

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

## SUPREME COURT OF THE UNITED STATES

## Syllabus

MARQUEZ v. SCREEN ACTORS GUILD, INC., ET AL.

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

No. 97–1056. Argued October 5, 1998— Decided November 3, 1998

The collective bargaining agreement between respondent union, the Screen Actors Guild (SAG), and respondent movie producer, Lakeside Productions (Lakeside), contained a standard “union security clause” tracking the language of §8(a)(3) of the National Labor Relations Act (NLRA), which authorizes “an agreement . . . to require as a condition of employment membership [in the union] on or after the thirtieth day following the beginning of . . . such employment.” The union security clause did not explain that this Court has held that an employee can satisfy §8(a)(3)’s “membership” condition merely by paying to the union an amount equal to its initiation fees and dues, *NLRB v. General Motors Corp.*, 373 U. S. 734, 742–743, and that §8(a)(3) does not permit unions to exact dues or fees over the objection of nonmembers for activities that are not germane to collective bargaining, grievance adjustment, or contract administration, *Communications Workers v. Beck*, 487 U. S. 735, 745, 762–763. The clause did specify, however, that its 30-day grace period provision should be interpreted “to mean that [SAG] membership . . . cannot be required of any performer until . . . 30 . . . days after his first employment as a performer in the motion picture industry.” Petitioner, a part-time actress who had previously worked in the industry for more than 30 days, successfully auditioned for a one-line role in a television series produced by Lakeside, but was denied the part when she had not paid SAG’s required fees before beginning work. She filed suit alleging, among other things, that SAG had breached its duty of fair representation by negotiating and enforcing a union security clause with two basic flaws. First, she averred, the clause required union “membership” and the payment of full fees and dues when those terms could not be legally enforced under *General Motors* and *Beck*. She argued that the collective bar-

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gaining agreement should have contained language, in addition to the statutory language, informing her of her rights not to join the union and to pay only for the union's representational activities. Second, she asserted, the clause term interpreting the 30-day grace period to begin running with any employment in the industry contravened §8(a)(3), which requires a new grace period with each "such employment." The District Court granted summary judgment to the defendants on all claims. Affirming in pertinent part, the Ninth Circuit held that SAG had not breached the duty of fair representation merely by negotiating a union security clause that tracked the NLRA language. The Ninth Circuit also held that petitioner's challenge to the grace period provision was at base a claim that the clause violated the NLRA and that this claim fell within the primary jurisdiction of the National Labor Relations Board (NLRB).

*Held:*

1. A union does not breach the duty of fair representation merely by negotiating a union security clause that uses §8(a)(3)'s language without explaining, in the agreement, this Court's interpretation of that language in *General Motors* and *Beck*. Pp. 8–15.

(a) In resolving this narrow question, the Court is *not* deciding whether SAG illegally enforced the union security clause to require petitioner to become a union member or to pay dues for non-collective-bargaining activities. Similarly, the Court is *not* deciding whether SAG breached its fair representation duty by failing to adequately notify petitioner of her *Beck* and *General Motors* rights. Pp. 8–10.

(b) SAG did not breach its duty of fair representation by negotiating a union security clause that tracked the statutory language. A breach of that duty occurs when a union's conduct toward a member of the bargaining unit is arbitrary, discriminatory, or in bad faith. *E.g.*, *Vaca v. Sipes*, 386 U. S. 171, 190. Petitioner does not argue that SAG's conduct was discriminatory, and, on this record, SAG's conduct cannot be said to have been either arbitrary or in bad faith. The mere negotiation of a contract that uses terms of art cannot be fairly characterized as so far outside a wide range of reasonableness that it is wholly irrational or arbitrary. See, *e.g.*, *Air Line Pilots v. O'Neill*, 499 U. S. 65, 78. After this Court in *General Motors* and *Beck* stated that the statutory language incorporates an employee's rights not to "join" the union (except by paying fees and dues) and to pay for only representational activities, SAG cannot be faulted for using this very language to convey these very concepts. Moreover, petitioner's assertion that SAG acted in bad faith in that it had no reason to use the statutory language except to mislead employees about their *Beck* and *General Motors* rights is unpersuasive. This argument's first compo-

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nent— in effect, that even if SAG always informs workers of their rights and even if it enforces the union security clause in conformity with federal law, use of the statutory language in the agreement is intended to mislead employees— is unconvincing because it is so broad. The second part of petitioner’s bad faith argument— that there was no other reason for SAG’s choice of the statutory language— fails because a union might choose that language precisely *because* it is a shorthand description of workers’ legal rights that incorporates all of the refinements associated with it. Petitioner’s argument that the failure to explain all the intricacies of a term of art in a contract is bad faith has no logical stopping point; that argument would require that all the intricacies of *every* term used in a contract be spelled out. Pp. 10–15.

2. Because petitioner’s challenge to the union security clause’s grace period provision was based purely on an alleged inconsistency with the statute, the District Court lacked jurisdiction over it. A challenge to an action that is “arguably subject to §7 or §8 of the [NLRA]” is within the NLRB’s primary jurisdiction, *San Diego Building Trades Council v. Garmon*, 359 U. S. 236, 245, but a claim alleging a breach of the duty of fair representation is cognizable in federal court, *e.g.*, *Vaca v. Sipes*, *supra*, at 177–183. However, the mere incantation of the phrase “duty of fair representation” is insufficient to invoke the primary jurisdiction of federal courts. When a plaintiff’s only claim is that the union violated the NLRA, the plaintiff cannot avoid the NLRB’s jurisdiction by characterizing this alleged statutory violation as a breach of the duty of fair representation. See *Beck*, 487 U. S., at 743. To invoke federal jurisdiction when the claim is based in part on an NLRA violation, the plaintiff must adduce facts suggesting that the union’s statutory violation was arbitrary, discriminatory, or in bad faith. Although federal courts have power to resolve §7 and §8 issues that arise as collateral matters in a duty of fair representation suit, *ibid.*, this does not open the door for federal court first instance resolution of all statutory claims. Applying these principles in this case, petitioner’s challenge falls squarely within the NLRB’s primary jurisdiction. Petitioner’s argument that her challenge is structurally identical to the duty of fair representation claim considered in *Beck* is rejected because the latter claim was not premised on the mere unlawfulness of the union’s conduct, but on the fact that such conduct was arbitrary and possibly in bad faith. Her challenge to the membership and fees requirements discussed above is similarly distinguishable. Pp. 15–18.

124 F. 3d 1034, affirmed.

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O'CONNOR, J., delivered the opinion for a unanimous Court.  
KENNEDY, J., filed a concurring opinion, in which THOMAS, J., joined.