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Attorney for Plaintiff and Counter-Defendant
Screen Actors Guild, Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SCREEN ACTORS GUILD, INC.

Plaintiff,

v.

ANA-AAAA JOINT POLICY
COMMITTEE ON BROADCAST
TALENT RELATIONS,

Defendant.

Case No.: CV 08-05346 PA VBKx

NOTICE OF APPEAL

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1 ANA-AAAA JOINT POLICY
2 COMMITTEE ON BROADCAST
3 TALENT RELATIONS,

4 Defendant and Counter-Claimant,

5 v.

6
7 SCREEN ACTORS GUILD, INC.,

8 Plaintiff and Counter-Defendant
9

10 Notice is hereby given that Plaintiff and Counter-Defendant Screen Actors
11 Guild, Inc. ("Plaintiff") in the above named matter, hereby appeals to the United
12 States Court of Appeals for the Ninth Circuit from the Order and Decision granting
13 summary judgment for Defendant and Counter-Claimant ANA-AAAA Joint Policy
14 Committee On Broadcast Talent Relations ("JPC") against Plaintiff's complaint and
15 in favor of JPC's counter-claim, denying Plaintiff's motion for summary judgment on
16 its complaint against JPC, and confirming the subject arbitration award, entered in
17 this action on the 8th day of December, 2008, a true and correct copy of which is
18 attached hereto as Exhibit "A" and incorporated by this reference.
19

20 DATED: December 22, 2008

BUSH GOTTLIEB SINGER LÓPEZ
KOHANSKI ADELSTEIN & DICKINSON
A Law Corporation

23 By: 

24 Robert A. Bush
25 Ira L. Gottlieb
26 Attorneys for Plaintiff and Counter-
27 Defendant,
28 SCREEN ACTORS GUILD, Inc.

EXHIBIT A

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SCREEN ACTORS GUILD, INC,

Plaintiff,

v.

ANA-AAAA JOINT POLICY
COMMITTEE ON BROADCAST
TALENT RELATIONS

Defendant.

No. CV 08-5346 PA (VBKx)

JUDGMENT

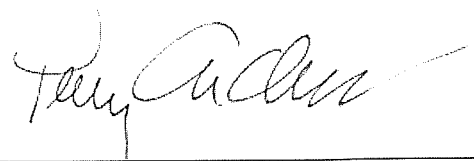
In accordance with the Court's order granting summary judgment in favor of defendant ANA-AAAA Joint Policy Committee on Broadcast Talent Relations ("Defendant") on Plaintiff Screen Actors Guild, Inc.'s ("Plaintiff") complaint to vacate an arbitration award;

It is therefore now ORDERED, ADJUDGED, and DECREED that the parties' arbitration award dated June 11, 2008, is confirmed.

Defendant shall recover its costs of suit.

The Clerk is ordered to enter this Judgment.

DATED: December 8, 2008



Percy Anderson
UNITED STATES DISTRICT JUDGE

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JS-6UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No. CV 08-5346 PA (VBKx) Date December 8, 2008

Title Screen Actors Guild, Inc. v. ANA-AAAA Joint Policy Comm. on Broadcast Talent Relations

Present: The Honorable PERCY ANDERSON, UNITED STATES DISTRICT JUDGE

Paul Songco

Not Reported

N/A

Deputy Clerk

Court Reporter

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

None

None

Proceedings: IN CHAMBERS – COURT ORDER

Before the Court are Defendant ANA-AAAA Joint Policy Committee on Broadcast Talent Relations' motions to confirm an arbitration award ("Motion to Confirm") (Docket No. 9), and for summary judgment to confirm the arbitration award (Docket No. 22).^{1/} Plaintiff Screen Actors Guild, Inc. has also filed a motion for summary judgment to vacate the arbitration award (Docket No. 18). Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that these matters are appropriate for decision without oral argument. The hearing calendared for December 8, 2008, is vacated, and the matter taken off calendar.

I. Background

Plaintiff is a labor union that represents actors working in film, television, commercials, and other media. Defendant is an unincorporated organization funded by the two major trade associations in the advertising industry: the Association of National Advertisers, and the American Association of Advertising Agencies. Defendant acts as the multi-employer bargaining unit for producers in their relationships with actors, models, athletes, and others (collectively "Talent") hired to participate in broadcast media commercials.

^{1/} Plaintiff takes the position that under the Labor Management Relations Act, a motion to confirm an arbitration award is not permitted. Rather, a motion for summary judgment is the proper vehicle for resolving a dispute over the validity of an arbitrator's award. Defendant appears not to disagree, and simply filed its own motion for summary judgment which presents all the arguments presented in the Motion to Confirm, but in more detail. Indeed, because the arguments are identical, Defendant filed a single consolidated reply brief for both motions. Accordingly, Defendant's Motion to Confirm is denied as moot, and the Court proceeds to resolve this case based on the cross-motions for summary judgment.

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Plaintiff and Defendant entered into a collective bargaining agreement ("CBA"). The CBA treats "covered services" and "non-covered services" differently. Covered services are services related to television commercials. Non-covered services are services related to other media, such as print advertising, personal appearances, photography, radio, etc. Compensation for covered services is subject to contributions to the Screen Actors Guild-Producers Pension and Health Plans (collectively "Plans"), which are Taft-Hartley multi-employer trust funds established under the Employee Retirement Income Security Act ("ERISA"). Income for non-covered services is not subject to ERISA contribution. Sometimes Talent provides both covered and non-covered services under one contract. Ideally, it will be specified in the contract how Talent's compensation is divided between covered and non-covered services, but in the event that the allocation is not clear, Section 46 of the CBA states:

- E. Where producer borrows acting services from a signatory loan-out company, or enters into a contract with a principal performer under which covered services and non-covered services are to be provided, the following shall apply:
1. There will be a separate provision in principal performer's agreement or loan-out agreement covering only acting services. Where other services are involved and there is a dispute over the portion of the compensation allocated to acting services, the principal performer's 'customary salary' shall be given substantial consideration in resolving such dispute.
 2. Contributions shall be payable on the amount allocated to covered services.

(See Pl.'s Mot., Naymark Decl. ¶ 12, Ex. 3 ("CBA § 46")). For many years, the trustees for the Plans ("Plan Trustees"), who are not parties to the CBA, issued informal guidelines to assist in understanding Talent's "customary salary." Producers typically abided by the guidelines. In July of 2007, the Plan Trustees issued new and more formal multi-service commercial allocation guidelines ("Guidelines"). The Guidelines set a floor establishing the minimum percentage of a multi-service contract fee that must be allocated to covered services. (See Def.'s Mot., Wilson Decl. ¶ 5, Ex. 4 at 266.) Defendant took the position that the Trustees lacked authority to impose the Guidelines, and attempted to negotiate with Plaintiff. After attempts to negotiate failed, Defendant filed a demand for arbitration on August 17, 2008. On June 11, 2008, after a full hearing and briefing, the arbitrator ("Arbitrator") issued an Opinion and Award ("Arbitration Award") sustaining Defendant's position in the arbitration. Plaintiff then filed

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a complaint to vacate the arbitration award. Defendant filed a counterclaim to confirm the award, and then filed its Motion to Confirm. Both parties then filed cross-motions for summary judgment.^{2/}

II. Standard on Summary Judgment

Summary judgment is proper where “the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). The moving party has the burden of demonstrating the absence of a genuine issue of material fact for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256, 106 S. Ct. 2505, 2514, 91 L. Ed. 2d 202 (1986). “[T]he burden on the moving party may be discharged by ‘showing’—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party’s case.” Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2554, 91 L. Ed. 2d 265 (1986); see also Musick v. Burke, 913 F.2d 1390, 1394 (9th Cir. 1990).

^{2/} Defendant also filed objections to the declaration of John McGuire in support of Plaintiff’s Motion. Specifically, Defendant argues that paragraph 13 of the declaration, which discusses what the Trustees have done regarding allocation of compensation under multi-service contracts to covered and non-covered services, lacks foundation, is irrelevant, and is hearsay. (See Docket No. 33, Attachment 2.) The Court disagrees. Mr. McGuire, as a Trustee, has personal knowledge of the actions the Trustees have taken, and this issue is relevant to the dispute. Defendant also objects to paragraph 14, which discusses the drafting of the Guidelines and the legal requirements of the CBA, on the grounds that it lacks foundation, is irrelevant, is hearsay, and it offers improper legal conclusions. To the extent that Mr. McGuire discusses what the Plan Trustees have done and generally do, the objections are overruled. To the extent that Mr. McGuire offers his interpretation of any entity’s power under the Guidelines or CBA, the Court agrees that the declaration offers an improper legal conclusion. Thus, the objections are sustained as to paragraph 14, lines 10–11 and 12–13.

Defendant requests that the Court take judicial notice, pursuant to Federal Rule of Evidence 201, of the declarations of Roxanne Wilson and Douglas J. Wood, both attorneys for Defendant. (Docket No. 33, Attachments 4–9.) Rule 201 permits judicial notice only of adjudicative facts that are not subject to reasonable dispute, are generally known, and are capable of accurate and ready determination. F.R.E. 201(a)–(b). The Wilson and Wood declarations meet none of these standards and Defendant’s request is denied.

Plaintiff filed objections to the declaration of Douglas J. Wood in support of Defendant’s Opposition to Plaintiff’s Motion, and moved to strike portions of the declaration. (See Docket No. 34, Attachment 2.) Plaintiff notes that paragraphs 6–8 of Wood declaration simply repeat, and to some extent characterize, the content of the Arbitration Award, and the CBA. Thus, Plaintiff argues, paragraphs 6–8 of the declaration are hearsay and the underlying documents speak for themselves. The Court agrees. Paragraphs 6–8 of the Wood declaration are stricken, and the Court does not rely on them.

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The moving party must affirmatively show the absence of such evidence in the record, either by deposition testimony, the inadequacy of documentary evidence, or by any other form of admissible evidence. See Celotex, 477 U.S. at 322, 106 S. Ct. at 2552. The moving party has no burden to negate or disprove matters on which the opponent will have the burden of proof at trial. See id. at 325, 106 S. Ct. at 2554.

As required on a motion for summary judgment, the facts are construed "in the light most favorable to the party opposing the motion." See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986). However, the nonmoving party's allegation that factual disputes persist between the parties will not automatically defeat an otherwise properly supported motion for summary judgment. See Fed. R. Civ. P. 56(e)(2) (nonmoving party "may not rely merely on allegations or denials in its own pleading; rather, its response must — by affidavits or as otherwise provided in this rule — set out specific facts showing a genuine issue for trial"). A "mere 'scintilla' of evidence will be insufficient to defeat a properly supported motion for summary judgment; instead, the nonmoving party must introduce some 'significant probative evidence tending to support the complaint.'" Fazio v. City & County of San Francisco, 125 F.3d 1328, 1331 (9th Cir. 1997) (quoting Anderson, 477 U.S. at 249, 252, 106 S. Ct. at 2510, 2512). Otherwise, summary judgment shall be entered.

III. Analysis

This action involves interpretation and enforcement of the terms of a collective bargaining agreement. Therefore, the Court has jurisdiction over Plaintiff's Motion pursuant to the Labor Management Relations Act. 29 U.S.C. § 185. Moreover, the text of the CBA itself grants the Court authority to confirm the Award. (CBA § 57(B).) The Court's review of an arbitration award in such circumstances is very limited:

Under the Steelworkers Trilogy, a district court ordinarily engages in only a very limited review of an arbitrator's decision. See United Steelworkers v. American Manufacturing Co., 363 U.S. 564, 80 S.Ct. 1343, 4 L. Ed. 2d 1403 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574, 80 S.Ct. 1347, 4 L. Ed. 2d 1409 (1960); United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 80 S.Ct. 1358, 4 L. Ed. 2d 1424 (1960). An award will be upheld provided it "draws its essence from the collective bargaining agreement," id. at 597, 80 S.Ct. at 1361; that is, as long as the arbitrator looks to the words of the contract and to the conduct of the parties, i.e., "the common-law of the shop." Riverboat Casino, Inc. v. Local Joint Executive Board of Las Vegas, 578 F.2d 250, 251 (9th Cir. 1978). We defer not only to an arbitrator's factual

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determinations, but ordinarily to his legal conclusions as well. American Postal Workers Union AFL-CIO v. United States Postal Service, 682 F.2d 1280, 1284 (9th Cir. 1982) (courts must defer to arbitrator's legal conclusions unless the arbitrator has manifestly disregarded the law).

Broadway Cab Co-op., Inc. v. Teamsters & Chauffeurs Local Union No. 281, 710 F.2d 1379, 1382 (9th Cir. 1983). The Court is to afford the arbitrator's decision a "nearly unparalleled degree of deference[.]" Stead Motors v. Auto. Machinists, 886 F.2d 1200, 1205 (9th Cir. 1989). Vacatur of an arbitration award is warranted only:

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

S. Cal. Gas Co. v. Util. Workers, 265 F.3d 787, 792-793 (9th Cir. 2001).

Each of the parties has moved for summary judgment.^{4/} The issues are: (1) whether the arbitrator's holding that Defendant had standing to demand arbitration was contrary to the language in the CBA, (2) whether the Arbitration Award is contrary to public policy under ERISA, and (3) whether the Arbitration Award draws its essence from the CBA.

1. Standing

The Arbitrator concluded that Defendant had standing to demand arbitration of the dispute over multi-service contract compensation allocated to covered services. (See Pl.'s Mot., Naymark Decl. ¶ 2,

^{3/} As discussed below, Plaintiff argues that the Arbitration Award does not draw its essence from the CBA, and is contrary to public policy. Plaintiff does not argue either that the Award was procured by fraud, or that it exceeds the bounds of the issues submitted to the Arbitrator. In the Complaint, Plaintiff did assert that the Award did not address the issues submitted. (See Compl. ¶ 21(d).) However, Plaintiff provided no argument or evidence in its Motion or other papers to support this assertion. Defendant argues (Def.'s Mot. 6-7), and the Court agrees, that the Arbitrator addressed precisely the issues submitted for his consideration.

^{4/} Indeed, the amount of verbatim repetition in the briefs is remarkable.

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Ex. 1 at p. 12 (Arbitration Award or "Award")^{5/}.) Plaintiff asserted before the Arbitrator, and asserts now, that Defendant lacks standing to demand arbitration because the CBA affords that right only to "Producers." Defendant, of course, asserts that it has standing. The CBA states: "All disputes and controversies of every kind and nature whatsoever between any Producer and the Union . . . arising out of or in connection with this Contract . . . shall be submitted to arbitration[.]" (See Pl.'s Mot., Naymark Decl. ¶ 12, Ex. 8 ("CBA § 57").) "Producer" is defined as: "advertisers and advertising agencies who have authorized [Defendant] to act on their behalf[.]" (See Pl.'s Mot., Naymark Decl. ¶ 13, Ex. 9 ("CBA preamble").)

Plaintiff further notes that a subclause to Section 57 of the CBA, which describes the procedure for demanding arbitration, states: "The Union, acting on its own behalf or on behalf of any person employed under this Contract, or the Producer concerned, may demand such arbitration in writing." (CBA § 57(A).) Plaintiff points out that the Union (i.e. Plaintiff) is explicitly given authority to demand arbitration in this clause, yet Defendant is not given such authority on behalf of Producers. Thus, Plaintiff argues, Defendant must lack that right.

The Arbitrator examined the definition of "Producer" in the CBA preamble and noted that Defendant was authorized to act on Producer's behalf. (Arbitration Award 13.) He also found that Defendant was a signatory to the CBA which contained the arbitration clause. (Arbitration Award 12.) The Arbitrator also relied on a treatise and case for guidance. The authority he cited construed a very similar clause, "the Employer or the Union shall submit the grievance to the [arbitration] Committee . . . , " to afford the employer's association the right to demand arbitration on behalf of the employers. (Arbitration Award 12 (citing Ray Schoonhoven Fairweather's Practice and Procedure in Labor Arbitration 47, n.159 (3d ed. 1991) (citing New England Road Builders Ass'n v. Operating Eng's Local, 285 F. Supp. 311, 316-17 (D. Conn. 1968))).) Finally, the Arbitrator looked to the expansive language of arbitration clause, and federal courts' recognition of public policy favoring arbitration of labor disputes, and concluded that Defendant had standing to demand arbitration of disputes regarding the CBA. (Arbitration Award 13-14.) The Court finds no fault in the Arbitrator's decision.

2. Conflict Between Arbitration Award and ERISA Public Policy

Next, Plaintiff argues that the Arbitration Award ordering bargaining and arbitration over the allocation dispute is contrary to ERISA public policy. Specifically, Plaintiff asserts that the Award interferes with the Plan Trustees' efforts to enforce contributions to the Plans as required under ERISA by imposing an "exhaustion requirement" on the Plan Trustees. This, Plaintiff argues, is directly

^{5/} Page references to the Arbitration Award refer to the page numbers provided in Plaintiff's exhibit, not the internal page numbers of the Arbitration Award itself.

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contrary to the Supreme Court's holding in Schneider Moving & Storage Co. v. Robbins, 466 U.S. 364, 104 S. Ct. 1844, 80 L. Ed. 2d 366 (1984).

In Schneider, the Supreme Court considered whether trustees of two multi-employer trust funds could initiate litigation to enforce collection of contributions without first having to submit, or having the union submit on their behalf, to arbitration to resolve what the employers argued were disputed terms in their collective bargaining agreement. 466 U.S. at 366-68, 104 S. Ct. at 1846-48. The Court held that exhaustion of the arbitration procedures in the collective bargaining agreement was not required before the trustees sought enforcement of contributions:

It is unreasonable to infer that the parties to these [collective bargaining] agreements, or to the trust agreements, intended the trustees to rely on the Union to arbitrate their disputes with the employer. Because arbitration may be expensive, there is no reason to assume, without more persuasive evidence than is presented here, that the Union intended to incur such expenses at the request of the trustees and without any requirement that the trustees provide reimbursement. It is even less likely that the parties to the trust agreements intended to agree to such complete reliance on the Union. If the Union disagreed with the trustees' construction of the agreement, it could refuse to arbitrate the claim, or compromise the trustees' position in arbitration. The outcome of any subsequent judicial proceeding could be predetermined by the outcome of arbitration. In the absence of . . . evidence [of a duty of fair representation to arbitrate collections claims], we will not engage the unlikely inference that the parties to these agreements intended to require the trustees to rely on the Union to arbitrate their disputes with the employer. Without that inference, as petitioners concede, there is no basis for assuming that the parties intended to require arbitration of disputes between the trustees and the employer.

Id. at 375-376, 104 S.Ct. at 1850-1851 (citations omitted). Plaintiff contends that, in light of Schreiber and its progeny, the Arbitration Award is an improper imposition of an exhaustion requirement that the Plan Trustees must allow the parties to the CBA to arbitrate disputes before the Plan Trustees seek to enforce collection of delinquent contributions.

While acknowledging the Supreme Court's rejection of the exhaustion requirement in Schneider, the Arbitrator found that Schneider was distinct. There, the employers sought to prevent the plan trustees from seeking to enforce collection of delinquent contributions until arbitration had been completed. Here, however, the Plan Trustees are free to seek delinquent contributions without waiting on arbitration:

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In this [CBA], [the rate of contribution is] 14.30%. No argument. If the producer doesn't pay that percentage, as Schneider instructs, the Plans need not yield to the Guild to collect the amount due. They may seek to enforce the producer's ERISA obligation in federal court without waiting for any arbitration award.

(Arbitration Award 21.) The arbitrable issue here, the Arbitrator held, is not collection of contributions, but rather the determination of what portion of compensation under a multi-service contract gets allocated to covered services. (Arbitration Award 20-22.) In reaching this holding, the Arbitrator looked to Section 46(E)(1) of the CBA, which governs contributions to the Plans:

Where other services are involved and there is a dispute over the portion of the compensation allocated to acting services, the principal performer's 'customary salary' shall be given substantial consideration in resolving such dispute.

This clause does not state with specificity who the parties to the allocation dispute might be, however the Arbitrator concluded that "[i]t doesn't make any sense to construe it to mean a dispute with a third party — in this case the Plans." (Arbitration Award 20.) Moreover, the Trust Agreements state:

The rate and amount of contribution shall at all times be governed by said collective bargaining agreements. Nothing in the Trust Agreement or in any Plan or trust agreement pursuant hereto shall be deemed to change, alter or amend any of said collective bargaining agreements.

(See Pl.'s Mot., Naymark Decl. ¶ 4, Ex. 3 at Art. III, § 1 (SAG-Producers Health Plan Trust Agreement).) Thus, the Arbitrator concluded that by the terms of the CBA and the Trust Agreements, the allocation of compensation on multi-service contracts is governed by the CBA and its signatories, not the Plan Trustees.^{6/} The Court finds no fault with this conclusion.

^{6/} Plaintiff argues that allocation and collection are functionally equivalent, as the Plan Trustees cannot commence to collect contributions on the amount they feel should be allocated to covered services without being able to determine that allocation. (Pl.'s Opp. to Def.'s Mot. 18-19.) Plaintiff's argument overreaches. A hypothetical dispute illustrates how: if the Plan Trustees sought to unilaterally raise the percent of gross compensation for covered services that Producers are required to contribute from 14.30% to 90%, Plaintiff's argument would equally apply. The Producers would point to Section 46(A) of the CBA, which explicitly sets the percentage of contribution at 14.30%, and argue that the Plan Trustees cannot change this term in the CBA as part of their collection efforts, and that the

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Thus, Schneider is distinguishable on two grounds. First, the Arbitration Award does not impinge the Plan Trustees' ability to collect contributions, unlike in Schneider. Second, here the CBA and Trust Agreements reserve to the parties to the CBA the ability to determine allocation. Accordingly, the Court finds that the Arbitration Award is not contrary to ERISA public policy.

3. The Arbitration Award Draws its Essence From the CBA

The Arbitrator concluded that:

- (1) Disputes over determinations regarding amounts allocated to covered services for performers in commercials governed by Section 46 of the CBA must be bargained over between SAG and the relevant producer.
- (2) In the event that the producer and SAG cannot agree on an allocation amount, such a dispute is subject to arbitration pursuant to Section 57 o[f] the CBA.

(Arbitration Award 25.) Plaintiff argues that neither of these conclusions draw their essence from the CBA.

The Court first addresses the conclusion that the parties must arbitrate disputes regarding allocation. Section 57 of the CBA provides:

All disputes and controversies of every kind and nature whatsoever between any Producer and the Union . . . arising out of or in connection with this Contract . . . as to the existence, validity, construction, meaning, interpretation, performance, nonperformance, enforcement, operation,

parties to the CBA must arbitrate the matter. Plaintiff could then argue that the requirement to arbitrate would interfere with the Plan Trustees' ability to "collect" the additional contributions that would be due as a result of the Trustees unilaterally increasing the percentage of contribution to 90%. Therefore, requiring this issue to be arbitrated would be contrary to public policy under ERISA. The Court cannot accept this result in light of the CBA's clear language establishing the 14.30% contribution in conjunction with the language calling for arbitration in the event of a dispute. Here, Section 46(E)(1) addresses the allocation of compensation in multi-service contracts, albeit not as clearly as Section 46 establishes the percentage of contribution. Nonetheless, the Plan Trustee's authority to collect cannot be expanded to usurp the terms of the CBA, which created the Plans in the first place.

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breach, continuance, or termination of the Contract . . . shall be submitted to arbitration in accordance with the following procedure:

A. The Union, acting on its own behalf or on behalf of any person employed under this Contract, or the Producer concerned, may demand such arbitration in writing. . . .

Relying on this language, the Arbitrator concluded that the allocation dispute was subject to arbitration. Plaintiff notes that Section 57(A) states that Plaintiff "may demand such arbitration in writing." Plaintiff then argues that this clause means that "Section 57 simply permits any party to arbitrate a dispute. . . . This language does not require either party to arbitrate a dispute." (Pl.'s Mot. 21 (emphasis in original).) This argument is untenable. Section 57(A) is a subclause of Section 57, and it merely addresses the procedure to demand arbitration. Thus, Plaintiff may chose to demand arbitration in writing, or presumably, by some other method. However, Section 57 itself makes clear in the starkest of terms that all disputes regarding the interpretation of the CBA "shall be submitted to arbitration[.]" (emphasis added). "Shall" means "[h]as a duty to; more broadly, is required to This is the mandatory sense that drafters typically intend and that courts typically uphold." Black's Law Dictionary 1407 (8th ed. 2004). The Arbitrator's conclusion that the parties must arbitrate their dispute regarding allocation draws its essence from the CBA.^{2/}

The Arbitrator also concluded that the parties must first bargain over the allocation dispute before arbitrating. Plaintiff correctly argues that the CBA contains no provision explicitly requiring the parties to bargain. (Pl.'s Mot. 19-21.) However, "the arbitrator is not bound by the four corners of the [collective bargaining agreement] document." Id. at 1081 (citing United Steel Workers of Am. v. Warrior and Gulf Navigation Co., 363 U.S. 574, 581-82, 80 S. Ct. 1347, 1352-53, 4 L. Ed. 2d 1409 (1960)). While the Arbitrator does not explicitly identify a clause in the CBA stating that the parties must bargain before demanding arbitration, he interprets Section 57, requiring arbitration, to so require.

^{2/} Defendant notes that Section 57(D) provides further evidence for this conclusion. It states:

The parties agree that the provisions of this Section shall be a complete defense to any suit, action or proceeding in any Federal, State or local court or before any administrative tribunal with respect to any controversy or dispute which arises during the period of this Contract and which is therefore arbitrable as set forth above. The arbitration provisions of this Contract shall, with respect to such controversy or dispute, survive the termination or expiration of this Contract.

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The Arbitrator appears to have determined that reasonable parties would talk and bargain about their dispute before demanding arbitration. Indeed, it is unclear how the parties would know what the dispute is without first discussing it. It further seems reasonable that parties would bargain to attempt to resolve a dispute without first resorting to the expense of arbitration. Accordingly, the Court cannot say, given the level of deference afforded to the Arbitrator, that his interpretation of the CBA arbitration clause does not draw its essence from the CBA.^{8/}

Conclusion

For the foregoing reasons, the Court finds that the Arbitration Award does draw its essence from the collective bargaining agreement and is not contrary to public policy. See S. Cal. Gas Co. v. Util. Workers, 265 F.3d at 792-793. Accordingly, Plaintiff's Motion is denied and Defendant's Motion is granted. The Court will issue an Judgment consistent with this Order.

IT IS SO ORDERED.

Initials of Preparer

^{8/} Plaintiff also cites to Phoenix Newspapers, Inc. v. Phoenix Mailers Union Local, 989 F.2d 1077, 1082 (9th Cir. 1993), and asserts that there, the Ninth Circuit "vacated an arbitrator's order that the parties 'affirmatively bargain' since it violated the 'good faith bargaining' policy embedded in the NLRA." (Pl.'s Mot. 11.) Plaintiff's characterization of Phoenix is incorrect. There, the court held that the arbitrator correctly "ordered the parties to negotiate over the [dispute]." Phoenix, 989 F.2d 1083. The court vacated the arbitrator's award only after finding that "[t]he arbitrator exceeded his authority . . . when he directed the outcome of the negotiation." Id. Here, the Arbitration Award leaves the outcome of bargaining entirely up to the parties.