UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES—GENERAL

Case No. CV-16-08753-MWF (FFMx) **Date: September 1, 2017**
Title: Marvin Kropke, et al. -*v*- Andy Dunbar, et al.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:	Court Reporter:
Rita Sanchez	Not Reported
Attorneys Present for Plaintiff:	**Attorneys Present for Defendant:**
None Present	None Present

Proceedings (In Chambers): ORDER DENYING MOTION TO VACATE AND GRANTING MOTION TO CONFIRM ARBITRATION AWARD [29] [32]

This action was last before this Court on the Motion to Stay Action Pending Arbitration (the "Motion to Stay"), which the Court granted (the "Stay Order") on March 2, 2017. (Docket No. 24). On May 24, 2017, the parties informed the Court in a Joint Status Report and Notice of Arbitrator's Decision and Award (Docket No. 26) that the arbitration proceedings had been held and the arbitrator had issued his decision. The Court held a status conference on June 1, 2017 to discuss the arbitration award; ultimately, the Court set a briefing schedule to permit the parties to set out their respective positions. (Docket No. 28).

Accordingly, before the Court are two motions. Defendants, Trustees of the Electrical Workers' Pension Trust Fund of Local Union No. 58 and Trustees of the Michigan Electrical Employees' Pension Fund (collectively, the "Michigan Trustees") filed their Motion to Confirm Arbitration Award (the "Motion to Confirm"), on July 10, 2017. (Docket No. 29; Mem. P. & A. at Docket No. 30). Plaintiffs, Trustees of the Southern California IBEW-NECA Pension Trust Fund (collectively, the "California Trustees") filed their Opposition on July 31, 2017. (Docket No. 35).

The California Trustees filed their Motion to Vacate Arbitration Award (the "Motion to Vacate"), on July 10, 2017, as well. (Docket No. 32). The Michigan Trustees filed their Opposition on July 31, 2017. (Docket No. 34). On August 2,

2017, the California Trustees filed a Supplemental Brief in Support of their Opposition to the Motion to Confirm (the "Supplemental Brief" (Docket No. 38)). The Michigan Trustees subsequently filed an Objection to the Supplemental Brief (Docket No. 41), which the California Trustees opposed (Docket No. 42).

The Court has read and considered the papers filed on the Motions and held a hearing on **August 14, 2017**.

For the reasons set forth below, the Motion to Confirm is **GRANTED** and the Motion to Vacate is **DENIED**. The California Trustees contend that the arbitrator's decision should be vacated because it is contrary to the law, and because the arbitrator himself was biased. A recently decided Ninth Circuit case, *Lehman v. Nelson*, considered very similar issues to those before the arbitrator, and the panel's reasoning agrees with that of the arbitrator. Therefore, the Court cannot conclude that the arbitrator exceeded his power by applying the law in a manifestly erroneous manner. Nor do the California Trustees succeed in showing that the arbitrator was biased. Although the procedures employed in arbitration differ from those used in the judicial system, they respond to the unique needs of the parties to the arbitration agreement. Moreover, the California Trustees fail to submit any evidence of actual bias on the part of the arbitrator.

The objection to the briefing is **OVERRULED *as moot***.

I. BACKGROUND

The background of this action is known to the parties, and set out in some detail in the Stay Order. (Docket No. 24). The Court nevertheless sets out the key facts below, to the extent that they are relevant to the pending Motions.

A. The Underlying Dispute

On November 23, 2016, the California Trustees filed a Complaint against the Michigan Trustees seeking a declaratory judgment as to the proper interpretation of a

contract. (Docket No. 1). The parties are all signatories to the Electrical Industry Pension Reciprocal Agreement (the "Reciprocal Agreement"), which is a contract between pension plans across the country that are funded by contributions from employers signatory to collective bargaining agreements with the locals of the International Brotherhood of Electrical Workers ("IBEW"). (Compl. ¶ 8). Often, employees who contribute to a fund travel outside of their "home" jurisdictions to the jurisdiction of another participating fund. (Joint Stipulation Authenticating Index of Exhibits in Support of Cross Motions to Confirm/Vacate the Decision and Award of Arbitrator D. Quinn Mills (the "Joint Stipulation"), Ex. 1 (Docket No. 33)). (These employees are sometimes called "travelers.") The Reciprocal Agreement provides that, if the traveler so elects, the outside fund must transfer "an amount of money equal to all Contributions received on behalf of the" traveling employee. (*Id.* at 20). "Contributions" are elsewhere defined as "[t]he payment which an employer is duly required to make by the terms of a collective bargaining agreement, or is otherwise legally bound, to make to a Participating Fund . . . for the purpose of providing a plan of benefits for Temporary or Permanent employees." (*Id.* at 14). This arrangement allows traveling employees to maintain one pension plan with their home pension fund, rather than several small pension plans with funds in whatever jurisdictions to which they previously traveled.

As of July 1, 2016, the SoCal Fund was projected to be in critical status, and since has been operating under a rehabilitation plan. (Joint Stip., Ex. 12 at 912). Part of the rehabilitation plan requires employers to submit increased contributions to help repair the SoCal Fund's deficit, called "off-benefit contributions." (*Id.*, Ex. 10 at 339). The SoCal fund viewed these off-benefit contributions to be separate from the "contributions," as defined in Section 1(g) of the Reciprocal Agreement, and has withheld them from transfer to the Detroit and Michigan Funds for travelers from those jurisdictions. (*See, e.g.*, Joint Stip., Ex. 12 at 758–59). The Michigan and Detroit Funds believe that the off-benefit contributions are "contributions" under Section 1(g), and thus must be transferred to the home funds under Section 11 of the Reciprocal Agreement. (Mot. to Confirm at 3).

The Reciprocal Agreement includes an arbitration clause requiring any dispute between participating pension funds to be referred to the Reciprocal Administrative Office within 180 days of the cause of the dispute. (Compl., Ex. A, at 15). If a dispute is not resolved 60 days after the dispute is noticed, the Reciprocal Agreement states that the dispute "may be submitted to an arbitrator, if requested in writing by either party, for binding determination." (*Id.* at 15–16). The parties may mutually agree to an arbitrator, or "in the event that the disputing parties cannot mutually agree on the selection of an arbitrator, either party may request in writing that the Reciprocal Administrative office select an arbitrator." (*Id.* at 16). Finally, the Reciprocal Agreement states that "[r]ules concerning procedures for the resolution of disputes under this section ***including arbitration*** shall be promulgated by the Reciprocal Administrator." (*Id.*) (emphasis added).

On October 3, 2016, the Detroit Fund notified the SoCal Fund of a dispute under the Reciprocal Agreement. (Compl., Ex. C). On October 5, 2016, the Michigan Fund did the same. (Compl., Ex. D). On November 28, 2016, having failed to resolve the dispute, the Detroit and Michigan Funds wrote to the Reciprocal Administrator requesting selection of an arbitrator under the Reciprocal Agreement. (Declaration of Derek L. Watkins in Support of Motion to Dismiss ("Watkins Decl.") ¶ 7 (Docket No. 13), Ex. 5). On December 1, 2016, the Reciprocal Administrator sent a letter to the parties, announcing an unresolved dispute under the Reciprocal Agreement and explaining that the dispute would be referred to arbitration. (Watkins Decl. ¶ 7, Ex. 6).

The Reciprocal Administrator attached a document titled "Guidelines for Procedures for Dispute Resolution" (the "Guidelines") to the letter. (Schmidt Decl. ¶ 5, Ex. 2). Counsel for the California Trustees averred that he had never seen any copy of the Guidelines before December 2016. (*Id.*). Defendants were served with the Complaint on December 12, 2016. (Docket No. 10).

The SoCal Fund refused to select an arbitrator or participate in the arbitration process, as set forth in the Guidelines. (Watkins Decl. ¶ 8). On December 21, 2016, the Detroit and Michigan Funds renewed their request to arbitrate, asking the Reciprocal Administrator to select an arbitrator for the parties. (*Id.*, Ex. 7).

Accordingly, on January 10, 2017, the Reciprocal Administrator reached out to D. Quinn Mills, a regular arbitrator for the Bricklayers and Allied Crafts reciprocal program, to ask him about his availability to arbitrate the dispute. (Joint Stip., Ex. 17). On January 18, 2017, the Reciprocal Administrator informed the parties that Mills would serve as arbitrator, and that the arbitration would be held at the IBEW International Office in Washington, DC. (*Id.*). The Reciprocal Administrator informed the parties of Mills' regular fee, and gave the parties a choice between February 23 or March 9, 2017 as the arbitration hearing date. (*Id.*).

On January 30, 2017, the California Trustees wrote to the Reciprocal Administrator and the selected arbitrator, requesting the suspension of "any and all attempts to proceed with the commencement of arbitration" until after the hearing on the Motion to Dismiss, which had been filed earlier that same day. (Schmidt Decl. ¶ 7, Ex. 4). On January 31, 2017, Defendants wrote a letter in response, opposing the California Trustees' request for the suspension of arbitration proceedings and requesting March 9, 2017, as the date for the arbitration hearing. (Schmidt Decl. ¶ 8, Ex. 5). On February 2, 2017, the Reciprocal Administrator sent a letter to the parties indicating that the arbitration hearing would be held on March 9, 2017, the later of the two proposed hearing dates. (Schmidt Decl. ¶ 9, Ex. 6).

B. Hearing on the Motion to Stay

On March 2, 2017, the Court held a hearing on the Michigan Trustees' Motion to Stay, and subsequently issued the Stay Order. The Court concluded that the arbitration provision of the Reciprocal Agreement was enforceable under California contract law. (Stay Order at 11). The Court rejected the California Trustees' argument that the arbitration provision of the Reciprocal Agreement could not be enforced because the rules concerning arbitration procedures were not attached to the Reciprocal Agreement at the time it was signed, and was not given to the parties until the current dispute arose. (*Id.* at 6–7). The Court determined that the arbitration rules were not material to the agreement because the parties expressly agreed to be bound by the procedures promulgated by the Reciprocal Administrator. (*Id.* at 6). The Court also

rejected the California Trustees' argument that the language governing arbitration procedures was permissive; rather the language was mandatory. (*Id.* at 7).

What the California Trustees emphasized most strongly at the hearing were their concerns that the contract was unconscionable and substantively unfair. (*See* Stay Order at 9–11). The Court took the California Trustees' concerns seriously, but ultimately found them unavailing in light of the strong presumption in favor of arbitration. Specifically, the Court rejected the California Trustees' challenges to the Reciprocal Administrator's power to choose the time and place of the arbitration, and the requirement that the parties split the costs of arbitration after the Reciprocal Administrator incurs them. (*Id.* at 11). As the Court explained,

> the Guidelines provide that "all parties shall attempt to agree upon the locale where the arbitration is to be held" before the Reciprocal Administrator is called upon to select one. (Watkins Decl., Ex. 2, at 27). Selection of the locale is hardly an arbitrary procedure, but one in which Plaintiffs have every opportunity to participate. Similarly, both parties to a dispute are given the opportunity to mutually select an arbitrator; it is only if the parties reach an impasse that the Reciprocal Administrator is empowered to select an arbitrator. (*Id*. at 26–27). Because Plaintiffs are given the opportunity, under the Guidelines, to participate in the very processes they challenge, those provisions cannot render the arbitration provision unconscionable.
>
> Similarly, Plaintiffs fail to explain how a provision requiring the parties to split the costs of arbitration unfairly favors one party over the other. Even if it is possible for the Reciprocal Administrator to "run up the costs" of the arbitration, doing so would not unfairly burden one party to the agreement more than the other. Moreover, the section to which Plaintiffs refer actually states that the costs "shall be borne equally by the parties, unless they agree otherwise." (Watkins Decl., Ex. 2, at 31). If the cost-sharing becomes burdensome, the parties have the ability to renegotiate.

> Finally, Plaintiffs challenge the lack of ordinary discovery procedures provided for in the Guidelines. But "[t]he California Supreme Court has made clear that 'limitation on discovery is one important component of the simplicity, informality, and expedition of arbitration.'" *Poublon v. C.H. Robinson Co.*, 846 F.3d 1251, 1270 (9th Cir. 2017) (quoting *Armendariz*, 24 Cal. 4th at 106 n.11). Without any other showing of unconscionability, either procedural or substantive, the Court does not see that a failure to delineate access to specific discovery procedures renders the entire arbitration provision unconscionable and invalid.

(*Id.*). In light if its conclusion that the arbitration agreement should be enforced, the Court stayed the action pending the arbitrator's final decision.

C. Arbitration and Subsequent Developments

On March 6, 2017, at the SoCal Fund's request, Mills held a pre-arbitration conference among the parties' counsel to discuss the arbitration procedure and other general questions. (Joint Stip., Exs. 14–15). Mills also provided the parties with his conflict disclosure form after the conference. (Joint Stip., Ex. 15).

The arbitration was held, as scheduled, on March 9, 2017. (Joint Stip., Exs. 3, 10). The California Trustees, Michigan Trustees, and Reciprocal Administrator (who appeared as an "interested party" under paragraph 4 of the Reciprocal Agreement) all introduced exhibits into the record. (Joint Stip., Exs. 11–13). The arbitrator took testimony at the hearing, and after the hearing the parties submitted post-arbitration briefs for the arbitrator's review. (Joint Stip., Exs. 5–7, 10).

On May 12, 2017, the arbitrator issued his Decision and Award. (Joint Stip., Ex. 3). As relevant to this proceeding, the arbitrator found in favor of the Michigan Trustees on the interpretation of Sections 1(g) and 11 of the Reciprocity Agreement, and determined that the SoCal Fund owed $25,442.99 in withheld contribution funds to the Michigan Fund and $30,528.38 to the Detroit Fund, for a period spanning 2012–17.

(Joint Stip., Ex. 3 at 54–58). That is, the arbitrator agreed with the Michigan Trustees and the Reciprocal Administrator that "off-benefit" contributions are "contributions" as defined in the Reciprocal Agreement, and must pass through to traveling employees' home pension funds. The arbitrator reasoned,

> [t]he argument made by the Southern California Fund that some money paid for an hour's work by a temporary employee from another IBEW jurisdiction is somehow not money paid [on] his/her behalf is a concept repugnant to American practice. The concept says in effect that a third party which is not government . . . operating through collective bargaining agreements can take part of what a worker earns to benefit other people. This seems particularly egregious when it applies to a pension fund. The off-benefit contribution which is paid to employees who are within the coverage of the pension plan operated by the Southern California Fund — that is, not travelers — ***does accrue in some form to their benefit or potential benefit even though it does not directly generate additional benefit accruals for those persons.*** When "off-benefit" contributions are not reciprocated for travelers, then there is no form in which travelers benefit from the contributions, and this is not permitted by the Reciprocal Agreement.

(Joint Stip., Ex. 3 at 54) (emphasis added).

The arbitrator goes on to explain why his analysis is consistent with federal law:

> Federal law does not require the Southern California Fund not to reciprocate the funds in dispute. I find no explicit reference in the federal statute to reciprocity and no explicit denial of reciprocity payments which mirror payments made under a PPA program. The Southern California Fund argues that there exists an implicit prohibition of reciprocity for what the Southern California Fund labels "off-benefit" contributions. . . . [T]he Southern California Fund argues that the apparent requirement of the Reciprocal Agreement for reciprocation of off-benefit contributions

> constitutes an amendment to [a Rehabilitation Plan/Funding Improvement Plan ("RP/FIP")] which is inconsistent with the Plan. No convincing evidence that reciprocity is inconsistent with an RP/FIP has been offered in this proceeding. Nor does the cited language of the law provide an explicit prohibition of reciprocation. Reciprocation is not mentioned. Lacking an explicit prohibition, it seems unwise to read into the federal statute a prohibition against the reciprocity process when that reciprocity process serves generally desirable private and public purposes as it does here.

(Joint Stip., Ex. 3 at 55).

After the arbitration concluded and the arbitrator issued his decision and award, counsel for the California Trustees inquired regarding the status of their portion of the fees for the arbitration. (Declaration of Joanne M. Keller ("Keller Decl.") ¶ 4 (Docket No. 38)) (The Michigan Trustees' objections to the filing of the Supplemental Opposition and supporting papers are **OVERRULED**. The Michigan Trustees seek to have the Supplemental Opposition stricken because a prior version was filed without proper redactions. This is too extreme of a sanction for what appears to have been an unintentional mistake on the part of the California Trustees.). The California Trustees never heard back from the arbitrator regarding his fees. (*Id.*). On July 31, 2017, following the filing of the parties' Oppositions to the pending Motions, the Reciprocal Administrator emailed the California Trustees and the Michigan Trustees requesting repayment for the arbitrator's fees. (*Id.* ¶¶ 5–6, Ex. A).

As the Reciprocal Administrator explained, the IBEW International Office wrote the arbitrator three checks for his services. (Keller Decl., Ex. A). The Reciprocal Administrator proposed to split the total amount three ways between the three parties involved in the arbitration. (*Id.*). The fees and expenses were as promised in the initial letter from the Reciprocal Administrator to the parties, regarding the selection of an arbitrator. (*Compare* Keller Decl., Ex. B *with* Joint Stip., Ex. 17).

II. DISCUSSION

Courts are expected to extend great deference to an arbitrator's award. Indeed, "[a]rbitration is a favored method for the resolution of disputes, particularly in the labor area." *Marino v. Writers Guild of Am., E., Inc.*, 992 F.2d 1480, 1483 (9th Cir. 1993). To this end, the Federal Arbitration Act was enacted by Congress to create "a 'national policy favoring arbitration and plac[ing] arbitration agreements on equal footing with all other contracts.'" *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 581 (2008) (quoting *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443 (2006). Therefore, "courts may vacate an arbitrator's decision 'only in very unusual circumstances.'" *Oxford Health Plans LLC v. Sutter*, 133 S. Ct. 2064, 2068 (2013) (quoting *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 942 (1995)).

The Federal Arbitration Act provides that "any time within one year after [an arbitrator's] award is made any party to the arbitration may apply to the court . . . for an order confirming the award, and thereupon the court ***must*** grant such an order unless the award is vacated, modified, or corrected . . . ." 9 U.S.C. § 9 (emphasis added). These are the "exclusive grounds" for setting aside an arbitrator's award. *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 584 (2008). While the Michigan Trustees have requested an order confirming the arbitrator's award, the California Trustees have requested that the award be vacated.

Section 10 of the Federal Arbitration Act provides the narrow circumstances under which an arbitrator's award may be vacated:

> (1) where the award was procured by corruption, fraud, or undue means;
>
> (2) where there was ***evident partiality*** or corruption in the arbitrators, or either of them;
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> (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence

> pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
>
> (4) where the arbitrators ***exceeded their powers***, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a) (emphasis added). The California Trustees contend that the award should be vacated (1) due to evident partiality on the part of the arbitrator, and (2) because the arbitrator exceeded his powers in issuing a decision "in manifest disregard of the law." (Mot. to Vacate at 13–14 (quoting *Comedy Club, Inc. v. Improv W. Assocs.*, 553 F.3d 1277, 1290 (9th Cir. 2009))).

A. The Arbitrator Did Not Exceed His Powers

"In most cases, courts must defer to an arbitrator's conclusions even where they are erroneous." *Am. Postal Workers Union AFL-CIO v. U.S. Postal Serv.*, 682 F.2d 1280, 1284–85 (9th Cir. 1982). Therefore, for an arbitrator's award to show manifest disregard for the law, "[i]t must be clear from the record that the arbitrators recognized the applicable law and then ignored it." *Collins v. D.R. Horton, Inc.*, 505 F.3d 874, 879 (9th Cir. 2007) (quoting *Carter v. Health Net of Cal., Inc.*, 374 F.3d 830, 838 (9th Cir. 2004)). "Moreover, to rise to the level of manifest disregard '[t]he governing law alleged to have been ignored by the arbitrators must be well defined, explicit, and clearly applicable.'" *Id.* at 879–80 (quoting *Carter*, 374 F.3d at 838).

The California Trustees contend that the arbitrator ignored dispositive, undisputed facts in concluding that "[n]o convincing evidence that reciprocity is inconsistent with an RP/FIP has been offered in this proceeding." (Mot. to Vacate at 15 (quoting Joint Stip., Ex. 3 at 55)). The California Trustees cite to *American Postal* in support. (Mot. to Vacate at 14–15). There, the Ninth Circuit explained that where the clear and undisputed evidence showed that an employee participated in a strike, the arbitrator's conclusion that the same employee did ***not*** strike would be in manifest disregard of the law, that is, a willful refusal to apply the law correctly to the facts.

682 F.2d at 1284–85; *see also Coutee v. Barington Capital Grp., L.P.*, 336 F.3d 1128, 1133 (9th Cir. 2003) ("In some circumstances, however, legally dispositive facts are so firmly established that an arbitrator cannot fail to recognize them without manifestly disregarding the law.").

Here, the California Trustees contend that the thrust of the governing federal law (*i.e.*, the Pension Protection Act and ERISA) is to repair endangered plans, and "any amendment to these repair plans that would be inconsistent with those plans" is precluded. (Mot. to Vacate at 17 (citing 29 U.S.C. §§ 1085(d)(2)(A))). The California Trustees characterize the arbitrator's award as an amendment to the SoCal Fund's repair plan that is precluded by federal law. (Mot. to Vacate at 17–18).

The problem with this argument is twofold. First, it is an argument, not a legally dispositive and undisputed fact, and thus *American Postal* does little to help Plaintiffs. More fundamentally, however, the Ninth Circuit recently issued a decision in a case arising out of the same Reciprocal Agreement at issue in this action, and touching on the same legal issue: Whether the Pension Protection Act and ERISA prohibit the transfer of off-benefit contributions to traveling employees' home pension funds. *Lehman v. Nelson*, 862 F.3d 1203, 1217 (9th Cir. 2017). There, the Ninth Circuit agreed with the position of the arbitrator and the Michigan Trustees as expressed in this action.

In *Lehman*, the Trustees of the IBEW Pacific Coast Pension Fund (the "Pacific Fund"), like the California Trustees, began to withhold certain portions of employer contributions to improve the Plan's funding status, pursuant to a rehabilitation plan, after learning that the Pacific Fund was projected to enter critical status. 862 F.3d at 1206. Like the California Trustees, the Pacific Fund enacted amendments that explicitly prohibited transferring the off-benefit contributions to traveling employees' home funds. *Id.* at 1208–09. And like the California Trustees, the Pacific Fund argued that the off-benefit contributions were not included under Section 1(g) of the Reciprocal Agreement, and thus not required to be transferred to travelers' home funds. *Id.* at 1217.

The Ninth Circuit rejected this argument, concluding that the Reciprocal Agreement's definition of contributions applies to pass through payments even of "off-benefit" contributions like those at issue in this action. *Id.* Specifically, the Ninth Circuit explained as follows:

> Section 1.04 of the Pension Plan defines "contribution" as "the payment made or to be made to the Fund by any individual employer under the provisions of a collective bargaining agreement." ***This definition does not limit "contributions" to mean only payments used by the [Pacific Fund] for a specific objective.*** . . .
>
> Further, ERISA's purpose is "to protect plan participants and beneficiaries." *Boggs v. Boggs*, 520 U.S. 833, 845, 117 S. Ct. 1754, 138 L.Ed.2d 45 (1997). To that end, ERISA mandates that the assets of a plan "shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan." 29 U.S.C. § 1103(c)(1). When read in the context of the Pension Plan and ERISA, the Reciprocal Agreement's definition of "contributions" does not support the Trustees' interpretation of Amendment 14.

Id. at 1217–18 (emphasis added).

Although the posture of *Lehman* and this action are not the same, the Ninth Circuit's reasoning is very similar to the reasoning of the arbitrator, as set forth above. The arbitrator concluded that nothing in federal law required the definition of "contributions" in the Reciprocal Agreement to exclude the off-benefit contributions negotiated under the SoCal Fund's rehabilitation plan. Citing directly to the relevant federal law, the Ninth Circuit in *Lehman* agreed. And, indeed, the Ninth Circuit has expressed similar sentiments in older, unpublished opinions as well. *See, e.g.*, *Trustees of the U.A. Local 38 Defined Benefit Pension Plan v. Trustees of the Plumbers & Pipe Fitters Nat'l Pension Fund*, 672 F. App'x 692, 692–93 (9th Cir. 2016) (stating explicitly that "[t]here is no 'well defined, explicit, and clearly applicable' law that

bars PPA contributions from being reciprocated"). Accordingly, the Court cannot conclude that the arbitrator manifestly disregarded either the undisputed facts in the record, or the law.

The California Trustees' attempts at the hearing to distinguish *Lehman* do not cut against the Court's conclusion. While the withholding in *Lehman* was structured differently than the withholding of the off-benefit contributions in this action, the decision cannot fairly be confined to its facts — especially on a motion to vacate an arbitration award. The question before this Court is not whether *Lehman* dictates the result reached by the arbitrator, but rather whether the result reached through arbitration is precluded by "well-defined, explicit, and clearly applicable law." In light of *Lehman*, the Court concludes that it was not.

B. The Arbitrator Was Not Evidently Partial

The California Trustees also vigorously contend that the Reciprocal Administrator exercised undue influence over the arbitrator, and in response the arbitrator unfairly favored the Reciprocal Administrator and Michigan Trustees.

A moving party may show evident partiality by establishing "specific facts indicating actual bias toward or against a party . . . ." *Lagstein v. Certain Underwriters at Lloyd's, London*, 607 F.3d 634, 645–46 (9th Cir. 2010). The California Trustees fail to present any clear evidence that the arbitrator exhibited bias towards the Michigan Trustees or the Reciprocal Administrator, apart from his award in their favor.

Most of the objections raised by the California Trustees are repeats of their arguments in opposition to the prior Motion to Stay, and the Court rejected their arguments in the Stay Order. In the California Trustees' view, they were not adequately included in the process of selecting an arbitrator, a date, or a location for arbitration. The California Trustees now renew these arguments in the guise of challenging the Reciprocal Administrator's "ex parte" communications with the arbitrator in setting up the details of the arbitration, when the Reciprocal Administrator

also intended to participate in the arbitration as an interested party. (Mot. to Vacate at 23–24).

The Court understands the California Trustees' concerns in this regard. But as the Court previously stated, these were the terms to which the California Trustees agreed when they signed the Reciprocal Agreement. (Stay Order at 11). It is the Reciprocal Agreement itself that provides that the Administrator shall select the arbitrator if the parties are unable to agree within a certain period of time. (Joint Stip., Ex. 1 at 26–27). The Reciprocal Agreement further states that "the expense of the arbitration shall be borne equally by the parties." (*Id.* at 27).

Here, it appears that the Reciprocal Administrator accomplished these directives in the most simple and straightforward manner, by contacting a potential arbitrator, ensuring his willingness to arbitrate this dispute, and once the arbitrator was secured, timely paying him while saving receipts for future allocation amongst the parties. (*See* Supp'l Opp. , Exs. A–C). Without something more, these simple actions do not appear to indicate that the arbitrator had any evident bias in favor of the Reciprocal Administrator over the other parties.

The California Trustees also renew their objections to the participation of the Reciprocal Administrator as a party in the action. But "because arbitration is contractual, rather than imposed by law, what we have come to see as the hallmarks of judicial justice are not necessarily required in arbitral justice." *Marino*, 992 F.2d at 1483. In *Marino*, the Ninth Circuit upheld an arbitration procedure that required the entire process to conclude within 21 days, and included the use of three anonymous arbitrators, who worked independently to consider an entirely written record. *Id.* at 1482. The Ninth Circuit explained that "[a]rbitration can supply high-powered expertise to a particular and narrow area[,]" and may employ "unique" means, unavailable in the judicial system, for doing so. *Id.* at 1483. The Ninth Circuit declined to find the arbitration procedures in *Marino* to be unfair (and thus evidence of bias) simply because they were different from those typically employed in the judicial system: "Although the three-phase arbitration procedure is not the same as the more

deliberate judicial procedures that we are accustomed to . . . other needs demand other procedures." *Id.* at 1488.

Here, there is an evident benefit to the various Trusts that are parties to the Reciprocal Agreement in involving the Reciprocal Administrator in intra-party disputes, as the voice of institutional memory. While the California and Michigan Trustees each represented their respective Trusts during the arbitration, the Reciprocal Administrator appeared on behalf of the hundreds of other parties who would also be affected by the arbitrator's interpretation of the contract. That the institution was also involved in selecting and compensating the arbitrator only reflects the terms of the Reciprocal Agreement itself. The procedure employed in this action was developed to serve the needs of ***all*** the parties to the Reciprocal Agreement, not just those three Trusts in active dispute. The adversary procedures employed in this Court and the judicial system are simply less able to accommodate those concerns. Here, as in *Marino*, "other needs demand other procedures."

The Court questions the appearance of having the Reciprocal Administrator both select and then pay the arbitrator. At the hearing, however, counsel for the California Trustees assured the Court that the arbitrator reviewed the Reciprocal Agreement carefully, and thus was aware that the parties would ultimately share the costs of arbitration equally. Even if that were not so, courts often expect only one party to pay for arbitration, in order to ease the burden on the party with fewer means. *E.g.*, *Mohamed v. Uber Techs., Inc.*, 848 F.3d 1201, 1212 (9th Cir. 2016) (affirming agreement to arbitrate statutory rights where Defendant employer "committed to paying the full costs of arbitration"); *cf. Green Tree Fin. Corp.-Alabama v. Randolph*, 531 U.S. 79, 92 (2000) (refusing to find that an "arbitration agreement's silence with respect to costs and fees rendered it unenforceable"). The fact that the Reciprocal Administrator fronted the costs of arbitration, by itself, is thus not indicative of bias.

III. CONCLUSION

The Court recognizes that this decision may place the California Trustees in a difficult position. But none of the concerns raised by the California Trustees at the

hearing — regarding fairness to the SoCal Plan's members, discontent on the part of the employers, the potential liability of the California Trustees, or the like — are squarely before this Court. Ultimately, this decision comes down to the fact that the parties agreed, in advance, to arbitrate exactly these sorts of disputes, and the arbitration itself followed the agreed-upon procedure. Without a stronger showing that the arbitrator exceeded his mandate or was actually biased in favor of the Reciprocal Administrator, the Court is unwilling, and indeed unable, to interfere with the negotiated conflict resolution processes of the Trusts.

The Motion to Confirm is **GRANTED** and the Motion to Vacate is **DENIED**.

This Order shall constitute notice of entry of judgment pursuant to Federal Rule of Civil Procedure 58. Pursuant to Local Rule 58-6, the Court **ORDERS** the Clerk to treat this Order, and its entry on the docket, as an entry of judgment.

IT IS SO ORDERED.