UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED NATURAL FOODS, INC, Plaintiff, v. INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 117, *et al.*, Defendants.	CASE NO. C19-1736-LK ORDER REGARDING CROSS MOTIONS FOR SUMMARY JUDGMENT

This matter comes before the Court on the cross motions for summary judgment filed by Plaintiff United Natural Foods, Incorporated ("UNFI") and by Defendants and counterclaimants International Brotherhood of Teamsters Local 117 and Local 313 (collectively, the "Unions"). Dkt. Nos. 70, 71. UNFI and the Unions were parties to collective bargaining agreements that contained provisions regarding transferred employees' rights in the event an existing UNFI facility was moved. After UNFI announced a plan to consolidate two of its facilities to a new distribution center, the parties disputed the meaning of those provisions, culminating in arbitration. UNFI seeks to vacate the arbitration award, and the Unions seek to confirm it and hold UNFI liable for breach

of the parties' collective bargaining agreements. For the reasons set forth below, the Court denies UNFI's motion for summary judgment and grants in part and denies in part the Unions' motion for summary judgment.

I. BACKGROUND

A. Changes at UNFI spawn conflict

In October 2018, UNFI, a national wholesale grocery distribution company, acquired SuperValu, Inc. and thereby became party to collective bargaining agreements with the Unions, which represented employees in UNFI's facility in Tacoma, Washington. Dkt. No. 1 at 2, 4. Those employees comprised four bargaining units of warehouse workers, inventory control workers, warehouse clerks, and drivers. *Id.* at 2. The relevant collective bargaining agreements ("CBAs") at issue in this case covered the Tacoma employees in those bargaining units effective July 15, 2018 to July 17, 2021. *Id.* at 3–4; Dkt. Nos. 1-2, 1-3, 1-4. As relevant here, Section 1.01.2 of the CBAs[1] provides as follows:

> Movement of Existing Facility: In the event that [UNFI] moves an existing facility to any location within the jurisdiction of Joint Council of Teamsters No. 28 . . . the terms of this contract shall continue to apply with respect to the new facility. In addition, all employees working under the terms of this Agreement at the old facility shall be afforded the opportunity to work at the new facility under the same terms and conditions and without any loss of seniority or other contractual right or benefits. The designated Union will be required to show a majority representation in accordance with controlling law. In addition, the parties agree to enter into effects bargaining in accordance with controlling law regarding the impact on employees of the movement of an existing facility.

Dkt. No. 1-2 at 6 (the "Movement Provision").

In February 2019, UNFI announced that it would consolidate its Tacoma, Washington, and Portland, Oregon, facilities into a newly constructed distribution center in Centralia, Washington.

[1] The CBAs include mostly identical language with minor variations that are inconsequential with respect to this litigation.

Dkt. No. 1-1 at 5. UNFI planned to close the Tacoma and Portland facilities[2] with the opening of the Centralia facility. Dkt. No. 1 at 4. The Centralia facility was anticipated to employ approximately 500 workers, and UNFI "encouraged" employees from the Tacoma facility to apply for those jobs. *Id.* at 5.

In March 2019, the Unions filed grievances against UNFI, claiming that it violated the CBAs by disclaiming the applicability of the Movement Provision to relocation of Tacoma employees to the Centralia facility. *See* Dkt. No. 72-1 at 433. UNFI denied the grievances, and the parties agreed to arbitrate the dispute. Dkt. No. 1 at 6.

B. The arbitrator finds in favor of the Unions

A two–day arbitration was held on August 6 and 7, 2019. Dkt. No. 1 at 7. The issues before the arbitrator were (1) whether the dispute was arbitrable, (2) if so, whether UNFI violated the Movement Provision, and (3) if so, what the appropriate remedy should be. Dkt. 1-1 at 4. Under the CBAs, the arbitrator's powers were limited to "interpretations of and a decision concerning appropriate application of the terms of [the CBAs]"; the arbitrator had "no power to add to or subtract from or to disregard, modify or otherwise alter any terms of this or any other agreement(s) between the Union and Employer or to negotiate new agreements." Dkt. No. 1-2 at 23.

The arbitrator issued his Opinion and Award (the "Award") on October 7, 2019. Dkt. No. 1-1. The arbitrator found that arbitrability was "so intertwined" with the merits of the case that they should be discussed together "in order to provide a clear explanation for [the] final ruling." *Id.* at 9. The parties' substantive dispute centered on the Movement Provision. The Unions argued that the Provision entitled employees working at the Tacoma facility to work at the new Centralia facility under the same terms of employment they had in Tacoma. Dkt. No. 1-1 at 13. Although

[2] The employees at the Portland facility are represented by unions that are not parties in this matter. Dkt. No. 1 at 5.

the Unions acknowledged that they could not represent the Centralia employees until a majority of employees there supported such representation, they maintained that they merely sought to enforce the Tacoma CBAs, and such enforcement did not constitute representation of the Centralia employees. *Id.* at 10. In response, UNFI argued that employees were only entitled to employment at the Centralia facility under the same terms if the Unions first demonstrated majority representation. *Id.* at 11, 17. Because the Unions had not done this, UNFI argued that the dispute was "a representation case subject to NLRB jurisdiction disguised as a grievance." *Id.* at 11.

In examining the meaning of the Movement Provision, the arbitrator identified several "difficult[ies]" presented by the text. *Id.* at 12–13. First, there was an apparent conflict between the first two sentences and the third: although the first two sentences "appear to grant clear rights to existing employees that 'shall' apply," the third sentence (the "majority support" sentence) "seems to add a condition that negates or limits the rights and benefits provided by the first two sentences." *Id.* at 12. Examining the apparent conflict, the arbitrator found it unclear why the first two sentences stated that the rights and benefits therein "shall" apply if those rights and benefits were "conditioned on showing majority support[.]" *Id.* at 13. And, if the third sentence were a pre-condition for the first two sentences, it was unclear why the first two sentences were included at all, or in the very least why they were not placed after the majority support sentence. *Id.* at 12–13. Observing that "the order of the sentences in [the Movement Provision] and the language used do not give a completely clear picture of what the Parties intended," the arbitrator resolved to interpret the language in a manner that best reflected the parties' intent. *Id.* at 13–14.

The arbitrator then considered testimony from the parties about their intent in negotiating the Movement Provision. *Id.* at 14–16. Two witnesses for the Unions testified that the Unions' objectives in negotiating that section were to enable union workers "to follow the work to a new location," and to ensure that "in the transitional phase" to a new facility "the terms of the agreement

[would] apply." *Id.* at 14–15. UNFI's witness testified that "the Union proposed the first two sentences of [the Movement Provision] and the Employer proposed the third sentence because the Employer did not want to agree 'to do what is more than we can legally do under board law'"; in other words, "the third sentence 'has to happen before the first two come into play.'" *Id.* at 15. On cross-examination, UNFI's witness "agreed that [UNFI] can set the terms and conditions, assuming no collective bargaining relationship exists, and nothing prevents [UNFI] from agreeing to allow the employees from Tacoma to transfer to Centralia and to maintain their terms and conditions of employment." *Id.* However, UNFI argued that not all terms from the CBAs "[c]ould exist for the transferred employees without a [collective bargaining] contract," which in turn would require majority support at the new location, such that the "majority support" provision must be read as a precondition to applying the terms of the CBAs to transferred employees as provided in the first two sentences of the Movement Provision. *Id.* at 13, 19.

Addressing that argument, the arbitrator found that the "terms of the contract" referenced in the first two sentences of the Movement Provision could "reasonably be interpreted to mean the wages, hours, benefits and working conditions contained in the Agreement." *Id.* at 19. He reasoned that the Provision "allows the employees to follow the work to the new location and avoid having to face a reduced standard of living to do so." *Id.* The arbitrator also rejected UNFI's argument that it could not continue to make payments to the Pension Trust Fund without a contract in place, noting that UNFI's witness testified during the hearing that based on his experience as a Trustee of the Trust, the Trust could approve continuation of contributions and benefits even though no contract was in place during a transition period. *Id.* at 19.

Having found that the Movement Provision contained an "express promise" to "apply the terms of the contract and afford all employees working under the terms of the Agreement at the Tacoma facility the opportunity to work at the Centralia facility under the same terms and

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.