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EAGLE SYSTEMS AND SERVICES,
INC.,

Plaintiff,

v.

INTERNATIONAL ASSOCIATION OF
MACHINISTS, DISTRICT LODGE
725,

Defendant.

No. 2:16-cv-02077-JAM-EFB

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS AND COUNTER
MOTION TO CONFIRM ARBITRATION
AWARD**

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This case involves a dispute about an arbitration award.¹ Plaintiff Eagle Systems and Services, Inc. ("Eagle") filed its complaint to vacate an arbitration award under the Labor Management Relations Act ("LMRA"). ECF No. 1. Defendant International Association of Machinists, District Lodge 725 ("Union") moves this Court for an order dismissing Eagle's complaint under Fed. R. Civ. P. 12(b)(6) and counter-moves for an order confirming the arbitration award. ECF No. 7. Eagle

¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for November 15, 2016.

1 opposes Union's motion and counter motion. ECF No. 19.

2 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

3 Eagle and Union entered into a collective bargaining
4 agreement ("CBA"). CBA, attached to Complaint as Exhibit 1. The
5 CBA requires Eagle to provide full-time and part-time pilot and
6 loadmaster instructors for the C-17 Training System Program at
7 the Travis Air Force Base in Fairfield, California ("bargaining-
8 unit employees"). Exh. 1 at 6. Union represents these
9 bargaining-unit employees. Id.

10 Except in emergencies, the CBA prohibits non-bargaining-unit
11 employees (i.e., Eagle employees not covered by the agreement)
12 from performing work typically performed by the bargaining unit.
13 Id. at 17. Nor can a non-bargaining-unit employee's work "cause
14 a bargaining unit employee to be laid off, displaced or excluded
15 from overtime." Id. at 18.

16 The CBA also includes a grievance procedure resulting in
17 final and binding arbitration. Id. at 10-12. Under the CBA, the
18 arbitrator's decision "shall be final and binding on all
19 parties," provided the arbitrator does not "add to, subtract
20 from, modify or in any way change" CBA provisions. Id. at 12.

21 After executing the CBA with Union, Eagle modified a
22 subcontract it already had with L-3 Communications Link
23 Simulation & Training Division ("L-3"). Modified Subcontract,
24 attached to Complaint as Exhibit 3. Under the original
25 subcontract, Eagle provided five full-time equivalent pilot
26 instructors at Travis Air Force Base. Compl. at 3. But, because
27 L-3 hired a Site Manager to perform bargaining-unit work, the
28 Modified Subcontract reduced the staff by one full-time

1 equivalent instructor. Exh. 3 at 6-8. So, Eagle terminated two
2 part-time pilot instructors, which also precluded the remaining
3 bargaining-unit employees from working overtime. Compl. at 5.

4 Union filed a grievance, alleging that Eagle violated the
5 CBA when an L-3 Site Manager began performing bargaining-unit
6 work and when Eagle terminated two bargaining-unit employees.
7 Grievance Statement, attached to Complaint as Exhibit 4. The
8 parties could not resolve their differences, so Union submitted
9 the matter to arbitration. Compl. at 5.

10 Meanwhile, Union filed an Unlawful Labor Practice Charge
11 against Eagle with the National Labor Relations Board ("NLRB"),
12 alleging that Eagle violated several provisions under the
13 National Labor Relations Act ("NLRA") by transferring work out of
14 the bargaining unit and terminating two bargaining-unit
15 employees. ULP Charge, attached to Complaint as Exhibit 5. But
16 the Regional Director declined to issue a complaint. Regional
17 Director's Decision, attached to Complaint as Exhibit 6. Then
18 Union appealed the Regional Director's decision, but the General
19 Counsel's Office affirmed it. Office of the General Counsel's
20 Decision, attached to Complaint as Exhibit 9.

21 One day before the General Counsel's Office issued its
22 affirmance, the arbitrator held a hearing on Union's grievance.
23 Compl. at 7. About one month later, the arbitrator concluded
24 that Eagle violated the CBA. Arbitrator's Decision, attached to
25 Complaint as Exhibit 10. He issued an award requiring Eagle to
26 reinstate any terminated bargaining-unit employees, to pay
27 overtime to those bargaining-unit employees who lost that
28 opportunity, and to take all other steps necessary to return to

1 the pre-violation status quo. Exh. 10 at 9-10.

2 Eagle then filed its complaint in this Court to vacate the
3 arbitration award, alleging that the arbitrator exceeded his
4 authority, that the award does not draw its essence from the CBA,
5 that the award violates public policy, and that the award
6 conflicts with a prior NLRB ruling. Compl. at 1. Union now
7 moves to dismiss Eagle's complaint and counter-moves to confirm
8 the arbitration award.

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10 II. OPINION

11 A. Procedural Issue

12 In response to a complaint to vacate an arbitration award,
13 a party may simultaneously move to dismiss under Rule 12(b)(6)
14 and move to confirm the award. See K&M Installation, Inc. v.
15 United Bhd. of Carpenters, Local 45, No. 15-cv-05265, 2016 WL
16 1559712, at *1 (N.D. Cal. Apr. 18, 2016) (granting defendant's
17 Rule 12(b)(6) motion to dismiss and "Counter-Motion" to confirm
18 arbitration award). Even when a party files only a Rule
19 12(b)(6) motion to dismiss a complaint to vacate an arbitration
20 award, a court may, sua sponte, treat that motion as a motion to
21 confirm the award. See Sanluis Devs., LLC v. CCP Sanluis, LLC,
22 556 F. Supp. 2d 329, 332 (S.D.N.Y. 2008). That is because a
23 motion to dismiss a complaint to vacate an arbitration award is
24 essentially the same as a motion to confirm an award. See First
25 Fed. Fin. Corp. v. Carrion-Concepcion, No. 14-1019, 2016 WL
26 1328769, at *1 (D.P.R. Apr. 5, 2016) ("motion to dismiss 'a
27 complaint to vacate or modify an award is functionally
28 equivalent to a motion to confirm an award'") (internal

1 citations omitted); Gen. Elec. Co. v. Anson Stamping Co. Inc.,
2 426 F. Supp. 2d 579, 595 (W.D. Ky. 2006) (finding that a motion
3 to dismiss is the "practical equivalent" of a motion to confirm
4 and treating it as such). Indeed, sometimes judicial economy
5 interests or a case's procedural posture warrants treating a
6 motion to dismiss as a motion to confirm an arbitration award.
7 See Roy v. Buffalo Philharmonic Orchestra Society, Inc., 161 F.
8 Supp. 3d 187, 193 (W.D.N.Y. 2016).

9 The parties dispute whether it was procedurally proper for
10 Union to join its motion to dismiss with its counter motion to
11 confirm the arbitration award. Eagle says it was procedurally
12 improper for several reasons: (1) Union violated Rule 12(g) by
13 joining a Rule 12 motion and a non-Rule-12 counter motion;
14 (2) Union's counter motion violated E.D. Cal. L.R. 230(e) by
15 bringing a motion against a complaint; (3) courts decide motions
16 to vacate or confirm awards under the LMRA on summary judgment;
17 and (4) it would be unduly prejudicial to decide Union's counter
18 motion now because Eagle has not had the opportunity to fully
19 brief or provide evidence. See Opp'n at 4-5.

20 Conversely, Union maintains that it properly joined its
21 motion and counter motion. First, Union says, courts commonly
22 adjudicate motions to dismiss joined with motions to confirm
23 awards. See Reply, ECF No. 20, at 1. Second, it was unclear
24 whether Eagle intended its complaint to operate as a motion.
25 Id. And, third, ruling now would not prejudice Eagle or L-3
26 because (i) L-3 is neither a party to this litigation nor the
27 CBA, and (ii) there are no factual issues, so the court may
28 decide the legal question on the pleadings. Id. at 1-2.

1 The Court finds that Union properly joined its motion to
2 dismiss with its counter motion to confirm the arbitration
3 award. First, courts often treat motions to dismiss as motions
4 to confirm an award. See First Fed. Fin. Corp., 2016 WL 1328769
5 at *1; Gen. Elec., 426 F. Supp. 2d at 595. Eagle cites Kemner
6 v. Dist. Council of Painting and Allied Trades No. 36 to support
7 its argument that courts decide motions to vacate or confirm
8 arbitration awards under the LMRA on summary judgment, not the
9 pleadings. 768 F.2d 1115 (9th Cir. 1985). Eagle's reading of
10 Kemner is misplaced. Kemner involved a complaint to vacate one
11 arbitration award and to confirm two others under the LMRA and
12 the Federal Arbitration Act. Id. at 1117. The defendant moved
13 to dismiss for lack of subject matter jurisdiction and for
14 failure to state a claim. Id. Without explanation, the
15 district court granted the defendant's motion; the Ninth Circuit
16 reversed, confirming the first arbitration award and declining
17 to reach the remaining substantive issues. Id. Kemner is
18 easily distinguishable from the instant case and does not
19 support Eagle's argument. Also, given that courts frequently
20 treat motions to dismiss as motions to confirm arbitration
21 awards, Eagle's Rule 12(g) argument fails.

22 Second, it is unclear whether Eagle intended its complaint
23 to operate as a motion to vacate the award, which undercuts
24 Eagle's L.R. 230(e) argument. On the one hand, Eagle attached
25 to its complaint 95 pages worth of exhibits (including the CBA,
26 the Modified Subcontract, both NLRB rulings, and the
27 Arbitrator's Decision), suggesting that Eagle wanted the Court
28 to treat its complaint as a motion. See Exhs. 1, 3, 6, 9, 10.

1 On the other hand, Eagle requests leave to amend if the Court
2 dismisses the complaint. Opp'n at 15. Nevertheless, the Court
3 need not resolve whether Eagle has filed a motion to vacate the
4 arbitration award because Eagle, in its opposition brief, "had
5 the opportunity to defend against [the Union's counter motion]
6 and the enforcement of that [a]ward." See K&M, 2016 WL 1559712
7 at *1. And Eagle did just that.

8 Lastly, ruling on Union's counter motion will not prejudice
9 Eagle because the Court faces a legal question it can resolve on
10 the pleadings. Given the detailed record Eagle provided, this
11 Court has the evidence it needs to decide the issues before it.
12 See Exhs. 1, 3, 6, 9, 10. Indeed, "a court is barred from
13 disregarding the arbitrator's factual determinations, let alone
14 supplementing them with its own." Stead Motors of Walnut Creek
15 v. Auto. Machinists Lodge No. 1173, Int'l Ass'n of Machinists &
16 Aerospace Workers, 886 F.2d 1200, 1207 (9th Cir. 1989) (en
17 banc). As for prejudice against L-3, the Court need not address
18 that issue because L-3 is neither a party to this litigation nor
19 a signatory to the CBA.

20 B. Standard of Review

21 The Steelworkers Trilogy recognizes the unique interplay
22 between arbitration and collective bargaining agreements. See
23 United Steelworkers of Am. v. Am. Mfg. Co., 363 U.S. 564 (1960);
24 United Steelworkers of Am. v. Warrior & Gulf Navigation Co., 363
25 U.S. 574 (1960); United Steelworkers of Am. v. Enter. Wheel &
26 Car Corp., 363 U.S. 593 (1960). As the Supreme Court has
27 explained, "the grievance machinery under a collective
28 bargaining agreement is at the very heart of the system of

1 industrial self-government." Warrior & Gulf, 363 U.S. at 581.
2 This explains why, in the labor context, arbitration more than
3 merely resolves disputes: "The processing of disputes through
4 the grievance machinery is actually a vehicle by which meaning
5 and content are given to the collective bargaining agreement."
6 Id.

7 Eagle seeks to vacate the arbitration award under § 301 of
8 the LMRA. See Compl. at 1. Section 301 empowers this Court to
9 review an arbitration required under a collective bargaining
10 agreement. See generally Enter. Wheel & Car Corp., 363 U.S. 593
11 (1960). But, because arbitration plays a critical role in the
12 collective bargaining agreement context, courts reviewing labor
13 arbitration awards afford a "nearly unparalleled degree of
14 deference" to the arbitrator's decision. Stead Motors, 886 F.2d
15 at 1205. This deference applies to the arbitrator's
16 interpretation of the collective bargaining agreement and to his
17 factual findings, see id. at 1207, as well as the arbitrator's
18 interpretation of the issue's scope. See Pack Concrete, Inc. v.
19 Cunningham, 866 F.2d 283, 285-86 (9th Cir. 1989).

20 Because "the parties have[e] authorized the arbitrator to
21 give meaning to" the CBA's text, the Supreme Court has held that
22 a court cannot vacate an arbitration award simply because the
23 arbitrator misread the collective bargaining agreement. United
24 Paperworkers Int'l Union, AFL-CIO v. Misco, Inc., 484 U.S. 29,
25 38 (1987). Indeed, an arbitrator cannot misinterpret a
26 collective bargaining agreement because he essentially functions
27 as the parties' surrogate: "[H]is award is their contract."
28 See Stead Motors, 886 F.2d at 1205 (internal citation omitted)

1 (original emphasis).

2 The Ninth Circuit has "taken this instruction to heart,"
3 reiterating that "even if we were convinced that the arbitrator
4 misread the contract or erred in interpreting it, such a
5 conviction would not be a permissible ground for vacating the
6 award." Sw. Reg'l Council of Carpenters v. Drywall Dynamics,
7 Inc., 823 F.3d 524, 530 (9th Cir. 2016) (internal citation and
8 quotation marks omitted). Simply put, "as long as the
9 arbitrator is even arguably construing or applying the contract
10 and acting within the scope of his authority," a court must
11 uphold the arbitration award. See Misco, 484 U.S. at 38
12 (emphasis added).

13 Likewise, courts give great deference to an arbitrator's
14 factual determinations because "[t]he parties did not bargain
15 for the facts to be found by a court, but by an arbitrator
16 chosen by them." Misco, 484 U.S. at 45. "[I]mprovident, even
17 silly, factfinding ... is hardly a sufficient basis for
18 disregarding what the agent appointed by the parties determined
19 to be the historical facts." Id. at 39.

20 Finally, "an arbitrator's interpretation of the scope of
21 the issue submitted to him is entitled to the same deference
22 accorded his interpretation of the collective bargaining
23 agreement." Pack Concrete, 866 F.2d at 285. Indeed,
24 interpreting the submitted issue often requires interpreting the
25 collective bargaining agreement, "a job clearly for the
26 arbitrator." Id. at 285-86 (internal citation omitted).

27 Despite these well-established principles, under § 301 of
28 the LMRA, a court may vacate an arbitration award if (1) the

1 award does not draw its essence from the CBA; (2) the arbitrator
2 exceeds the issue's scope; (3) the award violates public policy;
3 or (4) the award is procured by fraud. See Sprewell v. Golden
4 State Warriors, 266 F.3d 979, 986 (9th Cir. 2001).

5 C. Analysis

6 1. The Award Draws Its Essence From The CBA

7 Under controlling Supreme Court precedent, a court may
8 declare an arbitrator's decision unenforceable only when the
9 arbitrator strays from interpreting and applying the collective
10 bargaining agreement and effectively "dispense[s] his own brand
11 of industrial justice." Major League Baseball Players Ass'n v.
12 Garvey, 532 U.S. 504, 509 (2001) (internal citation and
13 quotation marks omitted). An arbitrator may "look for guidance
14 from many sources, yet his award is legitimate only so long as
15 it draws its essence from the collective bargaining agreement.
16 When the arbitrator's words manifest an infidelity to this
17 obligation, courts have no choice" but to declare the award
18 unenforceable. See Enter. Wheel & Car Corp., 363 U.S. at 597.
19 The critical inquiry is simple: "Did the arbitrator look at and
20 construe the contract"? See Drywall Dynamics, 823 F.3d at 532.
21 "If so, the court's inquiry ends," id., provided the
22 arbitrator's award does not ignore the contract's "plain
23 language." Stead Motors, 886 F.2d at 1205 n.6.

24 The parties dispute whether the arbitration award draws its
25 essence from the CBA. Eagle says it does not for two reasons.
26 First, the arbitrator's decision that the Modified Subcontract
27 violated the CBA is not a plausible interpretation of the CBA
28 because the CBA's plain language shows that it applied only to

1 Eagle. Opp'n at 9. Second, the arbitrator modified the CBA to
2 bind L-3 by requiring Eagle to reinstate terminated employees,
3 which necessarily requires L-3 to remove its Site Manager. Id.
4 at 10.

5 Union disagrees, contending that Eagle's "plausibility"
6 argument invokes the wrong standard. Mot. at 7. The
7 arbitrator, Union says, needed only to arguably look at and
8 construe the CBA, and he did that. Id. at 6-7. Union adds that
9 the arbitrator also reviewed the Modified Subcontract to show
10 that Eagle agreed to reduce staffing, which falls within the
11 submitted issue's scope. Mot. at 9. Finally, Union reminds the
12 Court that it must afford great deference to the arbitrator's
13 interpretation of the submitted issue's scope. Reply at 3-4.

14 The Court concludes that the arbitration award draws its
15 essence from the CBA. First, Eagle proposes the wrong standard:
16 "The question is not ... whether the arbitrator's interpretation
17 of the agreement was 'plausible,' ... but instead whether he
18 made any interpretation or application of the agreement at all."
19 Drywall Dynamics, 823 F.3d at 531-32. Here, the arbitrator
20 clearly looked at and applied the CBA. See Exh. 10 at 6, 9.

21 Moreover, Eagle misconstrues the arbitrator's decision.
22 Eagle says that the arbitrator "found that by virtue of L-3
23 reducing the scope of the number of instructors Plaintiff
24 provided at Travis Air Force Base and employing L-3's own site
25 instructor to perform instructional duties, Plaintiff violated
26 the CBA." Compl. at 8. Eagle also contends that the arbitrator
27 modified the CBA to bind L-3 because requiring Eagle to
28 reinstate terminated workers "necessarily requires" L-3 to

1 remove its Site Manager. Opp'n at 10. Although Eagle suggests
2 that the arbitrator targeted L-3, the arbitrator puts the onus
3 on Eagle. See Exh. 10 at 9 ("[T]he arbitrator has not been
4 persuaded that [Eagle] can vacate its accountability"; Eagle
5 "voluntarily negotiated a [CBA] with the Union"; Eagle
6 "negotiated with L3 to transfer work out of the bargaining
7 unit"; Eagle "violated the...CBA"). Any effect L-3 felt is
8 simply an indirect consequence of the award, and Eagle's own
9 language suggests the same. See Opp'n at 10 (requiring Eagle to
10 reinstate terminated workers "necessarily requires L-3 to
11 remove" its Site Manager) (emphasis added).

12 Second, the award did not ignore the CBA's plain language.
13 The CBA prohibits transferring bargaining-unit work from
14 bargaining-unit employees to non-bargaining-unit employees. See
15 Exh. 1 at 17. The award enforces this prohibition by requiring
16 Eagle to pay overtime to the bargaining-unit employees who lost
17 that opportunity after the transfer, to reinstate terminated
18 workers, to make terminated workers whole, and to take other
19 steps necessary to return to the pre-violation status quo. See
20 Exh. 10 at 9-10.

21 Finally, that the arbitrator looked to the Modified
22 Subcontract to show that Eagle voluntarily transferred
23 bargaining-unit work is insufficient grounds to vacate the award
24 because, ultimately, the award draws its essence from the CBA.
25 The parties asked the arbitrator to decide whether Eagle
26 violated the CBA when an L-3 Site Manager began performing
27 bargaining-unit work. See Exh. 10 at 3. The arbitrator
28 concluded that his assessment required analyzing primarily the

1 CBA, but also the Modified Subcontract—to show that Eagle
2 voluntarily transferred bargaining-unit work. This is
3 permissible. See Enter. Wheel & Car Corp., 363 U.S. at 597
4 (concluding that arbitrator may “look for guidance from many
5 sources,” provided the award draws its essence from the
6 collective bargaining agreement). Because the arbitrator’s
7 words do not “manifest an infidelity” to his obligation to draw
8 the award’s essence from the CBA, see id., this Court affords
9 great deference to his interpretation of the issue’s scope. See
10 Pack Concrete, 866 F.2d at 285.

11 In short, the arbitrator addressed the submitted issue by
12 looking at and construing the CBA—that is all the law requires.
13 See Drywall Dynamics, 823 F.3d at 531-32 (concluding that if the
14 arbitrator interpreted or applied the CBA, then “the court’s
15 inquiry ends”). The Court will not vacate the arbitration award
16 on this ground.

17 2. The Award Does Not Violate Public Policy

18 There exists a very limited public policy exception to the
19 general rule requiring courts to enforce arbitrators’ decisions
20 that interpret and apply collective bargaining agreements. See
21 W.R. Grace & Co. v. Local Union 759, Int’l Union of United
22 Rubber, Cork, Linoleum & Plastic Workers of Am., 461 U.S. 757,
23 766 (1983). This narrow exception involves “a specific
24 application of the more general doctrine, rooted in common law,
25 that a court may refuse to enforce contracts that violate law or
26 public policy.” Misco, 484 U.S. at 42.

27 When evaluating whether to vacate an award on public policy
28 grounds, the court engages in a two-step inquiry. First, the

1 court must determine that an "explicit," "well defined and
2 dominant" public policy exists. W.R. Grace, 461 U.S. at 766.
3 The policy must arise from "the laws and legal precedents," and
4 cannot "be the product of the parties' or the courts' general
5 considerations of supposed public interests." Stead Motors, 886
6 F.2d at 1210 (internal citation and quotation marks omitted).
7 The Ninth Circuit has held that "[t]he public policy set forth
8 in the NLRA represents well defined and dominant public policy."
9 Van Waters & Rogers, Inc. v. Int'l Bhd. of Teamsters,
10 Chauffeurs, Warehousemen & Helpers of Am., Local Union 70, 913
11 F.2d 736, 742 (9th Cir. 1990) (internal quotation omitted). The
12 second step requires the court to find that the identified
13 policy specifically militates against relief provided by the
14 arbitration award. See Stead Motors, 886 F.2d at 1213-14.

15 As evidenced by this limited inquiry, courts should
16 cautiously vacate an arbitration award on public policy grounds
17 "because the finality of arbitral awards must be preserved if
18 arbitration is to remain a desirable alternative to courtroom
19 litigation." See Aramark Facility Servs. v. Serv. Emps. Int'l
20 Union, Local 1877, AFL CIO, 530 F.3d 817, 823 (9th Cir. 2008)
21 (internal citation and quotation marks omitted).

22 The parties dispute whether the arbitration award violates
23 public policy under the NLRA. Eagle says it does for three
24 reasons. First, the award violates § 8(a)(1)-(2) because
25 requiring that all pilot and loadmaster instructors comprise the
26 bargaining unit infringes on L-3 employees' § 7 rights to make
27 their own choices about representation. Compl. at 9. Second,
28 the arbitrator infringed on the NLRB's primary jurisdiction by

1 modifying the bargaining unit's scope when it included L-3
2 employees in its analysis. Id. at 9-10. And, third, Eagle
3 maintains that the award violated the NLRA's anti-featherbedding
4 provisions under § 8(b)(6) by requiring Eagle to pay people for
5 services they cannot perform. Id. at 10.

6 Union argues that the award does not violate NLRA policy
7 because Eagle has not alleged that the award conflicts with an
8 explicit, well-defined, and dominant public policy, i.e. Eagle
9 has not alleged facts establishing that the award imposed
10 binding obligations on L-3, extended rights or obligations of
11 union members to L-3 employees, or required Eagle to pay workers
12 who have not provided a "bona fide offer of competent
13 performance." Reply at 4.

14 The Court agrees with Union, but for a slightly different
15 reason. Because the NLRA qualifies as "explicit, well defined
16 and dominant public policy," see Van Waters, 913 F.2d at 742,
17 the issue turns on whether the NLRA militates against the relief
18 provided by the arbitrator's award. See Stead Motors, 886 F.2d
19 at 1213-14. It does not. The award imposes no burden on L-3's
20 employees, so it does not violate § 7 or § 8(a)(1)-(2). Nor
21 does the award require Eagle to pay the Site Manager for work it
22 can no longer perform, so the award does not violate § 8(b)(6).
23 Cases like the one here reaffirm the principle that courts
24 should cautiously vacate an arbitration award on public policy
25 grounds—otherwise arbitration will not "remain a desirable
26 alternative to courtroom litigation." See Aramark Facility
27 Servs., 530 F.3d at 823. The Court declines to vacate the
28 arbitration award on public policy grounds.

1 3. The Arbitrator Did Not Exceed His Authority

2 An arbitrator does not exceed his authority if, in
3 addressing an issue submitted before him, he looks at and
4 construes the collective bargaining agreement. See Drywall
5 Dynamics, 823 F.3d at 529-30. Stated differently, an arbitrator
6 exceeds his authority if he “dispense[s] his own brand of
7 industrial justice.” Garvey, 532 U.S. at 509.

8 Eagle first argues that the arbitrator’s conclusion
9 amounts to modifying the bargaining unit to include L-3
10 employees. Opp’n at 7. Eagle also argues that the arbitrator
11 impermissibly interpreted the Modified Subcontract, a document
12 not at issue. Id. at 7-8. And, third, the arbitrator’s
13 conclusion that only Eagle could provide instructors essentially
14 decided L-3’s rights and obligations. Id. at 8-9.

15 Conversely, Union argues that the arbitrator did not exceed
16 his authority. The arbitrator’s ruling that Eagle violated the
17 CBA when it modified the subcontract falls within the issue’s
18 scope. Mot. at 8. And, Union contends, the court must afford
19 great deference to the arbitrator’s interpretation of scope.
20 Reply at 3-4.

21 The Court finds that the arbitrator did not exceed his
22 authority. Again, Eagle misconstrues the arbitrator’s decision
23 by suggesting that the arbitrator targeted L-3. See Opp. 7-9
24 (arbitrator’s conclusion “essentially decided L-3’s rights and
25 obligations”) (emphasis added). As noted above, the award
26 imposes nothing on L-3, and suggesting that the award has
27 indirect effects on L-3 does not make this conclusion any less
28 true. The arbitrator answered the issue submitted before him by

1 looking at and construing the CBA, and he issued his award
2 accordingly. See generally Exh. 10. Furthermore, the Court
3 affords great deference to the arbitrator's interpretation of
4 the issue's scope. See Pack Concrete, 866 F.2d at 285. In sum,
5 Eagle has not shown that the arbitrator dispensed "his own brand
6 of industrial justice." See Garvey, 532 U.S. at 509. The
7 arbitration award is not vacated on this ground.

8 4. The Arbitrator's Decision May Differ From The
9 NLRB's Ruling

10 In cases involving conflicting decisions between the NLRB
11 and an arbitrator, the Ninth Circuit provides guidance as to
12 which decision a district court gives precedence. The inquiry
13 focuses on the NLRB's conduct. If the NLRB simply declined to
14 issue a complaint, then an arbitrator may take the case and
15 decide it differently than the NLRB. See Edna H. Pagel, Inc. v.
16 Teamsters Local Union 595, 667 F.2d 1275, 1279-80 (9th Cir.
17 1982); see also Warehousemen's Union Local No. 206 v. Cont'l Can
18 Co., Inc., 821 F.2d 1348, 1351 (9th Cir. 1987). But, if the
19 NLRB accepted the case on the merits and issued a decision and
20 order, and a subsequent arbitration "involving the same parties"
21 produces a conflicting award, the district court "need not
22 defer" to the arbitrator's decision. See Carpenters Local Union
23 No. 1478 v. Stevens, 743 F.2d 1271, 1275 (9th Cir. 1984); see
24 also Cont'l Can, 821 F.2d at 1351.

25 The parties dispute whether the Pagel rule or the Stevens
26 rule applies. Eagle argues that the Stevens rule should be
27 applied, see Opp'n at 14, whereas Union contends Pagal is the
28 controlling authority. See Mot. at 12-13.

1 The Court agrees with Union. The Pagal rule applies
2 because the NLRB's Regional Director declined to issue a
3 complaint. See Exh. 6 at 1. When the NLRB refuses to issue a
4 complaint, an arbitrator may take the case and decide it
5 differently. See Pagel, 667 F.2d at 1279-80. In other words,
6 the Stevens rule does not apply here because the NLRB did not
7 accept Union's case on the merits and did not issue a decision
8 and order. See Stevens, 743 F.2d at 1275. The Court declines
9 to vacate the arbitration award on this ground.

10 D. Attorneys' Fees

11 Under the American rule, absent statutory or contractual
12 authorization, a prevailing litigant usually cannot collect
13 attorneys' fees. See Alyeska Pipeline Serv. Co. v. Wilderness
14 Soc'y, 421 U.S. 240, 247 (1975). But a court may assess
15 attorneys' fees "when the losing party has acted in bad faith,
16 vexatiously, wantonly, or for oppressive reasons." Alyeska, 421
17 U.S. at 258-59 (internal citations and quotation marks omitted).

18 A court may find bad faith in several instances. Bad faith
19 may arise "in conduct that led to the lawsuit" or conduct
20 occurring during that suit. See Hall v. Cole, 412 U.S. 1, 15
21 (1973). Bad faith also occurs when a party's "obstinacy in
22 granting [the other party's] clear legal rights necessitated
23 resort to legal action with all the expense and delay entailed
24 in litigation." See Int'l Union of Petroleum & Indus. Workers
25 v. W. Indus. Maint., Inc., 707 F.2d 425, 428 (9th Cir. 1983)
26 (internal citation omitted).

27 Awarding attorneys' fees in this second context "satisfies
28 a dual purpose—deterrence and compensation." Id. The prospect

1 of attorneys' fees "tends to deter frivolous dilatory tactics."
2 Id. And the award compensates a party "for the added expense of
3 having to vindicate clearly established rights in court." Id.

4 In the labor arbitration context, deterrence and
5 compensation considerations are especially apt. See Warrior &
6 Gulf, 363 U.S. 577-78. The Ninth Circuit takes this rule
7 seriously, encouraging district courts to award the party
8 seeking enforcement attorneys' fees and reasonable costs because
9 "[e]ngaging in frivolous dilatory tactics not only denies the
10 individual prompt redress, it threatens the goal of industrial
11 peace." W. Indus. Maint., 707 F.2d at 428. Nevertheless,
12 awarding attorneys' fees lies within the district court's
13 discretion. Id.

14 Each party argues that it is entitled to attorneys' fees.
15 Union argues that it deserves attorneys' fees because (1) Eagle
16 acted in bad faith given that the parties agreed to a grievance
17 arbitration procedure, yet Eagle still challenged the award,
18 causing unnecessary expense and delay; and (2) Eagle's complaint
19 relies on "insubstantial arguments that fly in the face of well-
20 settled law concerning an arbitrator's authority." Mot. at 13-
21 15. Conversely, Eagle raises two points. First, Union does not
22 deserve attorneys' fees because Union's request is premature,
23 the American rule applies, and Union offered no evidence showing
24 that Eagle filed its complaint with ill-motive. Opp'n at 15.
25 Second, Eagle claims that it deserves attorneys' fees because
26 Union forced Eagle to oppose a "frivolous and procedurally
27 improper counter motion," a motion brought in bad faith. Id. at
28 14-15. In response, Union emphasizes that it has not "acted in

1 a way to impose costs unnecessarily." Reply at 6.

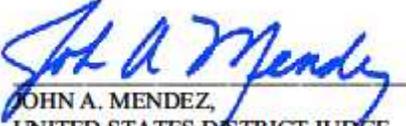
2 The Court grants Union's request for attorneys' fees, and
3 denies Eagle's request. Eagle not only agreed "to secure a
4 prompt and fair disposition of grievances" and to "final and
5 binding" arbitration, see Exh. 1 at 6, 12, but also filed an
6 action with meritless claims. Furthermore, having ruled that
7 Union properly filed its counter motion, the Court will not
8 grant Eagle attorneys' fees on that basis either. In short,
9 Eagle's behavior is the sort of bad faith the Ninth Circuit held
10 justifies attorneys' fees, especially in the labor arbitration
11 context, where such "frivolous dilatory tactics not only
12 denies...prompt redress," but also "threatens...industrial
13 peace." W. Indus. Maint., 707 F.2d at 428.

14
15 III. ORDER

16 For the reasons set forth above, the Court GRANTS WITH
17 PREJUDICE Union's Motion to Dismiss and GRANTS Union's Counter
18 Motion to Confirm the Arbitration Award. The Court also GRANTS
19 Union's request for attorneys' fees and orders Union to file
20 documents required under Local Rule 293 within twenty days of the
21 date of this Order to assist the Court in determining the
22 reasonable amount of attorneys' fees to be awarded.

23 IT IS SO ORDERED.

24 Dated: December 15, 2016

25
26 
27 JOHN A. MENDEZ,
28 UNITED STATES DISTRICT JUDGE