of a live contract" (or the lack thereof) as "go[ing] to the merits of the Funds' ERISA action." *Rieth-Riley*, 43 F.4th, at 618–619; *see also* App.3.

REASONS FOR GRANTING THE WRIT

The Court should grant certiorari for three reasons. First, the Sixth Circuit's decision presents an important question of federal jurisdiction—whether an ERISA § 515 plaintiff can artfully plead around *Garmon* preemption with mere labels—in a way that conflicts with this Court's precedent. Second, the Sixth Circuit's decision creates a circuit split by deciding this jurisdictional question differently than did the Seventh Circuit in *RiverStone Group, Inc.* v. *Midwest Operating Engineers' Fringe Benefit Funds*, 33 F.4th 424 (7th

Cir. 2022). And third, the Sixth Circuit's decision conflicts with how this Court and several circuits resolve factual disputes under similar jurisdictional rules, such as complete preemption and the distinction between major and minor disputes under the Railway Labor Act.

Because the decision is obviously inconsistent with this Court's precedent, the Sixth Circuit should be summarily reversed.

I. This case presents an important federal question in conflict with this Court's decisions.

A. This Court's decisions forbid artful pleading to avoid *Garmon* preemption.

The Sixth Circuit's decision allows plaintiffs to flout *Garmon* preemption, and thus the limits on a court's jurisdiction, by merely labeling unfair-labor-practice claims as "contract" claims under ERISA § 515. This is true even where, as here, the undisputed facts show that no contract exists and the employer's contribution obligation—if any—arises *solely* from its statutory status quo obligations under the NLRA. The decision thus makes the choice of forum (a court or the NLRB) and governing federal law (ERISA or the NLRA) entirely dependent on artful pleading. That is irreconcilable with this Court's longstanding rule under *Garmon* and its progeny that plaintiffs "may not circumvent the primary jurisdiction of the NLRB simply by casting statutory claims" as other claims to avoid *Garmon* preemption. *Commcn's Workers of Am.* v. *Beck*, 487 U.S. 735, 743 (1988).

This issue often arises in cases under Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, which provides a cause of action for "[s]uits for violation of contracts between an employer and a labor organization." In this context, the Court has recognized an exception to *Garmon* preemption for "labor law questions that emerge as collateral issues in suits brought under independent federal remedies." *Connell Constr. Co.* v. *Plumbers & Steamfitters Loc. Union No. 100*, 421 U.S. 616, 626 (1975). Under this "independent federal remedy" exception to *Garmon* preemption, the claim under the alternative federal remedy is "independent," and the NLRA issues merely "collateral," when the alternative federal claim exists *independently of and simultaneously with* the NLRA claim. *See, e.g.*, *Vaca* v. *Sipes*, 386 U.S. 171, 179–180 (1967) (holding that federal courts have jurisdiction over claims that are independently actionable as "breach[es] of a collective bargaining agreement" under Section 301 of the LMRA). If a federal remedy is truly "independent" of the NLRA, and the NLRA issues are truly "collateral," then the plaintiff can assert, and prevail on, the independent federal claim, irrespective of whether the plaintiff could potentially prevail on an NLRA claim.

This Court has consistently held that a plaintiff cannot invoke the independent federal remedy exception to *Garmon* preemption merely through artful pleading. In *Beck*, for example, the Court held that plaintiffs "may not circumvent the primary jurisdiction of the NLRB simply by casting statutory claims as violations of the union's duty of fair representation" under Section 301 of the LMRA.

Beck, 487 U.S., at 743. Likewise, in *Marquez* v. *Screen Actors Guild*, the Court said:

> The ritualistic incantation of the phrase "duty of fair representation" is insufficient to invoke the primary jurisdiction of federal courts. … [Employees] may not circumvent the primary jurisdiction of the NLRB simply by casting statutory claims as violations of the union's duty of fair representation. When a plaintiff's only claim is that the union violated the NLRA, the plaintiff cannot avoid the jurisdiction of the NLRB by characterizing this alleged statutory violation as a breach of the duty of fair representation.

525 U.S. 33, 51 (1998) (cleaned up and citation omitted). There is no justification for the Sixth Circuit's allowing artful pleading in this context when this Court has never allowed it in any other context under *Garmon*.

The policy behind the rule for disallowing artful pleading to circumvent *Garmon* preemption, and for allowing courts to make factual findings to avoid being bound by artful pleading, is particularly strong where the underlying ERISA theory is as weak as the ERISA theory is here. The Sixth Circuit acknowledged that Rieth-Riley may well be "right" that the contracts "don't exist." App.14. That's an understatement. They *can't* exist because the Funds' theory is based on a legal impossibility: that a contract was unilaterally formed merely because an

offer was made, even though it was rejected, and while the parties were undisputedly performing their statutory status quo obligations (which only exist when the parties have *no* contract). The doctrine of *Garmon* preemption is rendered hollow if plaintiffs can successfully plead themselves into federal court, dodging the NLRB's exclusive jurisdiction, by alleging plainly unsupportable ERISA-based contract theories to pursue what, in substance, are unfair-labor-practice claims governed by Section 8 of the NLRA.

The error of the Sixth Circuit's pleading-focused approach is highlighted by the procedure with which *Garmon* preemption has been applied as a jurisdictional doctrine. This Court has long recognized that the application of *Garmon* preemption turns on facts and evidence—not on conclusory labels or bare allegations. In *International Longshoremen's Association, AFL-CIO* v. *Davis*, for instance, *Garmon* preemption turned on whether a fired individual was an employee or a supervisor. 476 U.S. 380, 394 (1986). If he was an employee, the employer's firing of him was "arguably … prohibited" by the NLRA; if he was a supervisor, "he was legally fired." *Id.*, at 394. This Court "inquire[d]," based on record evidence, whether he "was arguably an employee, rather than a supervisor." *Ibid.* In doing so, the Court stressed that *Garmon* is "not satisfied by a conclusory assertion of pre-emption and would therefore not be satisfied in this case by a claim, without more, that [he] was an employee rather than a supervisor." *Ibid.* Rather, the Court required the party claiming *Garmon* preemption—the union—to put forth "a showing sufficient to permit the Board to

find that Davis was an employee, not a supervisor." *Id.*, at 395. The union failed, because it "point[ed] to no *evidence* in support of its assertion that [he] was arguably an employee" and made no "factual … showing" supporting its *Garmon* preemption claim. *Id.*, at 398 (emphasis added).

Here, the Sixth Circuit did just the opposite: it held that ERISA § 515 plaintiffs can plead themselves around the exclusive jurisdiction of the NLRB and into federal court with conclusory labels that are contradicted by undisputed evidence. That holding is irreconcilable with this Court's authority under *Garmon* in every other context, which disallows artfully pleading around the NLRB's exclusive jurisdiction to hear disputes that, in substance, arise under Sections 7 or 8 of the NLRA. This Court should grant the petition for writ of certiorari to reject it in this context, too.

B. The Sixth Circuit should be summarily reversed.

"A summary reversal is a rare disposition, usually reserved by this Court for situations in which the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error." *Schweiker* v. *Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting). This is such a case. The Sixth Circuit's decision defies well-settled precedent of this Court on undisputed facts and, if left to stand, will gut the jurisdiction of the NLRB with devastating consequences for the parties whose unfair-labor-practice disputes belong before it. It should be summarily reversed.

First, the Sixth Circuit's decision is the kind of "clear misapprehension" of *Garmon* that justifies summary reversal. *See, e.g.*, *Brosseau* v. *Haugen*, 543 U.S. 194, 198 n.2 (2004) (per curiam); *Tolan* v. *Cotton*, 572 U.S. 650, 659–660 (2014) (per curiam). Indeed, this Court did so just four terms ago in *CNH Industrial, N.V.* v. *Reese*, 138 S. Ct. 761, 765 n.2 (2018) (per curiam), when the Sixth Circuit was "unwilling (or unable) to reconcile its precedents" to comply with *M&G Polymers USA, LLC* v. *Tackett*, 574 U.S. 427 (2015). *Garmon* preemption has been the law of the land since 1959; is a jurisdictional rule that turns on facts, not labels; and was the foundation of this Court's holding in *Advanced Lightweight*. *Advanced Lightweight*, 484 U.S., at 543 n.4, 552. The Sixth Circuit's decision countenancing artful pleading around *Garmon* preemption is impossible to reconcile with those settled legal principles.

Second, the facts are undisputed. The Funds admitted every fact supporting Rieth-Riley's motion to dismiss. App.27–28; *Rieth-Riley*, 517 F. Supp. 3d, at 678. They opposed Rieth-Riley's motion only with a flawed legal theory that Rieth-Riley unilaterally formed a contract by offering to enter into one, even though its offers were rejected. App.28–30. They do not claim—and did not plead—that they or Local 324 accepted one of Rieth-Riley's offers. App.30; *Rieth-Riley*, 517 F. Supp. 3d, at 683–684.

Finally, absent summary reversal, the Sixth Circuit's decision will have devastating consequences for labor organizations and employers who deserve to have their unfair-labor-practice disputes heard by

Congress's designated tribunal for them. "[S]ummary dispositions remain appropriate in truly extraordinary cases involving categories of errors that strike at the heart of our legal system." *Andrus* v. *Texas*, 142 S. Ct. 1866, 1879 (2022) (Sotomayor, J., dissenting from denial of certiorari). The Sixth Circuit's opinion—which disregards the primacy of the NLRB that is fundamental to Congress's entire labor law scheme—makes this such a case.

The Sixth Circuit concluded that, in the absence of a contractual contribution obligation, the "Funds los[e] on the merits," as if a merits adjudication in Rieth-Riley's favor at the end of litigation absolves a federal court's usurpation of the NLRB's exclusive jurisdiction from the outset. *Rieth-Riley*, 43 F.4th, at 624; *see also* App.14. That casual attitude toward a jurisdictional limitation on the power of federal courts ignores this Court's repeated instruction that *Garmon* preemption seeks to avoid both the substantive and procedural conflicts between the NLRB and federal courts.

Garmon preemption represents this Court's careful effort "to preclude, so far as reasonably possible, conflict between the exertion of judicial and administrative power in the attainment of the multi-faceted policies underlying the federal scheme." *Amalgamated Ass'n of Street, Elec. Ry. & Motor Coach Emps. of Am.* v. *Lockridge*, 403 U.S. 274, 285–286 (1971); *see also San Diego Bldg. Trades Council* v. *Garmon*, 359 U.S. 236, 242 (1959) (noting this Court's concern with "potential conflict of rules of law, of remedy, and of administration"). One "conflict" Congress sought to prevent is between the

NLRB's procedural rules and those of courts. *Lockridge*, 403 U.S., at 287. The harm to employers and other parties to labor disputes caused by being forced to litigate in the wrong forum derives from specific differences in remedy and procedure between the claims raised in the NLRB versus in federal court. That employers like Rieth-Riley may ultimately win on the merits does not cure that harm.

The differences in procedure between the NLRB and federal courts have real consequences for employers subject to claims like those of the Funds. First, ERISA § 515 provides a federal forum, with specific remedies and procedures, for multiemployer funds to enforce contractual obligations. *See, e.g.*, 29 U.S.C. § 1132(g). These federal-court remedies for § 515 claims conflict with the "particular procedure for investigation, complaint and notice, and hearing and decision" available to multiemployer funds in the NLRB. *Lockridge*, 403 U.S., at 287 (cleaned up and citation omitted). And these conflicts are "fully as disruptive to the system Congress erected as conflict in overt policy." *Ibid.* The mere threat of federal court litigation over matters that are *in substance* within the exclusive jurisdiction of the NLRB threatens this "complex and interrelated federal scheme of law, remedy, and administration" and itself presents "potential for debilitating conflict." *Id.*, at 288–289 (cleaned up and citation omitted.)

Second, ERISA § 515 claims are subject to a statute of limitations that, in Michigan, is *twelve times longer* than the statute of limitations under the NLRA. *Compare Operating Eng'rs Loc. 324 Health*

Care Plan v. *G&W Constr. Co.*, 783 F.3d 1045, 1054 (6th Cir. 2015) (applying Michigan's six-year contract statute of limitations to § 515 action) *with* 29 U.S.C. § 160(b) (setting six-month statute of limitations for unfair-labor-practice charge).

Finally, multiemployer funds that artfully plead their claims around *Garmon* preemption have the benefit of much broader discovery procedures in federal court. Contrary to the Federal Rules of Civil Procedure, the NLRB's procedures do not allow for pretrial discovery. *See, e.g.*, *Union-Tribune Publ'g Co. and San Diego Newspaper Guild, Loc. No. 95, The Newspaper Guild, AFI-CIO, CLC*, 307 NLRB 25, 26, 1992 WL 77799, at *2 (1992) ("It is well established that the Board's procedures do not include prehearing discovery."). Instead, parties may request pre-hearing subpoenas for production of documents at the hearing. *See, e.g.*, 29 C.F.R. § 102.31 (establishing subpoena procedures for unfair-labor-practice proceedings). The NLRB also applies its own substantive discovery rules, particularly to documents related to collective bargaining. Under the so-called "bargaining strategy privilege," employers are not required to produce documents reflecting internal bargaining strategies of employers and unions. *See, e.g.*, *Boise* v. *Cascade Corp.*, 279 NLRB 422, 432, 1986 WL 53792, at *17 (1986). Federal courts have not uniformly applied the NLRB's bargaining strategy privilege to discovery under the Federal Rules of Civil Procedure. *Compare, e.g.*, *Kerns* v. *Caterpillar, Inc.*, No. 3:06-cv-1113, 2008 WL 351233, at *3 (M.D. Tenn. Feb. 7, 2008) (granting motion for protective order to protect bargaining strategy documents) *with Chi. Bridge & Iron Co.,*

N.V. v. *Fairbanks Joint Crafts Council, AFL-CIO*, No. 3:18-CV-00100, 2019 WL 2579627, at *4 (D. Ala. June 23, 2019) (rejecting NLRB rule and declining to recognize federal bargaining strategy privilege); *Patterson* v. *Heartland Ind. Partners, LLP*, 225 F.R.D. 204, 207 (N.D. Ohio 2004) (same).

In short, whether a case like this proceeds in federal court under ERISA or before the NLRB under the NLRA matters because those different forums and regulatory regimes afford the parties with materially different remedies, statutes of limitation, and discovery rules. The gravity of the Sixth Circuit's error, and the extent to which it needlessly disrupts Congress's and this Court's careful balancing of power under labor law, thus justifies summary reversal.

II. The Sixth Circuit's decision creates a circuit split with the Seventh Circuit.

The Sixth Circuit's decision also conflicts irreconcilably with the Seventh Circuit's recent decision in *RiverStone Group, Inc.* v. *Midwest Operating Engineers' Fringe Benefit Funds*, 33 F.4th 424 (7th Cir. 2022). *RiverStone*, like this case, involved claims made by multiemployer benefit funds for delinquent contributions due after the expiration of a collective bargaining agreement. *Id.*, at 425. And like here, the funds did not label their claims as unfair-labor-practice claims, instead bringing their claims under ERISA § 515 and Section 301 of the LMRA. *Id.*, at 429. As for their ERISA § 515 claims, the funds claimed that "the district court should have assumed jurisdiction under … ERISA … because the Funds have an independent right to enforce the

terms of the collective bargaining agreement relating to the funding of benefits." *Ibid.* As for their LMRA claim, they urged that "federal courts can develop through LMRA § 301 a federal common law obligation to bestow the benefits of an expired collective bargaining agreement." *Id.*, at 431.

The Seventh Circuit rejected the funds' attempt to avoid NLRB jurisdiction. Looking past the labels in their complaint, the court held that both the ERISA theory and the LMRA theory were foreclosed by *Advanced Lightweight* and *Garmon* because the funds' claims "invade[d] the exclusive province of the NLRB." *Id.*, at 432. The Seventh Circuit thus confirmed that *Advanced Lightweight* applies whenever a multiemployer benefit fund's delinquent contribution claims arise solely (despite their labels) from an expired collective bargaining agreement, because "[w]ithout a contract, … any failure to make payments 'could only constitute a violation of NLRA § 8(a)(5),' which is under the NLRB's exclusive jurisdiction.". *Id.*, at 428 (quoting *RiverStone Grp., Inc.* v. *Midwest Operating Eng'rs Fringe Benefit Funds*, No. 4:19-cv-04039-SLD-JEH, 2021 WL 1225865, at *4 (C.D. Ill. Mar. 31, 2021)).

The conflict between the Sixth Circuit's decision in this case and the Seventh Circuit's decision in *RiverStone* could not be more stark. When multiemployer benefit funds bring purported "contract" claims under ERISA § 515 for post-expiration contribution obligations, the Seventh Circuit faithfully applies *Garmon* and *Advanced Lightweight* by examining the substance of the plaintiffs' claims. If, as a matter of substance, a

fund's claims are unfair labor practice claims because, *in fact*, no contract exists to create a claim under ERISA § 515, then the fund must bring its claims, if at all, in the NLRB. The Sixth Circuit, on the other hand, requires those same claims to be litigated on the merits in federal court, thus disrupting this Court's careful balancing of judicial and administrative authority in the area of labor relations.

III. The Sixth Circuit's decision conflicts with how this Court and several circuits resolve similar jurisdictional disputes.

Finally, *RiverStone* aside, the Sixth Circuit's decision also irreconcilably conflicts with how other circuits resolve jurisdictional challenges in two related circumstances: complete preemption and jurisdiction under the Railway Labor Act ("RLA").

First, complete preemption, like *Garmon* preemption, is a jurisdictional rule. The "well-pleaded complaint rule" prevents defendants from removing cases filed in state court to federal court under 28 U.S.C. § 1441 based solely on a federal preemption defense. *See, e.g.*, *Metro. Life Ins. Co.* v. *Taylor*, 481 U.S. 58, 63 (1987). But this Court has recognized that in some circumstances, "Congress may so completely pre-empt a particular area that any civil complaint raising [a] select group of claims is necessarily federal in character." *Ibid.* In other words, an ostensibly state-law claim may, in character, be nothing but a federal law claim that Congress intended to be resolved exclusively under federal law. One such circumstance is state-law claims for violations of labor contracts under Section

301 of the LMRA. *Ibid.* Another is state-law claims for benefits under ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B). *Aetna Health Inc.* v. *Davila*, 542 U.S. 200, 210 (2004).

No circuit allows plaintiffs to artfully plead around the complete preemption doctrine. A plaintiff's labeling of an ERISA claim for benefits as a state-law breach of contract or tort claim, for example, does not save her complaint from removal to federal court, or the federal court's subsequent conversion of her claim from a state-law claim to one arising under ERISA. And when parties dispute facts relevant to the application of the complete preemption rule, courts recognize that they are required to resolve those factual disputes before assuming jurisdiction over the removed claims. *See, e.g.*, *Cantrell* v. *Briggs & Veselka Co.*, 728 F.3d 444, 451–452 (5th Cir. 2013) (deciding, as a factual matter, whether contracts constituted an ERISA plan such that state-law claim under them was completely preempted by ERISA and removable to federal court); *Rice* v. *Panchal*, 65 F.3d 637, 642 (7th Cir. 1995) (examining "evidence in the record" to determine whether state-law claim was completely preempted by ERISA § 502(a)(1)(B) and removable to federal court); *Jass* v. *Prudential Health Care Plan, Inc.*, 88 F.3d 1482, 1489 (7th Cir. 1996) (rejecting plaintiff's conclusory allegations and artful pleading around ERISA complete preemption in favor of affidavit filed with removal papers).

Second, courts take the same approach in resolving jurisdictional disputes under the RLA. The RLA governs labor relations in the railroad and

airline industries. *See* 45 U.S.C. §§ 151–165. To promote labor peace and avoid strikes, the RLA codifies a "strong preference for arbitration, as opposed to judicial resolution of disputes." *Brotherhood of Locomotive Eng'rs & Trainmen (Gen. Comm. Of Adjustment Cent. Region)* v. *Union Pac. R.R. Co.*, 879 F.3d 754, 755 (7th Cir. 2017). Congress defined two categories of disputes under the RLA: "major" disputes, which "seek to create contractual rights," and "minor" disputes, which seek to enforce preexisting contractual rights. *Consolidated Rail Corp.* v. *Ry. Lab. Execs.' Ass'n*, 491 U.S. 299, 302 (1989). The RLA requires "a lengthy process of bargaining and mediation" of major disputes, and parties must "maintain the status quo" until that process is resolved. *Id.*, at 302–303. Federal courts have jurisdiction only "to enjoin a violation of the status quo pending completion of the required procedures." *Ibid.* Minor disputes, on the other hand, are "subject to compulsory and binding arbitration before the National Railroad Adjustment Board," which has "exclusive jurisdiction over minor disputes." *Id.*, at 303–304.

This Court has unequivocally held that RLA plaintiffs may not artfully plead themselves into federal court, and out of arbitration, simply by labeling their dispute "major." *See Consolidated Rail*, 491 U.S., at 305–306 (holding that in some cases, "protection of the proper functioning of the statutory scheme requires the court to substitute its characterization for that of the claimant"). Often, the character of the dispute turns on whether the parties' past practice under a collective bargaining agreement allows for the employer's conduct. *See, e.g.*, *id.*, at

312–313 (considering "essential facts regarding Conrail's past practice[]" to determine whether dispute was major or minor). For that reason, courts are free to look beyond an RLA plaintiff's labeling of her claim to determine for themselves whether the claim is one that may be litigated in federal court. *See, e.g.*, *Union Pac.*, 879 F.3d, at 758–759 (considering declarations providing factual support for railroad's characterization of dispute as minor).

Like *Garmon* preemption, complete preemption and the RLA's major/minor dispute dichotomy are jurisdictional rules. Unlike how the Sixth Circuit resolved the question of *Garmon* preemption here, this Court and other circuits agree that courts must consider facts—not labels—to determine their application.

CONCLUSION

The Court should grant certiorari and summarily reverse. In the alternative, the Court should grant certiorari and set the case for merits briefing and argument.

Respectfully submitted,

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