United States Court of Appeals
For the First Circuit

No. 20-1690

JON L. BRYAN,

Plaintiff, Appellant,

v.

AMERICAN AIRLINES, INC.; ALLIED PILOTS ASSOCIATION,

Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Denise J. Casper, U.S. District Judge]

Before

Lynch, Kayatta, and Barron,
Circuit Judges.

Stephen Schultz, with whom Schultz Law LLP was on brief, for appellant.

Mark W. Robertson, with whom Sloane Ackerman and O'Melveny & Myers LLP were on brief, for appellee American Airlines, Inc.

James P. Clark, with whom Law Offices of James P. Clark, P.C. was on brief, for appellee Allied Pilots Association.

February 16, 2021

LYNCH, Circuit Judge. In December 2017, Jon L. Bryan, a former pilot for US Airways who retired in January 1999, brought suit against the Allied Pilots Association ("APA") and American Airlines, Inc. ("American Airlines") under the Railway Labor Act ("RLA"), 45 U.S.C. §§ 151 et seq.

In 1999, at Bryan's request, his union at the time submitted a grievance on his behalf against his then-employer US Airways, which US Airways denied. That grievance alleged that US Airways violated the terms of the applicable collective bargaining agreement by cancelling Bryan's scheduled flight retraining which allegedly led to his premature retirement. Bryan's suit alleges that APA, the successor to the union which first submitted his grievance, breached its statutory duty of fair representation by withdrawing from pursuing his nearly nineteen-year-old grievance to arbitration based on what he alleges was an inadequate investigation into his grievance's merits. He also brings an alleged "hybrid" suit against American Airlines, as the successor to US Airways, for US Airways's alleged breach of the collective bargaining agreement that purportedly led to his premature retirement.

The district court dismissed the claim against American Airlines and later granted APA's motion for summary judgment. Concluding that APA did not breach its duty of fair representation, we affirm.

I.

A. Facts

We refer to the district court's motion to dismiss and summary judgment opinions, which fully set forth the facts and issues in this case. See generally Bryan v. Allied Pilots Ass'n, No. 17-cv-12460-DJC, 2020 WL 3182881 (D. Mass. June 15, 2020); Bryan v. Allied Pilots Ass'n, No. 17-cv-12460-DJC, 2018 WL 6697681 (D. Mass. Dec. 19, 2018). We summarize only those facts pertinent to the duty of fair representation claim because we conclude that that claim against APA fails, and Bryan's counsel conceded at oral argument that if the claim against APA fails, then so does the "hybrid" claim against American Airlines. See Miller v. U.S. Postal Serv., 985 F.2d 9, 10-11 (1st Cir. 1993) (describing a "joint cause" of action against a union for breach of the duty of fair representation and an employer for breach of contract as a "hybrid" suit and explaining that the failure to prove either "results in failure of the entire hybrid action"); Stanton v. Delta Air Lines, Inc., 669 F.2d 833, 836 (1st Cir. 1982) (explaining that courts generally do not have jurisdiction over the merits of any employment dispute under the RLA, except to determine whether a union has breached its duty of fair representation).

In the summer of 1998, US Airways scheduled Bryan for flight retraining but later cancelled his training date and did not reschedule it. In January 1999, Bryan retired as a pilot from

US Airways under the second phase of an Early Retirement Incentive Program into which he had opted. The program allowed up to 325 pilots to retire no later than May 2000 with certain benefits. He received all benefits called for under the program. In February 1999, Bryan filed a grievance with the Air Line Pilots Association ("ALPA"), the then-certified collective bargaining representative for US Airways pilots, relating to the cancellation of his flight retraining and its consequences.

ALPA initially pursued the grievance at his request. US Airways denied Bryan's grievance in October 1999, and it affirmed that denial in August 2000. On August 29, 2000, ALPA submitted Bryan's dispute to the US Airways Pilots System Board of Adjustment for arbitration pursuant to ALPA's standard practices.

Between August 2000 and September 2014, Bryan's grievance was not scheduled for arbitration. There was a considerable backlog of more than 400 grievances at US Airways during that time, including grievances which were given priority over Bryan's grievance. That backlog was exacerbated by bankruptcies filed by US Airways in 2002 and 2004. During that period, Bryan contacted union representatives several times regarding his grievance.

In January 2004, Bryan sent a letter to the National President of ALPA inquiring as to the status of his grievance and requesting that it be scheduled for arbitration. There is no

evidence that he received a response from the National President, and his grievance was not scheduled for arbitration after that inquiry. In June 2004, he emailed Captain Tracy Parrella, the Grievance Committee chair for ALPA, requesting that she schedule his grievance for arbitration because he believed the delay in processing his grievance was excessive. In or around August 2004, Parrella responded to Bryan and advised him that his "grandchildren would be dead before the arbitration [of his grievance] was scheduled," and Bryan interpreted this statement as hyperbole referring to the union's lack of resources to process the backlog of grievances. In December 2005, Bryan emailed Parrella with a settlement proposal and threatened to initiate litigation if no settlement was reached with US Airways regarding advancing his grievance to arbitration. ALPA did not conduct settlement negotiations with US Airways and Bryan did not initiate litigation. In January 2006, Parrella notified Bryan that his grievance would not be scheduled for arbitration in the "foreseeable future." In October 2007, Bryan sent a letter to the National President of ALPA stating that ALPA had failed to schedule his grievance for arbitration, referencing a duty of fair representation on the part of ALPA, and indicating that if no settlement could be reached with US Airways, he would pursue legal action. ALPA did not schedule Bryan's grievance for arbitration following that letter nor did Bryan commence litigation against ALPA or US Airways.

In or around May 2008, the US Airways Pilots Association ("USAPA") replaced ALPA as the certified collective bargaining representative for US Airways pilots. Parrella remained the Grievance Committee chair for USAPA from 2008 through 2012. At some point during her tenure as Grievance Committee chair, Parrella placed Bryan's grievance on a list of grievances that the union would not pursue because the union had determined it had no merit. In December 2011, Bryan contacted Parrella again to ask about the status of his grievance and again threatened litigation for the union's failure to take his grievance to arbitration. Following this communication with Parrella, his grievance was still not scheduled for arbitration and he did not pursue legal action. Bryan had no further communication with USAPA regarding his grievance between December 2011 and October 2014.

In or around 2013, Captain David Ciabattoni, who had replaced Parrella as USAPA's Grievance Committee chair, reviewed Bryan's grievance. He discussed that grievance with Captain Doug Mowery, the former ALPA Grievance Committee chair at the time Bryan's grievance was filed, who Ciabattoni considered a subject-matter expert regarding that grievance. Based in part on that discussion with Mowery, Ciabattoni concluded that Bryan's grievance lacked merit and he placed Bryan's grievance on an internal list of grievances that were candidates for withdrawal by the union.

In or around December 2013, US Airways completed a merger into American Airlines. At the time of the merger, USAPA was still the certified collective bargaining representative for the US Airways pilots and APA was the representative for the American Airlines pilots. In or around September 2014, APA became the certified collective bargaining representative for the pilots of the merged American Airlines. In October 2014, Ciabattoni notified Bryan by email of this change in representation and the grievance processing going forward.

In 2015, APA set up a process for reviewing the hundreds of outstanding USAPA grievances by having former USAPA representatives review grievance files and recommend which grievances APA should pursue either through arbitration or settlement. APA relied on the USAPA representatives as subject-matter experts because they had more knowledge and information as to the USAPA grievances. Tricia Kennedy, Esq., APA's Director of Grievance and Dispute Resolution, asked Ciabattoni and several other former USAPA representatives to travel to APA and review the grievance files over several days. In November 2015, Ciabattoni sent Kennedy an email containing a table titled "OLD USAPA WITHDRAWN GRIEVANCES" which included Bryan's grievance. After reviewing Bryan's grievance file for APA, Ciabattoni and other former USAPA representatives agreed that Bryan's grievance lacked merit and recommended to Kennedy that APA withdraw the grievance.

Kennedy did not make any independent decisions as to which grievances were withdrawn and only passed the recommendations on to the APA President.

Bryan contacted APA for the first time regarding the status of his grievance when he called Kennedy in February 2017. Kennedy did not follow up on his inquiry and so he called her again in April 2017. She again did not follow up with him and Bryan contacted her again in May 2017, at which time she told him that a meeting was scheduled with American Airlines to discuss the grievances, including his. There is no evidence that Kennedy or anyone else from APA told Bryan that his grievance had merit or that APA would pursue his grievance through arbitration.

In August 2017, APA and American Airlines reached a tentative settlement agreement in which American Airlines agreed to pay a sum in settlement of those grievances that the USAPA subject-matter experts had found to have merit, while APA agreed to withdraw all the grievances that the USAPA subject-matter experts had determined did not have merit. On October 5, 2017, Kennedy notified Bryan of the tentative settlement agreement and that his grievance had been withdrawn. Kennedy told him that he could contact Paul DiOrio, the Chairman of the Philadelphia domicile, if he had any questions about his grievance. Bryan never contacted DiOrio or anyone else at APA to discuss his grievance or to object to its withdrawal, though he did request his grievance

file from Kennedy which was not provided to him until after he filed this action. The Global Settlement Agreement, which included the withdrawal of Bryan's grievance, was finalized and executed on October 16, 2017.

B. Procedural History

On December 14, 2017, Bryan filed this action in the district court, alleging a breach of APA's statutory duty of fair representation and a breach of the collective bargaining agreement which he asserted resulted in his allegedly premature retirement. On March 27, 2018, APA and American Airlines each filed a motion to dismiss for failure to state a claim. The court held a hearing on those motions on June 26, 2018. On December 19, 2018, the district court allowed American Airlines's motion to dismiss, but denied APA's motion to dismiss. Bryan, 2018 WL 6697681, at *8. In dismissing the claim against American Airlines, the court held that Bryan had failed to state a claim to relief because he failed to allege any facts plausibly suggesting collusion between APA and American Airlines in denying his rights under the RLA or the collective bargaining agreement or bad faith on American Airlines's part in entering the Global Settlement Agreement. Id. at *6-8.

On January 31, 2020, APA filed a motion for summary judgment. The district court held a hearing on the motion on April 2, 2020. On June 15, 2020, the court allowed APA's motion for

summary judgment. Bryan, 2020 WL 3182881, at *8. It first assumed that APA owed a statutory duty of fair representation to Bryan even though his grievance had been filed with ALPA. Id. at *4-5. It next held that the RLA's six-month statute of limitations barred Bryan's claim against APA because he "knew or reasonably should have known of the unions' alleged wrongdoing long before filing suit." Id. at *5-6. Finally, the court held that, even if his claim against APA was not time-barred, the claim failed on the merits because APA did not breach its duty of fair representation. Id. at *7. The court concluded that APA instituted an adequate review process in which it relied on the recommendations of former USAPA representatives and that the review process was neither arbitrary nor conducted in bad faith with respect to Bryan's grievance. Id.

Bryan timely appealed both district court decisions.

II.

Because we agree with the district court that the evidence Bryan put forward on summary judgment does not permit a finding of any breach of a duty of fair representation by APA, we need not reach the statute of limitations issue. And because we hold that Bryan's duty of fair representation claim against APA lacks merit, we need not reach the claim against American Airlines

which must also fail, as Bryan's counsel properly conceded.[1] See Miller, 985 F.2d at 11; Stanton, 669 F.2d at 836; see also Martin v. Am. Airlines, Inc., 390 F.3d 601, 608 (8th Cir. 2004) (holding that, because the court concluded the union did not breach its statutory duty of fair representation, the court lacked jurisdiction over the minor dispute asserted against the employer under the "hybrid" theory).

We review de novo a district court's decision to grant a motion to dismiss for failure to state a claim. Harry v. Countrywide Home Loans, Inc., 902 F.3d 16, 18 (1st Cir. 2018). We also review de novo a district court's grant of summary judgment. Lawless v. Steward Health Care Sys., LLC, 894 F.3d 9, 21 (1st Cir. 2018). "Summary judgment is warranted if the record, construed in the light most flattering to the nonmovant, 'presents no genuine issue as to any material fact and reflects the movant's entitlement to judgment as a matter of law.'" Id. at 20-21 (quoting McKenney v. Mangino, 873 F.3d 75, 80 (1st Cir. 2017)); see also Fed. R. Civ. P. 56(a).

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[1] Bryan and American Airlines also dispute whether case law regarding the Labor Management Relations Act ("LMRA"), 29 U.S.C. §§ 141 et seq., is applicable to claims brought under the RLA. Because we affirm the dismissal of the claim against American Airlines without reaching the merits, we need not resolve this dispute. This dispute over the LMRA case law does not relate to the rules set forth in Miller, 985 F.2d at 10-12, a case which APA asserts applies in the RLA context and which Bryan does not contest applies here.

Under the RLA, which governs labor relations in the airline industry, see 45 U.S.C. § 181, a certified union has a statutory duty of fair representation that requires it "to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." Air Line Pilots Ass'n, Int'l v. O'Neill, 499 U.S. 65, 76 (1991) (quoting Vaca v. Sipes, 386 U.S. 171, 177 (1967)); see also Emmanuel v. Int'l Brotherhood of Teamsters, Loc. Union No. 25, 426 F.3d 416, 420 (1st Cir. 2005) ("A union breaches this duty by acting discriminatorily, in bad faith, or arbitrarily toward a union member.").[2] "[A] union's actions are arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a 'wide range of reasonableness' as to be irrational." O'Neill, 499 U.S. at 67 (citation omitted) (quoting Ford Motor Co. v. Huffman, 345 U.S. 330, 338 (1953)); see also id. at 78; Miller, 985 F.2d at 12. "[A] union's mere negligence or erroneous judgment will not constitute a breach of the duty of fair representation." Miller, 985 F.2d at 12. "A union acts in bad faith when it acts with an improper

[2] Bryan has waived any argument that there was "discrimination" against him by not arguing it in his initial brief, see Kelly v. Riverside Partners, LLC, 964 F.3d 107, 116 & n.13 (1st Cir. 2020), so we focus on the law about what constitutes arbitrariness and bad faith.

intent, purpose, or motive, and [b]ad faith encompasses fraud, dishonesty, and other intentionally misleading conduct." Good Samaritan Med. Ctr. v. NLRB, 858 F.3d 617, 630 (1st Cir. 2017) (alteration in original) (internal quotation marks omitted) (quoting Spellacy v. Airline Pilots Ass'n-Int'l, 156 F.3d 120, 126 (2d Cir. 1998)).

"Any substantive examination of a union's performance . . . must be highly deferential, recognizing the wide latitude that negotiators need for the effective performance of their bargaining responsibilities." O'Neill, 499 U.S. at 78; see also Emmanuel, 426 F.3d at 420 ("[T]he reviewing court must accord the union's conduct substantial deference[,] . . . [and t]his standard of review recognizes that unions must have ample latitude to perform their representative functions."); Miller, 985 F.2d at 12 ("We also allow the union great latitude in determining the merits of an employee's grievance and the level of effort it will expend to pursue it.").

Bryan has not presented evidence of either arbitrariness or bad faith, and the summary judgment record makes it quite clear that he has not made out a case for breach of the duty of fair representation.[3] Bryan mischaracterizes clear law on what

[3] At oral argument for this appeal, Bryan's counsel made clear that he is not bringing a duty of fair representation claim based on the various unions' failure to pursue Bryan's grievance to arbitration. Rather, the duty of fair representation claim is

constitutes both arbitrariness and bad faith. "The duty of fair representation mandates that a union conduct at least a 'minimal investigation' into an employee's grievance," but "only an 'egregious disregard for union members' rights constitutes a breach of the union's duty' to investigate." Emmanuel, 426 F.3d at 420 (first quoting Garcia v. Zenith Elecs. Corp., 58 F.3d 1171, 1176 (7th Cir. 1995); and then quoting Castelli v. Douglas Aircraft Co., 752 F.2d 1480, 1483 (9th Cir. 1985)); see also Vaca, 386 U.S. at 191 ("[W]e accept the proposition that a union may not arbitrarily ignore a meritorious grievance or process it in perfunctory fashion . . . .").

APA more than satisfied its duty to conduct at least a "minimal investigation" into Bryan's grievance. It is undisputed that APA brought in former USAPA representatives to review the grievances APA had inherited from USAPA, and APA relied on these former USAPA representatives to provide recommendations as to the merits of those grievances. At least one of these former USAPA representatives had previously reviewed Bryan's grievance and determined that it lacked merit, including it on a table of old USAPA grievances that had been designated as candidates for withdrawal which was provided to APA. These representatives also

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based only on APA's purportedly inadequate investigation as to the merits of Bryan's grievance and decision to withdraw the grievance without Bryan's participation. We analyze only that claim.

unanimously recommended that Bryan's grievance be withdrawn by APA. APA's reliance on the expertise of these former USAPA representatives in choosing to withdraw Bryan's grievance did not reflect an "egregious disregard" for Bryan's rights, Emmanuel, 426 F.3d at 420 (quoting Castelli, 752 F.2d at 1483), and Bryan cites no controlling case law which suggests that APA's review process here was not at least a minimally adequate investigation.

Bryan posits that the experts on which APA relied were required by the duty of fair representation to truly be experts, including being familiar with the particular collective bargaining provision at issue in Bryan's grievance and understanding the nature of the grievance. Without accepting this contention, even so, mere negligence or erroneous judgment does not constitute a breach of the duty of fair representation. Miller, 985 F.2d at 12. The USAPA representatives were at least more familiar with the former USAPA grievances and applicable collective bargaining agreement than was APA. We must afford substantial deference to the decision not to pursue the grievance further to arbitration. See O'Neill, 499 U.S. at 78; Emmanuel, 426 F.3d at 420; Miller, 985 F.2d at 12. Two bankruptcies, a change in unions, a 400-case backlog, and the passage of almost two decades reasonably explain why APA did not need to do more to investigate a claim that the predecessor union had several times marked for dropping after the airline had rejected it.

In addition, Bryan presents no evidence that APA, or the former USAPA representatives on which it relied, acted in bad faith in reviewing Bryan's grievance or that APA acted in bad faith in withdrawing it. Bryan has presented no evidence that anyone from APA ever told him that his grievance had merit or that the union would pursue it through arbitration. Bryan was told the name of the APA agent to contact if he had any questions regarding the withdrawal of his grievance. It was his choice not to contact that agent.

Nor was APA under an obligation to give him even more notice than he was given of its decision not to pursue his grievance to arbitration. Bryan argues that he had a right to pursue his grievance individually "at his own expense," and that the failure of APA to notify him sooner deprived him of that opportunity. Bryan has cited no controlling authority for the proposition that an employee has an individual right under the RLA to pursue a grievance against his employer where the employee's certified representative has declined to pursue that grievance, nor has he explained why such a right exists under the statute. Cf. Vaca, 386 U.S. at 191 (holding that, under the LMRA, an "individual employee has [no] absolute right to have his grievance taken to arbitration regardless of the provisions of the applicable collective bargaining agreement"); id. at 194-95; Plumley v. S. Container, Inc., 303 F.3d 364, 374-75 (1st Cir. 2002) (applying

LMRA); Miller, 985 F.2d at 12 (citing Vaca, 386 U.S. at 191). To the extent that such a right exists under the RLA, we reject that it was violated on these facts because Bryan was notified of the withdrawal of his grievance and given an opportunity to contact an APA agent about his grievance more than a week before the Global Settlement Agreement became final. That he chose not to contact that agent about his grievance despite having more than a week to do so defeats his claim that he was entitled to more notice.

III.

We hold that APA did not breach its duty of fair representation under the RLA. Based on Bryan's concession at oral argument, we also hold that Bryan cannot maintain a claim against American Airlines. The judgment of the district court is affirmed.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JON L. BRYAN, **Plaintiff,** **v.** **ALLIED PILOTS ASSOCIATION and AMERICAN AIRLINES, INC.,** **Defendants.**	**Case No. 17-cv-12460-DJC**

MEMORANDUM AND ORDER

CASPER, J. **June 15, 2020**

I. Introduction

Plaintiff Jon L. Bryan ("Bryan") brings this action under the Railway Labor Act ("RLA"). D. 1. Bryan alleged that Defendant Allied Pilots Association ("APA") breached its duty of fair representation (Count I) and Defendant American Airlines breached the terms of the collective bargaining agreement in effect prior to Bryan's termination (Count II). Id. This Court previously dismissed the claim against American Airlines. D. 40. APA now moves for summary judgment on the remaining count. For the reasons stated below, the Court ALLOWS APA's motion, D. 60.

II. Standard of Review

The Court grants summary judgment where there is no genuine dispute as to any material fact and the undisputed facts demonstrate that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). "A fact is material if it carries with it the potential to affect the outcome of the suit under the applicable law." Santiago-Ramos v. Centennial P.R. Wireless Corp.,

217 F.3d 46, 52 (1st Cir. 2000) (quoting Sanchez v. Alvarado, 101 F.3d 223, 227 (1st Cir. 1996)). The movant "bears the burden of demonstrating the absence of a genuine issue of material fact." Carmona v. Toledo, 215 F.3d 124, 132 (1st Cir. 2000); see Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If the movant meets its burden, the non-moving party may not rest on the allegations or denials in her pleadings, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986), but "must, with respect to each issue on which she would bear the burden of proof at trial, demonstrate that a trier of fact could reasonably resolve that issue in her favor," Borges v. Serrano-Isern, 605 F.3d 1, 5 (1st Cir. 2010). "As a general rule, that requires the production of evidence that is 'significant[ly] probative.'" Id. (alteration in original) (quoting Anderson, 477 U.S. at 249). "Neither party may rely on conclusory allegations or unsubstantiated denials, but must identify specific facts derived from the pleadings, depositions, answers to interrogatories, admissions and affidavits to demonstrate either the existence or absence of an issue of fact." Magee v. United States, 121 F.3d 1, 3 (1st Cir. 1997). In conducting this inquiry, the Court "view[s] the record in the light most favorable to the nonmovant, drawing reasonable inferences in his favor." Noonan v. Staples, Inc., 556 F.3d 20, 25 (1st Cir. 2009).

III. Factual Background

The following facts are drawn from APA's statement of material facts, D. 61, Bryan's response to same, D. 66, and other supporting documents and are undisputed unless otherwise noted.[1]

[1] At oral argument, counsel for Bryan argued that the newly stated facts in his response to APA's statement of material facts must be admitted as true because APA did not respond to it. Local Rule 56.1, upon which Bryan relies, however, states that "[m]aterial facts of record set forth in the statement required to be served by the moving party will be deemed for purposes of the motion to be admitted by opposing parties unless controverted by the statement required to be served by opposing parties." Here, APA is the moving party, and thus a response was required to APA's statement of material facts by Bryan, the opposing party. Moreover, it is up to the discretion

A. Bryan's Grievance with US Airways

Bryan was a captain with US Airways until he retired in 1999. D. 66 Resp.[2] ¶ 14. Until 2008, the Air Line Pilots Association ("ALPA") was the duly certified collective bargaining agent for US Airways pilots. D. 66 Resp. ¶ 2. In or around December 1996, Bryan was elected to a two-year term as the chairman of the ALPA Master Executive Council. D. 66 Resp. ¶ 15. During his two-year term, Bryan ceased piloting commercial aircraft and did not participate in any recurrent pilot training. D. 66 Resp. ¶¶ 16, 19. As a result, Bryan's qualification to fly lapsed in 1997. D. 66 Resp. ¶ 19.

US Airways and ALPA agreed to an Early Retirement Program ("ERIP"), which permitted up to 325 pilots to opt into the program to retire between May 1998 and May 2000. D. 66 Resp. ¶¶ 21, 22. Under the ERIP, pilots could designate their preferred retirement date, but US Airways would assign retirement dates based on operational needs and other considerations. D. 66 Resp. ¶ 23. Bryan voluntarily opted into the ERIP in or around March 1998. D. 66 Resp. ¶ 20. In or around the summer of 1998, Bryan sought to enroll in training to regain qualification to fly. D. 66 Resp. ¶ 28. Bryan was scheduled to participate in a training program in August 1998, but his participation was canceled by US Airways. D. 66 Resp. ¶ 29. US Airways advised Bryan that his training was canceled because US Airways determined the training was not an appropriate use of company resources.[3] D. 66 Resp. ¶ 30. US Airways selected Bryan to retire on January 1, 1999

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of this court whether facts stated in a statement of material facts are to be admitted as true, see Hernandez v. Philip Morris USA, Inc., 486 F.3d 1, 7 (1st Cir. 2007); Navarro v. U.S. Tsubaki, Inc., 577 F. Supp. 2d 487, 492 n.1 (D. Mass 2008), which the Court declines to do here.

[2] Citations to "D. 66 Resp." refer to the section of Bryan's statement of material facts responding to APA's statement of material facts, beginning on page twenty-one of D. 66. Citations to "D. 66" refer to Bryan's statement of material facts beginning on page one of D. 66.

[3] In a letter detailing his grievance, Bryan indicated that he contested US Airways' cancellation of his training as a "misinterpretation and misapplication" of the US Airways Pilots' Working Agreement. D. 63-1 at 98. Bryan contends that the cancellation of his training resulted

under the second phase of retirements pursuant to the ERIP. D. 66 Resp. ¶ 35. Bryan received all benefits called for under the ERIP. D. 66 Resp. ¶ 35.

On February 24, 1999, Bryan filed a grievance under the collective bargaining agreement between US Airways and ALPA regarding US Airways' cancellation of his training. D. 66 Resp. ¶ 37. US Airways denied the grievance at the first step of the grievance process, stating, in part, that "Bryan was properly assigned a retirement date . . . and was appropriately withheld from training consistent with the intent of not expending training resources on a pilot scheduled to retire." D. 66 Resp. ¶ 38. US Airways subsequently denied Bryan's grievance at step two of the process on August 2, 2000. D. 66 Resp. ¶ 39. Pursuant to standard practices, the ALPA submitted Bryan's dispute to the U.S. Airways Pilots System Board of Adjustment for arbitration on August 29, 2000. D. 66 Resp. ¶ 40. The issue submitted concerned whether US Airways had acted improperly by "unilaterally and arbitrarily cancelling [Bryan's] training." D. 66 Resp. ¶ 41.

B. The Unions' Handling of Bryan's Grievance

1. ALPA and USAPA

Under ALPA, grievances were handled through a Grievance Committee comprised of pilots. D. 66 Resp. ¶ 42. In January 2004, Bryan sent a letter to the National President of ALPA inquiring about the status of his grievance and requesting that it be scheduled for arbitration. D. 66 Resp. ¶ 43. There is no indication that Bryan received a response to his letter and his grievance was not scheduled for arbitration. D. 66 Resp. ¶ 44. Captain Tracy Parrella ("Parrella") was the Grievance Committee chairman for ALPA from 2003 through 2008. D. 66 Resp. ¶ 51. Parrella made recommendations regarding which grievances were scheduled for arbitration. D. 66 Resp.

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from the deterioration of his relationship with US Airways president Rakesh Gangwahl based on positions that Bryan took in negotiations with US Airways. D. 66 ¶¶ 63-65.

¶ 54. In June 2004, Bryan emailed Parrella asking that she process his grievance through arbitration, noting that "the passage of five years for processing was excessive." D. 66 Resp. ¶ 56. In or about August 2004, Parrella informed Bryan that his "grandchildren would be dead before arbitration [of his grievance] was scheduled." D. 66 Resp. ¶ 60. ALPA did not schedule Bryan's grievance for arbitration following this communication. See D. 66 Resp. ¶ 59.

In December 2005, Bryan emailed Parrella with a settlement proposal and threatened to commence litigation if no settlement was reached. D. 66 Resp. ¶ 62. ALPA did not conduct settlement negotiations following the letter and Bryan did not commence litigation. D. 66 Resp. ¶ 63. In January 2006, Parrella contacted Bryan and informed him that his grievance would not be scheduled in the "foreseeable future." D. 66 Resp. ¶ 64. In October 2007, Bryan sent a letter to the ALPA National President advising him that ALPA had failed to schedule his grievance for arbitration and referencing the possibility of pursuing a duty of fair representation claim against ALPA, indicating that, if no settlement could be reached, he would be "forced" to seek a legal resolution. D. 66 Resp. ¶¶ 65, 66. ALPA did not schedule Bryan's grievance for arbitration following this communication and Bryan did not commence legal action against ALPA. D. 66 Resp. ¶ 67.

In or around 2008, the US Airways Pilots Association ("USAPA") replaced ALPA as the collective bargaining agent for US Airways pilots. D. 66 Resp. ¶ 45. Parrella was the Grievance Committee chair for USAPA from 2008 through 2012. D. 66 Resp. ¶ 52. During her time as Grievance Committee chair for ALPA and USAPA, Parrella included Bryan's grievance on a list of grievances to be withdrawn by the union. D. 66 Resp. ¶ 69. Bryan contacted Parrella in December 2011 to inquire about the status of his grievance, again threatening legal action regarding the failure of the union to pursue his grievance. D. 66 Resp. ¶¶ 71, 72. Although his

grievance was not scheduled for arbitration following this communication, Bryan did not initiate any legal action and had no further contact with USAPA concerning the grievance between December 2011 and October 2014. D. 66 ¶¶ 74, 75.

Captain David Ciabattoni ("Ciabattoni") served as the Grievance Committee chair for USAPA beginning in or around 2013 through in or about 2014. D. 66 ¶ 84. During this time, Bryan's grievance was not scheduled for arbitration. D. 66 Resp. ¶ 86. Ciabattoni consulted Captain Doug Mowery ("Mowery"), a former ALPA Grievance Committee chairman, as a subject-matter expert regarding Bryan's grievance. D. 66 Resp. ¶¶ 89, 90. Ciabattoni later included Bryan's grievance on in internal working list indicating that it was a candidate for withdrawal by the union. D. 66 Resp. ¶ 92.

2. APA

In or around December 2013, US Airways merged into American Airlines. D. 66 Resp. ¶ 7. At the time of the merger, US Airways pilots were represented by USAPA and American Airlines pilots were represented by APA. D. 66 Resp. ¶ 8. In or around September 2014, APA was certified as the collective bargaining agent for the pilots of the merged American Airlines. D. 66 Resp. ¶ 9. APA set up a process whereby former USAPA subject-matter experts would review grievance files and make recommendations regarding which grievances to pursue. D. 66 Resp. ¶ 97. Tricia Kennedy, Esq. ("Kennedy") is the Director of Grievance and Dispute Resolution at APA. D. 66 Resp. ¶ 160. Kennedy asked Ciabattoni to travel to APA to assist with reviewing grievance files. D. 66 Resp. ¶¶ 94, 95. Ciabattoni met with former USAPA representatives, including former USAPA Negotiating Committee chairman Dean Colello ("Colello") and former USAPA Charlotte domicile representative Ron Nelson ("Nelson") to review the grievance files over a number of days. D. 66 Resp. ¶¶ 101, 166. On November 3, 2015, Ciabattoni sent Kennedy

an email containing a chart titled "OLD USAPA WITHDRAWN GRIEVANCES TABLE" that included Bryan's grievance. D. 66 Resp. ¶¶ 107-109. Upon reviewing Bryan's grievance file for the APA in November 2015 and conducting research, Ciabattoni, Colello and Nelson agreed that Bryan's grievance should not be pursued by APA. D. 66 Resp. ¶¶ 168-170. Ciabattoni made the recommendation to Kennedy that the grievance should be withdrawn. D. 66 Resp. ¶¶ 111-116. Bryan did not attempt to contact anyone at APA regarding his grievance between 2014 and February 2017. D. 66 Resp. ¶ 184. Bryan first reached out to Kennedy at APA regarding the status of his grievance on February 24, 2017. D. 66 ¶ 123. Bryan did not hear back from Kennedy regarding the status of his grievance, so called her again on April 13, 2017 and stated that he would litigate if he did not hear back from Kennedy within thirty days. D. 66 ¶ 126; see D. 67-3 at 2. Kennedy did not get back to Bryan within thirty days and Bryan reached out to Kennedy again in May 2017, at which time she indicated that a meeting was scheduled with American Airlines in which Bryan's grievance would be discussed. D. 66 ¶ 127.

C. The Global Settlement

In or around December 2015, APA met with representatives of American Airlines to discuss a potential global settlement of all outstanding US Airways grievances that the USAPA representatives had recommended that APA pursue. D. 66 Resp. ¶ 174. APA insisted that the agreement with American Airlines (the "Global Settlement Agreement") include all meritorious grievances whether the affected pilot was employed by American Airlines at that time. D. 66 Resp. ¶ 176. The parties reached a tentative global settlement, which included all grievances that had been previously withdrawn by USAPA or were recommended for withdrawal by the USAPA subject-matter experts. D. 66 Resp. ¶ 183. In October 2017, Kennedy notified Bryan of the tentative global settlement and that Bryan's grievance had been withdrawn by APA. D. 66 Resp.

¶ 186. Kennedy indicated that the global settlement had not yet been finalized and that Bryan could contact Paul DiOrio ("DiOrio"), the Chairman of the Philadelphia domicile and a former USAPA representative, if Bryan had any questions regarding his grievance. D. 66 Resp. ¶ 188. Bryan did not contact DiOrio at any time to discuss his grievance. D. 66 Resp. ¶ 189. The Global Settlement Agreement, which included the withdrawal of Bryan's grievance, was finalized and executed on October 16, 2017. D. 66 Resp. ¶ 192.

IV. Procedural History

Bryan filed a complaint in this action on December 14, 2017. D. 1. The Court denied APA's motion to dismiss and granted American Airlines' motion to dismiss. D. 40. APA has now moved for summary judgment. D. 60. The Court heard the parties on the motion and took the matter under advisement. D. 72.

V. Discussion

The Railway Labor Act ("RLA") governs labor relations in the airline industry. Hennebury v. Transport Workers Union, 485 F. Supp. 1319, 1321 (D. Mass. 1980) (citing 45 U.S.C. § 151 et seq.). Under the RLA, "[a]s 'the exclusive bargaining representative of the employees, a union has a statutory duty fairly to represent all of those employees.'" Cabral v. Mass. Bay Transp. Auth., No. 18-cv-12404-NMG, 2019 WL 3781567, at *6 (D. Mass. June 18, 2019) (quoting Emmanuel v. Int'l Bd. of Teamsters, Local Union No. 25, 426 F.3d 416, 419-20 (1st Cir. 2005)).

APA argues that Bryan's claim must be dismissed because APA never owed him a duty of fair representation as Bryan was never a member of APA and was not employed by American Airlines. D. 62 at 9. APA also argues that Bryan's claim, which is based on the union's handling of a grievance he filed in 1999, is time-barred by the applicable six-month statute of limitations. D. 62 at 10-13. Finally, APA contends that, even if they owed Bryan a duty of fair representation

and the claim was brought within the statute of limitations, the APA did not breach their duty to Bryan. D. 62 at 13-21. The Court addresses each of these arguments in turn.

A. Duty of Fair Representation to Bryan

Based on this record, the court assumes, *arguendo*, that APA owes a duty of fair representation to Bryan. Although the parties agree that Bryan was never a member of APA, D. 66 Resp. ¶ 12, the record supports the conclusion that APA assumed a duty to pilots who had outstanding grievances filed with ALPA and USAPA. Upon certification as the collective bargaining agent for American Airlines pilots following the merger between American Airlines and US Airways, representatives of APA set up a process to review outstanding USAPA grievances with the input of past USAPA representatives. D. 66 Resp. ¶¶ 94-97. Ciabattoni, the former USAPA Grievance Committee chairman, who participated in this process, emailed Bryan to inform him that USAPA no longer had rights or duties with respect to Bryan's grievance and that APA "now has those duties and rights to represent you and advocate for you." D. 66 ¶ 4; D. 67-1 at 2. This email further indicated that USAPA had requested a filing in the bankruptcy court to ensure the assumption of outstanding USAPA grievances. D. 67-1 at 2-3. APA representatives met with American Airlines to negotiate a global settlement of all past US Airways grievances, specifically rejecting American Airlines' proposal that the settlement should include only pilots then working for American Airlines and insisting that it cover all grievances, not just those of current employees. D. 66 Resp. ¶¶ 174-176. Further, in the Global Settlement Agreement executed by APA and American Airlines to settle the outstanding USAPA grievances, APA expressly acknowledged that it had "inherited" grievances from USAPA. D. 66 ¶¶ 8-9; D. 64-3 at 1.

Based on these undisputed facts, this Court assumes that APA assumed the duty to represent Bryan with regard to his grievance initiated with ALPA and, thus, assumed the duty of fair representation on his behalf. See Cabral 2019 WL 3781567, at *6. Further, in Barnes v. Air Line Pilots Ass'n, 141 F. Supp. 3d 836 (N.D. Ill. 2015), the court noted that, if a union "through both omission and commission, conveyed to the [grievants] that it was negotiating on their behalf," the union could have assumed a duty of fair representation as to those pilots. See Barnes, 141 F. Supp. 3d at 844-845. Here, the APA, through their process of reviewing and negotiating the USAPA outstanding grievances, conveyed to pilots that they were resolving the grievances on their behalf. The cases cited by APA are distinguishable and do not support their argument as none involved a union that took affirmative actions to engage in negotiations on behalf of those to which they claimed they owed no duty.

B. The Statute of Limitations Bars Bryan's Claim

Although assuming APA owes a duty to Bryan, on this developed record, even just focusing on APA, Bryan knew or reasonably should have known of the unions' alleged wrongdoing long before filing suit. Bryan and APA agree that the relevant statute of limitations for an action alleging a breach of the duty of fair representation claim under the RLA is six months. D. 62 at 11; D. 65 at 10; see Benoni v. Bos. and Me. Corp., 828 F.2d 52, 56 (1st Cir. 1987) (noting that "[a]lthough the RLA has no statute of limitations of its own, the courts . . . have borrowed the six-month limitations period of section 10(b) of the National Labor Relations Act . . . and applied it to actions claiming unfair labor practices under the RLA") (internal quotation marks and citations omitted). A cause of action against a union for breach of the duty of fair representation arises "when the plaintiff knows, or reasonably should know, of the acts constituting the union's alleged wrongdoing." Graham v. Bay State Gas Co., 779 F.2d 93, 94 (1st Cir. 1985). "As a general

matter, a duty of fair representation claim accrues and the six-month limitations period commences when 'the futility of further union appeals becomes apparent or should have become apparent.'" Bensel v. Allied Pilots Ass'n, 387 F.3d 298, 305 (3rd Cir. 2004) (quoting Scott v. Local 863, Int'l Brotherhood of Teamsters, etc., 725 F.2d 226, 229 (3d Cir. 1984)). "If, however, a union purports to continue to represent an employee in pursuing relief, the employee's duty of fair representation claim against the union will not accrue so long as the union proffers 'rays of hope' that the union can 'remedy the cause of the employee's dissatisfaction.'" Id. (quoting Childs v. Penn. Fed'n Brotherhood of Maintenance Way Employees, 831 F.2d 429, 434 (3d Cir. 1987)).

APA argues that Bryan's claim against the union accrued prior to June 2017, which is six months before Bryan initiated the instant case in December 2017, D. 1, based on ALPA and USAPA's collective failure to take any action with regards to Bryan's grievance for over fifteen years. D. 1; D. 62 at 12. Bryan counters that the six-month period did not begin to accrue until October 2017, when Kennedy notified him that APA had withdrawn his claim. See D. 65 at 10. The undisputed record indicates that, between 1999, when Bryan first filed his grievance, D. 66 Resp. ¶ 37, and September 2014, when APA was certified as the collective bargaining representative for pilots following the merger of US Airways and American Airlines, D. 66 Resp. ¶ 9, Bryan contacted representatives from ALPA and USAPA numerous times inquiring about the status of his grievance and threatening legal action if the unions failed to act expeditiously to process his grievance. See D. 66 Resp. ¶ 43 (Bryan sent a letter to the National President of ALPA requesting that his grievance be scheduled for arbitration in January 2004); D. 66 Resp. ¶ 56 (in June 2004, Bryan emailed Parrella asking that his grievance be processed and noting that the passage of five years since its filing was "excessive"); D. 66 Resp. ¶ 62 (in December 2005, Bryan emailed Parrella with a settlement proposal and threatened to commence litigation if a settlement

was not reached); D. 66 Resp. ¶ 65 (in October 2007, Bryan sent a letter to the National President of ALPA regarding the failure to schedule his grievance for arbitration); D. 66 Resp. ¶¶ 71-72 (in December 2011, Bryan contacted Parrella threatening legal action for the union's failure to process his grievance). None of these communications resulted in the unions taking action to schedule Bryan's grievance for arbitration. In August 2004, Parrella informed Bryan that his "grandchildren would be dead before the arbitration was scheduled." D. 66 Resp. ¶ 60. "Prolonged inaction is sufficient to give a diligent plaintiff notice that the union has breached its duty of fair representation." Pantoja v. Holland Motor Express, Inc., 965 F.2d 323, 327 (7th Cir. 1992). Based on these facts, it is apparent that Bryan was aware that neither ALPA nor USAPA was acting on his grievance and that this inaction could give rise to a duty of fair representation claim. As such, Bryan's claim accrued prior to APA's certification as collective bargaining agent.

Even considering only the time following APA's certification as collective bargaining agent in 2014, the undisputed facts indicate that Bryan's duty of fair representation claim is time-barred. On October 2, 2014, Bryan was notified that APA had inherited the outstanding USAPA grievances in an email from Ciabattoni that referenced the new working agreement. See D. 66 ¶ 4; D. 67-1 at 1. Bryan did not attempt to contact anyone at APA regarding the status of his grievance between 2014 and February 2017. D. 66 Resp. ¶ 184. Bryan first contacted Kennedy about the status of his grievance in February 2017, which is over six months prior to the date when Bryan filed the present action in December 2017. See D. 66 ¶ 187. Bryan indicates that Kennedy did not get back to him after he initially called her in February 2017, so he called her again in April 2017 and stated that if he did not receive an adequate response within thirty days he would litigate. See D. 66 ¶ 126; D. 67-3 at 2. Bryan admits that he did not receive a response within thirty days of his April 2017 call, but he did not initiate litigation at that time. D. 66 ¶ 127.

Bryan does not dispute that he never received any communication from APA that it was going to take his grievance to arbitration. D. 66 Resp. ¶ 50. In Yordán v. Am. Postal Workers Union, AFL-CIO, 293 F.R.D. 91 (D.P.R. 2013), the court noted that "[u]nion inaction should indicate to the plaintiff that the union breached its duty of fair representation" in finding that a plaintiff's claim was barred by the statute of limitations where there was no communication or action by the union regarding plaintiff's grievance for over two years. Yordán, 293 F.R.D. at 97 (citing Metz v. Tootsie Roll Industries, Inc., 715 F.2d 299, 304 (7th Cir. 1983); Delaney v. District of Columbia, 612 F. Supp. 2d 38, 43 (D.D.C. 2009); Pulliam v. United Auto Workers, 354 F. Supp. 2d 868, 872 (W.D. Wisc. 2005)). The court rejected plaintiff's contention that she was not required to initiate suit until she received formal notice that the union had abandoned her claim, stating that "[the two-year] period of inaction should have indicated to Yordán that the Union may have breached its duty of fair representation, triggering the statute of limitations." Yordán, 293 F.R.D. at 98. Here, the approximately three-year period of inaction by APA should have indicated that the union was not acting on Bryan's 1999 grievance.

Bryan relies upon Bensel to support his argument that his claim did not accrue until he was notified that his grievance was withdrawn in October 2017. D. 65 at 10. Bensel, however, is distinguishable as the union in that case pursued arbitration and the court noted that a positive outcome in the arbitration would have mooted the duty of fair representation claim. Bensel, 387 F.3d at 307. As such, the court stated that "[w]here a union represents the employee in an arbitration proceeding and proffers rays of hope concerning the possibility of success in spite of its breach . . . the employee's cause of action does not accrue until the arbitration board denies the employee's claim." Id. The same is not applicable here where APA did not arbitrate Bryan's claim and approximately three years passed without any action or communication by APA.

The record indicates that APA took no action regarding Bryan's claim over a period of years and that Bryan was aware of his right to file a claim on the basis of this inaction, but did not do so.[4] As the court in Pantoja indicated, "[t]he [grievant] cannot be allowed to sit back and claim lack of notice in circumstances such as these. . . . The alleged violation, which consisted of union inactivity, should have been discovered by a reasonably diligent plaintiff." Pantoja, 965 F.2d at 327. As such, Bryan's claim is barred by the six-month statute of limitations.

C. APA Did Not Breach Their Duty of Fair Representation

Even if the statute of limitations did not apply to bar Bryan's claim, summary judgment in favor of APA is warranted because APA did not breach its duty of fair representation in processing Bryan's grievance. "Wrongdoing constituting a breach of duty is defined as arbitrary, discriminatory or bad faith conduct." Borowiec v. Local No. 1570 of Int'l Brotherhood of Boilermakers, etc., 626 F. Supp. 296, 301 (D. Mass. 1986) (citing Vaca v. Sipes, 386 U.S. 171, 190 (1967)). A union may not "arbitrarily ignore a meritorious grievance or process it in a perfunctory fashion." Newbanks v. Cent. Gulf Lines, Inc., 64 F. Supp. 2d 1, 4 (D. Mass. 1999) (internal quotation marks and citations omitted). A union's actions are arbitrary where, "in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a 'wide range of reasonableness' as to be irrational." Miller v. U.S. Postal Serv., 985 F.2d 9, 12 (1st Cir. 1993) (quoting Air Line Pilots Ass'n Int'l v. O'Neill, 499 U.S. 65, 78 (1991)). But "mere negligence or erroneous judgment will not constitute a breach of the duty of fair

[4] Bryan states that he did not take any action between 2014 and 2017 because the former USAPA grievance chair informed him that the grievance would not be addressed until a new working agreement was executed. D. 65 at 11, n.8. Bryan cites no authority indicating that the statute of limitations should be tolled for the three-year period based upon same. It remains undisputed that APA did not indicate that it was processing Bryan's grievance at any time during the three-year period of inaction. See D. 66 ¶¶ 184-185.

representation." Id. at 12. Judicial review of union action "must be highly deferential, recognizing the wide latitude that negotiators need for the effective performance of their bargaining responsibilities." O'Neill, 499 U.S. at 78.

It is undisputed that APA utilized a process to review the grievances it inherited from USAPA, including Bryan's, whereby it relied upon former USAPA representatives as subject-matter experts to review the grievances and make recommendations as to which grievances APA should pursue and which should be withdrawn. D. 66 Resp. ¶ 97. In November 2015, Ciabattoni, a former chair of the Grievance Committee for USAPA, Colello, a former USAPA Negotiating Committee chairman, and Nelson, a former USAPA Charlotte domicile representative, researched, reviewed and discussed Bryan's claim, ultimately recommending to APA that Bryan's claim be withdrawn. D. 66 Resp. ¶¶ 114-119. At the time he reviewed Bryan's grievance file, Colello also spoke with Mowery, a former USAPA representative who had been the Grievance Committee chair at the time Bryan's grievance was filed. D. 66 Resp. ¶ 130. Additionally, on November 3, 2015, Ciabattoni emailed Kennedy at APA a chart titled "OLD USAPA WITHDRAWN GRIEVANCES TABLE" that included Bryan's grievance as one that USAPA had planned to withdraw, indicating that USAPA had previously considered Bryan's grievance and determined that it should not be scheduled for arbitration. D. 66 Resp. ¶¶ 107-109.

In engaging former USAPA representatives who had familiarity with US Airways' policies and procedures, the APA conducted more than just a "minimal investigation" of Bryan's claim. See Emmanuel v. Int'l Brotherhood of Teamsters, Local Union No. 25, 426 F.3d 416, 420 (1st Cir. 2005) (stating that "[t]he duty of fair representation mandates that a union conduct at least a 'minimal investigation' into an employee's grievance," but clarifying that "under this standard, only an 'egregious disregard for union members' rights constitutes a breach of the union's duty'

to investigate") (quoting Garcia v. Zenith Elecs. Corp., 58 F.3d 1171, 1176 (7th Cir. 1995); Castelli v. Douglas Aircraft Co., 752 F.2d 1480, 1483 (9th Cir. 1985)). On this record, the actions by the APA did not reflect an egregious disregard for Bryan's rights. Considering the factual and legal landscape, APA's process for review and resolution of the inherited grievances was not outside the "range of reasonableness," but considered the opinion of subject-matter experts and relied upon past determinations by USAPA representatives.

Further, there is no indication that APA acted in bad faith in withdrawing Bryan's claim. Bryan argues that APA acted in bad faith by misleading him into thinking that his case was open only for it to be withdrawn as part of the Global Settlement Agreement. See D. 65 at 20-21. "A union acts in bad faith when it acts with an improper intent, purpose, or motive, and [b]ad faith encompasses fraud, dishonesty, and other intentionally misleading conduct." Good Samaritan Med. Ctr. v. NLRB, 858 F.3d 617, 630 (1st Cir 2017) (internal quotation marks omitted). There is no indication that APA acted with an improper motive or that it engaged in fraud or dishonesty or intentionally mislead Bryan. Rather, prior to the finalization of the Global Settlement Agreement, Kennedy informed Bryan that his grievance would be withdrawn and that he could contact DiOrio if he had questions. D. 66 Resp. ¶¶ 186-188. Bryan did not attempt to contact DiOrio or any other APA representative after Kennedy informed him of the pending global settlement. D. 66 Resp. ¶ 190. Based on the undisputed facts, APA did not breach their duty of fair representation with regard to their withdrawal of Bryan's grievance as part of the global settlement of outstanding USAPA claims with American Airlines.

VI. Conclusion

For the foregoing reasons, the Court ALLOWS APA's motion for summary judgment, D. 60.

So Ordered.

/s/ Denise J. Casper
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOHN L. BRYAN, **Plaintiff,** **v.** **ALLIED PILOTS ASSOCIATION and AMERICAN AIRLINES, INC.,** **Defendants.**	**Civil Action No. 17-cv-12460-DJC**

MEMORANDUM AND ORDER

CASPER, J. **December 19, 2018**

I. Introduction

Plaintiff John L. Bryan ("Bryan") brings this action under the Railway Labor Act ("RLA"). D. 1. Bryan alleges that Defendant Allied Pilots Association ("APA") breached its duty of fair representation (Count I) and also asserts a claim for breach of the collective bargaining agreement/wrongful termination (Count II) against Defendant American Airlines ("American"). Id. APA and American have moved to dismiss Bryan's claims. D. 17; D. 20. For the reasons stated below, the Court DENIES APA's motion, D. 17, and ALLOWS American's motion, D. 20.

II. Standard of Review

Pursuant to Rule 12(b)(6), a complaint must include sufficient facts to "state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). This requirement "simply calls for enough fact[s] to raise a reasonable expectation that discovery will reveal evidence" of the illegal conduct alleged. Id. at 556. The Court "must assume the truth of

all well-plead[ed] facts and give the plaintiff the benefit of all reasonable inferences therefrom." Ruiz v. Bally Total Fitness Holding Corp., 496 F.3d 1, 5 (1st Cir. 2007). First, the Court must "distinguish the complaint's factual allegations (which must be accepted as true) from its conclusory legal allegations (which need not be credited)." Saldivar v. Racine, 818 F.3d 14, 18 (1st Cir. 2016) (quoting Cardigan Mt. Sch. v. N.H. Ins. Co., 787 F.3d 82, 84 (1st Cir. 2015)). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). "Factual allegations must be enough to raise a right to relief above the speculative level." Twombly, 550 U.S. at 555. Second, the Court must determine whether the factual allegations support a "reasonable inference that the defendant is liable for the misconduct alleged." Haley v. City of Bos., 657 F.3d 39, 46 (1st Cir. 2011) (quoting Iqbal, 556 U.S. at 678). If the facts "do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not 'show[n]' – 'that the pleader is entitled to relief.'" Iqbal, 556 U.S. at 679 (alteration in original).

When reviewing a motion pursuant to Rule 12(b)(6), the Court "may properly consider only facts or documents that are part of or incorporated into the complaint." Trans-Spec Truck Serv., Inc. v. Caterpillar Inc., 524 F.3d 315, 321 (1st Cir. 2008); see Fed. R. Civ. P. 12(d). The Court may also consider "documents the authenticity of which are not disputed by the parties; for official public records; for documents central to plaintiffs' claim; or for documents sufficiently referred to in the complaint." Alt. Energy, Inc. v. St. Paul Fire & Marine Ins. Co., 267 F.3d 30, 33 (1st Cir. 2001) (quoting Watterson v. Page, 987 F.2d 1, 3 (1st Cir. 1993)).

III. Factual Allegations

Except as otherwise stated, the following facts are based upon the allegations in Bryan's complaint, including the documents attached to and fairly incorporated therein, and are accepted as true for the consideration of the motions to dismiss.

Bryan became a pilot for Mohawk Airlines, Inc. ("Mohawk Airlines") in 1969. D. 1 ¶ 6. Subsequently, Mohawk Airlines merged with Allegheny Airlines, Inc., which later became US Airways, Inc. ("US Airways"). Id. Between December 1996 and 1998, Bryan served as Chairman and Chief Executive Officer of US Airways' Air Line Pilots Association's ("ALPA")[1] Master Executive Council. Id. ¶ 7. Consistent with his predecessors, Bryan stopped piloting commercial aircrafts during his two-year term as Chairman and CEO of ALPA's Master Executive Council. Id. ¶¶ 8, 12. As a result of his decision not to fly commercial aircrafts for two years, Bryan was required to complete a retraining program before he could resume piloting. Id. ¶¶ 9-10, 12. Bryan alleges he was entitled to participate in such a program pursuant to the terms of the operating collective bargaining agreement (the "CBA") between ALPA and US Airways at the time.[2] Id. ¶ 13; see 31-2 at 5 (explaining that "[t]raining which is 'reoccurring' in nature shall be open to all pilots for bidding").

In July 1998, Bryan enrolled in a Boeing 767 recurrent retraining program. Id. ¶ 12. According to the complaint, US Airways' President Rakesh Gangwahl, who allegedly had a hostile relationship with Bryan and who had announced earlier that year that he would no longer speak to

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[1]Prior to 2008, ALPA served as the union for US Airways' pilots. See D. 1 ¶ 7. In April 2008, US Air Line Pilots Association ("USAPA") replaced ALPA as the lawful representatives of US Airways' pilots. Id. ¶ 1, n.1; D. 18 at 3 (explaining that Bryan's complaint incorrectly identified the US Airline Pilots Association as the US Airways Pilots Association). On September 16, 2014, after US Airways merged with American, the American Pilots Association ("APA") replaced USAPA per an announcement by the National Mediation Board, which "certified APA as the representative for all American pilots." Id. The APA has inherited the rights, responsibilities and obligations of predecessor unions, including ALPA and USAPA. Id.

[2]The CBA at issue in this litigation was not attached to Bryan's complaint. Instead, Bryan provided an excerpt from a document entitled "US Airways Pilots Contingent Agreement 1998-2003," D. 31-2, as an attachment to a signed affidavit, D. 31-1, filed in opposition to Defendants' motions to dismiss. According to Bryan's signed affidavit, the aforementioned excerpt is a "true and accurate copy of Section 11 of the Collective Bargaining Agreement agreed upon between the ALPA and US Airways in effect" as of July 1998. D. 31-1 ¶ 3. Although not attached to the complaint, the CBA is referenced therein, see, e.g., D. 1 ¶ 13, and the Court will consider it. In re Colonial Mortg. Bankers Corp., 324 F.3d 12, 15 (1st Cir. 2003).

Bryan, ordered Bryan's removal from the retraining program. Id. ¶¶ 14-15. Bryan alleges this conduct interfered with his right to participate in the training program in violation of the terms of the CBA. See id. ¶¶ 12-17. Because Bryan did not complete the required program, he was deemed unqualified to serve as a US Airways pilot. Id. ¶ 16. US Airways, therefore, terminated Bryan upon completion of his term as Chairman and CEO of the ALPA Master Executive Council in February 1999. Id. Bryan's termination occurred over a year prior to his anticipated retirement date of May 1, 2000 pursuant to US Airways' Early Retirement Incentive Program. Id. Bryan alleges that, due to his wrongful exclusion from the training program and his early termination, he was denied compensation and anticipated retirement benefits totaling over $1 million. Id. ¶ 17.

On February 24, 1999, Bryan filed a grievance ("Grievance No. PHL 99-02-11") regarding the alleged interference with his participation in the training program and his subsequent termination in alleged violation of the CBA. Id. ¶ 18. US Airways denied Bryan's grievance on October 12, 1999 and August 2, 2000. Id. ¶ 19. However, because ALPA had determined that Bryan's grievance was meritorious, id. ¶ 20, it submitted the grievance to US Airways' Pilots System Board of Adjustment ("Adjustment Board") for arbitration on August 29, 2000. Id. The president of ALPA at the time requested the grievance "be heard by the Board at its next regular or special session." Id. This request was purportedly sent to thirteen APA and US Airways officials. Id. Bryan's grievance, however, was never scheduled for arbitration. Id. ¶ 22.

Bryan contacted ALPA (and, eventually, its successors, USAPA and APA) to determine the status of his grievance "on multiple occasions" between August 29, 2000 and the institution of this action in December 2017. See id. ¶ 23. At various, unspecified points over the course of seventeen years, the ALPA and its successors informed Bryan that his grievance was not a priority and that he should anticipate continued delay in obtaining an arbitration date due, in part, to US Airways' two bankruptcies and the company's merger with American. Id. ¶ 24.

On February 24, 2017, Bryan contacted Tricia Kennedy ("Kennedy"), the Director of Grievances and Dispute Resolution for APA, the collective bargaining representative for all airline pilots employed by American following its merger with US Airways. Id. ¶ 25. Kennedy explained that she would follow up with Bryan after she researched the status of his grievance. Id. A few months later, on April 13, 2017, Bryan called Kennedy a second time. Id. ¶ 26. Kennedy confirmed that Bryan's grievance was "open." Id. Kennedy asked Bryan how much money he was requesting in connection with the grievance and stated that she would call Bryan back. Id.

In May 2017, Kennedy confirmed that Bryan's grievance would be discussed at a joint American-APA meeting in June 2017. Id. ¶ 27. Kennedy also asked Bryan to provide his settlement request and promised to call him after the joint meeting. Id. Kennedy did not call Bryan back and did not respond to Bryan's emails. Id. ¶ 28. On October 5, 2017, Bryan called Kennedy, who confirmed that APA and American had considered Bryan's grievance during the June 2017 meeting. Id. ¶ 29. Kennedy explained that, as part of a "global settlement" with American, APA "dropped" Bryan's grievance.[3] Id. Kennedy provided no explanation for why Bryan's grievance was withdrawn. Id. At Bryan's request, Kennedy promised to provide the complete grievance file. Id. At the time this action was instituted, Bryan had not yet received the file. Id.

[3] Although Bryan did not file the global settlement agreement as an exhibit to his complaint, the Court will still consider the agreement, which APA provided at D. 19-1, in evaluating the motions to dismiss, because it is "integral" to the complaint. See Clorox Co. Puerto Rico v. Proctor & Gamble Commercial Co., 228 F.3d 24, 32 (1st Cir. 2000) (noting that "[i]t is well-established that in reviewing the complaint, [the court] may properly consider the relevant entirety of a document integral to or explicitly relied upon in the complaint, even though not attached to the complaint") (internal quotation marks and citations omitted).

IV. Procedural History

On December 14, 2017, Bryan filed this lawsuit. D. 1. Defendants American and APA have now moved to dismiss the complaint. D. 17; D. 20. The Court heard the parties on the pending motions and took the matters under advisement. D. 37.

V. Discussion

A. Bryan Has Stated a Claim Against APA for Breach of the Duty of Fair Representation

1. Bryan's Claim Against APA is Not Time Barred

APA first argues that Bryan's duty of fair representation claim is time barred. Affirmative defenses, such as a statute of limitations defense, may be raised in a motion to dismiss an action for failure to state a claim. See LaChapelle v. Berkshire Life Ins. Co., 142 F.3d 507, 509 (1st Cir. 1998). However, Rule 12(b)(6) requires that "the grounds for dismissal must be clear on the face of the pleadings alone." Aldahonda-Rivera v. Parke Davis & Co., 882 F.2d 590, 592 (1st Cir. 1989). Moreover, "review of the complaint, together with any other documents appropriately considered under Fed. R. Civ. P. 12(b)(6), must 'leave no doubt' that the plaintiff's action is barred by the asserted defense." Blackstone Realty LLC v. Fed. Deposit Ins. Corp., 244 F.3d 193, 197 (1st Cir. 2001) (quoting LaChapelle, 142 F.3d at 508).

Bryan and APA agree that the relevant statute of limitations for an action alleging "breach of [a] collective bargaining agreement and a breach of a duty of fair representation claim under the [RLA] . . . is six months." D. 31 at 5; D. 21 at 5; see Benoni v. Bos. and Me. Corp., 828 F.2d 52, 56 (1st Cir. 1987) (internal quotation marks and citations omitted) (noting that "[a]lthough the RLA has no statute of limitations of its own, the courts . . . have borrowed the six-month limitations period of section 10(b) of the National Labor Relations Act . . . and applied it to actions claiming unfair labor practices under the "RLA"). A cause of action against a union for breach of the duty

of fair representation arises "when the plaintiff knows, or reasonably should know, of the acts constituting the union's alleged wrongdoing." Graham v. Bay State Gas Co., 779 F.2d 93, 94 (1st Cir. 1985). APA alleges that Bryan's claim against the union "clearly accrued . . . long before June 2017," which is six months before Bryan initiated the instant dispute. D. 21 at 9. For support, APA relies primarily on Metz v. Tootsie Roll Indus., Inc., 715 F.2d 299 (7th Cir. 1983) and Yordán v. Am. Postal Workers Union, AFL-CIO, 293 F.R.D. 91 (D.P.R. 2013). These cases are readily distinguishable.

In Metz, the Seventh Circuit determined that "the failure and refusal of the Union to file the grievance within the specified time [under the collective bargaining agreement] amounted to a final decision" that gave rise to a cause of action triggering the statute of limitations. Metz, 715 F.2d at 303. By contrast, there is no indication here that APA's failure to obtain an arbitration hearing date served as a final decision for determining when the statute of limitations accrued. To the contrary at least as alleged, over the course of seventeen years, union representatives led Bryan to believe that his grievance was still active and that he would eventually receive an arbitration date. D. 1 ¶ 24, 36. As late as February, April and May 2017, a union representative assured Bryan that his grievance was still open and would be discussed by American and APA in June 2017. Id. ¶¶ 25-27. It was not until October 2017, less than six months before this lawsuit, that the union notified Bryan that his grievance was dropped as part of the global settlement between APA and American. Id. ¶ 29. Approximately two months later, in December 2017, Bryan instituted this action. See id. In view of the reasoning in Metz, the Court finds that Bryan filed his complaint within six months of receiving a final decision with respect to his grievance.

In Yordán, the court emphasized that "over two years elapsed" between the plaintiff's last communication with the union and the institution of the lawsuit, and that "[t]his extensive period of inaction should have indicated to [the plaintiff in Yordán] that the Union may have breached its

duty of fair representation . . . ." Yordán, 293 F.R.D. at 98. The Court cannot, at this time from the pleadings (and materials reasonably incorporated in pleadings) alone, determine that there was an extensive lapse in communication between Bryan and the union such that Bryan should have known the union had abandoned his grievance. Instead, Bryan alleges that "on multiple occasions and over many years" he attempted to determine the status of his grievance. D. 1 at ¶ 23. Given that the Court "indulge[s] all reasonable inferences that fit the plaintiff's theory of liability" at this stage in the litigation, Rogan v. Menino, 175 F.3d 75, 77 (1st Cir. 1999), it is plausible that Bryan maintained reasonably consistent contact with the union prior to the formal denial of his grievance. Neither Metz nor Yordán require the Court to conclude that, at this juncture, Bryan's claim against APA is time-barred.

2. Bryan Has Plausibly Alleged APA Acted Arbitrarily or in Bad Faith

Alternatively, APA argues that Bryan has failed to state a claim that APA breached the duty of fair representation it owed him. D. 20 at 1. A union has a statutory duty to represent its members fairly in collective bargaining and in the enforcement of any collective bargaining agreement. Vaca v. Sipes, 386 U.S. 171, 177 (1967). "A union breaches this duty 'only when [its] conduct . . . is arbitrary, discriminatory, or in bad faith.'" Miller v. U.S. Postal Serv., 985 F.2d 9, 11 (1st Cir. 1993) (alteration in original) (quoting Vaca, 386 U.S. at 190). A union may not "arbitrarily ignore a meritorious grievance or process it in a perfunctory fashion." Newbanks v. Cent. Gulf Lines, Inc., 64 F. Supp. 2d 1, 4 (D. Mass. 1999) (internal quotation marks and citations omitted). But "mere negligence or erroneous judgment will not constitute a breach of the duty of fair representation." Miller, 985 F.2d at 12.

Bryan contends that over a span of years, APA (and its predecessors, ALPA and USAPA)[4] engaged in a pattern of conduct that amounts to a breach of its duty of fair representation. Specifically, Bryan alleges that APA (1) failed to obtain an arbitration hearing date for his grievance; (2) misled Bryan into believing that APA was fairly representing him in the handling of his grievance; (3) breached its duty of fair representation in withdrawing his grievance as part of the settlement between APA and American; and (4) failed to timely notify Bryan that his grievance was withdrawn. D. 1 ¶ 36. Bryan contends that APA's handling of his meritorious grievance was "arbitrary, capricious, and in bad faith, with the intent to harm and discriminate" against him. Id. ¶ 35.

Bryan need only plausibly allege that APA acted either arbitrarily, discriminatorily or in bad faith to state a claim for breach of the duty of fair representation. Vaca, 386 U.S. at 190. He has plausibly alleged that the APA acted in bad faith and/or arbitrarily, even if he has not plausibly alleged that the APA discriminated against him. See Newbanks, 64 F. Supp. 2d at 5 (requiring discrimination on the basis of protected status or unfair classification).

A "'union acts in bad faith when it acts with an improper intent, purpose, or motive,' and '[b]ad faith encompasses fraud, dishonesty, and other intentionally misleading conduct.'" Good Samaritan Med. Ctr. v. Nat'l Labor Relations Bd., 858 F.3d 617, 630 (1st Cir. 2017) (alteration in original) (quoting Spellacy v. Airline Pilots Ass'n-Int'l, 156 F.3d 120, 126 (2d Cir. 1998)). Bryan alleges that union representatives led him to believe his meritorious grievance remained open and that an arbitration date was pending, despite continued delays. D. 1 ¶¶ 22-24. Between February and June 2017, Bryan was repeatedly promised an update on his grievance, only to learn in October

[4] Given that APA has inherited the rights, responsibilities and obligations of predecessor unions, including ALPA and USAPA, D. 18 at 3, the Court, hereinafter, refers to APA when discussing the alleged conduct of APA and its predecessors. Id.

2017 that APA had withdrawn the grievance in accordance with a global settlement agreement and without providing any notice to Bryan. D. 1 ¶¶ 22-29. In view of these allegations, the Court could reasonably infer that APA acted with bad faith.

In evaluating whether a union acted arbitrarily, courts consider whether "in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a wide range of reasonableness as to be irrational." Miller, 985 F.2d at 12 (quoting Air Line Pilots Ass'n, Int'l v. O'Neill, 499 U.S. 65, 67 (1991)) (internal quotation marks omitted). The "standard requires the court to examine objectively the competence of the union's representation." Emmanuel v. Int'l Bhd. of Teamsters, Local Union No. 25, 426 F.3d 416, 420 (1st Cir. 2005). The Court, however, "may not substitute [its] own views for those of the union." Miller, 985 F.2d at 12. Instead, the union must be given "great latitude in determining the merits of an employee's grievance and the level of effort it will expend to pursue it." Id. Bryan alleges that APA arbitrarily abandoned his meritorious grievance after seventeen years "without explanation," "without involving [Bryan] in the decision to withdraw the grievance" and after "[making] false promises that [union representatives] would get back to [Bryan]" to discuss his grievance. D. 31 at 3. As an initial matter, Bryan alleges that in August 2000 APA "found merit" in Bryan's grievance and, as a result, submitted the grievance to the Adjustment Board for arbitration. D. 1 ¶ 20. In so doing, the union president submitted a request that Bryan's grievance be heard at the "next regular or special session." Id. However, despite the fact that the union president's request was sent to thirteen APA and US Airways officials, the union failed to obtain a date for Bryan's arbitration. Id. ¶¶ 20, 22. Moreover, at no point over the years and in multiple conversations with Bryan did the union schedule arbitration or notify Bryan that it had decided not to pursue his meritorious grievance. Id. ¶ 23. To the contrary, union representatives informed Bryan that there would be a continued "delay" in obtaining an arbitration date due to US Airways' bankruptcies and the merger

with American. Id. ¶ 24. Shortly after the Director of Grievances and Dispute Resolution for US Airways apologized to Bryan for "dropping the ball," the union entered a global settlement agreement with American to withdraw Bryan's grievance. Id. ¶¶ 26, 29. Not only did the union allegedly neglect to provide Bryan with notice of its decision to withdraw his meritorious grievance, but it also failed to provide an explanation as to why it decided not to pursue arbitration after nearly seventeen years of asserting that it would do so. Id. ¶ 26.

Although a union member has no "absolute right to have his grievance taken to arbitration," Vaca, 386 U.S. at 191, Bryan has plausibly alleged that the union's alleged "continuing failure to take any action" on Bryan's meritorious grievance over the years without justification was arbitrary. Soto Segarra v. Sea-Land Serv., Inc., 581 F.2d 291, 295-96 (1st Cir. 1978) (affirming that the union breached its duty of fair representation where the plaintiff's "six-month letter writing campaign" provided the union with adequate opportunities to proceed with the grievance process and the union's "continuing inaction" confirmed that "the union would be less than vigorous in his defense"); see Sanchez v. New England Confectionery Co., Inc., 120 F. Supp. 3d 33, 37-38 (D. Mass. 2015) (distinguishing cases concerning mere negligence from cases in which unions made "no effort to advocate for their members"). Further, APA's assertion that its "actions . . . were entirely consistent with its exclusive authority 'to resolve institutional and individual grievances,'" D. 21 at 16, are inapposite where, as here, it either arbitrarily ignored or perfunctorily processed a meritorious grievance. See Melanson v. John J. Duane Co. Inc., 507 F. Supp. 238, 241 (D. Mass. 1980) (explaining that "a union behaves arbitrarily toward an aggrieved union member if it ignores a meritorious grievance for no apparent reason or processes it with only perfunctory attention"). Moreover, when unions fail to provide adequate notice of or justification for a decision to withdraw an employee's grievance, courts have found that the union acted arbitrarily in violation of the duty of fair representation. See Robesky v. Qantas Empire Airways Ltd., 573 F.2d 1082, 1091 (9th Cir.

1978) (explaining that "[a]cts of omission by union officials . . . may be so egregious . . . as to be arbitrary" and vacating summary judgment because union "fail[ed] to disclose to appellant that her grievance would not be submitted to arbitration"). The Court concludes, at a minimum, that Bryan has plausibly alleged the union acted arbitrarily or in bad faith with respect to its duty to fairly represent Bryan in processing his grievance.

B. Bryan Has Failed to State a Claim Against American for Breach of the Collective Bargaining Agreement

Bryan also alleges that American breached the terms of the CBA in effect when he was terminated. See D. 1 ¶¶ 18, 38-45 (explaining that American's predecessor, US Airways, wrongfully prohibited Bryan from participating in a pilot retraining program in violation of the CBA, which resulted in Bryan's early termination). Under the RLA, which governs Bryan's claims against the union and American, "minor disputes between an employee and [an employer] concerning the terms of [a] collective bargaining agreement are within the exclusive jurisdiction" of the appropriate adjustment board. Raus v. Bhd. Ry. Carmen, 663 F.2d 791, 794 (8th Cir. 1981) (citing Andrews v. Louisville and Nashville R.R., 406 U.S. 320, 322 (1972)); see 45 U.S.C. § 184 (creating adjustment board for carriers by air and explaining that disputes between employees and carriers "may be referred by petition of the parties . . . to an appropriate adjustment board"); 45 U.S.C. § 153 *et seq.* (describing the powers and duties of the National Railroad Adjustment Board, including its jurisdiction over "disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions"). Federal district courts, therefore, "do not have general subject matter jurisdiction to adjudicate disputes [between employers and employees] arising from a breach of a collective bargaining agreement governed by the RLA." Bove v. Long Island R.R., No. 93 CV 4032, 1995 WL 901990, at *3 (E.D.N.Y. Dec. 12, 1995).

Nevertheless, in the absence of arbitration before an adjustment board, courts have exercised jurisdiction over collective bargaining claims against employers under the RLA where such claims (1) were joined with an action against a union for breach of the duty of fair representation, and (2) "there [were] well-plead allegations of something like collusion between the [employer] and the union in denying the employee their rights under the [CBA] and the [RLA]." Raus, 663 F.2d at 798; see Glover v. St. Louis-San Francisco Ry. Co., 393 U.S. 324, 331 (1969) (exercising jurisdiction over claims against an employer under the RLA, despite the parties' failure to exhaust administrative remedies, where the union had acted in "concert" with the employer to "set up schemes and contrivances" to prevent employees from exercising rights under the CBA at issue); Emswiler v. CSX Transp., Inc., 691 F.3d 782, 790 (6th Cir. 2012) (explaining that allegations of "collusion between the union and employer" would allow courts to grant relief against an employer under the RLA despite failure to arbitrate); Richins v. S. Pac. Co., 620 F.2d 761, 762 (10th Cir. 1980) (considering collective bargaining claims against an employer under the RLA and claims against the union for breach of the duty of fair representation where "the alleged facts . . . are consistent with a pattern of collusion between Union and [employer]").

In Raus, for example, the Seventh Circuit held there was no subject matter jurisdiction over a claim against an employer where there were "neither allegations nor facts supporting allegations of collusion between the railroad and the union in denying the [employee's] access to [an] apprentice program in violation of the [CBA]." Raus, 663 F.2d at 798-99. There, the court allowed the employee's action against the union for breach of the duty of fair representation to proceed. Id. at 799. The First Circuit has similarly focused on whether the union and employer were "together involved in the creation of the employee's basic grievance" in determining whether subject matter jurisdiction existed over a claim against an employer for allegedly breaching the terms of a CBA. Stanton v. Delta Airlines, Inc., 669 F.2d 833, 837 (1st Cir. 1982) (citing Raus for

support). In Stanton, the First Circuit affirmed the district court's refusal to exercise jurisdiction over a collective bargaining claim against an employer where the grievance had not been arbitrated on the merits and the union at issue was "not itself involved in the pressure or the misrepresentation" that formed the basis of the plaintiff's grievance against his employer. Id.

Bryan alleges that "American acted jointly with APA in failing to obtain a hearing date for [Bryan's] grievance," D. 1 ¶ 39, and "American acted jointly with APA in deceiving [Bryan] into believing they were working on settling his grievance and/or intended to schedule a date for his grievance to be arbitrated," id. ¶ 40. However, conclusory allegations alone are insufficient to raise a plausible inference of collusion between employer and union. See Addington v. U.S. Airline Pilots Ass'n, 588 F. Supp. 2d 1051, 1063 (D. Ariz. 2008), rev'd on other grounds, 606 F.3d 1174 (9th Cir. 2010) (declining to exercise subject matter jurisdiction over breach of contract claims against US Airways where pilots failed to "allege[] nor present[] any specific facts suggesting collusion" and noting that "conclusory allegations . . . are insufficient to establish collusion"). Bryan has not alleged specific facts suggesting that American and APA acted in concert at any point. The allegations in the complaint do not raise a plausible inference that American and APA's predecessors colluded to deny Bryan access to the pilot retraining program in alleged violation of the terms of the operating CBA. Nor does Bryan plausibly allege that American was involved in APA's failure to schedule an arbitration date or even the decision to withdraw Bryan's grievance with prejudice pursuant to a global settlement agreement that resolved thousands of pending grievances. Even if the "union's goals or means were improper," courts may not exercise subject matter jurisdiction over minor disputes against an employer subject to the RLA where "the record does not show that the airline pursued or shared those goals or means." Addington, 588 F. Supp. 2d at 1063. Reading the complaint in a light most favorable to Bryan, the Court concludes there are "neither allegations nor facts supporting allegations of collusion

between [American] and the union in denying [Bryan's] access to the [training] program" in purported violation of the CBA. Raus, 663 F.2d at 798-99; see Stanton, 669 F.2d at 837.

The cases Bryan cites for support do not compel the Court to exercise subject matter jurisdiction over his claim against American given that the disputes at issue in those cases were governed by the Labor Management Relations Act ("LMRA") and not the RLA. See DelCostello v. Int'l Board of Teamsters, 462 U.S. 151, 157 (1983); Hines v. Anchor Motor Freight, Inc., 424 U.S. 554, 561 (1976); Vaca, 386 U.S. at 173. As a general matter, disputes involving employers covered by the RLA, including common carriers by air like American, are expressly exempt from the LMRA. See Raus, 663 F.2d at 794 (explaining that the LMRA "expressly exempt[s] . . . employers and employees subject to the [RLA]"); Corbin v. Pan Am. World Airways, Inc., 432 F. Supp. 939, 942 (N.D. Cal. 1977) (explaining that "[f]ederal courts do not have jurisdiction over actions brought pursuant to the LMRA . . . where the parties involved are [employers] and employees governed by the [RLA]"); Bruno v. Ne. Airlines, 229 F. Supp. 716, 718 (D. Mass. 1964) (dismissing complaint for lack of jurisdiction where plaintiff erroneously brought a claim against an airline pursuant to the LMRA as opposed to the RLA).

Even if subject matter jurisdiction is appropriate based upon the allegations at issue here, Bryan cannot state a claim against American given that his grievance was withdrawn pursuant to a legally binding settlement agreement between APA and American. D. 35 at 2. Bryan does not dispute that APA, as the "duly recognized and authorized exclusive collective bargaining representative under the RLA for all airline pilots employed by American," has the authority to "negotiate, conclude agreements, and settle grievance disputes." D. 1 ¶ 5. Bryan, nevertheless, contends that the global settlement agreement should not be considered binding because it is "tainted" by APA's breach of the duty of fair representation. D. 30 at 2-3. As American points out, "[i]mposing liability on an [employer] where it bargained an agreement in good faith and only

the union acted improperly 'would require an employer to supervise the actions of the union [] and make an independent evaluation of the conduct and decisions of the union'" prior to entering otherwise binding agreements. D. 35 at 4 (quoting In Re AMR Corp., 567 B.R. 247, 260 (Bankr. S.D.N.Y. 2017)). Although, as discussed above, Bryan has stated a claim against APA for breach of the duty of fair representation, Bryan has not alleged that American acted in bad faith in entering the global settlement agreement. See Am. Airlines Flow-Thru Pilots Coal. v. Allied Pilots Ass'n, No. 15-cv-03125-RS, 2015 WL 9204282, at *3 (N.D. Cal. Dec. 17, 2015) (finding that "merely agreeing to a union's contractual demands, even with knowledge that the union may not be advocating for all its members fairly, is not a sufficient basis for imposing liability on an employer"). The duty of fair representation is ultimately the union's duty and, as such, "something more than merely acceding to union demands must be alleged," id., for the Court to hold American responsible for the union's breach and unravel an otherwise binding agreement between parties with the authority to enter the same. Without more, Bryan has failed to state a claim against American for breach of the CBA.

VI. Conclusion

For the foregoing reasons, the Court DENIES APA's motion to dismiss, D. 20, and ALLOWS American's motion to dismiss, D. 17.

So Ordered.

/s/ Denise J. Casper
United States District Judge

United States Court of Appeals
For the First Circuit

No. 20-1690

JON L. BRYAN

Plaintiff - Appellant

v.

AMERICAN AIRLINES, INC., ALLIED PILOTS ASSOCIATION

Defendants - Appellees

Before

Howard, Chief Judge,
Lynch, Thompson, Kayatta and Barron,
Circuit Judges.

ORDER OF COURT

Entered: March 23, 2021

The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and the petition for rehearing en banc be denied.

By the Court:

Maria R. Hamilton, Clerk

cc:
Jon L. Bryan
Jay Stephen Gregory
James P. Clark
Alexandra D. Thaler
Mark W. Robertson
Sloane Ackerman