UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

PROFESSIONAL TRANSPORTATION, INC.,	)	
Plaintiff/Counter-Defendant,	)	
v.	)	Cause No. 3:17-cv-00176-RLY-MPB
UNITED PROFESSIONAL & SERVICE EMPLOYEES UNION LOCAL 1222,	)	
Defendant/Counter-Plaintiff.	)	

DEFENDANT/COUNTER-PLAINTIFF UNION'S REPLY BRIEF IN FURTHER SUPPORT OF ITS SUMMARY JUDGMENT MOTION AND MEMORANDUM

Defendant/Counter-Plaintiff United Professional & Service Employees Union Local 1222 (ñUnionò) has fully briefed its arguments in its Memorandum in Support of its Motion for Summary Judgment/Response to Plaintiff/Counter-Defendant Professional Transportation, Inc.ôs (ñPTIò or ñCompanyò) Summary Judgment Motion and Supporting Brief[1]. The Union, by counsel, hereby submits its Reply Brief in Further Support of its Motion for Summary Judgment.

I. INTRODUCTION

PTI ultimately offers a single argument to support its erroneous assertion that Arbitrator Joseph V. Simeriôs (ñArbitrator Simeriò or ñArbitratorò) Award should be overturned. PTI believes Article 3 of the partiesô 2015-2018 collective bargaining agreement (ñCBAò) is clear and unambiguous in its favor, only providing for wage rate increases to employees making the minimum wage rates. PTI, thus, improperly puts forth its **interpretation** of the relevant CBA language as if it were an ultimate conclusion that the Arbitrator was beholden to find and agree with.

[1] Hereinafter referred to as Unionôs ñSummary Judgment Briefò and cited to as ñUnionôs Sum. Br.ò.

Instead of offering the Court a legitimate argument that this case is one of the rare and extremely limited matters in which the Arbitratorôs Award is subject to reversal, PTIôs Response/Reply Brief actually underscores that the Arbitrator acted within his authority. Although PTI is not pleased with the result that the Arbitrator reached, its Response/Reply Brief does not help its cause because it further establishes that the Arbitrator interpreted the relevant contract language.

PTIôs position that a reasonable reading of the Article 3 can yield no other result is untenable. PTI conveniently fails to address the critical fact that, at worst, the plain language of the CBA **does not explicitly spell out** which employees are entitled to the wage increases. Thus, the two wage charts contained in Article 3 lend themselves to differing interpretations, and the exact task that the parties authorized Arbitrator Simeri to undertake was to resolve this contract interpretation dispute. This is precisely what Arbitrator Simeri did in reaching his conclusion that the wage rate increases are not limited to only those employees earning the minimum wage rates.

Ultimately, PTI is simply unhappy with the Arbitratorôs interpretation of the CBAôs wage rate provision, and is now inappropriately inviting this court to substitute the Arbitratorôs bargained-for interpretation for its own, preferred version. The Court must refuse this unlawful invitation. In its Opposition Brief, PTI goes to great length to explain why, in its opinion, it believes the Unionôs explanation of the Arbitratorôs interpretation of the CBA is ñunreasonableò and why the Companyôs interpretation is the only accurate reading of the partiesô wage provision. However, by engaging in this analysis, all PTI has done is interpret the language in the way it deems right and all it is arguing is that the Arbitrator misinterpreted the relevant CBA provisions. Although the Company may disagree with the Arbitratorôs interpretation of the relevant provision and his finding that all Level 2 to Level 7 employees are eligible for the 2016 wage rate increases,

it still stands that its disagreement is not a legally sufficient for the Court to vacate Arbitrator Simeriôs Award and ignore the great deference afforded to labor arbitration awards. A review of the Award and controlling case law reveal that Arbitrator Simeri interpreted and construed the relevant contract language, appropriately considered extrinsic evidence, and rendered a legally valid award based on his analysis. As a result, the Court should grant the Unionôs Motion for Summary Judgment and enforce the Arbitration Award.

II. ARGUMENT

A. The Court Should Enforce The Arbitrator's Award Because He Interpreted The CBA, His Award Draws Its Essence From The CBA And There Is An Interpretive Route To His Decision

1. The Appropriate Standard Of Review

PTI attempts to muddy the waters as to the appropriate standard the Court should employ when evaluating whether the Arbitratorôs decision should be enforced or not. It effectively argues that this Court is tasked with determining whether the relevant language of the collective bargaining agreement is ñclear and unambiguous.ò Yet, this is not the Courtôs role. This Court only needs to determine whether the Arbitrator interpreted the CBA, whether his Award draws its essence from the CBA and whether there is an interpretive route to his decision. If the Court makes these minimum threshold findings, then the Award should be enforced. This is true irrespective of whether the Court agrees or disagrees with the Arbitratorôs interpretation.

As the Supreme Court carefully explained, ñthe question of interpretation of the collective bargaining agreement is a question for the arbitrator. It is the arbitratorôs construction which was bargained for.ò *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 599. Therefore, the Supreme Court instructed that ñthe courts [] have no business weighing the merits of the grievance.ò *United Steelworkers v. American Mfg. Co.,* 363 U.S. 564, 568 (1960).

ñ[A]n arbitrator must find facts and a court may not reject those findings simply because it disagrees with them.ò *United Paperworkers Int'l Union v. Misco, Inc*. 484 U.S. 29, 38 (1987). In fact, ñ[s]o long as the award is based on the arbitratorôs interpretationð unsound though it may beð of the contract, it draws its essence from the contract.ò *Ethyl Corp. v. United Steelworkers of Am., AFL-CIO-CLC*, 768 F.2d 180, 184 (7th Cir. 1985). More specifically, ñas long as the arbitrator engaged in bon[a] fide contractual interpretation, [courts] are without power to vacate even if [they] believe the award was factually or legally incorrect.ò *N. Ind. Pub. Serv. Co. v. United Steelworkers of Am., Local 12775*, 243 F.3d 345, 347 (7th Cir. 2001). In addition, any reasonable doubt as to whether an award draws its essence from the contract will be resolved in favor of enforcing the award. *Id.*

Judicial review of an arbitral award is therefore ñextremely limitedò and is in fact ñso narrowò that the Seventh Circuit has wondered whether ñreviewò of an arbitral award might be a misnomer. *United Food & Commercial Workers, Local 1546 v. Ill.-Am. Water Co.,* 569 F.3d 750, 754 (7th Cir. 2009). The Seventh Circuit will uphold the arbitratorôs award so long as the arbitrator ñinterpreted the partiesô agreement *at all.*ò *Prostyakov v. Masco Corp*., 513 F.3d 716, 723 (7th Cir. 2008). *See also*, *Hill v. Norfolk & Wesleyan Railway Co.*, 814 F.2d 1192, 1195 (7th Cir. 1987)(the court only has to determine whether the arbitrator interpreted the contract).

The Courtôs position on whether the arbitrator correctly interpreted the relevant contract language is irrelevant to the analysis of whether the Arbitratorôs Award should be enforced. Misinterpretation of contractual language, no matter how ñclear,ò is within the arbitratorôs powers. *Int'l Union of Operating Eng'rs, Local 139 v. J.H. Findorff & Son, Inc.*, 393 F.3d 742, 745 (7th Cir. 2004). As such, it is not the Courtôs job to decide if an arbitrator erred in interpreting a labor contract, even if the error was significant. CUNA Mut. Ins. Socôy, v. Office *& Profôs Emples.,

Intôl Union, Local 39, 443 F.3d 556 (7th Cir 2006). The issue for the Court is therefore not whether the contract interpretation is incorrect or ñeven wackyò but whether the arbitrator failed to interpret the contract at all. *Wise v. Wachovia Sec.*, LLC, 450 F.3d 265 (7th Cir. 2006).

2. The Arbitrator's Award

In its Opposition Brief, PTI failed to sufficiently respond to the Unionôs meticulous dissection of Arbitrator Simeriôs written analysis. The Union directly quoted from the Award and cited all relevant analysis. *See* Unionôs Sum. Br., pp. 23-33. However, because PTI distorts and disregards the careful and reasoned steps that the Arbitrator took to interpret the relevant contract language, a recap of what the Arbitrator did to interpret the CBA is being provided.

At the outset of the Award, the Arbitrator referenced the arbitration hearing and noted that the Union and PTI had submitted ñexcellent post-hearing briefs.ò (PTIôs SJM, Ex. A, p. 1). At arbitration and in its post-hearing brief, PTI offered the identical argument that it makes here: that the language of Article 3, Section 1 of the CBA clearly and unambiguously provides that the only employees entitled to receive the annual wage rate increases were those who made the national minimum wage rates. The Union argued in its post-hearing brief that the language of Article 3, Section 1 is clear and unambiguous in support of its position that all Level 2 to Level 7 employees were entitled to the 2016 raises regardless of their wage rates. It also alternatively contended that, even if the language is ambiguous, the language and the relevant extrinsic evidence support the Unionôs position.

In the Applicable Contract Provisions section of his Award, the Arbitrator cited the CBA provisions that apply and that were the basis of his Award. (PTIôs SJM, Ex. A, p. 2-3). He cited: Article 3, Section 1, which the parties agree contains the applicable language regarding the 2016 wage rates increases; the Preamble to the CBA, which PTI contended also supported its position;

and Article 20, Grievance and Arbitration Procedure, Section 2, Arbitration, which ñprohibited [the Arbitrator] from altering the terms and conditionsò of the CBA and stated that his decision ñshall be final and binding.ò (*Id*.).

In the Facts section of his Award, the Arbitrator cited the relevant facts, finding that PTI is a national employer operating in at least 23 states and that the same wage scale for all of its employees made no economic sense. (*Id*. at pp. 3-6). He found that, under the CBA, pay was different for bargaining unit employees depending on their work location. (*Id*.). He explained that the CBA therefore identified 7 employment levels, which corresponded to seniority, and set forth the minimum wage rates in Article 3, Section 1, the text of which was also included in the Fact section. (*Id*.). The Arbitrator found that, under all of the preceding collective bargaining agreements, all bargaining unit employees received negotiated wage rate increases whether they were earning the minimum rate or greater than the minimum rate. (*Id*.).

The Arbitrator framed the issue as: Did the employer violate the contract when it paid wage increases only to those bargaining unit employees making the minimum wage rates in the contract and, if so, what is the appropriate remedy? (*Id*. at pp. 6-7).

At the beginning of the Analysis section of his Award, the Arbitrator noted that it was his ñdutyò to ñdetermine the intent of the parties, not to decide whether one side or the other made a good deal or a bad deal.ò (*Id*. at p. 7). The Arbitrator first dealt with the argument PTI makes here- that Article 3, Section 1 clearly and unambiguously provides that the only employees entitled to the 2016 negotiated wage rate increases are those making the national minimum rates. In this regard, his Award states, ñThe Employer tells me, first, that the Contract is ***clear and unambiguous*** and that the annual increases only apply to the minimum rates described in the Contract.ò(emphasis added). (*Id*. at pp. 7-8).

The Arbitrator rejected PTIôs argument in the very next sentence of the Award, stating, ñI agree that the only rates specifically spelled out in the Contract are what the Contract describes as minimum rates.ò (*Id*. at p. 8). However, he then explained that there was ñmore to the storyò because wage rates vary across the country, depending on the location of the PTI branch and that ñit would make little sense to list separately the wages for each Employer location because of the great number of locations.ò (*Id*. at pp. 8-9). He also concluded that there is a ñpublic relations problemò of telling the Arkansas worker that the person doing the same work as the worker in Massachusetts has a higher wage rate. (*Id*.). For these reasons, he pointed out that Article 3, Section 1, while listing the national minimum wage rates, also states:

> The above rates are minimum rates across all PTI Branch locations. Rates are Branch specific and depend on a number of factors, including, state law, area, trip configuration, PTIôs ability to recruit. Rates may be more or less in each category than another Branch, subject to minimum rates.

(*Id*.). The Arbitrator concluded that this contractual language ñrecognizes that wages paid by the Employer under the Contract are not limited to the dollar rates in the Contract, but that those dollar rates are simply minimum rates, the floor, and do not represent all the rates, the ceiling.ò (*Id*.). He concluded that this language constituted the ñpartiesô attempt to make clear that employees at the same employment level but working in different locations earn different wages *without actually attaching the wages amounts to the Contract*.ò (*Id*.). (emphasis added). This contractual arrangement helped prevent bargaining unit disruption. (*Id*.).

Having found that the branch-specific rates were incorporated into the CBA by Section 3, Article 1, the Arbitrator next decided whether employees making branch-specific rates that were higher than the national minimum wage rates were entitled to the 2016 negotiated wage rate increases. (*Id*. at pp. 9-12). The Arbitrator found that PTI only provided the opinion testimony of its Controller. (*Id*.). This individual, who was not involved in the negotiations for the Contract,

opined that the parties only negotiated minimum wage rates and that, on each anniversary year of the Contract, only the employees making the minimum wage rates would receive wage rate increases. (*Id.*). The Controllerôs opinion testimony was formed without the benefit of participating in bargaining. (*Id.*). In contrast, the Union offered witnesses who participated in the negotiation of the CBA and credibly testified that the annual wage rate increases were negotiated irrespective of employee wage rates. (*Id.*).

The Arbitrator found that both parties agreed that the language in the CBA was ñnot new.ò (*Id*. at pp. 10-11). He further found, ñBased on that consistent language, all bargaining unit employees, in all prior years, whether earning the national minimum wage rates or the higher branch-specific rates, received the annual negotiated wage rates increases.ò (*Id.*). This included 2015, which was the first year of the current CBA. The Arbitrator found that, in every labor agreement since 1999, the negotiated wage rate increases applied to all the employees in the bargaining unit, not just those making the national minimum wage. (*Id.*). Based on this evidence the Arbitrator concluded:

> One can moniker the Employerôs lengthy history of paying the increases to all the bargaining unit employees, under the same language over successive contracts as ñconsistent usageò or ñconsistent practiceò or ñconsistent term of employmentò or ñimplied contract integrationò or simply ñpast contract practice.ò The name doesnôt matter. What matters is that the Employer and this Union consistently applied the wage articles of their bargains to mean wage increases applied to all bargaining unit employees, those making the national minimum wage and those more than the national minimum wage.

(*Id.*). The Arbitrator therefore decided that all Level 2 to Level 7 employees should receive the 2016 negotiated wage rate increases. (*Id*. at p. 13).

3. The Arbitrator Interpreted The CBA, His Award Draws Its Essence From The CBA And There Is An Interpretive Route To His Decision

The Arbitrator clearly met the minimum threshold for the enforcement of his Award. For example, he focused on the appropriate provisions of the CBA, including Article 3, Section 1. He analyzed the relevant facts. He noted that he was not empowered to alter the terms and conditions of the CBA. He engaged in textual analysis of the language of Article 3, Section 1. He also examined the evidence that the parties submitted to him regarding the intended meaning of Article 3, Section 1. Based on his reading of the contract language, the Companyôs practice of providing the raises regardless of wage rates in all prior years, including the first year of the CBA, and the relevant negotiation history, he determined that all Level 2 to Level 7 employees are entitled to the 2016 raises. These are the hallmarks of contract interpretation for a labor arbitrator. *See, e.g.*, *Clear Channel Outdoor, Inc. v. Int'l Unions of Painter's & Allied Trades, Local 770*, 558 F.3d 670 (7th Cir. 2009)(finding that the arbitrator interpreted the agreement ñwithout questionò by: indicating that he understood that it was his task to construe the provisions of the collective bargaining agreement and to apply those provisions to the facts presented to him; considering relevant facts; including in full the relevant provisions of the agreement in the background set forth at the outset of his opinion; and grounding his analysis in those contractual provisions); *see also*, *Joseph Schlitz Brewing Co. v. Milwaukee Brewery Workers' Pension Plan,* 3 F.3d 994, 998 (7th Cir. 1993))(finding that the arbitrator unquestionably interpreted the Association Agreement and the Planôs governing documents, tried to carry out the partiesô rules rather than invent his own, and did not engage in fraud or corruption and noting that, in the standard labor case, this ends the analysis of whether the arbitratorôs decision should be enforced)(citation omitted).

The Arbitratorôs Award also draws its essence from the CBA and there is a clear interpretive route to the Arbitratorôs decision. It is based on and consistent with the language of

Article 3, Section 1. There is no language in Article 3, Section 1 that expressly states that the only employees entitled to the 2016 raises are those who made the minimum wage rates outlined in the CBA. Moreover, Article 3, Section 1 expressly references both minimum wage rates and branch-specific wage rates that can be higher than the minimum wage rates. The two charts in Article 3, Section 1, and particularly the chart in question, can be read as linking raises to employment levels rather than wage rates. Given the Arbitratorôs conclusion that the branch-specific wage rates are incorporated into the CBA, it was therefore reasonable for him to conclude that all Level 2 to Level 7 employees were entitled to the 2016 raises. Since the Arbitratorôs Award draws its essence from the CBA and there is an interpretive route to his decision, his Award should be enforced. *Chicago Typographical Union No. 16 v. Chicago Sun-Times*, 935 F.2d 1501, 1506 (7th Cir. 1991)(a petitioner will not prevail in an enforcement action unless he can prove that ñthere is no possible interpretive route to the [arbitrator's] award, so a non-contractual basis can be inferred.ò).

Notwithstanding PTIôs claim that the Arbitrator did not apply the clear and unambiguous language of Article 3, Section 1, the Arbitratorôs Award also draws its essence from the CBA and there is an interpretive route to his decision because he possessed the authority to determine that the CBA included an implied provision providing that employees were entitled to annual raises irrespective of their wage rates. PTI fails to acknowledge that collective bargaining agreements can include implied provisions or oral understandings. In fact, the Seventh Circuit has held that there is no requirement that the language of the contract must first be found to be ñambiguousò in order for the arbitrator to find an implied condition in the language in the contract. *Ethyl Corp.,* 768 F.2d at 186. The Arbitrator was, thus, empowered to conclude that the CBA provides that all Level 2 to Level 7 employees are entitled to the 2016 raises as an implied condition even if he did not conclude that the language of Article 3, Section 1 was ambiguous. His Award is also

enforceable because he found as ñconsistent term of employmentò or ñimplied contract integrationò or simply ñpast contract practiceò that the CBA provides that PTI and the Union agree that the wage articles mean that wage increases apply to all bargaining unit employees, those making the national minimum wage and those more than the national minimum wage. (PTIôs SJM, Ex. A, p. 13). This is true irrespective of whether the language of Article 3, Section 1 is ambiguous or not.

B. PTI Has Not Offered A Valid Argument To Support Its Argument That Arbitrator's Award Should Not Be Enforced

1. It Is Inappropriate For The Court To Determine Whether The Arbitrator Misinterpreted The Plain or Clear And Unambiguous Language Of The CBA

PTI does not (and cannot) assert that the Arbitrator ignored or disregarded Article 3, Section 1 of the CBA. PTI nevertheless attempts to distort and complicate the Courtôs analysis by asserting that the Arbitrator improperly relied on extrinsic evidence to reach his decision even though the relevant contract language was clear and unambiguous. Although PTI frames its argument by asserting that the Arbitrator overstepped his authority by reviewing extrinsic evidence in connection with his Award, there is no doubt as to what PTI is really claiming. When PTIôs argument is boiled down to its essentials, it is clear that PTI is maintaining that the Arbitrator misinterpreted Article 3, Section 1 by determining that it provides that all Level 2 to Level 7 employees are entitled to receive the 2016 wage rate increases. The problem with PTIôs argument is simple. It is well-established in the Seventh Circuit that arbitration awards are not subject to being overturned because of the assertion that the arbitrator misinterpreted the relevant contract language. *See, e.g.*, *Clear Channel,* 558 F.3d 670. This is true even if the arbitratorôs determination is alleged to have conflicted with the plain meaning, or as PTI contends the ñclear and unambiguousò language, of the contract.

The Seventh Circuit has flatly rejected invitations like the one from PTI to overturn arbitration decisions that allegedly are in conflict with the plain meaning or clear and unambiguous language of the contract. For example, in *J.H. Findorff*, the District Court vacated the arbitratorôs award because it found that the arbitrator had ñneglected the collective bargaining agreementôs plain language.ò 393 F.3d 742. The Seventh Circuit rejected the District Courtôs fundamental assumptions that courts rather than arbitrators should interpret collective bargaining agreements and that, once a court finds that the contractôs meaning is clear, no arbitrator may read it otherwise. *Id*. at 745. As such, it held that misinterpretation of contractual language- no matter how ñclearò- is within the arbitratorôs powers, and an arbitratorôs decision can only be vacated if the decision ignores or supersedes binding contractual language. *Id*. The District Court judge erred by applying a plain meaning exception to the rule that the arbitrator can err in interpreting contract language. The Seventh Circuit held that what may seem ñplainò to a judge is not necessarily plain to persons with greater experience in the business that the agreement is designed to cover. *Id*. at 746. It observed that arbitrators, often chosen because of their expertise in the industry, may see nuances that escape judges. *Id*..

PTI is asking this Court to make the same conclusion the District Judge made in *J.H. Findorff* ï that the arbitratorôs decision should be reversed because it conflicts with the plain meaning of the collective bargaining agreement- and that the Seventh Circuit expressly found improper. As the Seventh Circuit previously held in *J.H. Findorff*, it is neither this Courtôs role to determine what the plain or allegedly ñclear and unambiguousò language of the contract provides nor its position to cite the plain or allegedly ñclear and unambiguousò language of the contract to reverse the Arbitratorôs decision.

This is true even though PTI has attempted to mask its argument that the Arbitratorôs decision is wrong on its merits by arguing that the Arbitrator improperly considered extrinsic evidence. In *Clear Channel*, the Seventh Circuit concluded that the Companyôs argument that the arbitrator ignored relevant provisions of the contract actually boiled down to a claim that the arbitratorôs decision was contrary to the plain meaning of the contract. It reasoned that this was ñsimply another way of arguing that the decision is wrong on its merits.ò 558 F.3d at 677. The Seventh Circuit held that this was precisely the type of inquiry that was beyond its purview because the courtôs only task in reviewing the labor arbitratorôs award is to ensure that the arbitrator was interpreting the collective bargaining agreement, not that he was doing so correctly. *Id*.

Similarly, PTI argues that the Arbitratorôs Award should be reversed because it is contrary to the plain or clear and unambiguous meaning of Article 3, Section 1 of the CBA. Yet, as the Seventh Circuit determined in *Clear Channel*, PTIôs assertion is nothing more than an argument that the Arbitratorôs Award is wrong on its merits. *Id*. Since such an inquiry is beyond the Courtôs purview and since it is clear that the Arbitrator did interpret Article 3, Section 1 of the CBA- a point that PTI effectively concedes by claiming that the Arbitrator misinterpreted this provision, the Arbitratorôs Award should be enforced. *See also, Chicago Typographical Union No. 16,* 935 F.2d at 1505 (The court is forbidden to substitute its own interpretation for the arbitratorôs interpretation of contractual language ñeven if convinced that the arbitratorôs interpretation was not only wrong, but plainly wrong.ò).

2. The Arbitrator's Determination That Article 3, Section 1 Is Ambiguous Is Reasonable

Even though it is not this Courtôs place to second-guess the Arbitratorôs interpretation of contractual language that is alleged to be clear and unambiguous in an enforcement proceeding, PTIôs assertion that the Arbitrator did not find Article 3, Section 1 to be ambiguous is wrong.

An ambiguity exists if it is ñpossible to interpret a document reasonably in more than one way.ò *Rossetto v. Pabst Brewing Co.,* 217 F.3d 539, 542 (7th Cir. 2000). In interpreting the CBA, Arbitrator Simeri analyzed and rejected PTIôs sole argument that Article 3 was unambiguous in its favor; he analyzed and rejected the Unionôs argument that Article 3 was unambiguous in its favor; and he analyzed and he accepted the Unionôs alternative argument that, if ambiguous, the provision still provided that Level 2 to Level 7 employees receive the wage rate increases. Thus, there was a dispute between the parties over whether the language was ambiguous, and in analyzing the dispute, Arbitrator Simeri found the language ambiguous.

The Company selectively pulled only certain statements from the Award in an attempt to distort the Arbitratorôs words and analysis. The Company argues that the ñArbitrator just plunged headfirst into an analysis of extrinsic evidence because he felt that ówage negotiations are at the heart of collective bargainingô and óthere [was] more to this storyô than the terms of the CBA.ò PTI Opp. Br., p. 12. What the Company has done here is simply input the Arbitratorôs words into its own conclusory statement about the Award, when in fact, that is not at all what the Arbitrator did. It was after having summarized and considered the Companyôs argument, and then rejecting its argument and the claim that the language was clear and unambiguous, that the Arbitrator then explained that there was ñmore to this story.ò *See* Award, pp. 7-8.

In fact, the very first thing the Arbitrator does in the Analysis section of his Award is directly address the Companyôs assertion that the CBA clearly and unambiguously provides that the only employees entitled to the 2016 raises were those making the minimum rates. He then devotes the rest of his decision to explaining why he did not find that to be the case, citing both the language of the Article 3, Section 1 and extrinsic evidence. By the time he reached his decision, he had already been presented with the Companyôs argument at hearing and in its post-hearing

brief. He also had been presented with the Unionôs separate arguments. Moreover, there is no doubt that Article 3, Section 1 can be read as ambiguous in identifying which employees were entitled to the 2016 annual raises.

Nevertheless, the Company doubles down on its argument that the Arbitrator did not find the CBA ambiguous because he ñnever even mentioned the words óambiguousô or óambiguityô in his Award.ò PTI Opp. Br., p. 12. Yet, he did not have to do so. For one, it is patently obvious from his decision that he did believe the language in Article 3, Section 1 is clear and unambiguous in either partyôs favor.

Additionally, as the Union explained in its Summary Judgment Brief, the Arbitrator is not required to write a decision, much less specifically include the words ñambiguousò or ñambiguity.ò *See Enterprise Wheel*, 363 U.S. at 598 (ñ[a]rbitrators have no obligation to the court to give their reasons for an award.ò); *see also Chicago Typographical Union No. 16*, 935 F.2d at 1506 (Arbitrators are not required to write opinionsé It is a good thing when they do, because writing disciplines thought. We should not create disincentives to their doing so. The more basic point, however, is that since arbitratorsô interpretations must be accepted even when erroneous, it cannot be correct that arbitrators are required to write good opinions.); *Akers Nat. Roll Co. v. United Steel Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union*, 712 F.3d 155, 161 (3rd Cir. 2013) (finding that ñit might have been preferable for the [a]rbitrator to state explicitly that Section 3 was ambiguous, therefore permitting him to address the past practice issue. His failure to do so does not by itself, however, require that the award be vacated.ò).

PTI argues that the 2016 wage rate language can only be interpreted as applying to those making the minimum rates because Section 1(A) references ñminimum rates.ò However, the provision also references branch-specific rates that can be higher than the minimum rates.

Furthermore, the relevant chart nowhere says that the raises only apply to those making the minimum rates, and what is more, the 2016 (and 2017) raises are only linked in the chart to the corresponding employment levels and **not** to the minimum wage rates. Therefore, a reasonable reader can, as Arbitrator Simeri did, can look at the plain language of the wage rate increase charts and interpret it to mean something other than what the Company claims, e.g., that all Level 2 to Level 7 employees were to receive the negotiated wage rate increases. In actuality, it is PTIôs reading of the language that is not reasonable because it yields a catastrophic and absurd resultð only 30% of the workforce would receive raises and the rest of the bargaining unit employeesô wages would be subject to the whims and desires of the Companyð this surely cannot be right.

And again, even if the Arbitrator made an error in this interpretation, it is of no consequence; as a resykt, PTI cannot get over its high burden of demonstrating that the Arbitrator did anything impermissible because, even if he was wrong, the law affords the Arbitrator such deference that his Award must still be enforced.

Finally, as explained above, the Arbitratorôs Award should be enforced irrespective of whether the CBA language is ambiguous because the Arbitrator was empowered to conclude that the CBA provides as an implied condition that annual wage rate increases are not dependent on wage rates. *See, e.g., Ethyl Corp.,* 768 F.2d at 186 (although a literal reading of the contract would have precluded the implied condition that the arbitrator found present, the arbitrator did not have to read the contract literally; even though the contract included a no modification clause, he could find inferred provisions based on the contractôs written text *or* by not reading it literally).

3. The Arbitrator Properly Relied On Extrinsic Evidence To Disambiguate The Language

An arbitrator is permitted to look to extrinsic evidence to aid in his interpretation of the contract. *See, Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 608 (7th Cir. 1993) (en banc). The

Company contends that the mere dispute between the parties regarding the meaning of the CBA did not ñallow the Arbitrator to resort to extrinsic evidence.ò PTI Opp. Br., p. 11. Here, it is not the mere existence of the dispute between the parties that privileged Arbitrator Simeri to examine the extrinsic evidence, but rather, the fact that he found Article 3 to be ambiguous in his ***analysis*** of the partiesô conflicting readings of the provision. According to the Arbitratorôs Award, the ñyawning voidò in the CBA that needed to be filled was determining which bargaining unit employees were entitled to the 2016 wage rate increases. In order to resolve this ambiguity, the Arbitrator relied in part on the examination of testimonial and documentary evidence regarding the partiesônegotiation of the provision and application of the provision at issue. Arbitrator Simeri ruled in favor of the Union based on this contract language and extrinsic evidence. The Arbitrator found the language was ambiguous, and then he properly interpreted the language with the help of extrinsic evidence. In any case, as explained by the Seventh Circuit, ñextrinsic evidence is admissible to show that a written contract which looks clear is actually ambiguousò in the first instance. *Bidlack*, 993 F.2d at 608.

4. The *U.S. Soccer Federation* Decision Is Innapplicable

Despite the fact that in its Summary Judgment Brief, the Union distinguished and dismissed the cases cited by the Company, PTI continues to cite and rely on the same inapposite cases. The Company again offers *United States Soccer Fed'n, Inc. v. United States Nat'l Soccer Team Players Ass'n*, 838 F.3d 826 (7th Cir. 2016), but *U.S. Soccer Fed'n* is completely inapplicable here. In that case, the arbitrator required union approval for print creatives based on the partiesô past practice, despite the critical fact that the collective bargaining agreement **explicitly provided** the approval procedure for print creatives. The arbitrator looked at extrinsic evidence (the past practice) only because he found that the agreement was ambiguous because he concluded it was ñsilentò with

respect to the issue at hand. The Seventh Circuit rejected the arbitratorôs analysis because ñ**the CBA [was] not silent** as to the approval procedure for sponsor use of print creatives: the agreement explicitly provide[d] that, for sponsor use of print creatives with player likenesses for six or more players, the US Soccer Federation ówill request, but not require, the [sponsor] to make a contribution . . . to the applicable Player Pool(s).ôò *Id*. at 832-33.

There is no evidence, or even an argument, that the Arbitrator found that the CBA was silent with respect the 2016 annual wage rate increases. Moreover, the Arbitrator did not look to extrinsic evidence because he determined that the CBA was silent on this issue. On the contrary, he analyzed Article 3, Section 1 and looked to extrinsic evidence after he determined that, contrary to PTIôs assertion, the CBA did not clearly and unambiguously provide that the only employees entitled to the 2016 raisers were those making the national minimum wage rates. As such, *U.S. Soccer Fed'n* is not applicable or relevant to this matter.

5. The Rest Of The Company's Contentions Are Erroneous And/Or Irrelevant

PTI erroneously claims that the Union did not argue that the language in question is ambiguous and that the Union is now attempting to create an ambiguity. PTI Opp. Br., pp. 4-9. This is a false, red herring and a blatant effort by PTI to further put forth its belief that the disputed language is unambiguous. Not only did the Union devote a significant portion of its post-hearing arbitration brief to its argument that the language is ambiguous and detailed each piece of extrinsic evidence that was then relevant, but the Union also highlighted the fact that it argued this alternative position in its Summary Judgment Brief. *See* Unionôs Sum. Br., p. 7. Moreover, during the arbitration hearing, the Union elicited testimony regarding the bargaining history with respect to wage rate increases, and also submitted evidence, including, past contracts and CBA negotiation documents and minutes, almost exclusively without objection from PTI. Tellingly, PTI ignores

the Unionôs evidence on this point and fails to acknowledge, let alone respond to, the fact that the Union refuted its initial argument with incontrovertible documentary evidence.

PTI further argues that the Union took the position in the pleadings that the disputed language is unambiguous, citing paragraph 16 of the Unionôs counterclaim, which states: ñArticle 3, Section 1(A) of the CBA outlines the 2016 annual wage rate increases and provides that they are to be provided to all Level 2 to Level 7 bargaining unit employees.ò Dk. #14. This paragraph is true and is not inconsistent with the Unionôs argument that the language, alternatively, can be construed as ambiguous. PTI also cites the Unionôs response to paragraph 21 of its Complaint. *Id*. The Union admits it believes that the contract language clearly and unambiguously provides raises are for all Level 2 to Level 7 employeesð but this is an argument that the Union has always made. Importantly, the Union also argued that because the language could be interpreted as ambiguous, Arbitrator Simeri was authorized to review extrinsic evidence, and therefore, the Union submitted its extrinsic evidence in the arbitration. And Arbitrator Simeri did in fact conclude that the CBA was ambiguous. This was for him to decide, and not the Union or the Company or even this Court.

Further, even if the Union had not raised the argument that the CBA is ambiguous, the Arbitrator is not restricted to the arguments presented by the parties in reaching a determination on the issue. The law does not require an arbitrator to rely on any argument presented by either party; an arbitrator is free, on his own accord, to articulate an argument that neither party argued during the arbitration or in post-hearing briefs. *See Folger Coffee Co. v. Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am.-UAW*, 905 F.2d 108, 110 (5th Cir. 1990) (affirming arbitratorôs decision looking outside of the partiesô stipulated submission of relevant provisions in order to interpret subcontracting provision did not exceed scope of authority).

Finally, the Company posits that the Arbitrator acted impermissibly when it writes ñ[t]he Arbitrator stated that he was bringing his own ôbargaining-table experienceô and judgment to this responsibility.ò However, this is precisely what the arbitrator is supposed to do. Thus, the Supreme Court has expressly held that an arbitrator must ñbring his informed judgment to bear in order to reach a fair solution of a problem,ò (*Enterprise Wheel*, 363 U.S. at 597), and ñ[the parties] trust in his personal judgment to bring to bear considerations which are not expressed in the contract as criteria for judgment.ò *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960).

III. CONCLUSION

For the foregoing reasons and for the reasons set forth in the Unionôs Memorandum in Support of its Motion for Summary Judgment and Response to Plaintiffôs Motion, the Union is entitled to summary judgment as a matter of law. Therefore, the Union respectfully requests that this Court enforce Arbitrator Simeriôs October 3, 2017, Arbitration Award and order PTI to provide, with interest, the 2016 annual wage rate increases to all Level 2 through Level 7 bargaining unit employees who did not receive it.

Respectfully submitted,

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Attorneys for the Union

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of July, 2018, a copy of the foregoing was filed by use of the Courtôs electronic filing system. Notice of this filing will be sent to the following parties by operation of the Courtôs electronic filing system. Parties may access this filing through the Courtôs system.

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