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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

TEAMSTERS LOCAL 439,  
Plaintiff,  
v.  
LEPRINO FOODS COMPANY,  
Defendant.

No. 2:18-cv-0280-MCE-CKD

**MEMORANDUM AND ORDER**

By way of this action, Plaintiff Teamsters Local 439 (“Plaintiff”) seeks to compel Defendant Leprino Foods Company (“Defendant”) to arbitrate, pursuant to the parties’ Collective Bargaining Agreement (“CBA”), a grievance filed by Defendant’s employee, Rita Shah. Plaintiff contends that Defendant impermissibly awarded a foreperson position to a fellow employee who had less seniority than Ms. Shah without first offering her the opportunity to bid for that position. Presently before the Court is Defendant’s Motion to Dismiss (ECF No. 5) the Complaint on the basis that the express provisions of the CBA exclude Plaintiff’s grievance from the agreement’s arbitration provisions. For the following reasons, Defendant’s Motion is GRANTED with leave to amend.<sup>1</sup>

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<sup>1</sup> Because oral argument would not have been of material assistance, the Court ordered this matter submitted on the briefs. E.D. Cal. Local Rule 230(g).

**STANDARD**

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3 On a motion to dismiss for failure to state a claim under Federal Rule of Civil  
4 Procedure 12(b)(6), all allegations of material fact must be accepted as true and  
5 construed in the light most favorable to the nonmoving party. Cahill v. Liberty Mut. Ins.  
6 Co., 80 F.3d 336,337-38 (9th Cir. 1996). Rule 8(a)(2) requires only “a short and plain  
7 statement of the claim showing that the pleader is entitled to relief” in order to “give the  
8 defendant fair notice of what the . . . claim is and the grounds upon which it rests.” Bell  
9 Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41,  
10 47 (1957)). A complaint attacked by a Rule 12(b)(6) motion to dismiss does not require  
11 detailed factual allegations. However, “a plaintiff’s obligation to provide the grounds of  
12 his entitlement to relief requires more than labels and conclusions, and a formulaic  
13 recitation of the elements of a cause of action will not do.” Id. (internal citations and  
14 quotations omitted). A court is not required to accept as true a “legal conclusion  
15 couched as a factual allegation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950 (2009)  
16 (quoting Twombly, 550 U.S. at 555). “Factual allegations must be enough to raise a right  
17 to relief above the speculative level.” Twombly, 550 U.S. at 555 (citing 5 Charles Alan  
18 Wright & Arthur R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004) (stating  
19 that the pleading must contain something more than “a statement of facts that merely  
20 creates a suspicion [of] a legally cognizable right of action.”)).

21 Furthermore, “Rule 8(a)(2) . . . requires a showing, rather than a blanket  
22 assertion, of entitlement to relief.” Id. at 556 n.3 (internal citations and quotations  
23 omitted). Thus, “[w]ithout some factual allegation in the complaint, it is hard to see how  
24 a claimant could satisfy the requirements of providing not only ‘fair notice’ of the nature  
25 of the claim, but also ‘grounds’ on which the claim rests.” Id. (citing 5 Charles Alan  
26 Wright & Arthur R. Miller, supra, at § 1202). A pleading must contain “only enough facts  
27 to state a claim to relief that is plausible on its face.” Id. at 570. If the “plaintiffs . . . have  
28 not nudged their claims across the line from conceivable to plausible, their complaint

1 must be dismissed.” Id. However, “[a] well-pleaded complaint may proceed even if it  
2 strikes a savvy judge that actual proof of those facts is improbable, and ‘that a recovery  
3 is very remote and unlikely.’” Id. at 556 (quoting Scheuer v. Rhodes, 416 U.S. 232, 236  
4 (1974)).

5 A court granting a motion to dismiss a complaint must then decide whether to  
6 grant leave to amend. Leave to amend should be “freely given” where there is no  
7 “undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice  
8 to the opposing party by virtue of allowance of the amendment, [or] futility of the  
9 amendment . . .” Foman v. Davis, 371 U.S. 178, 182 (1962); Eminence Capital, LLC v.  
10 Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (listing the Foman factors as those to  
11 be considered when deciding whether to grant leave to amend). Not all of these factors  
12 merit equal weight. Rather, “the consideration of prejudice to the opposing party . . .  
13 carries the greatest weight.” Id. (citing DCD Programs, Ltd. v. Leighton, 833 F.2d 183,  
14 185 (9th Cir. 1987)). Dismissal without leave to amend is proper only if it is clear that  
15 “the complaint could not be saved by any amendment.” Intri-Plex Techs. v. Crest Group,  
16 Inc., 499 F.3d 1048, 1056 (9th Cir. 2007) (citing In re Daou Sys., Inc., 411 F.3d 1006,  
17 1013 (9th Cir. 2005); Ascon Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir.  
18 1989) (“Leave need not be granted where the amendment of the complaint . . .  
19 constitutes an exercise in futility . . .”)).

## 20 21 ANALYSIS

22  
23 Section 19(A) of the CBA (Job Bidding) provides in pertinent part as follows:

24 The working foreperson position shall be considered an  
25 assignment rather than a job classification for purposes of  
26 Sections 18 and 19 of this Agreement. **The designation of**  
27 **employees for such assignments is the exclusive right of**  
28 **the Employer and is not subject to review under this**  
**Agreement.** For purposes of layoff, bumping, disqualification  
or resignation of the working foreperson assignment, the  
working foreperson shall be considered to have remained  
within the classification previously held and reclaim his/her

1 previously held position, provided that position is not held by a  
2 higher senior employee. If a higher senior employee is holding  
3 the position or the job has been eliminated, the employee will  
4 bump in accordance with Section 18 (D) 2.

5 **The Employer shall consider candidates in the following**  
6 **order, but the Employer shall be the sole judge both of the**  
7 **employee's qualifications and of their suitability to the**  
8 **position in question, and no such judgment concerning**  
9 **the Employer's requirements shall be subject to the**  
10 **review under any provision of the Agreement** (the  
11 Employer shall post a list to afford employees the opportunity  
12 to indicate their interest in working foreperson assignments).

13 ECF No. 1-2 (emphasis added). Defendant contends that the express language above  
14 means what it says, namely that disputes regarding “working foreperson” positions are  
15 not subject to arbitration provisions included elsewhere in the CBA.

16 “[A]rbitration is a matter of contract and a party cannot be required to submit to  
17 arbitration any dispute which he has not agreed so to submit.” United Steelworkers of  
18 America v. Warrior & Gulf Nav. Co., 363 U.S. 574, 582 (1960).

19 [T]he question of arbitrability-whether a collective-bargaining  
20 agreement creates a duty for the parties to arbitrate the  
21 particular grievance-is undeniably an issue for judicial  
22 determination. Unless the parties clearly and unmistakably  
23 provide otherwise, the question of whether the parties agreed  
24 to arbitrate is to be decided by the court, not the arbitrator.

25 AT&T Technologies, Inc. v. Communications Workers of America, 475 U.S. 643, 649  
26 (1986). “[I]n deciding whether the parties have agreed to submit a particular grievance  
27 to arbitration, a court is not to rule on the potential merits of the underlying claims.” Id.

28 [W]here the contract contains an arbitration clause, there is a  
presumption of arbitrability in the sense that “[a]n order to  
arbitrate the particular grievance should not be denied unless  
it may be said with positive assurance that the arbitration  
clause is not susceptible of an interpretation that covers the  
asserted dispute. Doubts should be resolved in favor of  
coverage.”

Id. at 650 (quoting Warrior & Gulf, 363 U.S. at 582-83). Despite that presumption,  
parties may expressly agree to exclude a particular grievance or set of grievances from  
the scope of arbitration. See Warrior & Gulf, 363 U.S. at 584-85. That is precisely what  
the parties did here.

1 The CBA is clear that “[t]he designation of employees for ‘working foreperson’  
2 assignments is the **exclusive right** of the Employer and is **not subject to review under**  
3 **this Agreement.**” ECF No. 1-2 at 15 (emphasis added). It then reiterates that  
4 “no . . . judgment concerning the Employer’s requirements shall be subject to the review  
5 under any provision of the Agreement.” *Id.* As such, Defendant’s decision to designate  
6 another employee as foreperson in lieu of Plaintiff is not arbitrable.<sup>2</sup>

7 Plaintiff argues to the contrary that the “exclusion only applies to the Employer’s  
8 initial assignment and determination of an employee’s qualifications or suitability for the  
9 foreperson classification.” Pl.’s Op., ECF No. 7, at 5. If that was what the parties  
10 intended, however, they should have said as much. Nothing in the exclusionary  
11 language limits its application to initial designations. Rather, the CBA expressly states,  
12 without identifying any exceptions, that challenges to foreperson assignments are not  
13 subject to review under the terms of the agreement. Defendant’s Motion is thus well  
14 taken, and Plaintiff’s Complaint is DISMISSED.

15  
16 **CONCLUSION**

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18 Defendant’s Motion to Dismiss (ECF No. 5) is GRANTED with leave to amend.  
19 Not later than twenty (20) days following the date this Memorandum and Order is  
20 electronically filed, Plaintiff may, but is not required to, file an amended complaint. If no  
21 amended complaint is timely filed, this action will be deemed dismissed with prejudice  
22 upon no further notice to the parties.

23 IT IS SO ORDERED.

24 Dated: June 7, 2018

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27 MORRISON C. ENGLAND, JR.  
UNITED STATES DISTRICT JUDGE

28 <sup>2</sup> The Court notes that although it finds based on the current complaint that Ms. Shah’s grievance is not arbitrable, that does not necessarily mean she is without a remedy in some alternative forum.