

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

3535 LV NEWCO LLC,

Plaintiff/Counter-Defendant,  
vs.

INT'L ALL. OF THEATRICAL STAGE  
EMPS., MOVING PICTURE  
TECHNICIANS, ARTISTS, AND ALLIED  
CRAFTS OF THE U.S, ITS TERRITORIES  
AND CAN., LOCAL 720, LAS VEGAS,  
NEV.,

Defendant/Counter-Claimant.

Case No.: 2:23-cv-01274-GMN-BNW

**ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT  
AND CONFIRMING ARBITRATION  
AWARD**

Pending before the Court is the Motion for Summary Judgment ("MSJ"), (ECF No. 21), filed by Plaintiff/Counter-Defendant, 3535 LV Newco, LLC dba The Linq Resort and Casino (the "LINQ" or the "Employer"). Defendant/Counter-Claimant International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists, and Allied Crafts of the United States, Local 720 ("IATSE" or the "Union") filed a Response and Countermotion for Summary Judgment, (ECF No. 25), and Plaintiff filed a Reply, (ECF No. 28). For the reasons discussed below, the Court DENIES Plaintiff's Motion for Summary Judgment, GRANTS, in part, Defendant's Countermotion for Summary Judgment, and CONFIRMS the Arbitration Award.

**I. BACKGROUND**

This case arises from an arbitration award regarding a dispute of whether a magician's assistant on Mat Franco's Magic Reinvented Nightly Show (the "Show") was performing IATSE bargaining unit work of a Stage Technician. (*See generally* Award, Ex. 3 to Pet., ECF No. 1-4); (*See generally* Pet. to Vacate Arbitration Award ("Pet."), ECF No. 1). Plaintiff

1 Employer and Defendant Union are signatories to a Collective Bargaining Agreement  
2 (“CBA”). (*See generally* CBA, Ex. 1 to Pet. App., ECF No. 1-2). Plaintiff operates a hotel and  
3 casino business in Las Vegas, Nevada and Defendant represents a bargaining unit of employees  
4 that consists of Stage Technicians. (Pet. ¶¶ 6, 9).

5 The Parties’ CBA contains a three-step grievance and arbitration process that culminates  
6 in final and binding arbitration. (CBA at 15–16, Ex. 1 to Pet. App.). Following the Covid-19  
7 pandemic, the Show was reformatted to include two new tricks. (Award at 4, Ex. 3 to Pet.). As  
8 a result of those new tricks, Defendant believed that Plaintiff violated the CBA by assigning  
9 bargaining unit work to non-bargaining unit personnel at the Mat Franco Showroom.  
10 (Grievance No. 2021-004 at 37, Ex. 1-B to MSJ App, ECF No. 22). Defendant subsequently  
11 filed a Grievance pursuant to the grievance and arbitration procedures of the CBA. (*Id.*). When  
12 the Arbitration process concluded, the Arbitrator issued his Opinion and Award in Defendant’s  
13 favor. (*See generally* Award, Ex. 3 to Pet.). Plaintiff then filed the Petition to Vacate  
14 Arbitration Award in this Court. (*See generally* Pet.).

15 Plaintiff now moves for summary judgment on all its claims asserted in its Petition and  
16 on all claims asserted against it by Defendant in Defendant’s Answer and Counterclaim  
17 (“Counterclaim”), (ECF No. 7). Defendant moves for cross summary judgment and for the  
18 Court to confirm the Award.

## 19 **II. LEGAL STANDARD**

20 The Federal Rules of Civil Procedure provide for summary adjudication when the  
21 pleadings, depositions, answers to interrogatories, and admissions on file, together with the  
22 affidavits, if any, show that “there is no genuine dispute as to any material fact and the movant  
23 is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Material facts are those that  
24 may affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).  
25 A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable jury to

1 return a verdict for the nonmoving party. *Id.* “The amount of evidence necessary to raise a  
2 genuine issue of material fact is enough ‘to require a jury or judge to resolve the parties’  
3 differing versions of the truth at trial.” *Aydin Corp. v. Loral Corp.*, 718 F.2d 897, 902 (9th Cir.  
4 1983) (quoting *First Nat’l Bank v. Cities Serv. Co.*, 391 U.S. 253, 288–89 (1968)). “Summary  
5 judgment is inappropriate if reasonable jurors, drawing all inferences in favor of the nonmoving  
6 party, could return a verdict in the nonmoving party’s favor.” *Diaz v. Eagle Produce Ltd.*  
7 *P’ship*, 521 F.3d 1201, 1207 (9th Cir. 2008). A principal purpose of summary judgment is “to  
8 isolate and dispose of factually unsupported claims or defenses.” *Celotex Corp. v. Catrett*, 477  
9 U.S. 317, 323–24 (1986).

10 In determining summary judgment, a court applies a burden-shifting analysis. “When  
11 the party moving for summary judgment would bear the burden of proof at trial, it must come  
12 forward with evidence which would entitle it to a directed verdict if the evidence went  
13 uncontroverted at trial. In such a case, the moving party has the initial burden of establishing  
14 the absence of a genuine issue of fact on each issue material to its case.” *C.A.R. Transp.*  
15 *Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (internal citation and  
16 quotation marks omitted). In contrast, when the nonmoving party bears the burden of proving  
17 the claim or defense, the moving party can meet its burden in two ways: (1) by presenting  
18 evidence to negate an essential element of the nonmoving party’s case; or (2) by demonstrating  
19 that the nonmoving party failed to make a showing sufficient to establish an element essential  
20 to that party’s case on which that party will bear the burden of proof at trial. *Celotex Corp.*, 477  
21 U.S. at 323–24. If the moving party fails to meet its initial burden, summary judgment must be  
22 denied, and the court need not consider the nonmoving party’s evidence. *Adickes v. S.H. Kress*  
23 *& Co.*, 398 U.S. 144, 158–60 (1970).

24 If the moving party satisfies its initial burden, the burden then shifts to the opposing  
25 party to establish that a genuine issue of material fact exists. *Matsushita Elec. Indus. Co. v.*

1 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute,  
2 the opposing party need not establish a material issue of fact conclusively in its favor. It is  
3 sufficient that “the claimed factual dispute be shown to require a jury or judge to resolve the  
4 parties’ differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*  
5 *Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987). However, the nonmoving party “may not rely on  
6 denials in the pleadings but must produce specific evidence, through affidavits or admissible  
7 discovery material, to show that the dispute exists,” *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404,  
8 1409 (9th Cir. 1991), and “must do more than simply show that there is some metaphysical  
9 doubt as to the material facts,” *Orr v. Bank of Am.*, 285 F.3d 764, 783 (9th Cir. 2002). “The  
10 mere existence of a scintilla of evidence in support of the plaintiff’s position will be  
11 insufficient.” *Anderson*, 477 U.S. at 252. In other words, the nonmoving party cannot avoid  
12 summary judgment by relying solely on conclusory allegations that are unsupported by factual  
13 data. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go  
14 beyond the assertions and allegations of the pleadings and set forth specific facts by producing  
15 competent evidence that shows a genuine issue for trial. *See Celotex Corp.*, 477 U.S. at 324.

16 At summary judgment, a court’s function is not to weigh the evidence and determine the  
17 truth but to determine whether there is a genuine issue for trial. *See Anderson*, 477 U.S. at 249.  
18 The evidence of the nonmovant is “to be believed, and all justifiable inferences are to be drawn  
19 in his favor.” *Id.* at 255. But if the evidence of the nonmoving party is merely colorable or is  
20 not significantly probative, summary judgment may be granted. *See id.* at 249–50.

### 21 **III. DISCUSSION**

22 Plaintiff moves for summary judgment on all its claims pled in the Petition and all of the  
23 counterclaims against it. Plaintiff’s Motion for Summary Judgment requests an Order Vacating  
24 the Award on four grounds: (1) the Award violates public policy; (2) the Arbitrator exceeded  
25 his authority and jurisdiction; (3) the Award did not draw its essence from the terms of the

1 CBA; and (4) the Arbitrator manifestly disregarded the law. (*See generally* MSJ). Defendant’s  
2 Response asks the Court to confirm the Award on the merits and because Plaintiff’s Petition is  
3 untimely and grant summary judgment to Defendant. (*See generally* Resp., ECF No. 25). The  
4 Court begins by addressing the timeliness of the Petition before turning to the merits of the  
5 Parties’ arguments.

#### 6 **A. Petition’s Timeliness**

7 Defendant argues that Plaintiff’s Petition to Vacate the Award is untimely under the  
8 Federal Arbitration Act (“FAA”) and the Labor Management Relations (“LMRA”). (Resp.  
9 18:14–15). To begin, the FAA generally does not apply to arbitration provisions in CBAs. *Epic*  
10 *Sys. Corp. v. Lewis*, 584 U.S. 497 (2018) (noting that the FAA’s legislative history shows  
11 Congress did not intend the statute to apply to arbitration provisions in employment contracts,  
12 which includes CBAs). As such, the Court will not address Defendant’s arguments for  
13 untimeliness under the FAA and will instead address its arguments under the LMRA.<sup>1</sup>

14 Because there is no statute of limitations in LMRA Section 301, “the timeliness of a  
15 § 301 suit. . . is to be determined, as a matter of federal law, by reference to the appropriate  
16 state statute of limitations.” *UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696, 704–705 (1966).  
17 The Ninth Circuit has advised courts to “borrow the most closely analogous statute of  
18 limitations under state law.” *Sheet Metal Workers Int’l v. Air Systems Eng’g*, 831 F.2d 1509,  
19 1511 (9th Cir. 1987). Therefore, the statute of limitations to file a petition to vacate an  
20 arbitration award under NRS § 38.241(2) applies in this case, and as such the motion “must be  
21 made within 90 days after the movant receives notice of the award pursuant to NRS § 38.236.”  
22 *See* NRS § 38.241(2), 38.236.

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25 <sup>1</sup> Even if the FAA applied to determining the timeliness of this matter, Defendant waived any right to assert such  
a defense by participating in the litigation for 11 months before raising such an issue to the Court. *U.S. v.*  
*Caldwell*, 859 F.2d 805, 806 (9th Cir. 1988) (“At the outset, it bears repeating that our court has held explicitly  
that the statute of limitations is not jurisdictional and can be waived.”); *see also* Fed. R. Civ. Pro. 8.

1 Here, the Award was signed by the Arbitrator on May 15, 2023, and Plaintiff received a  
2 copy of the Award on May 19, 2023, when it arrived in the mail. (*See* Award at 15, Ex. 3 to  
3 Pet.); (*See* Kerr Decl. ¶ 2, 5, Ex. 1 to Reply, ECF No. 28-2). Defendant argues that Plaintiff's  
4 statutory period to challenge the Award under the LMRA lapsed on August 13, 2023—90 days  
5 after the Award was signed and 3 days before Plaintiff's Petition to Vacate was filed in this  
6 Court. But Plaintiff argues that the deadline to file the Petition to Vacate was August 17,  
7 2023—90 days after it received notice of the Award. The Court agrees with Plaintiff's reading  
8 of the applicable statute. Indeed, NRS § 38.241(2) provides that a petition to vacate must be  
9 filed "90 days after the movant *receives notice* of the award." NRS § 38.241(2) (emphasis  
10 added). Plaintiff received notice of the Award on May 19, 2023, and had until August 17,  
11 2023, to file a petition. Plaintiff's Petition was filed on August 16, 2023, and is therefore  
12 timely under the LMRA.

### 13 **B. Arbitration Award**

14 The Court now turns to the merits of the Parties' Motions. Section 301 of the LMRA  
15 governs this matter. Under Section 301, courts within the Ninth Circuit will only vacate  
16 arbitration awards under four circumstances:

17 (1) when the award does not draw its essence from the collective bargaining  
18 agreement and the arbitrator is dispensing his own brand of industrial justice; (2)  
19 where the arbitrator exceeds the boundaries of the issues submitted to him; (3)  
20 when the award is contrary to public policy; or (4) when the award is procured by  
fraud.

21 *Sw. Reg'l Council of Carpenters v. Drywall Dynamics, Inc.*, 823 F.3d 524, 530 (9th Cir. 2016)  
22 (internal quotation omitted). The Ninth Circuit recognizes that, "[b]ecause federal labor policy  
23 strongly favors the resolution of labor disputes through arbitration, [j]udicial scrutiny of an  
24 arbitrator's decision is extremely limited." *Matthews v. Nat'l Football League Mgmt. Council*,  
25 688 F.3d 1107, 1111 (9th Cir. 2012) (internal quotations omitted). Accordingly, "[a]rbitration

1 awards are ordinarily upheld so long as they represent a plausible interpretation of the  
2 contract.” *Matthews*, 688 F.3d at 1111 (citation omitted).

3 Plaintiff’s Petition and Motion for Summary Judgment asks for an Order Vacating the  
4 Award on four grounds, three of which are based on the circumstances articulated in *Drywall*  
5 *Dynamics*: (1) the Award violates public policy; (2) the Arbitrator exceeded his authority and  
6 jurisdiction; (3) the Award did not draw its essence from the terms of the CBA; and (4) the  
7 Arbitrator manifestly disregarded the law. (*See generally* Pet.); (*see generally* MSJ). The Court  
8 takes up each argument in turn.

### 9 **1. Public Policy**

10 Plaintiff argues that the Court should vacate the Award because it violates public policy  
11 considerations. (MSJ 13:15). Vacatur of an arbitration award is justified when the award is  
12 contrary to public policy. *Drywall Dynamics, Inc.*, 823 F.3d at 530. To vacate an arbitration  
13 award on public policy grounds in the Ninth Circuit, a court must “(1) find that an explicit,  
14 well-defined and dominant public policy exists . . . and (2) that the policy is one that  
15 specifically militates against the relief ordered by the arbitrator.” *Matthews*, 688 F.3d at 1111  
16 (quoting *United Food & Com. Workers Int’l Union, Local 588 v. Foster Poultry Farms*, 74  
17 F.3d 169, 173 (9th Cir. 1995)) (internal quotation marks omitted). The alleged public policy  
18 must be “‘ascertained by reference to the laws and legal precedents and not from general  
19 considerations of supposed public interests.’” *E. Associated Coal Corp. v. United Mine*  
20 *Workers of Am., Dist. 17*, 531 U.S. 57, 62 (2000) (quoting *W.R. Grace & Co. v. Rubber*  
21 *Workers*, 461 U.S. 757, 766 (1983)). In cases where the arbitration award compels a party to  
22 violate the law, the arbitration award demonstrates a clear violation of public policy. *Stead*  
23 *Motors of Walnut Creek v. Automotive Machinists Lodge No. 1173*, 886 F.2d 1200, 1211 (9th  
24 Cir. 1989) (citing *Am. Postal Workers Union AFL-CIO v. U.S. Postal Serv.*, 682 F.2d 1280,  
25 1286 (9th Cir. 1982) (explaining arbitration award will not be enforced if it would force a party

1 to perform a manifestly illegal act)). “The party seeking to vacate the arbitration award bears  
2 the burden of showing that the arbitration award violates an explicit, dominant and well-defined  
3 public policy.” *United Food & Comm. Workers Int’l Union, Local 588*, 74 F.3d at 174 (internal  
4 quotation marks omitted). “[T]he public policy exception is narrow,” *E. Associated Coal*  
5 *Corp.*, 531 U.S. at 63, and “courts should be reluctant to vacate arbitral awards on public  
6 policy grounds,” *Ariz. Elec. Power Coop., Inc. v. Berkeley*, 59 F.3d 988, 992 (9th Cir. 1995).

7 Plaintiff argues that the Award violates public policy because it mandates Plaintiff to  
8 make contributions to the Union’s Health and Welfare Fund without a written agreement in  
9 violation of the LMRA. (MSJ 14:7–9). Section 302(a) of the LMRA provides: “It shall be  
10 *unlawful* for any employer . . . to pay, lend, or deliver, or agree to pay, lend, or deliver, any  
11 money or other thing of value” to “any representative of any of his employees” or “to any labor  
12 organization.” 29 U.S.C. § 186(a) (emphasis added). The LMRA contains a limited exception,  
13 however, whereby an employer, like Plaintiff, can make contribution payments to a Taft-  
14 Hartley Trust established “for the sole and exclusive benefit of the employees of such  
15 employer, and their families and dependents.” 29 U.S.C. § 186(a), (c). To satisfy this exception  
16 there must also be a written agreement with the employer specifying “the detailed basis on  
17 which such payments are to be made.” 29 U.S.C. § 186(c)(5)(B). The requirement for a  
18 detailed written agreement is based in statute and designed to prevent bribery and corruption.  
19 *Maxwell v. Lucky Construction Co., Inc.*, 710 F.2d 1395, 1398 (9th Cir. 1983).

20 Article 8 of the CBA is the only written document that authorizes contributions to the  
21 Union’s Health & Welfare Fund. (*See* CBA at 12, Ex. 1-A to Pl.’s App., ECF No. 22); (*see also*  
22 *Successor CBA* at 12, Ex. 1-E to Pl.’s App., ECF No. 22). Pursuant to Section 8.02 of the  
23 CBA, Plaintiff is required to make contributions for health care costs “for all hours worked or  
24 paid to any employee covered by [the CBA].” (*See* CBA at 12, Ex. 1-A to Pl.’s App.); (*see also*  
25 *Successor CBA* at 12, Ex. 1-E to Pl.’s App.). Plaintiff first argues that the CBA specifies the



1 *maximum* amount that Plaintiff is required to contribute on behalf of covered employees who  
2 elect the IATSE Health and Welfare Fund. (MSJ 6:21–24). However, the CBA explicitly states  
3 that “[t]he *minimum* rate of contributions to be made by the Employer . . . shall be \$4.39” and  
4 “\$5.88” in the original CBA and successor CBA respectively. (*See* CBA at 12, Ex. 1-A to Pl.’s  
5 App.); (*see also* Successor CBA at 12, Ex. 1-E to Pl.’s App.). Plaintiff argues that it did not  
6 agree to remit contributions at a rate beyond those specified in the CBA. But the CBA makes  
7 clear that Plaintiff and Defendant entered into a written agreement that set forth a minimum  
8 contribution rate, not a maximum one. Thus, Plaintiff’s argument that it did not enter into an  
9 agreement to remit contributions over the specified rate is unavailing and fails to establish how  
10 the Award violates public policy considerations.

11       Next, Plaintiff asserts that there is no written agreement requiring it to make  
12 contributions on behalf of imaginary individuals. (MSJ 17:1–3). While Plaintiff fails to  
13 identify what part of the Award requires it to take such actions, the Court believes that Plaintiff  
14 is referring to the second remedy in the Award but does not agree with Plaintiff’s assertion.  
15 The Arbitrator ordered Plaintiff to “contribute to the IATSE National Health and Welfare Fund  
16 an amount of money equivalent to the total hourly compensation package of Stage Technician  
17 who if employed and operating the hand-held camera during the performance would be  
18 entitled.” (Award at 69, Ex. 1-D to MSJ App., ECF No. 22). To address Plaintiff’s argument,  
19 the contribution is not on behalf of an imaginary individual, it is on behalf of someone  
20 employed as a Stage Technician. (*Id.*). Plaintiff does not explain how a Stage Technician  
21 qualifies as an “imaginary person,” nor does it offer any case law to support its argument.  
22 Plaintiff does cite 29 USC § 186(c)(5)(A), to argue that it would be illegal for Plaintiff and  
23 Defendant to negotiate on behalf of non-bargaining unit employees not represented by the  
24 Union or to make contributions that are not paid for the direct benefit of employees, but it does  
25 not explain how the Arbitrator’s Award is in conflict with § 186(c)(5)(A). (MSJ at n.27). The

1 CBA provides that “the Employer recognizes the Union as the sole and exclusive collective  
2 bargaining representative of *all* [Stage Technicians].” (CBA at 6, Ex. 1 to Pet. App.) (emphasis  
3 added). This provision therefore necessitates that all Stage Technicians are covered by the  
4 CBA and are thus bargaining unit employees. Accordingly, the remedy provided for in the  
5 Award does not require Plaintiff to negotiate with non-bargaining employees because the  
6 Award applies to Stage Technicians who are necessarily covered by the CBA.

7 Plaintiff further avers that the written agreement does not authorize it to remit  
8 contributions in perpetuity for work not covered by the CBA. (MSJ 17:1–3). The remedy  
9 provides: “This contribution will be calculated as follows: six hours for each Mat Franco Magic  
10 Reinvented Nightly show performed since the resumption of performances after the Covid  
11 shutdown, and continuing for as long as any Magi performer is operating the hand-held video  
12 camera as part of his or her role in the show.” (Award at 69, Ex. 1-D to App.). The Court  
13 disagrees with Plaintiff’s position that the remedy remains in effect in perpetuity. The remedy  
14 provides a clear cut off: it will “continue[] for as long as any Magi performer is operating the  
15 hand-held video camera as part of his or her role in the show.” (*Id.*). Accordingly, the Court  
16 finds that the Award does not violate public policy considerations because it does not infringe  
17 upon the written agreement between the two parties and does not violate any law. Thus,  
18 Plaintiff has failed to meet its burden at the summary judgment stage as to this justification for  
19 vacatur.

## 20 **2. Arbitrator’s Authority & Jurisdiction**

21 Next, Plaintiff argues that the Court should enter an Order vacating the Award because  
22 the Arbitrator exceed his authority and jurisdiction. (MSJ 19:1). Vacatur of an arbitration  
23 award is justified when arbitrators exceed the scope of their authority or exceed the boundaries  
24 of the issues submitted to them. *Drywall Dynamics, Inc.*, 823 F.3d at 530. It is a fundamental  
25 principal of labor arbitration that the CBA negotiated between parties sets forth the limits on

1 the authority of the arbitrator to hear and decide disputes. *Stolt-Nielsen S.A. v. AnimalFeeds*  
2 *Int'l Corp.*, 559 U.S. 662, 682 (2010).

3 Plaintiff presents numerous arguments for the Court to consider when determining  
4 whether the Arbitrator exceeded his authority and jurisdiction. Plaintiff begins by arguing that  
5 the Arbitrator exceeded his jurisdiction and authority when he decided an issue that was not  
6 presented to him. (MSJ 19:13–15). Per the CBA’s terms and Ninth Circuit precedent, Plaintiff  
7 argues, the Arbitrator can only consider the specific issue presented to him. (MSJ 19:13–15).  
8 Plaintiff avers that the scope of the issue presented to the Arbitrator was limited to determining  
9 whether the Magic Assistant was performing bargaining unit work and whether the hand-held  
10 camera work needed to be returned to the Union. (*Id.* 20:2–4). According to Plaintiff, the  
11 Arbitrator exceeded his authority when he determined whether Plaintiff’s failure to bargain or  
12 impose unilateral changes violated the CBA. (*Id.* 20:4–6). Stated differently, Plaintiff believes  
13 the issue before the Arbitrator was whether the results of reformatting the Show violated the  
14 CBA, and not whether the process Plaintiff used to reformat the Show violated the CBA.  
15 Plaintiff ultimately contends that by deciding an issue regarding the process rather than the  
16 results, the Arbitrator knowingly exceeded the bounds of the issue presented to him and  
17 addressed an issue that ventures into the jurisdiction of the National Labor Relations Board  
18 (“NLRB”).<sup>2</sup> (*Id.* 11:2–6, 23:10–11).

19 To begin, Plaintiff does not put forth evidence nor case law to establish that any part of  
20 the Award was meant to be decided under the sole authority of the NLRB. In fact, Plaintiff  
21 argues that the Arbitrator exceeded his jurisdiction when he alluded to a specific article within  
22 the CBA when deciding whether the CBA had been violated. (MSJ 22:8–19). Importantly, the  
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24 <sup>2</sup> Plaintiff also maintains that “[t]he Arbitrator even acknowledged that neither side raised the issue of ‘unilateral  
25 change’ before him or presented any evidence regarding the communications or circumstances surrounding the  
change to the show.” (MSJ 17–19). But at no point in the Award does the Arbitrator “acknowledge” that the  
parties do not raise the issue of “unilateral change.” (*See generally* Award, Ex. 1-D to App. to MSJ). Instead, the  
Arbitrator sets forth the positions of both sides. (*Id.*).

1 CBA allows for a violation of any CBA provision to be submitted to arbitration after the proper  
2 procedure is followed. (CBA at 76). Thus, the Arbitrator did not exceed his jurisdiction when  
3 issuing the Award.

4 Now the Court turns to Plaintiff's argument that the Arbitrator exceeded his authority  
5 when deciding an issue not explicitly submitted to him. Plaintiff asserts that pursuant to Article  
6 10.02(a) of the CBA, when a matter reaches the arbitration stage, "[t]he written demand for  
7 arbitration shall set forth the grievance to be arbitrated, the Section or Sections of this  
8 Agreement alleged to have been violated, and the relief sought." (CBA at 20, Ex. 1-A to App).  
9 When this matter reached the arbitration stage, Defendant submitted the following issue to the  
10 Arbitrator: "Did the Employer violate the [CBA] by allowing non-bargaining unit personnel to  
11 perform bargaining unit work relating to the operation of video cameras at the Mat Franco  
12 Theater?" (Award at 69, Ex. 1-D to App.). And Plaintiff submitted a similar issue stated as:  
13 "Did the LINQ violate the [CBA] by having a Magic Assistant play the character of a video  
14 operator to perform magic tricks during [the Show]?" (*Id.*). Because the two Parties could not  
15 agree on the wording of the issue, they asked that the Arbitrator frame it. (*Id.*). Thus, the  
16 Arbitrator framed the issue as follows: "[Did] the post Covid resumption of performances in the  
17 Mat Franco Showroom, at which time the show was reformatted to have a [Magic Assistant]  
18 operate the hand-held video camera instead of an IATSE bargaining unit member, cause the  
19 Company to be in violation of the CBA?" (*Id.*).

20 "The scope of the arbitrator's jurisdiction extends to issues not only explicitly raised by  
21 the parties, but all issues implicit within the submission agreement." *Schoenduve Corp. v.*  
22 *Lucent Techs., Inc.*, 442 F.3d 727, 733 (9th Cir. 2006). Here, the Parties did not agree on the  
23 issue to be presented to the Arbitrator and as such, they consented to the Arbitrator framing the  
24 issue. The issue to be decided at arbitration was ". . . at which time the show was reformatted  
25 to have a Magi operate the hand-held video camera instead of an IATSE bargaining unit

1 member, cause the Company to be in violation of the CBA?” (Award at 69, Ex. 1-D to App.).  
2 The issue framed by the Arbitrator implies that the reformatting of the Show would be  
3 scrutinized and was therefore not outside the scope of the Arbitrator’s jurisdiction or authority.  
4 *Schoenduve Corp.*, 442 F.3d at 733.

5 Furthermore, “the arbitrator’s interpretation of the scope of his powers is entitled to the  
6 same level of deference as his determination on the merits.” *Pack Concrete, Inc. v.*  
7 *Cunningham*, 866 F.2d 283, 285 (9th Cir.1989) (citing *Valentine Sugars, Inc. v. Donau Corp.*,  
8 981 F.2d 210, 213 (5th Cir.1993) (“In determining whether the arbitrator exceeded his  
9 jurisdiction, we resolve all doubts in favor of arbitration.”)). The CBA requires that the  
10 “arbitrator’s award shall be based solely upon the arbitrator’s interpretation of the meaning or  
11 application of provisions of this Agreement.” (CBA at 20, Ex. 1-D to MSJ App.). The Award  
12 lists applicable CBA provisions implicated in the arbitration process and alludes to the CBA in  
13 its discussion. (*See generally* Award, Ex. 1-D to MSJ App.). Thus, the Arbitrator did not  
14 exceed his authority or jurisdiction when issuing the Award and the Court resolves all doubts in  
15 favor of the arbitration.

16 Plaintiff next argues that the Arbitrator exceeded his authority and jurisdiction by  
17 issuing a remedy that was inconsistent with the Parties’ proposed remedies. (MSJ 21:6–22–19).  
18 Indeed, “an arbitrator has no authority to ignore the plain language of a CBA that limits the  
19 scope of his authority.” *Hawaii Teamsters & Allied Workers Union, Loc. 996 v. United Parcel*  
20 *Serv.*, 241 F.3d 1177 (9th Cir. 2001). Even so, “[a]n arbitrator is ‘not confined to the express  
21 terms of the contract’ but may also consider the ‘industrial common law’ which ‘is equally a  
22 part of the collective bargaining agreement although not expressed in it.’” *SFIC Props., Inc. v.*  
23 *Int’l Ass’n of Machinists & Aerospace Workers, Dist. Lodge 94*, 103 F.3d 923, 925 (9th Cir.  
24 1996) (quoting *Federated Dep’t Stores v. United Food & Commercial Workers Union, Local*  
25 *1442*, 901 F.2d 1494, 1497 (9th Cir.1990)).

1 Here, the Grievance requested at Arbitration was a cease and desist and make whole  
2 remedy entailing that Plaintiff employ four bargaining unit personnel and pay back all wages  
3 and benefits for the displaced workers. (Grievance No. 2021-004 at 37, Ex. 1-B to MSJ App,  
4 ECF No. 22). The Arbitrator considered the presented remedies and concluded that “it is not  
5 possible nor fair to either party to fashion a remedy which either returns all the covered work to  
6 the Union nor divides the [Magi’s] functions. . . in some equitable way.” (Award at 80, Ex. 1-D  
7 to MSJ App.). Arbitrators are allowed to apply common law principles when determining an  
8 arbitration award, which the Arbitrator did when discussing the remedy he imposed. *SFIC*  
9 *Props., Inc.*, 103 F.3d at 925. Thus, the Court is unpersuaded by this argument.

10 Plaintiff lastly argues that the Arbitrator exceeded his authority and jurisdiction when he  
11 altered, amended, changed and/or modified the conditions, procedures and contribution  
12 amounts specified in the CBA. (MSJ 23:17–19, 24:25–27). But for the reasons discussed above  
13 in the Public Policy section, the Court is unpersuaded that the Arbitrator altered, amended,  
14 changed and/or modified the conditions, procedures and contribution amounts specified in the  
15 CBA.

16 In sum, Plaintiff has failed to meet its burden at the summary judgment stage as to this  
17 justification for vacatur.

### 18 **3. Essence of the CBA**

19 Plaintiff further argues that the Court should enter an Order vacating the Award because  
20 it does not draw its essence from the CBA and is based on the Arbitrator’s own sense of  
21 industrial justice. (MSJ 15:4–6). Vacatur of an arbitration award is justified when the award  
22 does not draw its essence from the collective bargaining agreement and the arbitrator is  
23 dispensing his own brand of industrial justice. *Drywall Dynamics, Inc.*, 823 F.3d at 530. This  
24 justification for vacatur is “reserved for those egregious cases in which a court determines that  
25 the arbitrator’s award ignored the plain language of the contract, that he ‘manifestly

disregarded' the contours of the bargain expressed in outline by the collective bargaining agreement." *Stead Motors of Walnut Creek*, 886 F.2d at 1205–1206 at n.6 (internal quotation omitted).

Plaintiff argues that the Arbitrator's Award does not draw its essence from the CBA, in large part, for the same reasons it argues that the Arbitrator violated public policy and exceeded his authority and jurisdiction. (MSJ 24:24–26:9). For the same reasons discussed above, the Court disagrees with Plaintiff's contentions. Accordingly, Plaintiff has failed to meet its burden at the summary judgment stage as to this justification for vacatur as well.

#### **4. Disregard for the Law**

Lastly, Plaintiff contends that the Court should enter an Order vacating the Award because the Arbitrator manifestly disregarded the law. (MSJ 28:5–6). "Manifest disregard of the law' means something more than just an error in the law or a failure on the part of the arbitrators to understand or apply the law." *Mich. Mut. Ins. Co. v. Unigard Sec. Ins. Co.*, 44 F.3d 826, 832 (9th Cir. 1995) (internal quotations omitted). To vacate an arbitration award on this ground, "[i]t must be clear from the record that the arbitrators recognized the applicable law and then ignored it." *Id.* Here, Plaintiff argues that the Arbitrator manifestly disregarded the Taft-Hartley Act and the LMRA (MSJ 28:10–21). The Court disagrees and refers to its above discussion where it found that the Arbitrator did not violate any applicable laws. Thus, Plaintiff has failed to meet its burden at the summary judgment stage as to this justification for vacatur.

In sum, Plaintiff's Motion for Summary Judgment requesting that the Award be vacated, is DENIED. Pursuant to 9 U.S.C. § 9, if the motion to vacate is denied, the motion to confirm must be granted. Accordingly, Defendant's Countermotion for Summary Judgment is GRANTED, in part, and the Award is CONFIRMED. To the extent that Defendant's Response

1 and Countermotion for Summary Judgment moves for Attorney's Fees, Defendant is instructed  
2 to file a motion in accordance with Local Rule IC 2-2(b) and 54-14.

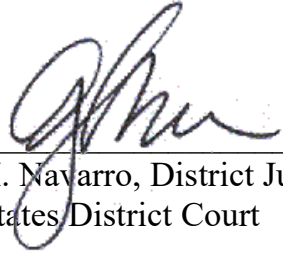
3 **IV. CONCLUSION**

4 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Summary Judgment, (ECF No.  
5 21), is **DENIED**.

6 **IT IS FURTHER ORDERED** that Defendant's Countermotion for Summary  
7 Judgment, (ECF No. 25) is **GRANTED, in part**, and **DENIED, in part**. The Court grants  
8 Defendant's request to confirm the Award but denies without prejudice Defendant's request for  
9 Attorney's Fees.

10 **IT IS FURTHER ORDERED** that the Arbitration Award at issue is **CONFIRMED**.  
11 The Clerk of Court is kindly directed to enter judgment for Defendant and close the  
12 case.

13 **DATED** this 11 day of March, 2025.

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17 Gloria M. Navarro, District Judge  
18 United States District Court  
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