No. ________

In The
Supreme Court of the United States

GOODRICH CORPORATION,

Petitioner,

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS LOCAL LODGE 2121 AFL-CIO,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

DAVID E. NAGLE
Counsel of Record
LECLAIR RYAN
Riverfront Plaza,
East Tower
951 East Byrd Street
Richmond, Virginia 23219
(804) 343-4077
Counsel for Petitioner

Of Counsel
LAWRENCE J. MCNAMARA
LOCKE LIDDELL & SAPP LLP
2200 Ross Avenue,
Suite 2200
Dallas, Texas 75201
(214) 740-8000

September 2005

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. In *Goodall-Sanford, Inc. v. United Textile Workers*, 353 U.S. 550, 551 (1957), this Court held that, "A decree under § 301(a) ordering enforcement of an arbitration provision in a collective bargaining agreement is . . . a 'final decision' within the meaning of 28 U.S.C. § 1291."

The first question presented is:

> In light of this Court's decision in *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001), is appellate jurisdiction for the review of an order compelling arbitration in a § 301 action now dependent upon the existence of a "final decision" as that term has been interpreted with respect to the Federal Arbitration Act?

2. Section 301(b) of the Labor Management Relations Act provides that, "Any labor organization which represents employees . . . may sue . . . as an entity [on] behalf of the employees whom it represents."

The second question presented is:

> Does a union have standing to sue a company in a § 301 action on behalf of a group made up entirely of non-employees?

CORPORATE DISCLOSURE STATEMENT

For purposes of petitioner's corporate disclosure statement, the following information is provided:

There is no parent corporation of petitioner nor is there a publicly held company owning 10% or more of the petitioner corporation's stock.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	1
STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	2
A. Facts	2
B. Proceedings below	4
REASONS FOR GRANTING THE PETITION	6
I. A decree under § 301(a) ordering enforcement of an arbitration provision in a collective bargaining agreement is a final decision, and appellate jurisdiction should not be evaluated under the standards applicable to orders compelling arbitration in Federal Arbitration Act cases	7
II. A union does not have standing to bring an action under § 301 of the Labor Management Relations Act on behalf of a group made up entirely of non-employees	18
CONCLUSION	25

TABLE OF AUTHORITIES

Page

CASES

Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974) 9

Allied Chem. & Alkali Workers, Local Union No. 1 v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971).......*passim*

Am. Heritage Life Ins. Co. v. Orr, 294 F.3d 702 (5th Cir. 2002).......... 12

Arizonans for Official English v. Arizona, 520 U.S. 43 (1997) 18

Baltimore Contractors, Inc. v. Bodinger, 348 U.S. 176 (1955) 10

Cap Gemini Ernst & Young, U.S., L.L.C. v. Nackel, 346 F.3d 360 (2d Cir. 2003) 13

Circuit City Stores, Inc. v. Adams, 532 U.S. 105 (2001) .... i, 8, 11

Coca-Cola Bottling Co. v. Soft Drink & Brewery Workers Union Local 812, 242 F.3d 52 (2d Cir. 2001).......... 16

Cole v. Burns Int'l Sec. Servs., 105 F.3d 1465 (D.C. Cir. 1997).......... 9

Freudensprung v. Offshore Technical Servs., Inc., 379 F.3d 327 (5th Cir. 2004).......... 12

Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20 (1991) 8, 9

Goodall-Sanford, Inc. v. United Textile Workers, 353 U.S. 550 (1957) ....*passim*

Green Tree Fin. Corp.-Ala. v. Randolph, 531 U.S. 79 (2000) 11, 12

TABLE OF AUTHORITIES – Continued

Page

Gulfstream Aerospace Corp. v. Mayacamas Corp., 485 U.S. 271 (1988) 17

In re Pahlberg, 131 F.2d 968 (2d Cir. 1942) 10

Int'l Ass'n of Machinists & Aerospace Workers Local Lodge 2121 v. Goodrich Corp., 410 F.3d 204 (5th Cir. 2005).......... *passim*

Int'l Union, UAW v. United Screw & Bolt Corp., 941 F.2d 466 (6th Cir. 1991).......... 17

Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992) 18

Major League Baseball Players Ass'n v. Garvey, 532 U.S. 504 (2001) 15

Oil, Chem. and Atomic Workers Union v. Conoco, Inc., 241 F.3d 1299 (10th Cir. 2001) 17

Rosetto v. Pabst Brewing Co., 128 F.3d 538 (7th Cir. 1997), *cert. denied*, 524 U.S. 927 (1998) 6, 23, 24

Schoenamsgruber v. Hamburg Am. Line, 294 U.S. 454 (1935) 10

S. La. Cement, Inc. v. Van Aalst Bulk Handling, B.V., 383 F.3d 297 (5th Cir. 2004) 13

Textile Workers Union v. Lincoln Mills, 353 U.S. 448 (1957) 7

Trollinger v. Tyson Foods, Inc., 370 F.3d 602 (6th Cir. 2004).......... 18, 19

United Steelworkers of America v. American Smelting & Refining Co., 648 F.2d 863 (3d Cir. 1981).......... 17

United Steelworkers of America v. Black, Sivalls & Bryson, Inc., 608 F.2d 303 (8th Cir. 1979).......... 16

TABLE OF AUTHORITIES – Continued

Page

United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960) 8

United Textile Workers v. Goodall-Sanford, Inc., 131 F. Supp. 767 (D. Me. 1955), *aff'd*, 233 F.2d 104 (1st Cir. 1956), *aff'd*, 353 U.S. 550 (1957) 10

STATUTES

28 U.S.C. § 1291 1

29 U.S.C. § 142(3)... 19

Federal Arbitration Act, 9 U.S.C. § 1 *et seq*. ....*passim*

Labor Management Relations Act § 2, 29 U.S.C. § 152 19

Labor Management Relations Act § 8(a)(5), 29 U.S.C. § 158(a)(5) 19

Labor Management Relations Act § 301, 29 U.S.C. § 185 ....*passim*

OTHER AUTHORITIES

Daniel P. O'Meara, *Arbitration of Employment Disputes* 31 (2002).. 9

Ronald Turner, *Employment Discrimination, Labor and Employment Arbitration, and the Case Against Union Waiver of the Individual Worker's Statutory Right to a Judicial Forum*, 49 Emory L.J. 135, 141 (2000) 9

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

Goodrich Corporation respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1-19) is reported at 410 F.3d 204. The opinion of the district court (App., *infra*, 20-35) is unreported.

JURISDICTION

The court of appeals entered its judgment on May 19, 2005. Justice Scalia extended the time within which to file a petition for a writ of certiorari to September 2, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1291 provides, in relevant part, that "The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States. . . ."

Section 301(b) of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185(b), provides, in relevant part, that "Any labor organization which represents employees

. . . may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. . . ."

STATEMENT OF THE CASE

A. Facts

Coltec Industries and IAM Local 2121 negotiated a collective bargaining agreement ("the CBA"), effective September 29, 1996, which established the wages, hours of work and other terms and conditions of employment for all unit employees at Coltec's Euless, Texas facility. The facility was subsequently acquired by Goodrich Corporation, and Goodrich assumed the CBA and the employee benefit plans in 1998. All subsequent references to the employer will be to Goodrich or "the company"; subsequent references to IAM Local 2121 will be to "the union."

The CBA contained a provision providing for early retiree medical coverage, declaring that during the term of that agreement, certain early retirees were eligible to participate in the company's plan at company expense or, at the retiree's option, in an HMO plan offered by the company to active employees. If the cost of the HMO was greater than the cost of the company plan, a retiree who selected the HMO option was required to pay the difference; if the HMO's cost was less than that of the company plan, the difference was credited to the cost of any spousal coverage.

After determining that it would close the Euless plant, Goodrich and the union bargained over and ultimately entered into a Plant Closure Agreement ("PCA") to mitigate

the impact of the plant closure on active unit employees. In negotiating the PCA, the union represented the interests of active bargaining unit employees only; it did not represent the interests of retirees in those negotiations. The PCA was executed on August 1, 2000.

The PCA provided that Goodrich would have the right to implement reasonable cost containment measures for retiree medical coverage so long as there was no material change in the level of benefits. The PCA also specifically addressed the termination of the bargaining agreement and bargaining relationship, stating:

> [T]he Union and Company agree . . . that the collective bargaining agreement and bargaining relationship will terminate on October 1, 2000. . . . [However, if the Company exercises an option in the PCA to remain open until November 15, 2000, then] the CBA and the bargaining relationship shall continue until all the retained employees have been released. . . . If the Company subsequently resumes production operations, the collective bargaining relationship shall resume and the current CBA continue in effect.

Goodrich exercised its option to continue operations until November 15, 2000, at which time it closed the Euless plant and released all of the remaining bargaining unit employees. Pursuant to the terms of the PCA, the bargaining relationship and the CBA terminated on that date. The company has not resumed production operations.

In November 2002, Goodrich announced that the Company would offer retirees a new Aetna HMO option, effective February 1, 2003. By letter in December 2002, Goodrich informed all participating retirees of the Aetna

HMO plan that would become effective in February 2003. With the new plan, the cost of the HMO would, for the first time, exceed the cost of the company plan. Thus, any retirees who opted for the HMO plan were required to make up the difference between its cost, and the cost of the company plan.

B. Proceedings below

On December 20, 2002, the union filed suit. The complaint's "introduction" stated:

> [Local 2121] brings this civil action under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, to enforce a collective bargaining agreement. Local 2121 seeks specific performance of Goodrich Corporation's contractual obligation to provide health benefits for certain retirees. Alternatively, Local 2121 seeks to compel arbitration of the dispute. Additionally, Local 2121 asserts a claim for declaratory relief.

The union was the only plaintiff. In the section identifying the parties to the action, the complaint states only, "Local 2121 is a local labor organization engaged in representing or acting for employees in an industry affecting interstate commerce." There was no mention of the retirees in the description of parties to the action.[1] The suit alleged that Goodrich was obliged to offer free HMO coverage to retirees, notwithstanding the cost-sharing language of the CBA and the provisions of the PCA.

---

[1] Some months after filing the complaint, the union filed "retiree representation authorizations" from 52 retirees.

The union's lawsuit contained three counts: Count I, "Enforcement of Medical Benefits Provision," declared that Local 2121 was entitled to an order directing specific performance by Goodrich with respect to the provision of retirees' medical benefits. Count II, "Enforcement of Arbitration Agreement," was presented as an alternative to Count I, and sought an order compelling Goodrich to arbitrate the contractual dispute pursuant to 29 U.S.C. § 185 [Section 301 of the LMRA]. Count III, "Declaratory Relief," sought a declaration "of the parties' rights and obligations under the PCA." It requested that the court declare (a) that the PCA prohibits Goodrich from making material changes in retiree benefits, (b) that the changes Goodrich made were material, and (c) that "upon request by either party, the parties are obligated to promptly submit" the dispute to arbitration.

Goodrich disputed the union's allegations and asserted that the union lacked standing to bring suit on behalf of the retirees. The union filed a motion for partial summary judgment seeking an order compelling arbitration. Goodrich opposed it, arguing that the union lacked standing to bring the lawsuit on behalf of retirees because it never was the bargaining representative of retirees, and because there was no longer a bargaining relationship between the union and Goodrich.

On March 8, 2004, the district court issued an order granting the union's motion, compelling arbitration, and administratively closing the case. (App. at 20). Goodrich noted a timely appeal.

On May 18, 2005, the court of appeals issued an opinion and judgment, dismissing the case for want of appellate jurisdiction. *Int'l Ass'n of Machinists & Aerospace Workers*

Local Lodge 2121 v. Goodrich Corp., 410 F.3d 204 (5th Cir. 2005) (App. at 1).

On August 3, 2005, Justice Scalia extended the time within which to file a petition for a writ of certiorari to and including September 2, 2005.

REASONS FOR GRANTING THE PETITION

This case presents an important question regarding appellate jurisdiction to review orders compelling arbitration. At issue is whether a decree under § 301(a) ordering enforcement of an arbitration provision in a collective bargaining agreement is still an appealable final decision, as this Court held in *Goodall-Sanford*. The court below evaluated appellate jurisdiction by the standards applicable to cases arising under the Federal Arbitration Act, and dismissed the case for want of appellate jurisdiction.

This case also presents a significant question on standing, specifically a union's standing to represent a group made up entirely of non-employees. The court below concluded that the plain language of § 301(b) – authorizing a union to sue on "behalf of the employees whom it represents" – is not controlling, and concluded that a union had standing to bring suit on behalf of retirees. The court below acknowledged that this holding is in conflict with *Rosetto v. Pabst Brewing Co.*, 128 F.3d 538 (7th Cir. 1997), *cert. denied*, 524 U.S. 927 (1998).

I. A decree under § 301(a) ordering enforcement of an arbitration provision in a collective bargaining agreement is a final decision, and appellate jurisdiction should not be evaluated under the standards applicable to orders compelling arbitration in Federal Arbitration Act cases.

There are two distinctly separate courses by which litigants may be directed to engage in court-ordered arbitration. First, in an action brought pursuant to § 301 of the Labor Management Relations Act (29 U.S.C. § 185), a court may find that the parties to a collective bargaining agreement (a "CBA") have an obligation arising out of the CBA to resolve through arbitration a dispute which has arisen between them. Although § 301 contains no substantive provisions, and no reference to arbitration, the Supreme Court has long recognized that it "does more than confer jurisdiction" and that it is a source of federal "substantive law . . . which the courts must fashion from the policy of our national labor laws." *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 455-56 (1957). Section 301 authorizes federal courts to fashion a body of federal law for the enforcement of CBAs and includes within that law specific performance of promises to arbitrate grievances under CBAs. *Id.* at 451.

The second route to court-ordered arbitration occurs where a court finds that the parties to a lawsuit have entered into a written agreement for arbitration that is subject to the Federal Arbitration Act (9 U.S.C. § 1 *et seq.*) ("FAA") and, pursuant to the authority granted by Section 4 of the FAA, compels the parties to proceed to arbitration in accordance with the terms of their agreement.

An action to compel arbitration brought under § 301 of the Labor Management Relations Act can arise only out of

a collective bargaining agreement. A motion to compel arbitration pursuant to the Federal Arbitration Act can arise only out of an agreement meeting the requirements of 9 U.S.C. § 2 (and not excluded by 9 U.S.C. § 1). Although each path may lead to court-ordered arbitration, the two paths rely upon fundamentally different statutes, with dissimilar underlying policy considerations.[2] A treatise on the subject distinguishes them by stating:

> [E]mployment arbitration and labor arbitration are very different from one another. Labor arbitration deals with alleged violations of collective bargaining agreements. Employment arbitration deals with alleged violations of statutes, individual employment agreements, and potentially other employment tort claims. . . . The courts have long treated labor arbitration differently from employment arbitration. The arbitrability of labor matters is typically controlled by Section 301 of the Labor Management Relations Act (LMRA) and the Supreme Court's 1960 *Steelworkers Trilogy*. The arbitrability of employment matters is controlled by the Federal Arbitration Act (FAA) and the Supreme Court's *Gilmer v. Interstate/Johnson Lane Corporation* and *Circuit City v. Adams* decisions.

[2] In the second of the *Steelworkers Trilogy* cases, *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960), Justice Douglas distinguished labor arbitration from FAA-based commercial arbitration. In FAA-based commercial arbitration, the "choice is between the adjudication of cases or controversies in courts . . . on the one hand and the settlement of them in the more informal arbitration tribunal on the other. . . . [Commercial arbitration] is the substitute for litigation." *Id.* at 578. Labor arbitration, however, does not substitute for litigation; instead, labor arbitration "is the substitute for industrial strife [and] . . . is part and parcel of the collective bargaining process itself." *Id.*

Daniel P. O'Meara, *Arbitration of Employment Disputes* 31 (2002).

It is critical that the distinction not be blurred. As Chief Judge Harry Edwards of the Court of Appeals for the District of Columbia Circuit has observed, "Not surprisingly, because traditional labor arbitration is so celebrated in the United States, it is easy for the uninitiated to fall prey to the suggestion that the legal precepts governing the enforcement and review of arbitration emanating from collective bargaining should be equally applicable to arbitration of all employment disputes. This is a mischievous idea, one that we categorically reject." *Cole v. Burns Int'l Sec. Servs.*, 105 F.3d 1465, 1473 (D.C. Cir. 1997). Similarly, in discussing the tension between *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974) and *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991), one commentator observed that, "Given that both decisions deal with the general topic of arbitration, it was perhaps inevitable that some commentators and courts would unnecessarily and incorrectly seek to reconcile and merge the separate and analytically distinct labor and employment arbitration regimes." Ronald Turner, *Employment Discrimination, Labor and Employment Arbitration, and the Case Against Union Waiver of the Individual Worker's Statutory Right to a Judicial Forum*, 49 Emory L.J. 135, 141 (2000). The court of appeals here has unnecessarily and incorrectly sought to reconcile these distinct bodies of law, specifically with respect to appellate jurisdiction over decisions compelling arbitration in actions brought pursuant to these two statutes.

In *Goodall-Sanford, Inc. v. United Textile Workers*, 353 U.S. 550 (1957), the union brought an action under § 301 to compel specific performance of a grievance arbitration

provision of a CBA or, in the alternative, damages. As in the case at bar, the district court granted the union's motion for summary judgment on the issue, and ordered arbitration. *United Textile Workers v. Goodall-Sanford, Inc.*, 131 F. Supp. 767, 772 (D. Me. 1955), *aff'd*, 233 F.2d 104 (1st Cir. 1956), *aff'd*, 353 U.S. 550 (1957). This Court squarely and explicitly addressed the availability of appellate review. The final paragraph of this Court's decision stated:

> There remains the question whether an order directing arbitration is appealable. This case is not comparable to *Baltimore Contractors v. Bodinger*, 348 U.S. 176, which held that a stay pending arbitration was not a "final decision" within the meaning of 28 U.S.C. § 1291. Nor need we consider cases like *In re Pahlberg*, 131 F.2d 968, and *Schoenamsgruber v. Hamburg Line*, 294 U.S. 454, holding that an order directing arbitration under the United States Arbitration Act [the FAA] is not appealable. The right enforced here is one arising under § 301(a) of the Labor Management Relations Act of 1947. Arbitration is not merely a step in judicial enforcement of a claim nor auxiliary to a main proceeding, but the full relief sought. **A decree under § 301(a) ordering enforcement of an arbitration provision in a collective bargaining agreement is, therefore, a "final decision" within the meaning of 28 U.S.C. § 1291.**

353 U.S. at 551-52 (emphasis added).

In the FAA context, on the other hand, a defendant in an employment discrimination case may rely upon a written agreement to arbitrate, and seek an order directing arbitration of the statutory claim. In such a case, arbitration is not the relief sought by the plaintiff. Rather,

the FAA is relied upon as the device for transferring the case from the judicial to the arbitral forum. In light of and consistent with the liberal federal policy favoring arbitration of disputes, § 16 of the FAA generally permits immediate appeal of orders hostile to arbitration, whether the orders are final or interlocutory, but bars appeal of interlocutory orders favorable to arbitration. *See* 9 U.S.C. § 16, *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 84-87 (2000). In other words, in a case where the FAA is relied upon by the party seeking to compel arbitration, immediate appellate review generally is limited to those situations in which the district court's ruling is hostile to arbitration.

The court of appeals in the case at bar began the process that Professor Turner described as "unnecessarily and incorrectly seek[ing] to reconcile and merge the separate and analytically distinct labor and employment arbitration regimes" by suggesting that collective bargaining agreements are subject to the FAA. The court below stated, "This is now a plausible approach because in *Circuit City Stores, Inc. v. Adams*, the Supreme Court held that the FAA applies to all contracts of employment, except those in the interstate transportation industries. 532 U.S. 105, 109 (2001). At first blush, this holding implicitly includes collective bargaining agreements." 410 F.3d at 207 n.2. (App. at 5). Although the court of appeals declined to decide whether the FAA applies to CBAs, the court implicitly questioned the continued vitality of *Goodall-Sanford,* because it failed to follow the explicit holding of that case. Rather, the court of appeals concluded that appellate jurisdiction in this § 301 action was dependent "in the first instance on whether the district court order was a 'final order'," citing the conditions identified in

Green Tree Fin. Corp.-Ala. as necessary to establish the presence of appellate jurisdiction in FAA cases.[3] 410 F.3d at 207 n.2 (App. at 6).

That the court of appeals should encounter difficulty in attempting to ascertain the existence of a "final order" using the FAA analysis is not surprising. The courts of appeals (and the Fifth Circuit in particular) have struggled mightily with the issue in the years since *Green Tree Fin. Corp.-Ala.*, attempting to ascertain when an order compelling arbitration under the FAA nevertheless may be final, and appealable. *Compare Am. Heritage Life Ins. Co. v. Orr*, 294 F.3d 702, 708 (5th Cir. 2002) (holding that a district court order that compels arbitration, stays court proceedings, and "closed" the case was an appealable, final decision within the contemplation of the FAA, as "there is no practical distinction between 'dismiss' and 'close' for purposes of this appeal."); *with Freudensprung v. Offshore Technical Servs., Inc.*, 379 F.3d 327 (5th Cir. 2004) (holding that order staying claims pending arbitration and administratively closing the case would have been final and appealable but, because of noncompliance with Rule 58's separate document requirement, was not final until 150

[3] In *Green Tree*, the district court had ordered the parties to proceed to arbitration and dismissed the claims with prejudice. While § 16(b) of the FAA does not permit an appeal to be taken from an interlocutory order compelling arbitration, § 16(a)(3) does permit an appeal from a final decision "with respect to an arbitration that is subject to" the FAA. The district court in *Green Tree* had dismissed the case after compelling arbitration. This Court concluded that the dismissal was "a final decision with respect to an arbitration" subject to the FAA, and accordingly, appealable. 531 U.S. at 86. Had the district court entered a stay instead of a dismissal, the order would not have been appealable. 531 U.S. at 87 n.2.

days later); *and S. La. Cement, Inc. v. Van Aalst Bulk Handling, B.V.*, 383 F.3d 297 (5th Cir. 2004) (holding that where district court compels arbitration, stays court proceedings pending arbitration, and orders the case "administratively closed", that is *not* a dismissal and thus is *not* a final, appealable decision). Another court of appeals, understandably exasperated with the nuances of terms used in orders compelling arbitration and evaluating which ones constituted a "final decision" under the FAA for purposes of appellate jurisdiction announced, "henceforth, we will . . . require an official dismissal of all claims before reviewing an order to compel arbitration." *Cap Gemini Ernst & Young, U.S., L.L.C. v. Nackel*, 346 F.3d 360, 363 (2d Cir. 2003).

The court of appeals here, entranced with a nitpicking approach to appellate jurisdiction in FAA cases, elected to ignore the bright line provided by this Court in *Goodall-Sanford* and claimed to find that the facts of the case were distinguishable. The court of appeals attached great (albeit unwarranted) significance to the fact that the union here, in addition to requesting arbitration, had included a count requesting declaratory relief as well. The court of appeals declared that because this count was contained in the complaint, the decree compelling arbitration of the dispute arising under the CBA was stripped of its finality and thus rendered not appealable. 410 F.3d at 207 n.2. (App. at 5). The decision was factually and analytically incorrect, and was a consequence of the confusion that arises from intermingling concepts related to review of FAA-based orders compelling arbitration with those arising from CBAs and the subject of § 301 proceedings.

The court of appeals incorrectly characterized the presence of a request for declaratory relief as distinguishing this case from *Goodall-Sanford*. Despite the presence of three enumerated causes of action, the union has asserted one, and only one, substantive claim: that the company is prohibited from modifying retirees' health benefits. The union's complaint presented Count I (asking the court to rule in the union's favor on that substantive claim and award damages) and alternatively, Count II (asking the court to direct that the union's substantive claim be resolved through arbitration). The alternatives sought by Counts I and II are virtually identical to alternatives sought by the union in *Goodall-Sanford*.

Here, however, the court of appeals declares that *Goodall-Sanford* is distinguishable, and therefore inapplicable, due to the presence of Count III in the complaint herein. Count III does not have the impact attributed to it by the court of appeals, for it is nothing more than the repackaging of Counts I *and* II. Essentially, it asked the court to render a declaratory judgment on *both* the substantive claim asserted by the union *and* the union's contention that the company is obliged to resolve the claim through arbitration. Count III is simply presented by the union as an alternative mechanism for securing a ruling on the same substantive claim for which the union sought relief in Counts I and II. The court of appeals failed to recognize that. Instead, it treated the complaint as though Count III presented additional substantive claims and issues that would not be addressed through the arbitration, but that would need to be resolved by the district court *after* the arbitration was concluded.

Such an approach is inconsistent with this Court's recognition in *Goodall-Sanford* that arbitration is the full

relief sought by a union bringing such an action. Here, should an arbitrator render a ruling regarding the company's alleged obligation to refrain from making changes to the retirees' health benefits, there will be nothing left for the court to do. First, the union presented Count I (asking for a determination on the substantive claims be made by the court) and Count II (asking that the determination on the substantive claim be made by an arbitrator) as alternatives. Therefore, the court's decision to compel arbitration pursuant to Count II would moot Count I. As to the three components of the "declaratory judgment" sought in Count III, to which the court of appeals attached such significance, the court's referral of the matter to arbitration disposed of the first two, and the third is not permissible once an arbitrator has rendered an award.[4]

The district court ordered the parties to proceed to arbitration and administratively closed the case. The court of appeals attached great weight to the further notation, "If the claims in this suit are not resolved in arbitration, either party may move to reopen the cause." (App. at 35). Once the case is sent to arbitration for resolution, however, and the arbitrator renders an award upon the union's substantive claim, the district court's authority will be limited. Nothing will be left upon which the court may render a declaratory judgment. Both the union's substantive claim and the parties' obligation to resolve it through arbitration will have been ruled upon (the former by the

[4] "Judicial review of a labor-arbitration decision pursuant to [a CBA] is very limited. Courts are not authorized to review the arbitrator's decision on the merits despite allegations that the decision rests on factual errors or misinterprets the parties' agreement." *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 509 (2001). *See also* 9 U.S.C. §§ 9-11.

arbitrator, and the latter by the district court's order compelling arbitration). Following arbitration, the district court will be unable to reverse its own order sending the case to arbitration, and will have only very limited authority to confirm or vacate the arbitrator's award. An inartful notation in the order compelling arbitration, which can have no effect upon the ultimate resolution of the union's claim, is not a legitimate basis upon which to distinguish the circumstances in the case at bar from those before this Court in *Goodall-Sanford*.

The ruling here, from the United States Court of Appeals for the Fifth Circuit, that the mere presence of a request for declaratory relief distinguishes this case from *Goodall-Sanford* and justifies departure from the explicit holding therein, is in conflict with a decision of the United States Court of Appeals for the Eighth Circuit. That court, in *United Steelworkers of America v. Black, Sivalls & Bryson, Inc.*, 608 F.2d 303 (8th Cir. 1979), was confronted with a case in which the union had "asked the court to declare the rights of the retired employees and to award them damages and other equitable relief [and the union] alternatively, requested that the dispute be submitted to arbitration." The district court ordered the parties to submit the matter to arbitration. The Eighth Circuit concluded that in those circumstances, the order referring the matter to arbitration was appealable. *Id.* at 304.

The ruling here is also in conflict with other circuits, which continue to follow the explicit, bright-line holding of *Goodall-Sanford*, wisely refraining from intertwining the appellate jurisdiction standards applicable to orders under § 301 with those of the FAA. *See, Coca-Cola Bottling Co. v. Soft Drink & Brewery Workers Union Local 812*, 242 F.3d 52, 55 (2d Cir. 2001) (relying on *Goodall-Sanford* for the

proposition that cases holding an order compelling arbitration unappealable under the FAA are inapplicable to one where arbitration was sought under § 301, and stating, "**Given the difference in eras and the intervening revolution in labor policy, adherence to the FAA in Section 301 cases may lead to anomalous or even bizarre results.**"(emphasis added)); *Oil, Chem. and Atomic Workers Union v. Conoco, Inc.*, 241 F.3d 1299, 1302 (10th Cir. 2001) (applying *Goodall-Sanford* and concluding that appellate jurisdiction exists because, in this § 301 action, the arbitration ordered by the district court is the full relief sought, and the district court's order therefore constitutes a final decision); *Int'l Union, UAW v. United Screw & Bolt Corp.*, 941 F.2d 466, 472 (6th Cir. 1991) (finding union's challenge to appellate jurisdiction, made in reliance on *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271 (1988), was misplaced, as *Goodall-Sanford* established that an order enforcing an arbitration provision in a CBA is a final decision); *United Steelworkers of America v. American Smelting & Refining Co.*, 648 F.2d 863, 866 (3d Cir. 1981) (relying on *Goodall-Sanford* to conclude that an order compelling arbitration based upon a CBA was a final order).

This Court should grant certiorari in order to address and reject the suggestion that appellate jurisdiction for review of § 301 orders compelling arbitration in reliance upon CBAs should be analyzed using the standards applicable to review of orders compelling arbitration in FAA cases. The two statutes are separate and analytically distinct. Granting the petition would allow the Court to address the continued vitality of the bright-line rule established by *Goodall-Sanford*. Furthermore, if the Court fails to grant the petition, and allows this ruling to go

uncorrected, unions will be encouraged to include sham requests for declaratory relief in any action under § 301 seeking an order compelling arbitration, as the tactic would permit them the opportunity to avoid timely, meaningful appellate review of an order compelling arbitration in a § 301 case.

II. A union does not have standing to bring an action under § 301 of the Labor Management Relations Act on behalf of a group made up entirely of non-employees.

Section 301(b) of the Labor Management Relations Act provides that, "Any labor organization which represents employees . . . may sue . . . as an entity [on] behalf of the employees whom it represents."

"[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). In order for the court to have jurisdiction, the plaintiff must qualify as a party with standing to litigate. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997).

Prior to Congress' enactment of the Taft-Harley Act in 1949, labor unions had no standing to act as litigating agents on behalf of their members. As the Sixth Circuit recently observed in *Trollinger v. Tyson Foods, Inc.*, 370 F.3d 602 (6th Cir. 2004):

> [U]ntil Congress enacted § 301 of the LMRA in 1947 (twelve years after it enacted the NLRA), unions had no standing to bring many types of lawsuits. That task fell upon individual employees because unincorporated associations like unions

> generally were not recognized as permissible litigants at common law.

370 F.2d at 617.

Section 301(a) of the LMRA provides that, "Suits for violations of contracts between an employer and a labor organization . . . may be brought in any district court of the United States having jurisdiction of the parties." 29 U.S.C. § 185(a). Section 301(b) of the LMRA provides that, "Any labor organization . . . may sue . . . as an entity [on] behalf of the employees whom it represents." 29 U.S.C. § 185(b). Thus, the former gave the federal courts subject matter jurisdiction over suits by labor unions to enforce collective bargaining agreements, and the latter gave labor unions standing to sue on behalf of the *employees* whom they represent. Accordingly, an inquiry into the union's standing to bring an action under § 301, to enforce a contract, on behalf of retirees, requires that the retirees must be "**employees** whom the union represents" within the meaning of the statute.

The term "employee" is defined in the LMRA at § 2(3), and there is no suggestion within the definition that retired workers fall within the scope of that term. 29 U.S.C. § 152(3).[5] In *Allied Chem. & Alkali Workers Local Union No. 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971), in order to determine whether the employer had violated § 8(a)(5) of the LMRA in bypassing the union and dealing directly with retirees, the Court first had to decide

[5] Although the definitions state that they are only applicable to the National Labor Relations Act, which does not include § 301(b), the definitions are made applicable to the entire LMRA by 29 U.S.C. § 142(3).

whether the retirees were "employees" as defined by the statute. This Court rejected the argument that, because it had "become an established industrial practice" to bargain over retirees' rights, retirees should be characterized as "employees." Instead, this Court concluded that the term "employee" was limited to active workers and could not be "stretched" to include retirees. *Allied Chemical Workers* at 166-68, 175-76. Specifically, this Court stated:

> The legislative history of [§ 152] itself indicates that the term "employee" is not to be stretched beyond its plain meaning embracing only those who work for another for hire. . . . The ordinary meaning of "employee" does not include retired workers; retired employees have ceased to work for another for hire. . . . No decision under the Act is cited, and none to our knowledge exists, in which an individual who has ceased work without expectation of further employment has been held to be an "employee."

Id. at 166-68. This Court further concluded that:

> [I]ndustrial practice cannot alter the conclusions that retirees are neither "employees" nor bargaining unit members. The parties dispute whether a practice of bargaining over pensioners' benefits exists. . . . But even if industry commonly regards retirees' benefits as a statutory subject of bargaining, that . . . would not be determinative. Common practice cannot change the law and make into bargaining unit "employees" those who are not.

Id. at 176.[6]

[6] In addition to holding that retirees are not employees as that term is used in § 2(3) of the LMRA, *Allied Chemical Workers* further

(Continued on following page)

In the case at bar, the district court was confronted with an action brought by a union on behalf of a group made up exclusively of retirees. The union – not the retirees – sought to compel arbitration of a claim that the company was obliged, but had failed, to provide certain health benefits for those retirees. The express language of § 301(b) must be scrutinized in order to ascertain whether the union had standing to bring this claim. If the union did not, then the district court was without jurisdiction to hear the case, and its subsequent order was a nullity.

The district court in the case at bar failed to appreciate the significance of the *Allied Chemical Workers* analysis, looking at that case only in terms of the obligation to bargain. The district court then concluded that "the issue is whether Goodrich contractually committed itself . . . to continue providing benefits for its already retired employees. If Goodrich did so . . . the union has legitimate interest in protecting the rights of the retirees." (App. at 30). The district court did not answer the critical statutory construction issues, i.e., whether the retirees on whose behalf the union brought the suit are "employees."

The court of appeals in the case at bar considered the plain language of the statute, but rejected it, stating:

> Goodrich's emphasis on the plain language of Section 301 is unavailing in this context. Though it is true as a general principle that plain language controls statutory interpretation, the Supreme Court has carved out an exception in the

---

distinguished retirees from employees, in holding that "retirees could not properly be joined with the active employees in the unit that the Union represents." 404 U.S. at 172.

> case of Section 301 and retirees. The Court has read Section 301 expansively to include a right of action by retirees against their former employers even though the plain language of Section 301 only creates a right of action for unions against employers and union members against their unions. [*Allied Chem. & Alkali Workers v.*] *Pittsburgh Plate Glass*, 404 U.S. at 182 n.20 ("The retiree [has] a federal remedy under § 301 of the [LMRA] for breach of contract if his benefits were unilaterally changed.") Indeed, neither party disputes that the retirees have cognizable claims against Goodrich under the CBA and the [plant closing agreement]. Therefore**, given that the fifty-two retirees in this case have viable causes of action against Goodrich despite the plain language of Section 301, we do not consider that same plain language to be an impediment to suit by the Union** when the Union has the express consent of the retirees to represent them therein.

410 F.3d at 212-13 (App. at 17) (emphasis added).[7]

The court of appeals, in essence, said that since the individual retirees have contractual rights arising from

[7] Goodrich does not assert that the individual retirees are barred from asserting claims; only that the union lacks standing to assert claims on their behalf. "Since retirees are not members of the bargaining unit, the bargaining agent is under no statutory duty to represent them in negotiations with the employer. . . . This does not mean that when a union bargains for retirees – which nothing in this opinion precludes if the employer agrees – the retirees are without protection. Under established contract principles, vested retirement rights may not be altered without the pensioner's consent. The retiree, moreover, would have a federal remedy under § 301 of the Labor Management Relations Act for breach of contract if his benefits were unilaterally changed." *Allied Chemical Workers* at 182 n.20.

the plant closing agreement, which those individual retirees could enforce by way of a suit under § 301, that they are entitled to transfer their standing to bring suit to the union. The court of appeals' holding on standing is unequivocal, despite being inconsistent with the text of § 301: "[U]nions may bring a section 301 suit on behalf of retirees who have authorized the union to do so on their behalf." 410 F.3d at 213 (App. at 17).

The decision in the case at bar is in conflict with *Rosetto v. Pabst Brewing Co.*, 128 F.3d 538 (7th Cir. 1997), *cert. denied*, 524 U.S. 927 (1998), as the court of appeals here acknowledged. 410 F.3d at 213 n.6 (App. at 18). The lawsuit in *Rosetto* was filed by the union (District 10 of the IAM) and four retired employees as representatives of a class of retired employees. The appeal was dismissed for lack of jurisdiction and, citing *Allied Chemical Workers,* the Seventh Circuit stated:

> A union's power to negotiate with management derives from the fact that the union is the exclusive bargaining representative of a group of people. Labor jurisprudence is clear that retirees cannot be part of this group. . . . Because District 10 is not the exclusive bargaining representative of the forty-one retirees that make up the class, any claims for benefits here belong to the retirees individually, and the retirees may deal directly with Pabst in pursuing such claims.

128 F.3d at 539-40.[8]

[8] The Seventh Circuit went on to explain that it was not holding that a union can never represent retirees, but that it would require the union's willingness to represent retirees, the retirees assent, and – significantly – the *employer's* consent to accept the union as the

(Continued on following page)

The court below has improperly and cavalierly expanded the jurisdiction of the federal courts beyond that adopted by Congress. There is no legitimate basis upon which to conclude that the actions of an employer and a union, in voluntarily bargaining over benefits for retirees, may expand the limited authority contained in § 301 authorizing a labor union to act as a litigating agent to enforce a collective bargaining agreement. The courts below, in effect, have declared that the language of the statute is re-written to permit a union to act as a litigating agent on "behalf of the employees whom it represents" and on behalf of non-employee retirees for whom it has negotiated retirement benefits. Such an interpretation of the statute is contrary to the express statutory language of the LMRA and the holding of *Allied Chemical Workers,* in which this Court rejected the premise that the parties, through collective bargaining, can expand a limit imposed by statute.

representative of the retirees. 128 F.3d at 541. The court of appeals in the case at bar expressly rejected this holding. 410 F.3d at 213 n.6 (App. at 18).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

DAVID E. NAGLE
Counsel of Record
LECLAIR RYAN
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219
(804) 343-4077
Counsel for Petitioner

Of Counsel
LAWRENCE J. MCNAMARA
LOCKE LIDDELL & SAPP LLP
2200 Ross Avenue,
Suite 2200
Dallas, Texas 75201
(214) 740-8000

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS LOCAL LODGE 2121 AFL-CIO, Plaintiff-Appellee, versus GOODRICH CORPORATION, formerly known as BF Goodrich Company, Defendant-Appellant.

No. 04-10418

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

410 F.3d 204; 2005 U.S. App. LEXIS 8889; 177 L.R.R.M. 2321; 151 Lab. Cas. (CCH) P10,483

May 18, 2005, Filed

SUBSEQUENT HISTORY: REVISED JUNE 1, 2005.

COUNSEL: For INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS LOCAL LODGE 2121 AFL-CIO, Plaintiff-Appellee: James Roddy Tanner, Rod Tanner & Associates, Fort Worth, TX.

For GOODRICH CORP fka B F Goodrich Co, Defendant-Appellant: Lawrence J. McNamara, Robin Dee Gooch, Locke Liddell & Sapp, Dallas, TX.

JUDGES: Before GARWOOD, JONES, and PRADO, Circuit Judges.

OPINION BY: GARWOOD

OPINION: GARWOOD, Circuit Judge:

Defendant-appellant Goodrich Corporation (Goodrich) appeals the district court's grant of partial summary judgment to plaintiff-appellee International Association of Machinists and Aerospace Workers Local Lodge 2121 AFL-CIO

(Union) on count two of the latter's three-count complaint in which count the Union sought an order compelling arbitration of the parties' dispute over retiree benefits in their collective bargaining agreement (CBA). We hold that we lack jurisdiction to review the district court's order compelling Goodrich to arbitrate. We also conclude that we do not have appellate jurisdiction on the theory that the district court's order was void for want of jurisdiction, because we further conclude that the Union has standing under Section 301(b) of the Labor Management Relations Act (LMRA), 29 U.S.C. § 185(b), to bring suit on behalf of the fifty-two retirees whose authorizations for the Union to represent them in all the matters at issue in the suit were filed in district court below.

Facts and Proceedings Below

Goodrich merged with Coltec Industries in 1998 and thereby acquired its manufacturing facility in Euless, Texas. The Union represented bargaining-unit aerospace employees at this facility, and Goodrich assumed Coltec's responsibilities under the 1996 CBA. Section 8.37 of the CBA provided that early retirees, meaning those who elected to retire before turning sixty-five, were entitled to choose between healthcare coverage under Coltec's own company plan or under an HMO. If the retiree opted for the Coltec plan, the company would cover the premiums. If the retiree opted for the HMO, the company would contribute an amount equal to the premium for the company plan and the retiree would have to make up the difference. If, on the other hand, the HMO cost less than the company plan, the company would pay the HMO premium and credit the difference between the HMO and the company plan to the cost of coverage for the retiree's spouse.

On April 14, 2000, Goodrich notified the Union that it intended to close the Euless facility. Pursuant to 29 U.S.C. § 158(d), the parties then engaged in "effects bargaining," and, on August 1, 2000, signed the Plant Closure Agreement (PCA). Paragraph sixteen of the PCA stated that Goodrich would have the right to modify the healthcare coverage of early retirees as part of "reasonable cost containment measures" but only to the extent that this would not result in any "material change in the level of benefits." The PCA also contained a comprehensive arbitration clause at paragraph seventeen in which the parties agreed that "any future disputes regarding the interpretation, application or performance of [the PCA] or the CBA shall be resolved by [a designated arbitrator]." Goodrich closed the Euless facility on November 15, 2000.

In November of 2002, Goodrich informed the Union that, effective February 1, 2003, it intended to offer a different HMO option. Under this new HMO option, the cost of HMO coverage would for the first time exceed the cost of coverage under the original Coltec plan. This meant that retirees with HMO coverage would for the first time have to pay out-of-pocket for their healthcare coverage. The Union contended that this change constituted a material alteration in the level of benefits guaranteed by the PCA. Goodrich not only disagreed but also refused to submit the controversy to arbitration.

On December 20, 2002, the Union filed a three-count complaint under Section 301(b) of the LMRA, 29 U.S.C. § 185(b), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, seeking in count one, pursuant to Section 301(b), specific performance of the healthcare benefits provision of the PCA; in count two, in the alternative and also under Section 301(b), enforcement of the PCA's

arbitration clause; and in count three, in addition to the relief sought under counts one or two, a declaration of the parties' rights and duties under the PCA. Following discovery, the Union filed its "Motion For Partial Summary Judgment," seeking "summary judgment on Count II of its complaint." In support of its motion, the Union filed, *inter alia*, fifty-two "retiree representation authorization" forms, each one of which was signed by a retiree who, by the terms of the authorization, affirmed that the Union has, and has always had, the authority to represent him in any claim arising under the CBA and PCA. Soon thereafter, Goodrich filed a motion to dismiss counts one and two, arguing that the Union lacks standing under Section 301 to represent the retirees because Section 301(b) only authorizes a labor organization to represent active employees. Goodrich did *not* move to dismiss count three.

On March 8, 2004, the district court granted the Union's motion for partial summary judgment and directed the parties to arbitrate their dispute. However, rather than enter judgment for the Union and dismiss counts one and/or three, the district court instead directed the clerk to "administratively" close the case and ordered "if the claims in this suit are not resolved in arbitration, either party may move to reopen the cause, but such motion must be filed no later than 30 days after the arbitration process is completed." The district court's ruling is contained in a 15 page document entitled "Order Granting Plaintiff's Motion For Partial Summary Judgment, Compelling Arbitration, And Administratively Closing Case." The district court also determined as part of its summary judgment analysis that the Union has standing to bring a Section 301 suit on behalf of retirees. Having determined that the Union has standing, the

district court in a separate order on the same day, "ordered that" Goodrich's motion to dismiss counts one and two on this ground "is rendered MOOT."[1]

Goodrich timely filed proper notice of appeal.

I.

Though not raised by either party, the unusual procedural posture of this case has led us to question our jurisdiction *sua sponte*. *Mosley v. Cozby*, 813 F.2d 659, 660 (5th Cir. 1987) ("This Court must examine the basis of its jurisdiction, on its own motion, if necessary."). The issue before us is whether we can exercise appellate jurisdiction over an order granting partial summary judgment in which the district court: (1) directs the parties, pursuant to Section 301(b), to arbitrate their dispute; (2) administratively closes the case without resolving count three of the complaint, brought under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202; and (3) expressly retains jurisdiction to hear any claims not resolved in arbitration.[2]

[1] There is no document entitled "Judgment" or "Final Judgment." There is no award of costs in either of the March 8, 2004 orders, or elsewhere.

[2] The supplemental letter briefs filed at our request address the possibility that we could simplify this case by holding that collective bargaining agreements are subject to the Federal Arbitration Act (FAA), 9 U.S.C. §§ 1 *et seq*. This is now a plausible approach because in *Circuit City Stores, Inc. v. Adams*, the Supreme Court held that the FAA applies to all contracts of employment, except those in the interstate transportation industries. 532 U.S. 105, 109, 149 L. Ed. 2d 234, 121 S. Ct. 1302 (2001). At first blush, this holding implicitly includes collective bargaining agreements. Nevertheless, most courts, both before and after *Circuit City*, adhere to the traditional view that suits arising under Section 301 and concerning collective bargaining agreements are outside the scope of the FAA. *See, e.g., Int'l Bhd. of*

(Continued on following page)

In our view, there are two possible bases for jurisdiction. The partial summary judgment order was either a final order under 28 U.S.C. § 1291 or it was an appealable

---

Elec. Workers, Local Union No. 545 v. Hope Elec. Corp., 380 F.3d 1084, 1097 (8th Cir. 2004) (stating that nothing in *Circuit City* undermines the Supreme Court's holding in *Textile Workers v. Lincoln Mills of Ala.*, 353 U.S. 448, 451-452, 1 L. Ed. 2d 972, 77 S. Ct. 912 (1957), that "§ 301 provides an independent basis for federal jurisdiction to enforce labor arbitration[.]"); *Coca-Cola Bottling Co. of New York, Inc. v. Soft Drink and Brewery Workers Union Local 812, Int'l Bhd. of Teamsters*, 242 F.3d 52, 53 (2d Cir. 2001) ("We hold that in cases brought under Section 301 . . . the FAA does not apply."); *Int'l Chem. Workers Union v. Columbian Chemicals Co.*, 331 F.3d 491, 494 (5th Cir. 2003) (citing, *inter alia*, *Coca-Coca Bottling Co.* and stating that the "district court appropriately relied only on [Section 301, as opposed to the FAA] when it confirmed the arbitration award because this case involves arbitration under a CBA."); *but see Briggs & Stratton Corp. v. Local 232, Int'l Union, Allied Indus. Workers of America, AFL-CIO*, 36 F.3d 712, 715 (7th Cir. 1994) ("As it happens, our circuit is among the minority that has limited § 1 [of the FAA] to the transportation industries and therefore applies the Arbitration Act to most collective bargaining agreements.") (citing *Pietro Scalzitti Co. v. Operating Engineers*, 351 F.2d 576, 579-580 (7th Cir. 1965)).

We find it unnecessary to revisit our dictum in *Columbian Chemicals*, 331 F.3d at 494, that only Section 301, and not the FAA, applies to collective bargaining agreements because, regardless of which statute applies, our appellate jurisdiction depends in the first instance on whether the district court order was a "final order." *Green Tree Fin. Corp.-Alabama v. Randolph*, 531 U.S. 79, 148 L. Ed. 2d 373, 121 S. Ct. 513, 519 (2000) (holding that subsection 16(a)(3) of the FAA, 9 U.S.C. § 16(a)(3), which states that an appeal may be taken from a "final decision with respect to an arbitration that is subject to this title," uses the term "final decision" in its well-established sense under 28 U.S.C. § 1291) (citing *Evans v. United States*, 504 U.S. 255, 119 L. Ed. 2d 57, 112 S. Ct. 1881 (1992)). In light of our conclusion that the district court's order is not final under 28 U.S.C. § 1291 (and, as a result, appellate jurisdiction does not exist), there is no reason to reach the question of whether the FAA or traditional section 301 jurisprudence now controls controversies arising under a collective bargaining agreement.

interlocutory injunction under 28 U.S.C. § 1292(a)(1).[3] We will address each in turn.

a. Final Order

In response to our request for additional briefing on appellate jurisdiction, Goodrich relies primarily on *Goodall-Sanford, Inc. v. United Textile Workers of America*, 353 U.S. 550, 77 S. Ct. 920, 1 L. Ed. 2d 1031 (1957), for the proposition that a district court order compelling arbitration under Section 301 is a final order for the purposes of appeal. Goodrich directs our attention in particular to *Goodall-Sanford*'s holding:

> "The right enforced here is one arising under § 301(a) of the Labor Management Relations Act of 1947. Arbitration is not merely a step in judicial enforcement of a claim nor auxiliary to a main proceeding, but the full relief sought. A decree under § 301(a) ordering enforcement of an arbitration provision in a collective bargaining agreement is, therefore, a 'final decision' within the meaning of 28 U.S.C. § 1291."

353 U.S. at 551-552, 77 S. Ct. at 921. In Goodrich's view, *Goodall-Sanford* in effect established a bright-line rule under which an order to arbitrate is always a final order for the purposes of 28 U.S.C. § 1291 as long as the order to

[3] There is no appellate jurisdiction under the collateral order doctrine over an order staying a case pending arbitration. *Jolley v. Paine Webber Jackson & Curtis, Inc.*, 864 F.2d 402, 404 (5th Cir. 1989) (citations omitted) (stating that "an order granting a stay pending arbitration is not effectively unreviewable on appeal from a final judgment."); *Mire v. Full Spectrum Lending, Inc.*, 389 F.3d 163, 167 (5th Cir. 2004) (holding that an administrative closure is the functional equivalent of a stay).

arbitrate is issued pursuant to Section 301 of the LMRA. Because the district court's order in the instant case was indeed predicated on Section 301, Goodrich argues that the order is accordingly a final, and therefore appealable, order.

We disagree. Though we have a copy of neither the complaint nor the district court's final judgment in *Goodall-Sanford*, it is evident on the face of the published opinions in that case that *Goodall-Sanford* is procedurally distinguishable from the case at bar.

First, in that case the United Textile Workers brought suit exclusively under Section 301. *United Textile Workers of America v. Goodall-Sanford, Inc.*, 129 F. Supp. 859, 860 (S.D. Maine 1955) ("The plaintiffs have initiated this proceeding under Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185."); *accord United Textile Workers of America v. Goodall-Sanford, Inc.*, 131 F. Supp. 767, 767 (S.D. Maine 1955); *Goodall-Sanford, Inc. v. United Textile Workers of America*, 233 F.2d 104, 105 (1st Cir. 1956); 353 U.S. at 551, 77 S. Ct. at 921. In addition, the United Textile Workers sought only one form of relief, either an order to arbitrate or, in the alternative, damages. 129 F. Supp. at 860.

Like the United Textile Workers, the Union in the instant case similarly brought two counts under Section 301, pleading respectively for either specific performance of the CBA or, in the alternative, for an order compelling arbitration. Unlike the United Textile Workers, however, the Union here also included a third count brought under the Declaratory Judgment Act. This third count was pleaded as an independent cause of action, not in the alternative to any relief under counts one or two. This is a

critical distinction. In reaching its conclusion that the judgment in *Goodall-Sanford* was a final order under 28 U.S.C. § 1291, the Supreme Court emphasized that the order to arbitrate was the "full relief sought" by the *United Textile Workers*. 353 U.S. at 551, 77 S. Ct. at 921. In the instant case, on the other hand, the Union sought declaratory relief altogether separate from, and in addition to, the order to arbitrate, meaning that the order compelling arbitration only granted the Union part of the relief it sought.

Furthermore, the decree supporting the order to arbitrate in *Goodall-Sanford* was a final order in the sense that it ended the litigation and left the district court with nothing to do but execute the judgment. 233 F.2d at 105 ("Thus it seems that the [district] court did *not* intend to reserve jurisdiction to confirm the arbitrator's decision." (emphasis added)); *accord id.* at 107 ("The decree also provided, as already noted, that the award was to be 'final and binding[.]' "). Given that the district court rendered a final decision on the merits of the United Textile Workers' claims, it is unsurprising that the Supreme Court treated the lower court's decree as a final order under 28 U.S.C. § 1291. The district court in the instant case, however, did not render a "final and binding" judgment on the merits. Instead, the district court only ruled on the two Section 301 claims and declined to address the Declaratory Judgment Act claim.

An additional procedural distinction is that the district court closed the instant case administratively rather than render a final judgment. We have held that such an administrative closure is the functional equivalent of a stay and a stay will not support appellate jurisdiction under 28 U.S.C. § 1291. *Mire v. Full Spectrum Lending,*

Inc., 389 F.3d 163, 167 (5th Cir. 2004) (holding, in a case decided under the Federal Arbitration Act (FAA), 9 U.S.C. § 1 *et seq*., that an administrative closure is identical to a stay); *Apache Bohai Corp. v. Texaco China, B.V.*, 330 F.3d 307, 309 (5th Cir. 2003) (holding, in an FAA case, that a stay is not equivalent to a dismissal for the purposes of 28 U.S.C. § 1291).

Finally, also unlike *Goodall-Sanford*, the district court in the instant case expressly retained jurisdiction to entertain any claims the arbitration fails to resolve. This reservation of jurisdiction for the purpose of hearing substantive claims also precludes appellate jurisdiction because an order framed this way is not a final judgment. *See, e.g., Mire*; *Apache Bohai Corp.*

Thus, when the full procedural history of *Goodall-Sanford* is explicated, it becomes apparent that the Supreme Court's decision was based on the unambiguous finality of the underlying district court judgment. Where, however, as in the instant case, none of the salient indicia of finality are present, *Goodall-Sanford* does not control. We conclude, therefore, that the order directing the Union and Goodrich to arbitrate their dispute cannot be considered a final order for the purposes of 28 U.S.C. § 1291 because the district court: (1) declined to resolve all of the Union's claims; (2) only closed the case administratively rather than entering a final judgment; and (3) reserved jurisdiction to hear substantive claims not resolved by the arbitration. Accordingly, we lack jurisdiction under 28 U.S.C. § 1291 to entertain Goodrich's appeal.

b. Appealable Interlocutory Order

We also do not have jurisdiction under 28 U.S.C. § 1292(a)(1) because the district court order staying the case and ordering arbitration is not an interlocutory injunction. To understand why, it is helpful to review how appellate courts have traditionally analyzed a decision to grant or deny a stay.

Under the former *Enelow-Ettelson* doctrine,[4] appellate jurisdiction over stays under 28 U.S.C. § 1292(a)(1) only arose when a district court granted or denied a stay of a suit at law on the basis of a defense or counterclaim that sounded in equity. *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 108 S. Ct. 1133, 1139, 99 L. Ed. 2d 296 (1988). Appellate jurisdiction would not arise when the decision to grant or deny a stay was in a suit at law and the decision was predicated on legal considerations nor when, on the other hand, the suit was in equity and the decision was predicated on equitable considerations. *Id.* In such cases, the stay was not considered an interlocutory injunction, or denial thereof, but instead simply a decision by a judge or chancellor to manage his own docket. The historical premise behind the *Enelow-Ettelson* doctrine was the fact that, traditionally, a judge at law and a chancellor at equity were two different people with distinct purviews, and this esoteric distinction persisted even after the powers of law and equity were united in the single person of a federal district judge.

[4] So named because of two seminal cases, *Enelow v. New York Life Ins. Co.*, 293 U.S. 379, 79 L. Ed. 440, 55 S. Ct. 310 (1935), and *Ettelson v. Metropolitan Life Ins. Co.*, 317 U.S. 188, 87 L. Ed. 176, 63 S. Ct. 163 (1942).

In modern times, the distinctive feature of the *Enelow-Ettelson* doctrine was its stubborn preservation of this distinction between law and equity long after the Federal Rules of Civil procedure had formally abolished it. *See, e.g., Houston General Ins. Co. v. Realex Group N.V.*, 776 F.2d 514, 515 (5th Cir. 1985) (citing *Tenneco Resins, Inc. v. Davy Int'l, AG*, 770 F.2d 416, 418-419 (5th Cir. 1985)). In *Gulfstream*, the Supreme Court overruled the "Byzantine" *Enelow-Ettelson* doctrine, holding that "orders granting or denying stays of 'legal' proceedings on 'equitable' grounds are not automatically appealable under § 1292(a)(1)." 485 U.S. at 287, 108 S. Ct. at 1142. In eliminating the *Ennelow-Ettelson* exception, the Supreme Court disposed of a doctrine "deficient in utility and sense" and set forth a uniform standard establishing the non-appealability of stays. 485 U.S. at 282, 108 S. Ct. at 1140.

Soon thereafter, we applied *Gulfstream* to arbitration in *Jolley v. Paine Webber Jackson & Curtis, Inc.*, holding that "an order denying [or granting] a stay pending arbitration is not appealable under § 1292(a)(1)." 864 F.2d 402, 403 (5th Cir. 1989) (citation omitted) supplemented at 867 F.2d 891 (5th Cir. 1989); *Turboff v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 867 F.2d 1518, 1520 (5th Cir. 1989) (stating that there is no appellate jurisdiction over orders granting or denying stays pending arbitration). Consequently, under *Gulfstream* and its progeny, the district court's order staying the instant case and ordering arbitration was not in essence an affirmative injunction to arbitrate. It was instead simply an administrative decision by the district court to manage its docket by declining to hear the case until the parties made a good-faith effort to fulfill their mutual, bargained-for expectation that disputes under the CBA or PCA would be heard, at least initially, in

arbitration. Accordingly, we do not have appellate jurisdiction over the order under 28 U.S.C. § 1292(a)(1).

II.

Arguably, however, even though we do not have appellate jurisdiction under section 1291, because the order is not final or within the collateral order doctrine, and is not an appealable order under section 1292(a)(1), or under the FAA, we would still have appellate jurisdiction if the district court wholly lacked jurisdiction so that its order was a complete nullity. *See, e.g., Shepherd v. Int'l Paper Co.*, 372 F.3d 326, 328-29 (5th Cir. 2004). A federal court is without jurisdiction if the only complaining party lacks standing. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 119 L. Ed. 2d 351, 112 S. Ct. 2130 (1992); *Florida Dept. of Ins. v. Chase Bank of Texas*, 274 F.3d 924, 928-29 (5th Cir. 2001) (" . . . standing is a component of Article III's case or controversy requirement, and is jurisdictional in nature"). The Union "as the party invoking federal jurisdiction, bears the burden of establishing the three elements of Article III standing." *Grant v. Gilbert*, 324 F.3d 383, 387 (5th Cir. 2003) (citing *Lujan*, 504 U.S. at 561). As we stated in *Florida Dept. of Ins.* at 929:

> "As articulated by the Supreme Court in *Lujan v. Defenders of Wildlife*, the elements of constitutional standing are: (1) that the plaintiff have suffered an 'injury in fact – an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent"; (2) that there is 'a causal connection between the injury and the conduct complained of"; and (3) that the injury is likely to be redressed by a favorable decision. Under *Lujan*, courts must carefully examine whose injury is at issue, and to

> whom the recovery will go. If the plaintiff is not the party who sustained the concrete and particularized injury for which a remedy is sought, and is not the assignee or designated representative of the injured party, then it does not have standing." (footnotes omitted).

Goodrich in effect contends as a matter of statutory construction that the Union could not have sustained an injury in fact because it is only authorized by statute to bring suit on behalf of active employees, meaning that unions are, at least in a technical legal sense, incapable of suffering an injury when company action redounds only to the detriment of retirees. In support of this contention, Goodrich repeatedly emphasizes the plain language of Section 301(b): "Any [ ] labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States."

Goodrich's position is not without considerable force. The statutory definition of employee does not include retired former employees.[5] In addition, the Supreme Court has held that retirees are not "employees" for the purposes of the National Labor Relations Act (NLRA), 29 U.S.C. §§ 151-169 and, consequently, the issue of benefits extended

---

[5] "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer . . . and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice . . . " 29 U.S.C. § 152(3).

Though the definitions supplied at 29 U.S.C. § 152 expressly state that they apply only to the subchapter of the Labor Management Relations Act entitled the National Labor Relations Act, 29 U.S.C. §§ 151-169, which does not include Section 301(b), those same definitions have been made applicable to the entire LMRA by 29 U.S.C § 142(3).

to current retirees is not a subject of mandatory bargaining under the NLRA. *Allied Chemical & Alkali Workers, Local Union No. 1 v. Pittsburgh Plate Glass*, 404 U.S. 157, 172, 92 S. Ct. 383, 394, 30 L. Ed. 2d 341 (1971) ("In this cause, in addition to holding that pensioners are not 'employees' within the meaning of the collective-bargaining obligations of the [NLRA], we hold that they were not and could not be 'employees' included in the bargaining unit."). If, as *Pittsburgh Plate Glass* establishes, the statutory definition of the term "employee," found at 29 U.S.C. § 152(3), is too narrow to allow the Union to compel Goodrich to engage in good-faith mandatory bargaining over changes to the benefits of retirees, then it must also be true that the Union cannot hail Goodrich into court on the strength of its claim that the term "employees" in Section 301(b), which is also defined at 29 U.S.C. § 152(3), can be broadly read to include retirees.

This conclusion finds support in our decision in *Meza v. Gen. Battery Corp.*, 908 F.2d 1262, 1270 (5th Cir. 1990), in which we held that a Section 301 suit brought by a union purportedly on behalf of all retirees was not *res judicata* as to a retiree who did not know about, much less participate in, the union's suit. We reasoned, based on *Pittsburgh Plate Glass* and many other cases, that a labor organization does not have the statutory authority to act as the exclusive and binding agent of a retiree in the same way that a union can so act on behalf of its active bargaining-unit members. *Id.* at 1268-1272. *See also Rossetto v. Pabst Brewing Co., Inc.*, 128 F.3d 538, 541 (7th Cir. 1998); *Merk v. Jewel Cos.*, 848 F.2d 761, 766 (7th Cir. 1988). On the other hand, the Third Circuit in *United Steelworkers v. Canron*, 580 F.2d 77, 81 (3d Cir. 1978), held that in a

section 301 suit "the plaintiff-union has standing to represent the retirees in seeking arbitration under its labor contract with" the defendant-employer.

However, we need not here ultimately resolve whether *Canron* should be followed or is consistent with the statutory scheme or our *Meza* decision. We hold that the Union has standing under section 301 to represent the fifty-two retirees whose express authorizations of the Union to do so were filed with the district court below, and that accordingly the district court was not so lacking in jurisdiction that its challenged order becomes appealable on that basis. *Cf. Kelly v. Moore*, 376 F.3d 481, 484-85 (5th Cir. 2004) (order granting new trial erroneous but not void, and hence interlocutory and not appealable).

Our conclusion as to the Union's standing to represent those authorizing retirees does not follow from a single decisive principle. It is instead the sum of several considerations which, in our view, tip the scale in favor of standing to represent those retirees.

First, Goodrich's emphasis on the plain language of Section 301 is unavailing in this context. Though it is true as a general principle that plain language controls statutory interpretation, *see, e.g., Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 450, 151 L. Ed. 2d 908, 122 S. Ct. 941 (2002), the Supreme Court has carved out an exception in the case of Section 301 and retirees. The Court has read Section 301 expansively to include a right of action by retirees against their former employers even though the plain language of Section 301 only creates a right of action for unions against employers and union members against their unions. *Pittsburgh Plate Glass*, 92 S. Ct. at 399 n.20 ("The retiree [has] a federal remedy under § 301 of the

[LMRA] for breach of contract if his benefits were unilaterally changed.") (citations omitted)). Indeed, neither party disputes that the retirees have cognizable claims against Goodrich under the CBA and PCA. Therefore, given that the fifty-two retirees in this case have viable causes of action against Goodrich despite the plain language of Section 301, we do not consider that same plain language to be an impediment to suit by the Union when the Union has the express consent of the retirees to represent them therein.

Next, cases like *Pittsburgh Plate Glass* and *Meza*, which restricted the scope of a union's authority to act as the binding bargaining agent of retirees, stand for the proposition that unions cannot overreach and arrogate to themselves power that Congress has not clearly given them. *See also Int'l Union, UAW v. Yard-Man, Inc.*, 716 F.2d 1476, 1484-1485 (6th Cir. 1983) (holding that retirees are entitled to settle a claim against the company arising under a CBA even when the retirees' former union has a suit pending on the same issue), *cert. denied* 465 U.S. 1007, 79 L. Ed. 2d 234 (1984). We find that this concern is not implicated by holding that unions may bring a section 301 suit on behalf of retirees who have authorized the union to do so on their behalf. Nothing in our decision today would authorize a union to sue *on behalf* of individual retirees *but against* their wishes. *See Anderson v. Alpha Portland Indus.*, 752 F.2d 1293, 1296 (8th Cir.) (en banc) (stating that the law does not "establish that a union which does bargain for its retirees becomes their *exclusive* representative and that the retirees then *must* proceed through the union.") (emphasis in original), *cert. denied* 471 U.S. 1102, 85 L. Ed. 2d 846 (1985); *Merk*, 848 F.2d at 766 ("Unions may bargain on behalf of retirees if the

employer is willing, although the retirees need not accept the offer of representation. Former employees might choose the union as their agent for purposes of implementing or compromising claims arising under a [CBA]."). Nor have we held that a union may sue on behalf of a retiree who has not consented.[6]

Finally, Section 301 is not simply a procedural statute but a source of substantive labor law. *Textile Workers Union of America v. Lincoln Mills of Ala.*, 353 U.S. 448, 77 S. Ct. 912, 917-918, 1 L. Ed. 2d 972 (1957). The Supreme Court has instructed the courts to fashion this common law with an eye toward the overarching themes of federal labor policy. *Id.* at 918 ("We conclude that the substantive law to apply in suits under § 301(a) is federal law, which the courts must fashion from the policy of our national labor laws."). Our holding today is consistent with that policy. Granting the Union standing to represent the consenting fifty-two retirees provides a convenient vehicle for litigating their collective claim that Goodrich has failed to honor contractual rights that have vested under the

[6] The Seventh Circuit specifically addressed the question of union standing under Section 301 to represent retirees and concluded, that there is no standing unless the retirees consent to representation. *Rossetto*, 128 F.3d at 541. The *Rossetto* court went one step further, however, and held that a union's standing in federal court also depends on whether the company, in addition to the retirees, has consented to union representation of the consenting retirees. *Id.* The *Rossetto* court cites no authority for the proposition that a plaintiff's Article III standing depends on consent of the defendant, and we decline to follow that aspect of the opinion's holding. Given that a defendant cannot give standing where is [sic] it does not properly exist, *Nat'l Org. for Women v. Scheidler*, 510 U.S. 249, 255, 127 L. Ed. 2d 99, 114 S. Ct. 798 (1994) (stating that standing is jurisdictional and, hence, not subject to waiver), it follows *a fortiori* that a defendant cannot take away standing where it does properly exist.

CBA and PCA. Furthermore, finding standing recognizes that the Union, as both signatory to the CBA and PCA and former exclusive agent of retirees, has a legitimate interest in honoring the request of the retirees that it represent them to enforce their rights that it and Goodrich provided for in the CBA and PCA. These interests, while not dispositive, lend marginal additional support to our conclusion that granting limited standing to the Union to represent the consenting fifty-two retirees is consistent with national labor policy.

Conclusion

For the foregoing reasons, we conclude that we lack jurisdiction to review the district court's order. Accordingly, the appeal is

DISMISSED FOR WANT OF APPELLATE JURISDICTION.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, LOCAL LODGE 2121, AFL-CIO	§ § § §	ACTON NO. 4:02-CV-1026-Y
VS.	§ §	
GOODRICH CORPORATION	§	

ORDER GRANTING PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY JUDGMENT,
COMPELLING ARBITRATION, AND
ADMINISTRATIVELY CLOSING CASE

Pending before the Court is plaintiff International Association of Machinists and Aerospace Workers, Local Lodge 2121, AFL-CIO ("Local Lodge")'s Motion for Partial Summary Judgment, filed May 22, 2003. Having carefully considered the motion, response, and reply, the Court concludes that the motion should be GRANTED.

I. RELEVANT BACKGROUND

For several years, defendant Goodrich Corporation ("Goodrich") operated a manufacturing plant[1] in Euless, Texas. At all relevant times, Local Lodge was the exclusive collective-bargaining representative for all hourly rated production and maintenance employees at the Euless plant. Goodrich's predecessor at the Euless plant was

[1] Goodrich manufactured aircraft landing gear for Boeing Company and Lockheed Martin Corporation at this plant.

Coltec Industries/Menasco Aerosystems Division-Texas Operation ("Coltec"). In 1996, Coltec and Local Lodge negotiated a collective-bargaining agreement ("CBA") that established the wages, hours of work, and other terms of employment for all unit employees. The CBA became effective September 29, 1996. Section 8.37 of the CBA stated:

> Early retirees who have not attained the age of 65 shall be eligible to participate, at Company expense, in the Coltec Early Retiree Insurance Plan or, at the retiree's option during open enrollment periods in an HMO plan offered by the Company to active employees. If the cost of the HMO is greater than the cost of the Early Retiree Insurance Plan, the retiree shall pay the difference. If the cost is less than the Early Retiree Insurance Plan, the Company will provide the difference toward participation in the same plan by the retiree's spouse. An early retiree's spouse shall be eligible to participate on the same basis as the retiree, but at the retiree's expense, except as noted above.

(Pl.'s App. at 136.)

In 1998, Goodrich acquired the Euless manufacturing plant pursuant to a merger agreement and assumed the CBA and Coltec's employment-benefit plans. On April 14, 2000, Goodrich informed Local Lodge that it had decided to close the Euless plant and transfer all work performed there to facilities in other states. Consequently, Goodrich and Local Lodge engaged in effects bargaining to mitigate the impact of the closure on unit employees. On August 1, the parties entered into a Plant Closure Agreement ("PCA"). The relevant portions of the PCA state:

> 13. The Union and the Company agree that . . . the collective bargaining agreement and bargaining relationship will terminate on October 1, 2000. If the Company elects to produce more parts than are enumerated in Appendix A, the Company shall have the option to retain the number of bargaining unit employees it deems sufficient until a date not later than November 15, 2000. . . . If the Company subsequently resumes production operations, the collective bargaining relationship shall resume and the current CBA continues in effect.
>
> . . . .
>
> 16. The Company shall have the right to: (a) change the administrator, provider(s), or carrier(s); and (b) implement reasonable cost containment measures for retiree medical coverage so long as there is no material change in the level of benefits. The Company shall attempt to offer both a comprehensive and HMO option.
>
> 17. The provisions of this Plant Closure Agreement shall supersede any conflicting provisions of the collective bargaining agreement. All doubts shall be resolved in favor of the applicability of this Agreement. Any future disputes regarding the interpretation, application or performance of this Agreement or the CBA shall be resolved by A. Dale Allen.

(Def.'s App. at 14-15.)

Goodrich exercised its option to continue operations until November 15, 2000, at which time it closed the Euless plant and released all of the remaining bargaining-unit

employees. In August 2001,[2] Goodrich made certain changes to the HMO option that it characterized as cost-containment measures. These changes were subsequently withdrawn. Then, in November 2002, Goodrich informed Local Lodge that, effective February 1, 2003, it would offer retirees an Aetna HMO option in accordance with a prior plan design. Thereafter, in December 2002, Goodrich sent a letter to early retirees regarding their insurance coverage. The letter announced an increase in insurance premiums for the early retirees. As a result of the changes, a dispute arose between Local Lodge and Goodrich as to whether Goodrich is obligated to offer HMO coverage without charge under the early retiree health-insurance plan and whether the refusal or failure to offer such HMO coverage effects a material change in the level of benefits offered for retirees who participate in the plan.[3] Consequently, on December 20, 2002, Local Lodge filed suit on behalf of the early retirees alleging that Goodrich is obligated to offer free HMO coverage to the retirees.[4] Specifically, Local Lodge requests three forms of relief: (1) an order compelling specific performance of the contractual provision relating to the retirees' health benefits; (2) an order compelling Goodrich to arbitrate this contractual dispute pursuant to section 301 of the Labor Management

[2] The defendant claims it was **April** 2001. (Def.'s App. at 5.)

[3] According to the defendant, "[s]ince the plant closure in November 2000, the cost of the HMO retiree medical plan has exceeded that of the Coltec plan" and "[a]ny retirees who opt for the HMO plan covered by the Section 8.37 [of the CBA] cost-sharing provision are required to make up the difference between the cost of the HMO and Coltec plans." (Def.'s Br. in Supp. of Resp. at 6.)

[4] Fifty-two retirees signed a document titled "Retiree Representation Authorization" that authorizes Local Lodge to represent them in this dispute.

Relations Act ("LMRA"); and (3) a declaration of the parties' rights and obligations under the PCA pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202. Local Lodge claims that this Court has subject-matter jurisdiction to hear the suit pursuant to section 301 of the LMRA, 29 U.S.C. § 185.

II. SUMMARY-JUDGMENT STANDARD

Summary judgment is proper when the record establishes "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). An issue is considered "genuine" if "it is real and substantial as opposed to merely formal, pretended, or a sham." *Bazan v. Hidalgo Cty.*, 246 F.3d 481, 489 (5th Cir. 2001) (citing *Wilkinson v. Powell*, 149 F.2d 335, 337 (5th Cir. 1945)). Facts are considered "material" if they "might affect the outcome of the suit under governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). To determine whether there are any genuine issues of material fact, the Court must first consult the applicable substantive law to ascertain what factual issues are material. *Lavespere v. Niagra Mach. & Tool Works*, 910 F.2d 167, 178 (5th Cir. 1990). Next, the Court must review the evidence on those issues, viewing the facts in the light most favorable to the non-moving party. *Id.*; *Newell v. Oxford Mgmt. Inc.*, 912 F.2d 793, 795 (5th Cir. 1990); *Medlin v. Palmer*, 874 F.2d 1085, 1089 (5th Cir. 1989).

In making its determination on the motion, the Court must look at the full record including the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits. *See* FED. R. CIV. P. 56(c); *Williams v.*

Adams, 836 F.2d 958, 961 (5th Cir. 1988). Rule 56, however, "does not impose on the district court a duty to sift through the record in search of evidence to support" a party's motion for, or opposition to, summary judgment. *Skotak v. Tenneco Resins, Inc.,* 953 F.2d 909, 915-16 & n.7 (5th Cir. 1992). Thus, parties should "identify specific evidence in the record, and . . . articulate" precisely how that evidence supports their claims. *Forsyth v. Barr*, 19 F.3d 1527, 1536 (5th Cir. 1994). Further, the Court's function is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial. *See Anderson*, 477 U.S. at 249.

To prevail on a motion for summary judgment, the moving party has the initial burden of demonstrating that there is no genuine issue as to any material fact and that he is entitled to judgment as a matter of law. *See Celotex Corp v. Catrett*, 477 U.S. 317, 323 (1986). A defendant moving for summary judgment may submit evidence that negates a material element of the plaintiff's claim or show that there is no evidence to support an essential element of the plaintiff's claim. *See Celotex Corp.*, 477 U.S. at 322-24; *Crescent Towing and Salvage Co. v. M/V Anax*, 40 F.3d 741, 744 (5th Cir. 1994); *Lavespere*, 910 F.2d at 178.

To negate a material element of the plaintiff's claim, the defendant must negate an element that would affect the outcome of the action. *See Anderson*, 477 U.S. at 247. If the defendant moves for summary judgment alleging no evidence to support an essential element of the plaintiff's claim, the defendant need not produce evidence showing the absence of a genuine issue of fact on that essential element. Rather, the defendant need only show that the plaintiff, who bears the burden of proof, has adduced no evidence to support an essential element of his case. *See*

Celotex, 477 U.S. at 325; *Teply v. Mobil Oil Corp.*, 859 F. 2d 375, 379 (5th Cir. 1988).

When the moving party has carried its summary-judgment burden, the respondent must go beyond the pleadings and by his own evidence set forth specific facts showing there is a genuine issue for trial. Fed. R. Civ. P. 56(e). This burden is not satisfied by creating some metaphysical doubt as to the material facts, by conclusory allegations, by unsubstantiated assertions, or by only a scintilla of evidence. *See Little v. Liquid Air Corp.*, 37 F. 3d 1069, 1075 (5th Cir. 1994). If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. *See Anderson*, 477 U.S. at 249-50.

III. ANALYSIS

The plaintiff, in its motion, argues that it is entitled to summary judgment on its claim that Goodrich should be compelled to arbitrate this contractual dispute pursuant to section 301 of the LMRA. Goodrich, on the other hand, argues that Local Lodge is not entitled to summary judgment because the Court does not have subject-matter jurisdiction to hear the suit since Local Lodge does not have standing to sue on behalf of the early retirees.

Because the question of standing implicates the Court's subject-matter jurisdiction, the Court concludes that there are two basic issues in this case: (1) whether the Court, pursuant to section 301 of the LMRA, has jurisdiction to hear the claims asserted by Local Lodge; and (2) if so, whether Local Lodge has standing to bring such claims. As to the first issue, "[w]hether a court possesses subject matter jurisdiction over a claim depends upon the 'court's

general power to adjudicate in specific areas of substantive law.'" *Am. Fed'n of Gov't Employees, AFL-CIO v. United States*, No. Civ. A. SA00CA1508HG, 2001 WL 262897, at *6 (W.D. Tex. Mar. 7, 2001) (quoting *Palmer v. United States*, 168 F. 3d 1310, 1313 (Fed. Cir. 1999)). Section 301 of the LMRA, 29 U.S.C. § 185, states:

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

29 U.S.C.A. § 185(a) (West 1998). The United States Court of Appeals for the Fifth Circuit has held that a "section 301 claim must satisfy three requirements: (1) a claim of violation of (2) a contract (3) between an employer and a labor organization." *Carpenters Local No. 1846 v. Pratt-Farnsworth, Inc.*, 690 F.2d 489, 500 (5th Cir. 1982). *See also Sprinkler Fitters Local Union No. 692 v. First Indemnity Ins. Co.*, 840 F.Supp. 38 (E.D. Pa. 1993). In this case, it is clear that these requirements are met as Local Lodge claims that Goodrich violated the provisions of the PCA, which is a contract between Goodrich, an employer, and Local Lodge, a labor organization.

The next issue is whether Local Lodge has standing to sue on behalf of the retired employees.[5] Goodrich, relying

[5] "It is well settled that unless a plaintiff has standing, a federal district court lacks subject matter jurisdiction to address the merits of the case." *Matte v. Sunshine Mobile Homes, Inc.*, 270 F. Supp. 2d 805,

(Continued on following page)

heavily on *Allied Chem. & Alkali Workers, Local Union No. 1 v. Pittsburgh Plate Glass* Co., 404 U.S. 157, 1818 n.20 (1971), argues that Local Lodge does not have standing because section 301(b) does not authorize labor organizations to sue on behalf of retirees because retirees are not employees for purposes of the LMRA. Goodrich claims that because it did not bargain with Local Lodge on behalf of the persons who were already retired when they negotiated the PCA, Local Lodge lacks standing to pursue such claims against Goodrich. Furthermore, Goodrich claims that Local 2121 lacks standing because there is no existing bargaining relationship between Local Lodge and Goodrich as required by section 301(b) because the PCA specifically states that the bargaining relationship terminated, at the very latest, on November 15, 2000.

Section 301(b) of the LMRA states that "[a]ny labor organization which represents **employees** . . . may sue . . . as an entity and on behalf of the **employees** whom it **represents**." 29 U.S.C. § 185(b) (emphasis supplied) (West 1998). Section 152(3), which defines the term "employee," states:

> The term "employee shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor

---

813 (W.D. La. 2003). "In the absence of standing, there is no 'case or controversy' between the plaintiff and defendants which serves as the basis for the exercise of judicial power under Article III of the [C]onstitution." *Id.*

> practice, and who has not obtained any other regular and substantially equivalent employment. . . .

29 U.S.C.A. § 152(3) (West 1998). In *Allied Chemical and Alkali Workers*, the United States Supreme Court held that an employer's mid-term unilateral modification to the benefits of already retired employees did not constitute an unfair labor practice because the term "employee," as defined by the NLRA, excluded retirees. 404 U.S. at 166.[6] Goodrich argues that it never negotiated with Local Lodge on behalf of retirees (as opposed to employees who would subsequently retire) and that, consequently, Local Lodge does not have standing to represent retired employees. On the other hand, Local Lodge claims that the evidence clearly shows that the parties did negotiate on behalf of already retired persons; thus, Local Lodge does have standing.

After reviewing the evidence, the Court concludes that Local Lodge does have standing to represent the retirees

---

[6] The most pertinent part of the Supreme Court's decision in *Allied Chemical* is contained in a footnote, which states:

> Since retirees are not members of the bargaining unit, the bargaining agent is under no statutory duty to represent them in negotiations with the employer. . . . This does not mean that when a union bargains for retirees – which nothing in this opinion precludes if the employer agrees – the retirees are without protection. Under established contract principles, vested retirement rights may not be altered without the pensioner's consent. The retiree, moreover, would have a federal remedy under § 301 of the [LMRA] for breach of contract if his benefits were unilaterally changed.

Id. at 182 n.20 (citations omitted).

in their claims against Goodrich. To begin with, Goodrich[7] and Local Lodge clearly bargained on behalf of early retirees in the CBA that became effective on September 29, 1996. Section 8.37 of this CBA specifically sets forth the details of an early-retiree insurance plan. Thereafter, the parties negotiated the PCA, which states that any provision of the PCA shall supersede any conflicting provision of the CBA and requires that **any** disputes be resolved through arbitration. However, the only references in the PCA to the early-retiree insurance plan are contained in sections 4 and 16 of the PCA. Section 16 states, in essence, that Goodrich can change the administrator, provider, or carrier and implement reasonable cost-containment measures for retiree medical coverage so long as there is no material change in the level of benefits.

Based upon the terms of the CBA and PCA concerning the rights of early retirees and the general, all-encompassing arbitration clause in the PCA, it is clear that Local Lodge, at the very least, has standing to represent the early retirees in this case. Unlike in *Allied Chemical*, the issue is not whether Goodrich must bargain with the Union over the benefits of retired employees; instead, the issue is whether Goodrich contractually committed itself in the PCA to continue providing benefits for its already-retired employees. If Goodrich did so, "then under accepted contract principles the union has a legitimate interest in protecting the rights of the retirees and is entitled to seek enforcement of the applicable contract provisions." *United Steelworkers of Am., AFL-CIO v.*

[7] Coltec actually bargained with Local Lodge over the terms of the CBA. However, Goodrich assumed the CBA when it took over the Euless plant.

Canron, Inc., 580 F.2d 77, 80-81 (3d Cir. 1987) (holding that the union had standing to seek enforcement of applicable contract provisions relating to retiree benefits when the union had negotiated with the employer over such benefits). *See Local 589, Int'l Ladies' Garment Workers' Union, AFL-CIO*, 592 F. 2d 1008 (8th Cir. 1979) ; *Textile Workers of* Am., *AFL-CIO, Local 129 v. Columbia Mills Inc.*, 471 F. Supp. 527, 530-31 (N.D.N.Y. 1978). *Cf. McLaughlin v. E-Systems, Inc.*, 403 F.Supp. 67 (N.D. Tex. 1975) (holding that court did not have jurisdiction under section 301 to hear a suit brought by retirees and that the retirees lacked standing to sue because the union and employer had not bargained for the retirees' rights that the employer unilaterally took away). *But see Rossetto v. Pabst Brewing Co.*, 128 F.3d 538, (7th Cir. 1997) (holding that union did not have standing to pursue a grievance involving retirees unless each of the retirees assents to its representation).[8] Because the terms of the PCA raise an issue of whether Goodrich contractually committed itself to providing benefits for already-retired employees, Local Lodge has standing to represent the already-retired employees in their claims. The general arbitration clause in the PCA requires that a decision on the merits on this issue be determined by the arbitrator.

Goodrich also argues that Local Lodge lacks standing to sue because section 301(b) of the LMRA requires an "extant bargaining relationship" and, according to the paragraph 13 of the PCA, there has been no bargaining relationship between Goodrich and Local Lodge since November 15, 2000. Local Lodge disagrees, claiming that

[8] The Court notes that in this case 52 of the retirees have authorized the union to act on their behalf.

Goodrich's argument misinterprets the terms of section 13 of the PCA. Specifically, Local Lodge states:

> There are two separate and distinct collective bargaining agreements between the parties: the CBA and the PCA. Section 13 addresses termination of the CBA – the agreement which Coltec negotiated originally, which became effective in September 1996, and which Goodrich assumed in 1998. By contrast, the purpose of the PCA was to negotiate the effects of Goodrich's decision to close the plant. This resulted in the PCA, which became effective August 1, 2000. Among other things, the PCA terminated the CBA by its express terms and made certain provisions to mitigate the hardship for all employees who would lose their jobs.
>
> Section 13 refers only to "the collective bargaining agreement" that had been in effect since September 1996. The reference to the parties' "bargaining relationship" obviously relates to their respective obligations under the CBA. Section 13 makes no reference whatsoever to the termination of the PCA or to the parties' bargaining relationship under that separate agreement.
>
> Other provisions of the PCA clearly establish that the parties intended for the PCA to remain in effect until all terms and condition[s] had been performed, including Section 16's provisions for early retiree medical insurance benefits. Significantly, Section 17 of the PCA mandates arbitration of all "future disputes" without any temporal limitations. Similarly, there is no temporal limitation whatsoever with respect to Goodrich's contractual obligation to provide retiree medical insurance coverage."

(Pl.'s Reply to Def.'s Resp. to Pl.'s Mot. for Part. Summ. J. at 7.)

After reviewing all of the evidence and the parties' arguments, the Court agrees with Local Lodge. In this case, Local Lodge is arguing that Goodrich breached its agreement under section 16 of the PCA by making material changes to the retirees' level of benefits. Section 17 of the PCA clearly provides that any disputes, including future disputes, of the PCA and the CBA shall be decided by arbitration and makes no reference whatsoever to the termination of the PCA or to the parties' bargaining relationship under that separate agreement. *See*, *e.g.*, *Nolde Brothers, Inc. v. Local No. 358, Bakery & Confectionery Workers Union, AFL-CIO*, 430 U.S. 243, 250 (1977);[9] *Textile Workers of Am., AFL-CIO, Local 129 v. Columbia Mills, Inc.*, 471 F.Supp. 527 (N.D.N.Y. 1978). *Cf. Lopresti v. Merson*, No. 00 Civ. 4255 (JGK), 2001 WL 1132051, at *6 (S.D.N.Y. Sept. 21, 2001) (holding that a plant-closing agreement that clearly supersedes a collective-bargaining agreement precludes jurisdiction pursuant to section 301 of the LMRA over a claim based on an alleged violation of the superseded collective-bargaining

---

[9] In this case, the employer and union were negotiating a new collective-bargaining agreement. When negotiation was not successful, the union terminated the existing contract between the parties. Consequently, the employer, faced with a threatened strike, decided to close its plant permanently. The union demanded that the employer provide the workers with severance pay, as called for in the collective-bargaining agreement. The employer refused the union's demand and declined to arbitrate the issue, claiming that its contractual obligation to arbitrate disputes terminated with the collective-bargaining agreement. The Supreme Court disagreed, stating that although the dispute arose **after** the expiration of the collective bargaining contract, it clearly arose under that contract since the resolution of the underlying claim hinged on the interpretation given the contract clause providing for severance pay. The Court held that, in these circumstances, the employer would be required to submit the dispute to arbitration. *See Nolde Brothers*, 403 U.S. at 254.

agreement). Consequently, there is an extant bargaining relationship between Goodrich and Local Lodge. Thus, Local Lodge has standing to bring this action on behalf of the retirees.

Since the Court has determined that it does have subject-matter jurisdiction to hear Local Lodge's claims and that Local Lodge does have standing to assert the claims, the final issue is whether the Court should grant Local Lodge's request to compel the parties to arbitrate this dispute. "As enunciated by the Supreme Court in *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957) and the Steelworkers Trilogy,[10] it is the federal policy to favor arbitration of labor disputes." *McLaughlin*, 403 F. Supp. at 69. When a party requests a federal court to compel arbitration of a labor dispute under section 301 of the LMRA, "the only question before the court is whether there is an arbitration clause in the [CBA that] covers the dispute." *United Steelworkers of Am. v. ASARCO, Inc.*, 970 F.2d 1448, 1450 (5th Cir. 1992). In this case, section 17 of the PCA explicitly states that any disputes regarding the interpretation, application, or performance of the PCA or CBA shall be resolved by arbitration. Consequently, the Court concludes that the parties should arbitrate this dispute.

[10] *See United Steelworkers of Am. v. Am. Mfg. Co.*, 363 U.S. 564 (1960); *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of Am. v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

IV. CONCLUSION

Based on the foregoing, it is ORDERED that Local Lodge's Motion for Partial Summary Judgment [doc. #49-1] is GRANTED.

It is further ORDERED that, within thirty (30) days of the date of this order, the parties shall initiate arbitration proceedings in accordance with the arbitration provision contained in the PCA. It is further ORDERED that this cause is ADMINISTRATIVELY CLOSED and the clerk is DIRECTED to note the closing on the Court's docket. If the claims in this suit are not resolved in arbitration, either party may move to reopen the cause, but such motion must be filed no later than 30 days after the arbitration process is completed.

SIGNED March 8, 2004.

/s/ Terry R. Means
TERRY R. MEANS
UNITED STATES
DISTRICT JUDGE

TRM/knv