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UNITED STATES DISTRICT COURT  
Northern District of California

GRANITE ROCK COMPANY,

No. C 12-02974 MEJ

Plaintiff,

v.

**ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS (DKT. NO. 15)**

TEAMSTERS UNION LOCAL NO. 890  
AND TEAMSTERS UNION LOCAL NO.  
912,

Defendant(s).

**INTRODUCTION**

On July 23, 2012, Plaintiff Granite Rock Company filed its First Amended Complaint (“FAC”) seeking an order to compel Defendants, Teamsters Union Local No. 890 and Teamsters Union Local No. 912, to arbitrate certain grievances under Section 301 of the Labor Management Relations Act (“LMRA”).<sup>1</sup> Dkt. No. 12, FAC at ¶¶8, 26. Specifically, Plaintiff seeks an arbitrated resolution to its allegation that Defendants violated the “no-strike provision” in the parties’ 2003-2007 collective bargaining agreement.<sup>2</sup> *Id.* at ¶26. Now before the Court is Defendants’ Motion to Dismiss Plaintiff’s FAC on the grounds that it fails to state a claim. Having considered the relevant legal authority and the parties’ arguments, the Court hereby GRANTS Defendants’ Motion for the reasons explained below.

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<sup>1</sup> Plaintiff initiated this action to compel arbitration on June 8, 2012. Dkt. No. 1. Defendants moved to dismiss the Complaint on July 9, 2012; this Motion was denied as moot when Plaintiff voluntarily amended its pleading and filed its FAC. Dkt. Nos. 7 and 14.

<sup>2</sup> The parties’ 2003-2007 collective bargaining agreement will subsequently be referenced as CBA 1. Dkt. No. 2, Declaration of Bruce Woolpert (“Woolpert Decl.”), Ex. B.

**BACKGROUND**

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Plaintiff is a California corporation engaged in interstate commerce and an “employer” within the meaning of Sections 2(6), 2(7), and 301 of the LMRA. FAC at ¶1. It produces and supplies concrete and other building materials to construction contractors throughout the San Francisco and Monterey Bay Areas. *Id.* Defendants are local labor unions covering employee warehousemen and drivers at Plaintiff’s concrete and building material facilities in Monterey and Santa Cruz Counties. *Id.* at ¶¶2, 3. Plaintiff and Defendants have been parties to a series of collective bargaining agreements governing their employment relationship. *Id.* at ¶5; CBA 1; Woolpert Decl., Ex. A (the 2007-2012 collective bargaining agreement).<sup>3</sup>

In June 2003, Plaintiff and Defendants entered into CBA 1, which governed their employment relationship from June 1, 2003 to May 31, 2007. CBA 1 at §29. CBA 1 contains two sections relevant to this dispute. First, Section 7 (titled as Strikes and Lockouts) states in relevant part that “[t]here will be no strikes, including unfair labor practices strikes, sympathy strikes, slowdowns, stoppage of work or picketing by the Union or employees . . . during the term of this agreement[.]” (the “no-strike clause”). *Id.* at §7. Second, Section 25 (titled as Board of Adjustment), which discusses the grievance procedure, provides generally that if the parties are unable to resolve the dispute themselves, or with the board of adjustment, the dispute will be submitted to arbitration upon request of either party. *Id.* at §25.

In June 2004, another local union (“Local 287”), went on strike after a series of failed negotiations with Plaintiff to renew their collective bargaining agreement. FAC at ¶8. Local 287 established picket lines at Plaintiff’s Watsonville, Santa Cruz, Seaside, and Salinas facilities. *Id.* at ¶9. Plaintiff notified Defendants that their unions’ participation in the strike would constitute a violation of CBA 1, and any refusal to resume work would be a direct breach of their responsibilities under the parties’ agreement. Woolpert Decl., Exhibit C at 1. Defendants refused to comply with Plaintiff’s instructions and their members joined Local 287 in the strike. *Id.* at 2; FAC at ¶9. As a

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<sup>3</sup> The parties’ 2007-2012 collective bargaining agreement will subsequently be referenced as CBA 2.

1 result, Plaintiff filed grievances against Defendants charging them with violating the no-strike clause  
2 of the then-in-effect CBA 1. FAC at ¶9.

3 In 2006, Plaintiff initiated a lawsuit against Local 287 for strike-related damages, but did  
4 not file a complaint against Defendants at that time. *Id.* at ¶¶3, 12. Plaintiff alleges that it and  
5 Defendants agreed to hold Plaintiff’s 2004 grievances against Defendants “in abeyance” while  
6 litigation against Local 287 — which dealt with similar issues — was pursued in federal court. *Id.*  
7 at ¶12. The action against Local 287 lasted several years and included the United States Supreme  
8 Court granting certiori. *Id.* at ¶12.

9 Meanwhile, Plaintiff and Defendants entered into a subsequent collective bargaining  
10 agreement. *Id.* at ¶16. CBA 2 was executed in June 2011 and applied retroactively from June 7,  
11 2007 to May 31, 2012. CBA 2 at §29. Recently, the parties further agreed to a one-year extension  
12 for CBA 2. FAC at ¶5.

13 CBA 2 contains a no-strike clause, an integration clause, and a procedure for grievances  
14 filed on behalf of either party. CBA 2 at §§7, 24, 25. The CBA 2 no-strike clause is identical to the  
15 no-strike clause in CBA 1. *Id.* at §7. The integration clause provides:

16 It is agreed and understood between the parties hereto that this Agreement contains  
17 all the covenants, stipulations, and provisions agreed upon by the parties hereto, that  
18 no agent, or representative of either party has authority to make, and that said parties  
19 shall not be bound by nor liable for any statement, representation, promise,  
20 inducement, or agreement, not set forth herein; any provision in the working rules of  
any Union, a party hereto, with reference to the relations between Employer and its  
employees not expressly reaffirmed in this Agreement, shall be deemed to be waived,  
and any such rules or regulations which may be hereafter adopted by any Union shall  
have no application to work hereunder.

21 *Id.* at §24. The grievance procedure provides in relevant part:

22 Any alleged violations of the specific terms of this Agreement which cannot be  
23 settled informally shall be referred to representatives of the Employer and the Union  
24 for settlement. Every effort shall be made to resolve differences at this level. Any  
other dispute between the parties shall be subject to this grievance procedure only by  
unequivocal written agreement between the parties.

25 *Id.* at §25.

26 Plaintiff’s FAC to compel arbitration alleges that it sought and bargained for terms  
27 reflecting the active status of the 2004 no-strike grievances against Defendants to be included in  
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1 CBA 2. FAC at ¶16. Plaintiff cites to extrinsic evidence and negotiation history in support of its  
2 allegations, including several letters from Plaintiff’s company officials. *Id.* at ¶¶16-23.

3 On August 23, 2012, Defendants moved to dismiss Plaintiff’s FAC. Dkt. No. 15, Motion.  
4 Defendants argue that Plaintiff’s FAC lacks a cognizable legal theory because CBA 1, under which  
5 Plaintiff seeks arbitration, has expired. And CBA 2 does not provide for arbitration of Plaintiff’s  
6 specific grievances because they arose under CBA 1, which was voided by CBA 2, a fully integrated  
7 collective bargaining agreement. According to Defendants, a fully integrated agreement supersedes  
8 any prior agreements, the CBA 2 is a fully integrated contract, and there is no ambiguity as to the  
9 contract to permit the court to look at extrinsic evidence.

10 On September 13, 2012, Plaintiff opposed Defendants’ Motion, arguing that its right to  
11 arbitrate the 2004 grievances survives CBA 1’s expiration. Dkt. No. 23, Opp. In the alternative,  
12 Plaintiff argues that it is equally entitled to arbitrate the 2004 grievances under CBA 2 since such  
13 grievances fall within that agreement’s arbitration clause. On September 20, 2012, Defendants  
14 replied to Plaintiff’s Opposition, reiterating that Plaintiff is not entitled to arbitration under either  
15 CBA 1 or CBA 2. Dkt. No. 24, Reply. This is the issue consequently before the Court: whether  
16 Plaintiff is entitled to compel Defendants to arbitrate its 2004 no-strike grievances under either of  
17 the parties’ collective bargaining agreements.

18 **ANALYSIS**

19 The Court begins its analysis by setting out the governing principles of arbitration disputes  
20 such as the one presented here. Arbitration “is a matter of contract,” and a party cannot be required  
21 to submit a dispute to arbitration unless it has agreed to do so. *AT&T Techs. Inc. v. Commc’ns*  
22 *Workers of America*, 475 U.S. 643, 648-49 (1986) (“This axiom recognizes the fact that arbitrators  
23 derive their authority to resolve disputes only because the parties have agreed in advance to submit  
24 such grievances to arbitration.”). The question of whether the parties have agreed to arbitrate is to  
25 be decided by the court and not the arbitrator, unless the parties have clearly and unmistakably  
26 provided otherwise. *Id.* If a contract between the parties contains an arbitration clause, the court  
27 should enforce that clause “unless it may be said with positive assurance that the arbitration clause is  
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1 arbitration clause from an expired agreement, presumptions in favor of arbitrability remain *unless*  
2 they are negated expressly or by clear implication. *Nolde Bros., Inc. v. Bakery Workers*, 430 U.S.  
3 243, 255 (1977) (emphasis added); *United Parcel Serv. v. Union De Tronquistas De Puerto Rico*  
4 (“*UPS*”), 426 F.3d 470, 472 (2005) (“In *Litton*, the Supreme Court confirmed that a presumption  
5 exists in favor of postexpiration arbitration of matters unless negated expressly or by clear  
6 implication in the collective bargaining agreement.”) (internal quotations and citations omitted).  
7 Citing to *Nolde* and *Litton*, Defendants argue that the parties expressly negated Plaintiff’s right to  
8 arbitrate the 2004 grievances under CBA 1 when they executed CBA 2, which contained an explicit  
9 integration clause that provided CBA 2 constituted the parties’ entire agreement and CBA 1 was no  
10 longer valid.

11 The Court agrees with Defendants’ position. CBA 2’s integration clause, as discussed  
12 previously, specifically provides that the parties will not be bound by any previous contracts, and  
13 that CBA 2 constitutes the entire agreement of the parties. CBA 2 at §24. The Court finds that this  
14 direct language in Section 24 extinguishes Plaintiff’s arbitration rights under CBA 1, as such  
15 expiration of rights was contemplated by *Nolde* and *Litton*. Based on this, Plaintiff cannot base its  
16 request to compel arbitration on CBA 1, an agreement that this Court finds was superseded by CBA  
17 2.

18 This view is supported by case law. In *GCIU Employer Retirement Fund v. Chicago Tribune*  
19 *Company* — a case that was discussed in Defendants’ Motion but never mentioned by Plaintiff in its  
20 Opposition — the Seventh Circuit held that an employer was no longer required to make pension  
21 payments pursuant to an obligation under the parties’ 1979 agreement since it was superseded by the  
22 parties’ 1980 collective bargaining agreement, which contained an integration clause. 66 F.3d 862,  
23 865 (1995) (“We conclude that since the CBA is a later contract which specifically terminated the  
24 earlier agreement, there can be no additional duty to contribute pursuant to that earlier contribution  
25 agreement.”); *see also id.* at 867 (“The 1980 CBA between the Union and the Tribune contained an  
26 integration clause which provided in clear and unambiguous terms that the 1980 CBA constituted  
27 the entire agreement between the parties. The 1980 CBA thereby superseded the 1979 Subscription  
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1 Agreement.”). In the same manner, CBA 2’s express integration clause here terminated CBA 1 and  
2 resulted in its arbitration clause no longer being available to Plaintiff.

3 In *Grey*, a California Appellate Court analyzed a similar question when it examined whether  
4 an arbitration provision in an employment contract that contained an integration clause superseded a  
5 previous agreement’s arbitration provision that was signed by the employee when he submitted his  
6 application. 204 Cal.App.4th at 805-06. The *Grey* court held that the later contract did supercede  
7 the previous agreement, explaining that because “the [employment] contract says it is the entire  
8 agreement, common sense dictates that it supersedes other prior agreements related to Grey’s  
9 employment.” *Id.* at 807. Plaintiff attempts to distinguish *Grey* by arguing that the case did not deal  
10 with collective bargaining issues, and the integration clause in that employment contract was much  
11 stronger than here since it specifically stated that all prior agreements were “superseded.” *Opp.* at  
12 16.

13 Plaintiff is correct regarding both of these slight differences. But this still does not persuade  
14 the Court to apply *Grey*’s rationale to this matter. First, as both parties acknowledged at oral  
15 argument, not many courts have directly addressed the specific issues presented here. This therefore  
16 requires the Court to look outside of collective bargaining cases for guidance, and the question  
17 examined in *Grey* is analogous to some of the issues in this case. Second, the Court agrees that it  
18 would have been more clear if Defendants specifically wrote in the integration clause that CBA 2  
19 supersedes CBA 1. However, that does not mean that CBA 2’s integration clause is rendered  
20 meaningless and should be completely ignored. As both Plaintiff and Defendants argue in their  
21 briefs, they are sophisticated parties that have negotiated collective bargaining agreements on many  
22 prior occasions. Having such experience, the Court cannot find that the parties did not understand  
23 that Section 24 of CBA 2 — the “Entire Agreement” clause — was not intended to supersede other  
24 agreements when it specifically stated that CBA 2 would be the only contract between the parties,  
25 and they would not be bound by any prior or contemporaneous agreements not contained in CBA 2  
26 (i.e., as Defendants state in their briefs, the integration clause was “wiping the slate clean” between  
27 the parties). *See* Motion at 5.

1           Moreover, many of the decisions relied on by Plaintiff in its Opposition are distinguishable  
2 because in those cases the subsequent agreement between the parties did not have an express  
3 integration clause as CBA 2 did here. For instance, Plaintiff argues that the Court should follow the  
4 rationale in *UPS*, which it claims is analogous. *Opp.* at 11-12. In *UPS*, the court first concluded that  
5 the employees’ dispute regarding vacation time had arisen under an earlier collective bargaining  
6 agreement. 426 F.3d at 474. It then noted that the dispute must therefore go to the arbitrator as  
7 contemplated in the parties’ agreement, “unless the agreement negates the presumption of  
8 arbitrability expressly or by clear implication.” *Id.* *UPS* held as follows: “We find no evidence in  
9 these provisions — clear or otherwise — that the parties agreed to depart from the presumption that  
10 matters arising under a particular collective bargaining agreement will remain arbitrable even after  
11 the contract has terminated.” *Id.* This holding, however, has no application to this dispute. Here,  
12 CBA 2 contains an integration clause — which was not present in *UPS* — that expressly provides  
13 that CBA 2, and not CBA 1, is the agreement that governs the parties’ employment relationship. *Id.*;  
14 CBA 2 at § 24. Thus, *UPS* is not analogous and Plaintiff cannot rely on it nor CBA 1 for its request  
15 to compel arbitration.

16           With respect to CBA 2, the Court’s analysis turns directly to that agreement’s Section 25,  
17 which outlines the grievance procedure for the parties. Section 25 provides that any “alleged  
18 violation of the specific terms of *this Agreement* which cannot be settled informally shall be referred  
19 to representatives of the Employer and the Union for settlement.” CBA 2 at §25 (emphasis added).  
20 Because Plaintiff’s 2004 grievances did not arise under CBA 2 — which was not even signed until  
21 seven years later in 2011 — this Court cannot find that such grievances arise under “this  
22 Agreement” (i.e., CBA 2). *See, e.g., Rosenblum v. Travelbyus.com Ltd.*, 299 F.3d 657, 663-64 (7th  
23 Cir. 2002) (holding that the terms of the arbitration clause in an employment agreement did not  
24 apply to another agreement between the parties since the clause specifically stated that it only  
25 applied to “any matter in dispute under or relating to *this Agreement*”).

26           Section 25 goes on to provide that “[a]ny other dispute between the parties shall be subject to  
27 this grievance procedure [i.e., arbitration] *only by unequivocal written agreement between the*  
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1 *parties.*” CBA 2 at §25 (emphasis added). To the extent that Plaintiff argues that CBA 1 constitutes  
2 such an “unequivocal written agreement” entitling it to arbitrate the 2004 grievances, this argument  
3 is denied. As the Court explained above, CBA 1 was superseded by CBA 2 and is therefore not  
4 applicable. Plaintiff’s allegation that the 2004 grievances were held by the parties “in abeyance” is  
5 also not persuasive. Plaintiff has never pointed to nor alleged that there is an unequivocal written  
6 contract reflecting that such an “abeyance” agreement was ever reached between the parties.  
7 Without this written contract, Plaintiff cannot invoke the arbitration procedure of CBA 2. For these  
8 reasons, CBA 2 also does not help Plaintiff in its quest to arbitrate the 2004 no-strike grievances.

9 **CONCLUSION**

10 Based on the above, Plaintiff is not entitled to arbitrate the 2004 grievances under either  
11 CBA 1 or CBA 2. Defendants’ Motion is therefore GRANTED, and Plaintiff’s FAC to compel  
12 arbitration is DISMISSED WITH PREJUDICE since amendment would be futile.

13 **IT IS SO ORDERED.**

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15 Dated: November 20, 2012



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17 Maria-Elena James  
18 Chief United States Magistrate Judge  
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