UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 17-5122 PSG (SKx)	Date	November 27, 2017
Title	Aerojet Rocketdyne, Inc. v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America et al.		

Present: The Honorable	Philip S. Gutierrez, United States District Judge	
Wendy Hernandez		Not Reported
Deputy Clerk		Court Reporter
Attorneys Present for Plaintiff(s):		Attorneys Present for Defendant(s):
Not Present		Not Present

Proceedings (In Chambers): Order DENYING Respondents' motion to dismiss

Before the Court is a motion to dismiss filed by Respondents International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and UAW Local 887 ("Respondents" or "UAW"). *See* Dkt. # 26 ("*Mot.*"). Petitioner Aerojet Rocketdyne, Inc. ("Petitioner" or "Aerojet") opposes the motion, *see* Dkt. # 27 ("*Opp.*"), and UAW timely replied, *see* Dkt. # 28 ("*Reply*"). The Court finds the matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; L.R. 7-15. Having considered the moving papers, the Court **DENIES** UAW's motion.

I. Background

Aerojet manufactures rockets, propulsion systems, and rocket propellant for customers in the aerospace and defense industries, including at a facility in Canoga Park, California. *See Petition to Vacate Arbitration Award*, Dkt. # 1 ("*Pet.*"), ¶ 1. Aerojet, then called Pratt & Whitney Rocketdyne, and UAW, which represents Aerojet's hourly workforce, negotiated a collective bargaining agreement that ran from 2011 to 2014. *See Arbitrator's Opinion and Award*, Dkt. # 1-7 ("*Award*"), at 3. The agreement included a retirement pension plan ("the Plan"), which was retained with only minor changes from previous agreements. *Id.* at 4. The Plan paid lifetime monthly benefits to worker participants once they reached a certain age and elected retirement, with the benefit amount determined by formula. *Id.* at 3–4. At that time, Aerojet was owned by conglomerate United Technologies Company ("UTC"), which was the sponsor and administrator of the Plan. *Id.* at 3.

In July 2012, another conglomerate, GenCorp, acquired Aerojet from UTC through a stock and asset purchase agreement. *Id.* As a result of this acquisition, the pension arrangement was altered so that both UTC *and* GenCorp would administer benefits, with UTC contributing an amount under the Plan and GenCorp providing future benefits under a new pension plan ("the

New Plan"). *Id.* at 4–5. In September 2014, Aerojet and UAW negotiated a new collective bargaining agreement ("the Aerojet CBA"). *Pet.* ¶ 14. Eventually, a dispute emerged between the parties as to the specifics of the New Plan. *See Mot.* 4:2–5:27; *Opp.* 5:24–6:22. Aerojet's workers ultimately filed a grievance that went to arbitration. *Award* at 18–19.

Following two days of hearing and briefing, Arbitrator Frederic Horowitz ("the Arbitrator") issued an award ("the Award") in April 2017, finding that Aerojet "violated the collective bargaining agreement with respect to retirement benefits for employees who commenced early retirement yet continued to work." *Award* at 28. The following remedy was adopted:

> [A]ll affected employees and [Aerojet] shall return to *status quo ante*. [Aerojet and UAW] are directed to incorporate into their pension plan a reasonable offset to the retirement benefit for those employees who commence receiving early retirement benefits and continue their employment with [Aerojet]. Each of the affected employees will then be afforded the option of continuing to receive early retirement or voiding their election *ab initio* with reasonable alternatives provided for crediting the plan with the payments they received.

Id. The Arbitrator "retain[ed] jurisdiction in the event of a dispute between [Aerojet and UAW] over the implementation of the remedy." *Id*.

On July 12, 2017, Aerojet filed a petition to vacate the arbitration award "on the grounds that the Award exceeded the Arbitrator's authority, imposes the Arbitrator's own brand of industrial justice, and does not draw its essence from the Aerojet CBA." *Opp.* 8:11–13. UAW filed this motion to dismiss on September 25, seeking dismissal under Federal Rule of Civil Procedure 12(b)(1) because "[t]he Court lacks jurisdiction to review the award until the Arbitrator has issued a final award." *Mot.* 1:2–23.

II. Legal Standard

Federal courts have limited jurisdiction and therefore only possess power authorized by Article III of the United States Constitution and statutes enacted by Congress pursuant thereto. *See Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986). Thus, federal courts cannot consider claims for which they lack subject matter jurisdiction. *See Wang ex rel. United States v. FMC Corp.*, 975 F.2d 1412, 1415 (9th Cir. 1992).

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Federal Rule of Civil Procedure 12(b)(1) provides for a party, by motion, to assert the defense of "lack of subject-matter jurisdiction." This defense may be raised at any time, and the Court is obligated to address the issue sua sponte. *See* Fed. R. Civ. P. 12(h)(1) (providing for waiver of certain defenses but excluding lack of subject matter jurisdiction); *Grupo Dataflux v. Atlas Global Grp., L.P.*, 541 U.S. 567, 571 (2004) ("Challenges to subject-matter jurisdiction can of course be raised at any time prior to final judgment."); *Moore v. Maricopa Cty. Sheriff's Office*, 657 F.3d 890, 894 (9th Cir. 2011) ("The Court is obligated to determine *sua sponte* whether it has subject matter jurisdiction."). The plaintiff bears the burden of establishing that subject matter jurisdiction exists. *See United States v. Orr Water Ditch Co.*, 600 F.3d 1152, 1157 (9th Cir. 2010). If the Court finds that it lacks subject matter jurisdiction at any time, it must dismiss the action. *See* Fed. R. Civ. P. 12(h)(3).

A Rule 12(b)(1) jurisdictional attack may be facial or factual. *See White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). In a facial attack, the challenging party asserts that the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction. *See Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). By contrast, in a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction. *See id*.

III. Discussion

A. Standard of Review

As a threshold matter, the parties dispute whether UAW's motion is properly brought under Rule 12(b)(1) or Rule 12(b)(6). UAW asserts that "[t]he finality of an arbitration award is a jurisdictional issue" and so is "properly raised on a motion to dismiss for lack of jurisdiction under Federal Rule 12(b)(1)." *Mot.* 7:17–27. Aerojet counters that the motion is not based on subject matter jurisdiction, but instead on prudential standing, and so should be evaluated under Rule 12(b)(6). *See Opp.* 8:18–9:20.

Unlike subject matter jurisdiction, "'[p]rudential' standing is 'not derived from Article III' but places judicially-created limitations on the exercise of federal court jurisdiction in certain categories of cases." *Tanner v. Hightower*, No. EDCV 15-183 JAK(JC), 2016 WL 7974658, at *5 (C.D. Cal. Dec. 13, 2016) (quoting *Lexmark Int'l, Inc. v. Static Control Components, Inc*, 134 S. Ct. 1377, 1386 (2014)). Prudential standing (or "statutory standing") differs from subject matter jurisdiction "since the absence of a valid (as opposed to arguable) cause of action does not implicate subject-matter jurisdiction, *i.e.*, the court's statutory or constitutional *power* to adjudicate the case." *Lexmark Int'l*, 134 S. Ct. at 1387 n.4 (emphasis in original and internal

quotation marks omitted). In general, while subject matter jurisdiction and issues of Article III standing are evaluated under Rule 12(b)(1), "prudential standing is evaluated under Rule 12(b)(6)." *Elizabeth Retail Props. LLC v. KeyBank Nat'l Ass'n*, 83 F. Supp. 3d 972, 985–86 (D. Or. 2015); *see also Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1175 (9th Cir. 2004) ("If a plaintiff has suffered sufficient injury to satisfy the jurisdictional requirement of Article III but Congress has not granted statutory standing, that plaintiff cannot state a claim upon which relief can be granted.").

However, the Court agrees with UAW that the issue before it is not one of *standing*, but one of *ripeness*, because UAW argues that Aerojet "filed the petition to vacate prematurely." *See Reply* 1:25–28. Ripeness, which includes both constitutional and prudential considerations, is addressed under Rule 12(b)(1). *See Colwell v. Department of Health & Human Servs.*, 558 F.3d 1112, 1123 (9th Cir. 2009) ("[R]ipeness doctrine reflects both constitutional and prudential considerations."); *St. Clair v. City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989) ("Like other challenges to a court's subject matter jurisdiction, motions raising the ripeness issue are treated as brought under Rule 12(b)(1) even if improperly identified by the moving party as brought under Rule 12(b)(6)."); *see also Underwood v. Mackay*, 614 F. App'x 871, 873 (9th Cir. 2015) (affirming Rule 12(b)(1) dismissal where "Plaintiffs' claims are unripe under the prudential standard").

Furthermore, several courts in this Circuit have treated the non-finality of an arbitration award as properly raised under Rule 12(b)(1). *See EHW Constructors, J.V. v. International Union of Operating Eng'rs Local 302*, No. C14-5270JLR, 2014 WL 4269511, at *1 (W.D. Wash. Aug. 29, 2014); *Southwest Reg'l Council of Carpenters v. Drywall Dynamics, Inc.*, No. CV-13-272-MWF (MANx), 2013 WL 12143955, at *1–2 (C.D. Cal. June 17, 2013); *Hyatt Corp. v. Unite Here Local 5*, No. 11-00645 JMS/KSC, 2012 WL 652098, at *5 (D. Haw. Feb. 29, 2012). The Court joins them and will consider UAW's motion under Rule 12(b)(1). The principal effect of this decision is that, while under 12(b)(6) "the scope of review . . . is limited to the contents of the complaint," *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006), a factual attack brought under 12(b)(1) allows the Court to consider extrinsic evidence. *See White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000).[1]

[1] Ultimately, the effect of applying Rule 12(b)(1) is minimal, since the Court denies UAW's motion based on Aerojet's petition and the Award, which, since it was attached to the petition, is incorporated therein and properly subject to judicial notice even under Rule 12(b)(6). *See In re NVIDIA Corp. Sec. Litig.*, 768 F.3d 1046, 1051 (9th Cir. 2014) ("In reviewing the sufficiency of a complaint, we limit ourselves to the complaint itself and its attached exhibits, documents incorporated by reference, and matters properly subject to judicial notice.").

B. Finality of the Award

UAW argues that the Court lacks jurisdiction "because the Arbitration Award is not yet final." *Mot.* 8:16. The basis for this assertion is the Award's provision that "[t]he Arbitrator shall retain jurisdiction in the event of a dispute between [Aerojet] and [UAW] over the implementation of the remedy awarded herein." *Award* at 28. Because a dispute currently exists with regards to the implementation of the Arbitrator's remedy, UAW concludes that the Award is not final and that "[i]t is for the Arbitrator, not the Court, to decide how to deal with the unforeseen remedial obstacle." *Mot.* 8:27–9:1.

The Court disagrees. In *Millmen Local 550, United Bhd. of Carpenters & Joiners of Am., AFL-CIO v. Wells Exterior Trim*, 828 F.2d 1373 (9th Cir. 1987), the Ninth Circuit explored the standards other courts of appeals apply to determine the finality of an arbitration award. *See id.* at 1376; *Public Serv. Elec. & Gas Co. v. System Council U-2, Int'l Bhd. of Elec. Workers, AFL-CIO*, 703 F.2d 68, 69–70 (3d Cir. 1983) (finding that a determination of liability without a determination of remedy does not constitute a final and binding award); *Michaels v. Mariforum Shipping, S.A.*, 624 F.2d 411, 413–14 (2d Cir. 1980) (holding that an arbitration award is final when it was intended by the arbitrator to be a complete determination of claims, including damages); *Anderson v. Norfolk & W. Ry. Co.*, 773 F.2d 880, 883 (7th Cir. 1985) ("To be considered 'final,' an arbitration award must be intended by the arbitrator to be his complete determination of every issue submitted to him."). The Ninth Circuit therefore adopted a rule that "requires the issue of damages be resolved in order for an award to be considered final." *Millmen Local 550*, 828 F.2d at 1376. Although the Ninth Circuit did not clearly articulate in this decision that an award is necessarily final when all issues of liability and remedy have been resolved, this result reasonably follows from the opinion and is consistent with the approaches of other federal courts. *See, e.g.*, *International Union v. Martinrea Heavy Stampings, Inc.*, No. 3:11-22-DCR, 2011 WL 3475301, at *3 (E.D. Ky. Aug. 9, 2011) (finding an award final where the arbitrator "unequivocally resolved both substantive issues submitted to him, and [] retained jurisdiction only for the purpose of resolv[ing] any issues associated with the implementation of th[e] Award") (internal quotation marks omitted); *International Bhd. of Elec. Workers, Local Union No. 124 v. Alpha Elec. Co., Inc.*, 759 F. Supp. 1416, 1421 (W.D. Mo. 1991) (concluding that "[b]ecause the [arbitrator] decided both the liability and remedy issues, the award is final and binding" and that "[a]ll details of the make-whole remedy do not need to be provided in order for an arbitration award to be final").[2]

[2] The Court notes with approval Aerojet's practical explanation for this rule: "If a limited reservation of authority regarding the implementation of a remedy (which reservations are typical in labor arbitration awards) prevented judicial review, parties to labor arbitrations would rarely be able to have awards confirmed or vacated." *Opp.* 12:17–20.

Here, UAW acknowledges that "[t]he Arbitrator determined that [Aerojet] breached the CBA and described a remedy." *Mot.* 8:17–18. He retained jurisdiction for the purpose of implementation, *not* to readdress liability, amend the remedy, or propose a new remedy. Although the Ninth Circuit has held that "[w]here an arbitrator retains jurisdiction in order to decide a substantive issue the parties have not yet resolved, this retention of jurisdiction indicates that the arbitrator did not intend the award to be final," *Orion Pictures Corp. v. Writers Guild of Am., W., Inc.*, 946 F.2d 722, 724 (9th Cir. 1991) (internal quotation marks omitted),[3] that is not the case here because the Arbitrator retained jurisdiction for *implementation*, not for any substantive purpose. Accordingly, the Court agrees with Aerojet that the Award here "is final because it fully addresses all issues presented." *Opp.* 13:17.

C. Functus Officio

Furthermore, the Court agrees with Aerojet that the arbitrator is functus officio and may not issue a new remedy that defeats the Award's finality. *See Opp.* 15:18–19:22.

It is a "fundamental common law principle that once an arbitrator has made and published a final award his authority is exhausted and he is functus officio and can do nothing more in regard to the subject matter of the arbitration." *McClatchy Newspapers v. Central Valley Typographical Union No. 46, Int'l Typographical Union*, 686 F.2d 731, 734 (9th Cir. 1982) (quoting *La Vale Plaza, Inc. v. R.S. Noonan, Inc.*, 378 F.2d 569, 572 (3d Cir. 1967)); *see also Legion Ins. Co. v. VCW, Inc.*, 198 F.3d 718, 720 (8th Cir. 1999) ("[A]n order does not have to be final in all aspects for the *functus officio* doctrine to apply."). Because, as discussed above, the Court concludes that the Award is final, it agrees with Aerojet that the Arbitrator is functus officio and that "his authority is exhausted and he legally cannot issue the new remedy [UAW] demands." *Opp.* 16:5–6.

UAW argues that "[w]hen an arbitrator reserves jurisdiction over remedy disputes, the arbitrator is not barred by [the] functus officio doctrine from amending the remedy." *Mot.* 10:20–21. The Court disagrees. Although the Arbitrator carved our jurisdiction to address *implementation*, this does not include the fashioning of a new remedy. *See Chicago Reg'l Council of Carpenters, United Bhd. of Carpenters & Joiners of Am. v. Unique Casework Installations, Inc.*, No. 14 C 2911, 2015 WL 5873380, at *2 (N.D. Ill. Oct. 5, 2015) ("[T]he

[3] Notably, in *Orion Pictures*, the Ninth Circuit adopted the characterization of *Millmen Local 550* advanced by Aerojet. *See Orion Pictures*, 946 F.2d at 724 (quoting *Millmen Local 550*, 828 F.2d at 1376) ("'To be considered "final," an arbitration award must be intended by the arbitrator to be [a] complete determination of every issue submitted . . .'") (alterations in original).

arbitrator indicated that he was retaining jurisdiction 'to resolve any disputes over amounts owed by [defendant] under this award.' . . . The arbitrator did not retain the authority to modify or vacate the awards on any other basis.").

The Court also disagrees that an exception to the functus officio doctrine applies here. The Ninth Circuit has recognized three such exceptions, grounded in the common law: "an arbitrator can correct a mistake which is apparent on the face of his award, complete an arbitration if the award is not complete, and clarify an ambiguity in the award." *McClatchy Newspapers*, 686 F.2d at 734 n.1. "The mistake-on-the-face-of-the-award exception 'is designed for cases of clerical mistakes or obvious errors of arithmetic computation.'" *Portland Gen. Elec. Co. v. U.S. Bank Tr. Nat'l Ass'n*, 38 F. Supp. 2d 1195, 1198 n.3 (D. Or. 1999) (quoting *Teamsters Local 312 v. Matlack, Inc.*, 118 F.3d 985, 992 (3d Cir. 1997)). That exception is inapplicable here because there is no indication that the Award contains a clerical mistake. "The completion exception to the doctrine of *functus officio* applies when an arbitration award fails to resolve an issue or specify the remedy in definite terms." *International Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am., AFL-CIO, Local 631 v. Silver State Disposal Serv., Inc.*, 109 F.3d 1409, 1411 (9th Cir. 1997) (internal quotation marks omitted). That exception is also inapplicable because, as discussed, the Court concludes that the Award addressed all issues that were raised. Finally, "[t]he ambiguity exception . . . applies when the award, although seemingly complete, leaves doubt whether the submission has been fully executed." *Silver State Disposal*, 109 F.3d at 1411 (internal quotation marks omitted). No such ambiguity exists here, and so this exception is similarly inapposite.

Ultimately, UAW proposes an additional exception: "When an unforeseen contingency frustrates the remedy . . . the Arbitrator has ongoing jurisdiction to amend the remedy to make it complete." *Mot.* 10:12–14. UAW bases this novel exception on the Ninth Circuit's decision in *Silver State Disposal*; specifically, its quotation of a Seventh Circuit opinion authored by Judge Richard Posner. *See Silver State Disposal*, 109 F.3d at 1411 (quoting *Glass, Molders, Pottery, Plastics & Allied Workers Int'l Union, AFL-CIO, CLC, Local 182B v. Excelsior Foundry Co.*, 56 F.3d 844, 847 (7th Cir. 1995)) ("'An award that fails to address a contingency that has arisen after the award was made is incomplete; alternatively, it is unclear; either way, it is within an exception to the doctrine.'"). The parties dispute whether this quotation constitutes an endorsement of or merely a reference to Judge Posner's opinion. *Compare Opp.* 18:13–14 ("*Silver State* did not adopt *Excelsior Foundry*'s approach. Nor has any other Ninth Circuit case.") *with Reply* 6:20–24 ("The Ninth Circuit quoted *Excelsior Foundry* to illustrate the 'completeness' and 'ambiguity' exceptions to the doctrine of *functus officio*. While it noted that *Excelsior Foundry* commingled the two, the Ninth Circuit was clear that it adopts *both* exceptions.") (citation omitted and emphasis in original). Although UAW's approach has merit,

and the Court can see the appeal of an exception that would permit an arbitrator to address unexpected circumstances in this manner, at least one court has determined that the *Excelsior Foundry* exception has *not* been adopted by the Ninth Circuit because it does not share the Seventh Circuit's hostility towards the functus officio doctrine. *See Thomas Kinkade Co. v. Hazlewood*, No. C 06 7034 MHP, 2007 WL 2462149, at *3 (N.D. Cal. Aug. 29, 2007) ("Turning to Ninth Circuit authority, it is clear that this Circuit does not share Judge Posner's hostility toward the finality of arbitrator jurisdiction, and allows for remand only in cases where some discrete error or ambiguity remains to be resolved."). Absent any clearer guidance from the Ninth Circuit, the Court is unwilling to adopt a fourth exception when the Circuit has expressly enumerated only three. *See McClatchy Newspapers*, 686 F.2d at 734 n.1. Accordingly, the Court concludes that no exception to the functus officio doctrine applies. Therefore, the Arbitrator has no authority to issue a new remedy, and the Award is final.[4]

IV. Conclusion

For the foregoing reasons, the Court **DENIES** UAW's motion to dismiss.

IT IS SO ORDERED.

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[4] UAW also implies that a fifth exception to the doctrine exists based on impossibility—"courts have long recognized that considerations of impossibility of performance are manifestly appropriate for arbitral resolution," *Mot.* 11:3–4—but as Aerojet notes, the cases cited for this proposition by UAW "do not address continuing arbitral authority and have no bearing on the instant dispute. Rather, they concern whether an employer may raise the contractual defense of impossibility against a claimed breach of a collective bargaining agreement." *Opp.* 20:4–7.