No. 25-_____

IN THE
Supreme Court of the United States

ALI BAHREMAN,

Petitioner,

v.

ALLEGIANT AIR, LLC; TRANSPORT WORKERS UNION OF AMERICA LOCAL 577,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Railway Labor Act ("RLA"), 45 U.S.C. § 152 (Fourth), prohibits "influenc[ing] or coerc[ing] employees in an effort to induce them to join or remain … members of any labor organization," with one exception. 45 U.S.C. § 152 (Eleventh) (a) permits unions and employers "to make agreements, requiring as a condition of continued employment, that … all employees shall become members of the labor organization representing their craft or class[.]"

The duty of fair representation ("DFR") "require[s] the union … to represent non-union … members of the craft without hostile discrimination, fairly, impartially, and in good faith." *Steele v. Louisville & N.R. Co.*, 323 U.S. 192, 204 (1944).

The questions presented are:

1. Do a union and employer violate § 2, Fourth by requiring non-members to financially support a union in a manner not authorized by § 2, Eleventh (a)?
2. Does a union violate the DFR by denying contractual seniority benefits and bidding privileges to non-member employees who do not financially support the union?

PARTIES TO THE PROCEEDING

Petitioner Ali Bahreman was the plaintiff in the district court and the appellant in the court of appeals.

Respondents Allegiant Air, LLC, and Transport Workers Union of America Local 577 were the defendants in the district court and the appellees in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

A corporate disclosure statement is not required under Supreme Court Rules 14.1(b)(ii) and 29.6 because the Petitioner is not a corporation.

STATEMENT OF RELATED PROCEEDINGS

This case arises from and is directly related to the following proceedings:

1. *Bahreman v. Allegiant Air, LLC, et al.*, No. 23-16156, U.S. Court of Appeals for the Ninth Circuit. Opinion filed December 10, 2024 (Pet.App.1a-14a), and petition for rehearing en banc denied January 22, 2025 (Pet.App.33a).
2. *Bahreman v. Allegiant Air, LLC, et al.*, U.S. District Court for the District of Nevada, No. 2:20-cv-00437-ART-DJA. Order filed August 9, 2023 (Pet.App.15a-30a), and judgment entered August 31, 2023 (Pet.App.31a-32a; Dist. Ct. Dkt. Entry No. 108).

TABLE OF CONTENTS

TABLE OF CONTENTS–Continued

Page

TABLE OF CONTENTS--Continued

Page

TABLE OF CONTENTS--Continued

Page

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES--Continued

TABLE OF AUTHORITIES--Continued

TABLE OF AUTHORITIES--Continued

TABLE OF AUTHORITIES--Continued

TABLE OF AUTHORITIES--Continued

Page(s)

TABLE OF AUTHORITIES--Continued

Page(s)

Other

OPINIONS BELOW

The court of appeals opinion (Pet.App.1a-14a) is reported at 122 F.4th 1155 (9th Cir. 2024). The unreported district court opinion (Pet.App.15a-30a) is published at 2023 U.S. Dist. LEXIS 139510, and 2023 WL 5152641 (D. Nev. Aug. 9, 2023).

JURISDICTION

The court of appeals issued its opinion on December 10, 2024. Pet.App.1a-14a. Petitioner timely filed a petition for rehearing en banc, which the court denied on January 22, 2025. Pet.App.33a. This petition is timely under Supreme Court Rule 13.3. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

This case involves the Railway Labor Act ("RLA"), 45 U.S.C. § 152 (Fourth) and (Eleventh), which are reproduced at Pet.App.34a-37a.

STATEMENT OF THE CASE

This case presents the question of whether a union and employer violate RLA §§ 2, Fourth & Eleventh (a) by requiring employees to financially support the union or suffer the penalty of losing contractual seniority benefits and work bidding privileges. This case also presents the question of whether a union unlawfully discriminates against non-members in violation of the duty of fair representation ("DFR") when it denies those contractual benefits to non-member employees it represents.

I. THE FACTS

In 2017, Respondents Allegiant Air, LLC ("Allegiant") and Transport Workers Union of America Local 577 ("TWU"), executed what they titled a "union security" provision in Section 29 of their collective bargaining agreement ("Agency Fee Requirement"). Pet.App.4a-5a, 15a-16a, 38a-39a. The Agency Fee Requirement required all flight attendants, including Petitioner Ali Bahreman, to financially support the union by paying agency fees, or lose their use of seniority for bidding on flight assignments, work schedules, and other employment benefits, all awarded in order of seniority. Pet.App.4a-5a, 15a-17a, 38a-39a.

Bahreman was not a TWU member and did not financially support the union during his employment as an Allegiant flight attendant. Pet.App.4a-5a, 16a-17a. In 2019, Allegiant and TWU suspended Bahreman's bidding privileges for nonpayment of agency fees pursuant to their Agency Fee Requirement. Pet.App.5a, 17a, 38a-39a. Allegiant created Bahreman's work schedule last in seniority, and he lost the ability to participate in any bidding that utilizes his seniority for contract benefits. Pet.App.4a-5a, 16a-17a, 38a-39a. Placing Bahreman at the bottom of the seniority list prevented him from using his contractual seniority to bid on more lucrative flight assignments, obtain valuable benefits to which he would have otherwise been entitled, and plan his work schedule. Pet.App.4a-6a, 16a-17a, 38a-39a.

II. THE PROCEEDINGS BELOW

On March 3, 2020, Bahreman sued TWU and Allegiant in the U.S. District Court for the District of Nevada. Pet.App.15a-17a, 19a. Bahreman asserted that TWU and Allegiant's Agency Fee Requirement violated the RLA because it unlawfully coerced him to pay agency fees in contravention of § 2, Fourth and failed to conform to Congress's sole exception for "union security" requirements in § 2, Eleventh (a). Pet.App.19a-28a. Bahreman also asserted that the Requirement discriminated against non-members of the union in violation of the DFR. Pet.App.19a, 28a-29a. Bahreman sought, *inter alia*, compensatory damages resulting from the revocation of his bidding privileges. Pet.App.5a, 15a-17a, 19a. The District Court had jurisdiction under 28 U.S.C. § 1331 because Bahreman claimed violations of federal law.

On August 9, 2023, the District Court granted TWU's and Allegiant's summary judgment motions and denied Bahreman's motion. Pet.App.15a-17a, 29a-30a. The District Court agreed that TWU and Allegiant's Agency Fee Requirement was *not* a § 2, Eleventh (a) "union security" agreement because it did not provide for termination as the consequence of not paying agency fees. Pet.App.19a-21a. Bahreman had argued § 2, Eleventh (a) is the only exception to § 2, Fourth's general agency fee prohibition. 45 U.S.C § 152 (Eleventh) (d); Pet.App.19a, 21a, 37a. Nonetheless, the court ruled that the Requirement did not violate § 2, Fourth. Pet.App.26a-28a.

The District Court also found that TWU did not violate the DFR by negotiating and enforcing the

Agency Fee Requirement. Pet.App.28a-29a. The District Court entered judgment in favor of Allegiant and TWU on August 31, 2023, and dismissed the case. Pet.App.31a-32a.

Bahreman timely appealed. Pet.App.6a. The Ninth Circuit affirmed the District Court's decision on December 10, 2024. Pet.App.14a. The court of appeals agreed that the Agency Fee Requirement was *not* a § 2, Eleventh (a) "union security" agreement. Pet.App.9a, 12a. Yet it also held that the Requirement did not violate § 2, Fourth because, it said, that section only prohibits coercing and influencing employees to join the union and does not prohibit coercing and influencing non-members to pay agency fees. Pet.App.9a-11a. The court of appeals further held that compelling employees to financially support a union or lose their seniority benefits and work bidding privileges is not coercive. Pet.App.9a-10a.

Finally, the Ninth Circuit decided that TWU did not violate the DFR because it believed that the Agency Fee Requirement treated union members and non-members the same. Pet.App.13a-14a. Bahreman timely filed a petition for rehearing en banc, which the Ninth Circuit denied on January 22, 2025. Pet.App.33a.

REASONS FOR GRANTING THE PETITION

The Railway Labor Act, 45 U.S.C. § 151 *et seq.*, prohibits union membership and agency fee requirements in § 2, Fourth. 45 U.S.C. § 152 (Fourth); Pet.App.34a. *See Int'l Ass'n of Machinists v. Street*, 367 U.S. 740, 750, 767-68 (1961); *Ellis v. Bhd. of Ry., Airline and S.S. Clerks*, 466 U.S. 435, 448 (1984); *Harris v. Quinn*, 573 U.S. 616, 628 (2014). Congress authorized one limited exception in § 2 Eleventh (a) for "union security" agreements that require employees to pay agency fees "as a condition of continued employment." 45 U.S.C. § 152 (Eleventh) (a); Pet.App.35a-37a.[1] Congress enacted broad statutory protections for non-member employees' associational freedoms, prohibiting "*any* limitation upon [their] freedom of association[.]" 45 U.S.C. § 151a(2) (emphasis added).

The Ninth Circuit erroneously held that the RLA does not require unions and employers to execute a § 2, Eleventh (a) "union security" agreement in order to override § 2, Fourth's general agency fee prohibition. Pet.App.11a-13a. The Ninth Circuit's decision effectively abolishes Congress's general agency fee prohibition from the statute, holding, contrary to Supreme Court precedent, that nothing in the statute, not even § 2, Fourth, restricts a union and employer's powers to use the "collective bargaining process" to coerce non-members and other employees to financially support a union. *See Street*, 367 U.S. at 767-68; *Ellis*, 466 U.S. at 447-48; *Harris*, 573 U.S. at 628; *see also Radio*

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[1] Congress extended the RLA to cover the airline industry in 45 U.S.C. §§ 181-188.

Officers' Union v. NLRB, 347 U.S. 17, 41-42 (1954); Pet.App.9a-13a.

The Ninth Circuit's decision also creates a circuit split with Second, Third, and Fifth Circuit precedent. *See Cunningham v. Erie R.R.*, 358 F.2d 640, 645 (2d Cir. 1966); *Brady v. Trans World Airlines, Inc.*, 401 F.2d 87, 102 (3d Cir. 1968); *Shea v. Int'l Ass'n of Machinists*, 154 F.3d 508, 512 (5th Cir. 1998).

The Ninth Circuit dismantles the RLA's robust association protections for employees working in the airline and railroad industries. It also threatens the freedoms of all private sector employees nationwide covered by the National Labor Relations Act ("NLRA"), 29 U.S.C § 151 *et seq*., because RLA § 2, Eleventh (a) and NLRA § 8(a)(3), 29 U.S.C. § 158(a)3), are "statutory equivalent[s]." *See Commc'ns Workers of Am. v. Beck*, 487 U.S. 735, 745-46 (1988) (quoting *Ellis*, 466 U.S. at 452 n.13).

Moreover, the Ninth Circuit erroneously held that the DFR does not prohibit a union from denying contractual seniority benefits to non-members who refuse to financially support it. Pet.App.13a-14a. The Ninth Circuit's holding contravenes well-established Supreme Court and NLRB DFR precedent, and in doing so, completely unravels DFR protections for all RLA and NLRA-covered private sector workers. *Steele v. Louisville & N.R. Co.*, 323 U.S. 192, 204 (1944).

The Ninth Circuit's decision also creates a circuit split with the First, Second, Fourth, Seventh, and Tenth Circuit courts of appeal, whose decisions recognize that a union's protection or advancement of its own interests over an employee's contractual or seniority benefits violates basic DFR principles. *See Jones*

v. Trans World Airlines, Inc., 495 F.2d 790, 797 (2d Cir. 1974); *Rakestraw v. United Airlines, Inc.*, 981 F.2d 1524, 1535 (7th Cir. 1992); *Teamsters Loc. Union No. 42 v. NLRB*, 825 F.2d 608, 613 (1st Cir. 1987); *Aguinaga v. UFCW*, 993 F.2d 1463, 1471 (10th Cir. 1993); *Bennett v. Loc. Union No. 66*, 958 F.2d 1429, 1437-38 (7th Cir. 1992); *Harrison v. United Transp. Union*, 530 F.2d 558, 561-62 (4th Cir. 1975).

This Court has long warned that "serious constitutional questions" would arise if the DFR could no longer function as the "bulwark" to Congress's exclusive representation scheme. *See Janus v. AFSCME, Council 31*, 585 U.S. 878, 901 (2018); *Vaca v. Sipes*, 386 U.S. 171, 182 (1967); *Steele*, 323 U.S. at 204. Under the Ninth Circuit's severely diminished DFR, the "necessary concomitant" of unions' government-conferred exclusive representation power is absent, and government action depriving non-members of their freedom to negotiate their own workplace benefits is unconstitutional. *Janus*, 585 U.S. at 901.

This Court should grant Bahreman's petition and decide the RLA and DFR issues presented in this case.

I. The Court should grant Bahreman's petition because the Ninth Circuit's decision is contrary to Supreme Court and circuit court RLA precedent.

A. The Ninth Circuit's decision dismantles Congress's § 2, Fourth general agency fee prohibition and the narrow § 2, Eleventh (a) exception.

1. The Ninth Circuit's decision dismantles Congress's § 2, Fourth agency fee prohibition and transforms the sole, narrow § 2, Eleventh (a) "union security" exception into a general statutory "collective bargaining" power for unions and employers to impose any agency fee requirements on employees, free from Congress's conditions and limitations. Pet.App.11a-13a.

The Ninth Circuit held that the RLA's "collective-bargaining process" broadly authorizes unions and carriers to adopt any contract provisions "for the pay, rules, and working conditions that [they] want," including agency fee requirements that do not conform to Congress's requirements in § 2, Eleventh (a) and violate § 2, Fourth. Pet.App.12a-13a.

That decision unwinds the clock on nearly 100 years of Supreme Court precedent and statutory history governing Congress's RLA regulatory framework. From its creation until Congress's 1951 amendments, the RLA completely prohibited unions from imposing any union membership or agency fee requirements on employees. The RLA, "[a]s originally enacted in 1926 … did not permit a collective-bargaining agreement to require employees to join or make any payments to a

union." *Harris*, 573 U.S. at 628 (citing *Street*, 367 U.S. at 750).

In 1934, Congress codified the RLA's complete ban of union membership and agency fee requirements in § 2, Fourth, which states that "it shall be unlawful … to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization[.]" 45 U.S.C. § 152 (Fourth); Pet.App.34a.

Congress later enacted the § 2, Eleventh proviso as the sole, limited *exception* to § 2, Fourth's complete prohibition of union membership and fee requirements. Congress expressly declared in doing so that its purpose was "to authorize agreements providing for union membership … *under certain conditions*." Act of Jan. 10, 1951, Ch. 1220, 64 Stat. 1238, S. 3295, Pub. L. No. 914 (emphasis added). Congress's § 2, Eleventh (a) exception to § 2, Fourth states that a union and employer "shall be permitted … to make agreements, requiring, *as a condition of continued employment*, that … all employees shall become [union] members[.]" 45 U.S.C. § 152 (Eleventh) (a) (emphasis added); Pet.App.35a.[2]

This Court recognized that "it is abundantly clear that Congress," by enacting the § 2, Eleventh (a) exception to § 2, Fourth, "did not completely abandon the policy of full freedom of choice embodied in the 1934 Act," i.e., § 2, Fourth's general prohibition of union

[2] This Court has interpreted § 2, Eleventh (a)'s "membership" requirement to mean that employees must either acquire formal membership in a union or pay the union agency fees, or face discharge from employment. *Ellis*, 466 U.S. at 439.

membership and agency fee requirements. *Street*, 367 U.S. at 767. Rather, § 2, Eleventh (a) made only "limited" inroads on § 2, Fourth's prohibitions. *Id.*; *see also Felter v. S. Pac. Co.*, 359 U.S. 326, 331 (1959) (recognizing that with the 1951 amendment it became lawful to bargain for "union security" arrangements, but the power was subject to limitations) (citing 45 U.S.C. §§ 152 (Fourth) & (Eleventh) (d)); Pet.App.34a, 37a.

This Court has also recognized that Congress, in § 2, Eleventh (a), "did not give a blanket approval to union-shop agreements," but "[i]nstead it enacted a precise and carefully drawn limitation on the kind of union-shop agreements which might be made." *Street*, 367 U.S. at 767-68 (cleaned up).

Following Congress's 1951 amendment the only lawful agency fee requirements under the RLA are those that § 2, Eleventh (a) specifically authorizes—those that are made "a condition of continued employment," i.e., are enforced by termination of employment, not a loss of contract benefits or bidding privileges. Thus, an agency fee requirement that is not a § 2, Eleventh (a) "union security" agreement violates § 2, Fourth's complete prohibition of union membership and fee requirements.

The Ninth Circuit deviated from Court precedent by finding that TWU and Allegiant's Agency Fee Requirement was *not* a § 2, Eleventh (a) agreement, but then holding the Requirement did *not* violate § 2, Fourth's complete prohibition of compulsory agency fees. Pet.App.9a, 12a.

2. The Ninth Circuit erroneously held that neither Supreme Court precedent nor the RLA requires un-

ions and employers to execute a § 2, Eleventh (a) "union security" agreement to override § 2, Fourth's general agency fee prohibition. Pet.App.12a-13a.

In *Ellis*, the Court explained that § 2, Eleventh (a) allows a union and employer to negotiate a contract "requiring all employees to become members of or to make contributions to the union." 466 U.S. at 448. But such "obligatory payments" must be "required by a contract authorized by § 2, Eleventh," and "[u]ntil such a contract is executed, no dues or fees may be collected from objecting employees who are not members of the union." *Id.*

Ellis's conclusion is mandated by the RLA's statutory text. § 2, Eleventh (d) states: "Any provisions in paragraphs Fourth and Fifth of this section in conflict herewith are to the extent of such conflict amended." 45 U.S.C. § 152 Eleventh (d); Pet.App.37a. Congress's limited amendment of § 2, Fourth's general agency fee prohibition "to the extent of such conflict" with § 2, Eleventh (a) means that it prevented unions and employers from overriding § 2, Fourth's agency fee prohibition unless and until they execute the "union security" agreement that Congress authorized in § 2, Eleventh (a).

The Ninth Circuit's holding that unions need not execute the congressionally authorized "union security" agreement before compelling employees to pay agency fees deviates from the basic federal labor law principle that unions can never force non-members to pay fees in the absence of a congressionally authorized "union security" agreement that is enforced by termination. *Ellis,* 466 U.S. at 448; *Radio Officers*, 347 U.S. at 26-27 (holding that NLRA § 8(a)(3) prohibits such

requirements); *Pro. Ass'n of Golf Offs.*, 317 N.L.R.B. 774, 777 (1995) (NLRB).

The Ninth Circuit's holding that the RLA's "collective bargaining process" gives unions and employers plenary power to impose any agency fee requirements and penalties they want, directly conflicts with *Street* and *Ellis*'s decisions that such unrestricted power violates §§ 2, Fourth & Eleventh (a). Pet.App.12a-13a.

Unions and employers cannot make contractual agreements or requirements that violate the RLA's "legislative pronouncement[s]." *Wightman v. Springfield Terminal Ry.*, 100 F.3d 228, 232 (1st Cir. 1996) (citations omitted). The Ninth Circuit held that an agency fee requirement that strips employees of their seniority benefits for refusing to financially support the union "does not contradict the [RLA's] text." Pet.App.12a. But indeed, such a requirement simultaneously violates § 2, Fourth's agency fee prohibition and, by the court's own admission, does not fall within Congress's sole exception in § 2, Eleventh (a) for "union security" agreements requiring non-members to pay agency fees "as a condition of continued employment." 45 U.S.C. §§ 152 (Fourth) & (Eleventh) (a); Pet.App.34a-35a.

3. The Ninth Circuit's holding also conflicts with Second, Third, and Fifth Circuit precedent recognizing that § 2, Eleventh (a) is an exception to the RLA's general prohibition of compulsory union membership and financial support in all forms. *See Cunningham*, 358 F.2d at 645 (recognizing that a union is liable under § 2, Fourth when Eleventh (a) "is no longer available as a defense"); *Brady*, 401 F.2d at 102; *Shea*, 154 F.3d at 512. Until the Ninth Circuit's decision, every

other appellate court to have decided the issue has recognized that § 2, Eleventh (a)'s "union security" agreement authorization is the sole, limited exception to § 2, Fourth's general prohibition of compulsory unionism.

The conflict with the Third Circuit's decision in *Brady* is the most glaring. The Third Circuit recognized that "[RLA] 2 (Eleventh), which permits union shop agreements within prescribed limits, was intended as a proviso [and "exception"] to section 2 (Fourth) (Fifth), which prohibited all employer conduct designed to influence or coerce employees to join or maintain membership in a labor organization." *Brady*, 401 F.2d at 95. The Third Circuit correctly held that the penalty for non-payment of union dues and fees must fall within the § 2, Eleventh (a) exception, or it violates § 2, Fourth. *Id.* at 98.

B. The Ninth Circuit's decision that the RLA does not restrict union agency fee requirements is contrary to Supreme Court precedent and violates separation of powers principles.

1. The Ninth Circuit held that the § 2, Eleventh (a) exception "does not by its terms prohibit carriers and unions from reaching collective bargaining agreements other than those it explicitly permits, including agency-shop agreements." Pet.App.12a (citations omitted).[3] The Ninth Circuit defied the RLA's text by

[3] The Ninth Circuit inverts *Street* and *Ellis*, citing them to justify its holding that nothing in the RLA prohibits unions from compelling non-members to financially support the union.

holding that the § 2, Eleventh (a) exception does not restrict agency fee requirements, notwithstanding Congress's limitations and conditions provided in the exception. Pet.App.11a-13a, 35a; 45 U.S.C. § 152 (Eleventh) (a).

"When Congress provides exceptions in a statute, it does not follow that courts have authority to create others. The proper inference … is that Congress considered the issue of exceptions and … limited the statute to the ones set forth." *United States v. Johnson*, 529 U.S. 53, 58 (2000); *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 188 (1978). Nothing in § 2, Eleventh (a)'s text permits any exceptions to § 2, Fourth other than "union security" agreements requiring agency fee payments "*as a condition of continued employment*[.]" 45 U.S.C. § 152 (Eleventh) (a), (d) (emphasis added); Pet.App.35a, 37a. When the text expresses Congress's intent "in reasonably plain terms, that language must ordinarily be regarded as conclusive." *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 570 (1982) (cleaned up); *accord Puerto Rico v. Franklin Cal. Tax-Free Trust*, 579 U.S. 115, 125-26 (2016).

The Ninth Circuit's decision violates separation of powers principles. "[O]nly the words on the page constitute the law adopted by Congress and approved by the President." *Bostock v. Clayton Cnty.*, 590 U.S. 644, 654 (2020). And "[i]f judges could add to, remodel, update, or detract from old statutory terms inspired only by extratextual sources and [their] own imaginations,

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Pet.App.12a (citing *Street*, 367 U.S. at 766-67; *Ellis*, 466 U.S. at 438-39). But *Street* and *Ellis* refute that proposition, showing that the *exact opposite* is true. *See supra* at 9-12.

[they] would risk amending statutes outside the legislative process reserved for the people's representatives." *Id.* at 654-55. This would "deny the people the right to continue relying on the original meaning of the law they have counted on to settle their rights and obligations." *Id.* at 655 (citation omitted). The Ninth Circuit re-wrote the RLA's regulatory framework in §§ 2, Eleventh (a) & Fourth, thereby intruding into Congress's exclusive province to make the laws.

2. The Ninth Circuit decided that taking away nonmember employees' contractual benefits as a penalty for nonpayment of agency fees is consistent with § 2, Eleventh (a)'s "anti-free rider" purpose. Pet.App.12a. But that is also wrong. The Ninth Circuit re-writes *Street* and *Railway Employees' Department v. Hanson,* 351 U.S. 225 (1956), which emphasized that Congress's purpose in Eleventh (a) was "the *elimination*" of "free riders" from the bargaining unit through termination of employment, not authorizing the exclusive union representative to engage in other coercion and discrimination against employees who remain in the bargaining unit. *Street*, 367 U.S. at 761 (emphasis added); *id.* at 763-64 (recognizing that Congress decided "to require, rather than to induce, the beneficiaries of trade unionism to contribute to its costs[.]" (quoting *Hanson*, 351 U.S. at 235)).

§ 2, Eleventh (a) protects non-members' freedoms by restricting a union's power to coerce financial support. As *Street* recognized, "[t]he obvious purpose of [Congress's] careful prescription [in § 2, Eleventh (a)] was to strike a balance between" union security interests and "the claims of the individual to be free of arbitrary or unreasonable restrictions resulting from

compulsory unionism." 367 U.S. at 767-68 (cleaned up).

The Ninth Circuit's re-tailored scheme alters and undermines Congress's legislative design by allowing unions to engage in coercion and discrimination that sacrifices the benefits of minority employees who remain in the bargaining unit and continue to be subject to the union's exclusive representation power. This is a clear violation of this Court's holding that "union security" agreements may permit *discharging* non-members for not paying union agency fees, but "[n]o other discrimination aimed at encouraging employees to join, retain membership, or stay in good standing in a union is condoned." *Radio Officers*, 347 U.S. at 41-42.

C. The Ninth Circuit's decision is contrary to Supreme Court and circuit court precedent establishing that unauthorized agency fee requirements coerce and influence non-members in violation of § 2, Fourth.

1. The Ninth Circuit erroneously decided that § 2, Fourth's prohibition of coercion and influence to join a union does not prohibit unions from requiring non-members to pay agency fees. Pet.App.9a-10a. The lower court's decision contradicts and undermines nearly 70 years of Supreme Court precedent recognizing that § 2, Fourth banned *all* union membership *and agency fee* requirements. *Hanson*, 351 U.S. at 231 (citing 45 U.S.C §§ 152 (Fourth) & (Fifth)) (other citations omitted); *Felter*, 359 U.S. at 330-31; *Street*, 367 U.S. at 750-64 (recognizing that Congress had to enact the § 2, Eleventh (a) exception to § 2, Fourth to permit

agency fees under limited conditions); *Harris*, 573 U.S. at 628; *see also supra* at 8-12. And, *Ellis* recognized that § 2, Fourth prohibits a union and employer's agency fee requirements (i.e., "obligatory" fee payments) without their execution of a § 2, Eleventh (a) agreement. 466 U.S. at 447-48; *supra* at 10-12.

2. The Ninth Circuit's decision also conflicts with well-established Supreme Court and circuit court precedent holding that coercing an employee to pay agency fees *is* coercion to join a union. The "normal effect" of a union's requirement to pay dues and fees is "to encourage nonmembers to join the Union, as well as members to retain their good standing in the Union, a potent organization whose assistance is to be sought and whose opposition is to be avoided." *Radio Officers*, 347 U.S. at 27 (quoting the NLRB trial examiner).

Coercion and influence to financially support a union is "inherently conducive to increased union membership" and "'encourages' union membership, by increasing the number of workers who would like to join and/or their quantum of desire." *Id.* at 38 (cleaned up) (quoting and affirming *NLRB v. Gaynor News Co.*, 197 F.2d 719, 722 (2d Cir. 1952)); *Brady*, 401 F.2d at 101 (finding that penalties "for failure to comply with the union's dues demands *inherently* encourage[] other employees to promptly comply with union 'membership' requirements") (emphasis in original); *see also* 45 U.S.C. § 152 (Fourth) (prohibiting any coercion or influence "*in an effort to induce* [employees] to join or

remain … members of any [union]") (emphasis added); Pet.App.34a.[4]

RLA § 2, Fourth's union shop prohibition naturally encompasses the agency shop prohibition. This Court has long recognized that "union shop" requirements, which coerce non-members *to join the union*, are the practical equivalent of "agency shop" requirements that coerce employees *to pay union agency fees*. *See Ellis*, 466 U.S. at 452 n.13 (citing *NLRB v. Gen. Motors Corp.*, 373 U.S. 734 (1963)). "Membership" is "a legal term of art" that "incorporates all of the [statutory] refinements," including this Court's decisions defining membership's meaning to include a non-member's agency fee payments. *Marquez v. Screen Actors Guild, Inc.*, 525 U.S. 33, 47 (1998); *Gen. Motors Corp.*, 373 U.S. at 742 (holding that union membership's meaning is "whittled down to its financial core") (citing *Radio Officers*, 347 U.S. at 41); *Ellis*, 466 U.S. at 452 n.13 (citation omitted); *accord Street*, 367 U.S. at 762-70.

The Ninth Circuit failed to heed this Court's guidance that proper statutory construction requires reading § 2, Fourth's prohibition of coercion to "join the union" consistently with the § 2, Eleventh (a) exception's

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[4] The Ninth Circuit's decision also conflicts with and disrupts well-established NLRB precedent governing millions of private sector workers nationwide. Where Congress has given employees the right not to join or assist labor organizations, as it did under both RLA § 2, Fourth and NLRA Section 7, "it can hardly be disputed" that Congress protected both the right not to belong to a union and the right not to "contribut[e] money to it." *Int'l Bhd. of Elec. Workers, Local No. 2088 (Lockheed Space Operations Co.)*, 302 N.L.R.B. 322, 327 (1991).

requirement "to become members of the labor organization," which the Court has defined to mean making agency fee payments. *Id.*; *accord Gen. Motors Corp.*, 373 U.S. at 742; *Puerto Rico*, 579 U.S. at 125-26; *Sullivan v. Stroop*, 496 U.S. 478, 484 (1990). The statutory meaning of "to join the union" in § 2, Fourth, and "to become members of the labor organization" in § 2, Eleventh (a) is the same and each encompass "to make agency fee payments" within their meaning.

3. The Ninth Circuit held that contractual requirements for all employees to pay agency fees or lose their seniority benefits do not unlawfully coerce financial support for the union in violation of § 2, Fourth. Pet.App.9a-10a. That holding contravenes this Court's decisions that any union agency fee requirements imposed without the congressionally authorized § 2, Eleventh (a) "union security" agreement are unlawful coercion. *See supra* at 8-12.[5]

The Ninth Circuit's holding that unions and employers can force employees to pay agency fees or lose contractual seniority benefits also derails this Court's RLA precedent defining what constitutes unlawful coercion and influence. "The intent of Congress is clear

[5] The Ninth Circuit held that "requiring agency fees does not incentivize union membership because, under the Agreement, those fees cannot exceed union dues." Pet.App.9a. The Ninth Circuit incorrectly reasoned: "Because it would cost Bahreman less to pay agency fees than to pay union dues, there is no financial inducement to join the Union." *Id.* at 9a-10a. But the § 2, Fourth anti-coercion provision prohibits requiring non-members to pay *any* agency fees against their will without a congressionally authorized § 2, Eleventh (a) agreement because any such requirement is inherently coercive. *See supra* at 16-18.

with respect to the sort of conduct that is prohibited … 'coercion' refer[s] to [a] well-understood concept[] of law." *Tex. & N.O.R. Co. v Bhd. of Ry. & S.S. Clerks*, 281 U.S. 548, 568 (1930). Black's Law Dictionary (11th ed. 2019) defines coercion as "[c]ompulsion of a free agent by physical, moral, or economic force or threat of physical force." *Id.* And "the word 'influence' … 'means pressure, the use of the authority or power of either party to induce action by the other … [t]he phrase covers the abuse of relation or opportunity so as to corrupt or override the will." *Tex. & N.O.R. Co.*, 281 U.S. at 568 (internal citation omitted). The Ninth Circuit's decision that a union may force non-members to choose between exercising their statutory rights and receiving their contractual benefits conflicts with this Court's definitions of RLA-prohibited coercion and influence.

The Ninth Circuit further held that contractual requirements for all employees to financially support the union or lose their seniority benefits treat non-members the same as union members. Pet.App.9a-10a. That holding also conflicts with well-established Supreme Court and Fourth Circuit precedent showing that requiring non-members to financially support a union *involuntarily*, and contrary to their exercise of statutory speech and association rights, constitutes unlawful coercion.

Union members voluntarily join the union and agree to pay all dues and fees as part of their membership obligations, *irrespective of* the collective bargaining agreement's "union security" (i.e., agency fee) requirements. *See Pattern Makers' League v. NLRB*, 473 U.S. 95, 102-107 (1985). These union members are not

being coerced to financially support a union against their will by any contractual agency fee requirement—they *voluntarily* agreed to do it. As the Fourth Circuit said in *Kidwell v. Transportation Communications International Union,* 946 F.2d 283, 292-93 (4th Cir. 1991): "Where the employee has a choice of union membership and the employee chooses to join" and pay dues and fees "the union membership money is not coerced. The employee is a union member voluntarily." *Id*. at 293.

In contrast to union members, non-members do not consent to join a union or assume its financial obligations, and are not subject to any of those obligations in the absence of a § 2, Eleventh (a) "union security" agreement. *Pattern Makers*, 473 U.S. at 102-103, 104-105. Non-members of a union are "those employees who, in the absence of [union security] arrangements, would prefer not to be involved at all with the union[.]" *Kidwell*, 946 F.2d at 293.

The Ninth Circuit's decision allows unions to coerce non-members under the false pretense that it is "equal" treatment to require both members and non-members to comply with union rules and financial membership obligations. But union members are not required to do those things; they voluntarily agree to them. Non-members' choices are coerced and discriminated against. Compelling non-members to *involuntarily* pay union fees or lose their seniority benefits restrains them from freely exercising their RLA-protected rights not to join or financially support the union. That does not treat them the same as union members, who are allowed to freely exercise their association rights and keep their seniority. That unlawfully

coerces and influences non-members in violation of § 2, Fourth.

4. The Ninth Circuit's decision is also directly contrary to *Radio Officers*, which struck down an identical seniority-based scheme under the NLRA. 347 U.S. at 25-27, 41-42, 46. There the Court held that "union security" schemes revoking employees' seniority positions on a work assignment list for failing to pay union dues and fees unlawfully coerces union members and non-members to join and pay the union. *Id*. The Court recognized that such requirements fall outside the scope of Congress's "union security" agreement authorization in NLRA § 8(a)(3). *Id*.

The Ninth Circuit refused to follow *Radio Officers* because it is an NLRA case. Pet.App.10a-11a. But this Court has held that NLRA § 8(a)(3) and RLA § 2, Eleventh (a) are "statutory equivalent[s]." *Beck*, 487 U.S. at 745-46 (quoting *Ellis*, 466 U.S. at 452 n.13). Recognizing that *Street* "is far more than merely instructive … it is controlling" with respect to NLRA § 8(a)(3), this Court stated in *Beck* that "§ 8(a)(3) and § 2, Eleventh are in all material respects identical." 487 U.S. at 745 (footnote omitted); *see also id.* at 746 n.4, 756.[6]

The Ninth Circuit justified its refusal to apply this directly "controlling" precedent because the RLA

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[6] This Ninth Circuit decision also conflicts with the Third Circuit's decision in *Brady*, which looked specifically to *Radio Officers* when evaluating whether union conduct amounts to coercion under § 2, Fourth. 401 F.2d at 101-02. The Fifth Circuit also recognizes the *Beck* Court's holding that "the union shop provisions of the NLRA and RLA have the same meaning." *Shea,* 154 F.3d at 513-14.

"lacks the NLRA's language prohibiting 'discrimination in regard to … any term or condition of employment[.]" Pet.App.10a (quoting 29 U.S.C. § 158(a)(3)). That is immaterial. Under both NLRA § 8(a)(3) and RLA § 2, Eleventh (a), Congress only authorized "union security" requirements made *as a condition of employment*, and otherwise prohibited coercing and influencing employees to join or financially support the union. 45 U.S.C. § 152 (Fourth); Pet.App.34a; 29 U.S.C. §§ 157, 158(a)(1), 158(b)(1). Additionally, the RLA prohibits "*any* limitation upon freedom of association among employees." 45 U.S.C. § 151a(2) (emphasis added). If anything, the RLA protects non-members' associational freedoms even more broadly than NLRA § 8(a)(3). This Court should grant the petition and decide the first question presented.

II. The Court should grant Bahreman's petition because the Ninth Circuit's decision unravels the duty of fair representation and is contrary to Supreme Court, circuit court, and National Labor Relations Board precedent.

A. The Ninth Circuit's decision unravels duty of fair representation protections by allowing unions to discriminatorily deny contractual benefits to employees who do not financially support them.

1. The Ninth Circuit's decision unravels the DFR and conflicts with this Court's precedent by holding that the union's fiduciary duty allows it to discriminatorily deny non-member employees contractual seniority benefits and bidding privileges because they do not financially support the union.[7] Pet.App.13a-14a.

The DFR "require[s] the union, in collective bargaining and in making contracts with the carrier, to represent non-union or minority union members of the craft without hostile discrimination, fairly, impartially, and in good faith." *Steele*, 323 U.S. at 204. *Steele* held that the DFR places "*constitutional limitations*" on the union's "power to deny, restrict, destroy or discriminate against [non-members'] rights." *Id.* at 198 (emphasis added). The Ninth Circuit's holding violates the basic DFR principle that unions must not

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[7] As demonstrated in Section I, the RLA prohibits the union from demanding agency fees from non-members without a congressionally authorized § 2, Eleventh (a) agreement requiring the payment of fees "*as a condition of continued employment*." 45 U.S.C. § 152 (Eleventh) (a) (emphasis added); Pet.App.35a; *see supra* at 8-12; *see also Radio Officers*, 347 U.S. at 41-42.

discriminate against non-members in negotiating and administering the collective bargaining agreement.

The Ninth Circuit held that denying contractual benefits to non-members who do not pay agency fees does not discriminate based on union membership. Pet.App.13a-14a. But discriminating against employees who choose not to pay a union's financial membership obligations *is* discrimination based on union membership. *Gen. Motors Corp.*, 373 U.S. at 742 (citing *Radio Officers*, 347 U.S. at 41) (recognizing that the union membership requirement is "whittled down to its financial core"); *see supra* at 17-18. As shown, such agency fee requirements do not treat non-members, who choose not to financially support the union in accordance with their statutory rights, the same as voluntary union members. *See supra* at 20-22.

The Ninth Circuit allows unions, under the false guise of "equal" treatment, to discriminate against and punish non-members and other employees with respect to their benefits, pay, and grievances, for their failure to comply with internal union membership rules, policies, and financial obligations, which union members voluntarily assume.

2. The Ninth Circuit's holding conflicts with Second Circuit precedent in *Jones*, 495 F.2d at 797, which held that "[d]iscrimination in seniority based on nothing else but union membership is arbitrary and invidious and violates the union's duty to represent fairly all members of the bargaining unit." *Id.;* s*ee also Rakestraw*, 981 F.2d at 1535 (recognizing that the DFR prohibits unions from "juggl[ing] the seniority roster for no reason other than to advance one group of employees over another" but finding no breach in

that case); *Barton Brands, Ltd. v. NLRB*, 529 F.2d 793, 799 (7th Cir. 1976) (finding a DFR breach where a union made seniority promises to advance the career of union officials); *Teamsters*, 825 F.2d at 613 (finding a DFR breach where the union assigned seniority based on longevity in the union).

The Ninth Circuit's holding also conflicts with precedent from this Court and the Tenth, Seventh, and Fourth Circuits recognizing that the DFR prohibits unions from sacrificing employee benefits and representation to protect or advance the union's institutional interests. *DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151, 164 n.14 (1983); *Aguinaga*, 993 F.2d at 1471; *Bennett*, 958 F.2d at 1437-38; *Harrison*, 530 F.2d at 561-62. The lower court's decision allows unions to sacrifice non-members' contractual benefits to bolster the union's finances and membership rolls.

The Ninth Circuit's decision also conflicts with and disrupts well-established NLRB precedent governing the same DFR that applies to RLA and NLRA private sector employees. *See Ford Motor Co. v. Huffman*, 345 U.S. 330, 337 (1953); *Roscello v. Sw. Airlines Co.*, 726 F.2d 217, 221 (5th Cir. 1984) ("[T]he union's duty of fair representation has been the same duty whether the union involved is covered by the NLRA or the RLA."). It is a matter of hornbook law that the DFR prohibits unions from unlawfully discriminating against non-members over benefits, pay, and grievance processing. *Rockaway News Supply Co.*, 94 N.L.R.B. 1056, 1058-59 (1951); *Narragansett Rest. Corp.*, 243 N.L.R.B. 125 (1979); *see also Kaufman Dedell Printing, Inc.*, 251 N.L.R.B. 78, 80 (1980); *Prestige Bedding Co.,* 212 N.L.R.B. 690, 691 (1974); *Hughes*

Tool Co., 104 N.L.R.B. 318, 329 (1953); *Machinists Local 697 (Canfield Rubber Co.)*, 223 N.L.R.B. 832, 835 (1976); *American Postal Workers (U.S. Postal Service)*, 277 N.L.R.B. 541 (1985); *Furniture Workers Loc. 282 (Davis Co.)*, 291 N.L.R.B. 182, 183 (1988). The Ninth Circuit leaves this DFR precedent in disarray.

B. The Ninth Circuit's decision raises serious constitutional questions regarding the constitutionality of Congress's exclusive representation scheme.

1. Having unraveled the DFR, the Ninth Circuit's decision allows unions to wield congressionally delegated exclusive representation power without the DFR's limitations. That raises "serious constitutional questions" regarding exclusive representation's constitutionality. *Janus*, 585 U.S. at 901.

Under RLA § 2, Ninth, Congress mandates that employers must bargain with employees' exclusive union representative and no one else. *See Virginian Ry. Co. v. Sys. Fed'n No. 40*, 300 U.S. 515, 548-49 (1937); 45 U.S.C. § 152 (Ninth). "[D]esignating a union as the exclusive representative of nonmembers substantially restricts the nonmembers' rights." *Janus*, 585 U.S. at 901. Exclusive representation "deprive[s]" the "minority members of a craft," by congressional statute, "the right, which they would otherwise possess, to choose a representative of their own, and its members cannot bargain individually on behalf of themselves." *Steele*, 323 U.S. at 200 (citations omitted); *see also Vaca*, 386 U.S. at 182.

The DFR "is a necessary concomitant of the authority that a union seeks when it chooses to serve as the exclusive representative of all the employees in a

unit." *Janus*, 585 U.S. at 901; *Vaca*, 386 U.S. at 182 (recognizing that the DFR must be "a bulwark to prevent arbitrary union conduct against individuals stripped of traditional forms of redress by the provisions of federal labor law"); *Steele*, 323 U.S. at 204.

The Ninth Circuit's decision severely diminishes the DFR and prevents the DFR from functioning as the "bulwark" and "necessary concomitant" to Congress's exclusive representation scheme. This Court has recognized that "the congressional grant of power to a union to act as exclusive bargaining representative, with its corresponding reduction in the individual rights of the employees so represented, would raise grave constitutional problems if unions were free to exercise this power" to discriminate against nonmembers who exercise their freedoms of association. *Vaca*, 386 U.S. at 182; *Steele*, 323 U.S. at 198-99; *accord Janus*, 585 U.S. at 901; *see also Air Line Pilots Ass'n, Int'l v. O'Neill,* 499 U.S. 65, 67, 76 (1991).

The Ninth Circuit's decision allows unions, acting under the color of congressionally-delegated exclusive representation powers, to discriminate against nonmembers based on their statutorily-protected freedoms not to financially support or associate with the union. *See supra* at 24-27. Furthermore, the decision opens the door to other union abuses of exclusive representation powers, such as implementing lower salaries for non-members who do not financially support the union or banning them from any overtime opportunities.

This Court has recognized that "[i]f the Railway Labor Act purports to impose on [an employee] … the legal duty to comply with the terms of a contract

whereby the representative has discriminatorily restricted their employment for the benefit and advantage of the [union's] own members, [it] must decide the constitutional questions[.]" *Steele*, 323 U.S. at 198-99.

Without having the DFR as a shield to protect them, Congress's exclusive representation scheme compels non-members to surrender to a discriminatory union contract and representation that targets them with loss of seniority benefits, lower salaries, or whatever other deprivation a union might imagine.

The Ninth Circuit's DFR decision restrains non-members' rights to associate with and speak through representatives of their own choosing and from bargaining individually with their employer, *Steele*, 323 U.S. at 200, leaving non-members "with no means of equalizing the situation[.]" *Radio Officers*, 347 U.S. at 37-38 (quoting *Gaynor News Co.*, 197 F.2d at 722). Thus, the Ninth Circuit transforms Congress's exclusive representation scheme into a weapon for the abridgement of employees' speech and associational activities. *Id.* at 198; *see also Janus,* 585 U.S. at 894; *Carbonell v. Lopez-Figueroa,* 749 F. Supp. 3d 266, 287-88, 289 (D.P.R. 2024); *Brannian v. City of San Diego*, 364 F. Supp. 2d 1187, 1194-97 (S.D. Cal. 2005).

2. The Ninth Circuit's decision negates the DFR's "constitutional limitations" on the union's power as exclusive representative "to deny, restrict, destroy or discriminate against [non-members'] rights." *Steele*, 323 U.S. at 198. Justice Black presciently warned years ago of the "parsimonious limitations on the kind of decree the courts below can fashion in their efforts

to afford effective protection to these priceless constitutional rights." *Street*, 367 U.S. at 797 (Black, J., dissenting).

Ever since this Court crafted the DFR to avoid striking down exclusive representation, courts have eroded the DFR's effectiveness. *See O'Neill*, 499 U.S. at 78 (justifying diminished DFR protections to give unions "wide latitude" for "the effective performance of their bargaining responsibilities"); *Amalgamated Ass'n of St., Elec. Ry. & Motor Coach Emps. v. Lockridge*, 403 U.S. 274, 301 (1971) (holding that a plaintiff must "adduce substantial evidence of discrimination that is intentional, severe, and unrelated to legitimate union objectives" to establish that the union's exercise of judgment was discriminatory); *Ford Motor Co.*, 345 U.S. at 338 (recognizing that the Court should not decline to give a union the deference owed to its exercise of judgment unless its actions or inactions are so far outside a wide range of reasonableness that they are wholly irrational or arbitrary); *United Steelworkers of Am. v. Rawson*, 495 U.S. 362, 372-73 (1990) (holding that even a union's negligence does not breach its DFR).

This case is a watershed moment concerning the DFR's continued viability as a bulwark against unconstitutional forced exclusive union representation schemes. The Ninth Circuit's decision deals a critical blow to the DFR's continued effectiveness that, if allowed to stand, would necessitate striking down exclusive representation along with it. This Court should grant the petition and decide the second question presented.

III. The questions presented are important to employees' freedoms from forced unionism, and this case is an ideal vehicle to resolve them.

The Ninth Circuit's decision dismantles the RLA's speech and association protections and unravels the DFR to the detriment of millions of private sector employees who are subject to the abuses of forced unionism. The lower court's decision affects nearly half a million RLA-covered employees, including flight attendants, pilots, and railroad engineers, as well as millions more NLRA-covered private sector employees.[8] As explained, RLA § 2, Eleventh (a) and NLRA § 8(a)(3) are "statutory equivalent[s]," and the DFR is the same under both statutes. *See supra* at 6, 22, 26.

The decision hands unions unchecked power to coerce and discriminate against RLA-covered employees who are essential to the daily operations of this nation's airlines and railroads, and the safe and efficient transportation of people, goods, and services. The same is true for NLRA-covered workers who are vital to this nation's manufacturing, retail business, universities, and health care facilities, among other industries in the private sector.

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[8] U.S. Bureau of Labor Statistics, Air Transportation: NAICS 481, Employment by Occupation (2024), https://www.bls.gov/iag/tgs/iag481.htm; U.S. Bureau of Labor Statistics, Rail Transportation: NAICS 482, Employment by Occupation (2024), https://www.bls.gov/iag/tgs/iag482.htm; Data USA, Rail Transportation, Occupations Distribution graph (2022), https://datausa.io/profile/naics/rail-transportation; Data USA, Air Transportation, Occupations Distribution graph (2022), https://datausa.io/profile/naics/air-transportation.

Ensuring that the Ninth Circuit's decision does not dismantle employees' RLA and NLRA speech and associational freedoms from forced unionism is of national importance. The Ninth Circuit's decision jeopardizes employees' ability to do their jobs free from union coercion, hostility, and discrimination in the workplace.

The Ninth Circuit's decision that unions can take away non-members' seniority-based benefits and bidding privileges allows unions to disturb employees' work lives and carriers' business operations because pilots and flight attendants use their seniority to select their daily flight assignments, work days, vacations, and other employment benefits. *See Rakestraw*, 981 F.2d at 1535 ("Higher seniority means more desirable assignments[.]"); *Addington v. U.S. Airline Pilots Ass'n*, 791 F.3d 967, 980 (9th Cir. 2015) ("Seniority is immensely valuable to [employees]; greater seniority means better wages and working conditions."); *see also Radio Officers*, 347 U.S. at 25-27, 41-42, 46 (striking down a nearly identical scheme as coercive of NLRA-covered employees' rights); *supra* at 22-23.

Preventing discrimination that harms employees' seniority expectations is of nationwide importance. *See Lorance v. AT&T Techs., Inc.*, 490 U.S. 900, 905, 12 (1989) (recognizing that "a competitive seniority system establishes a 'hierarchy [of contractual rights] … according to which … various employment benefits are distributed'" (quoting *Franks v. Bowman Transp. Co.*, 424 U.S. 747, 768 (1976)) (cleaned up).

Except for *Street* and *Ellis* this Court has not decided a case requiring extensive analysis of § 2,

Fourth's agency fee prohibition since Congress's enactment of § 2, Eleventh. *Street,* 367 U.S. at 750, 767-68; *Ellis,* 466 U.S. at 448; *supra* at 8-13. Nor has this Court examined the DFR issue presented in this case, except for deciding that unions cannot discriminate based on an employee's non-membership in a union. *See Steele*, 323 U.S. at 198, 201 n.2, 204; *Vaca*, 386 U.S. at 182. Notwithstanding the recent reminder in *Janus* that a weakened DFR raises serious questions regarding exclusive representation's constitutionality, some of this Court's own prior precedent has diminished and distorted the DFR's protections since *Steele* and *Vaca*. *See O'Neill*, 499 U.S. at 78; *supra* at 30. Resolving these constitutional issues is of national importance to all RLA and NLRA-covered employees affected by the Ninth Circuit's unraveling of the DFR.

This is the ideal case to resolve the issues presented. The facts are undisputed, and there are no procedural or jurisdictional impediments to review. Indeed, the Ninth Circuit and all parties agree on the most critical fact—that TWU and Allegiant's Agency Fee Requirement was not a § 2, Eleventh (a) "union security" agreement. Pet.App.9a, 12a.

That makes this case an ideal vehicle to reconcile the Ninth Circuit's conflicts with Supreme Court, circuit court, and NLRB precedent, and to secure the RLA's general agency fee prohibition as recognized in *Street*, *Ellis*, and *Harris*, as well as the DFR's vigorous protections of employees who do not wish to support or associate the union, without which, the extraordinary power of exclusive representation would be unconstitutional. *See Steele*, 323 U.S. at 198-99, 204; *Vaca*, 386 U.S. at 182; *Janus*, 585 U.S. at 901.

CONCLUSION

The Court should grant Bahreman's petition, issue a writ of certiorari to the United States Court of Appeals for the Ninth Circuit, and set the case for briefing and argument on the questions presented.

Respectfully submitted,

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April 21, 2025

APPENDIX

APPENDIX TABLE OF CONTENTS

Appendix A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ALI BAHREMAN, *Plaintiff-Appellant*, v. ALLEGIANT AIR, LLC; TRANSPORT WORKERS UNION OF AMERICA LOCAL 577, *Defendants-Appellees.*	No. 23-16156 D.C. No. 2:20-cv-00437-ART-DJA OPINION

Appeal from the United States District Court
for the District of Nevada
Anne R. Traum, District Judge, Presiding

Argued and Submitted October 7, 2024
San Francisco, California

Filed December 10, 2024

Before: M. Margeret McKeown, Lucy H. Koh, and Anthony D. Johnstone, Circuit Judges.
Opinion by Judge Johnstone

SUMMARY*

Railway Labor Act

The panel affirmed the district court's summary judgment in favor of Allegiant Air and the Transport Workers Union in Allegiant flight attendant Ali Bahreman's action alleging that the Collective Bargaining Agreement between Allegiant and the Union violated the Railway Labor Act of 1926.

The Agreement gives employees a choice a between paying dues to join the Union or paying agency fees without joining the Union. The Agreement's enforcement mechanism gives employees a third choice: pay neither dues nor fees, and lose bidding privileges for work schedules. Bahreman chose not pay any fees, and lost his bidding privileges.

The panel held that the Railway Labor Act does not prohibit a collective bargaining agreement that conditions seniority-based bidding privileges—not continued employment—on payment of either union dues or agency fees.

Addressing Bahreman's claims that the Agreement's suspension of bidding privileges for nonpayment of agency fees violates the Act, the panel held that (1) the Agreement does not violate the Act's anti-coercion provision because it does not induce employees to join the Union, (2) the Act does not prohibit unions from reaching collective bargaining agreements with different terms other than those that the Act explicitly permits, and (3) the Union did not violate its duty of fair representation because the

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Union enforced the Agreement equally among all members of the bargaining unit.

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OPINION

JOHNSTONE, Circuit Judge:

The Railway Labor Act of 1926, enacted to prevent labor disputes from interrupting interstate commerce, requires carriers and their employees to resolve disagreements through collective bargaining and arbitration. Over time, Congress has tailored the Act's terms to protect the freedom of employees to associate by joining—or not joining—labor unions. First, in response to carriers' use of "company unions," Congress amended the Act to forbid carriers from interfering with employee organizing. Second, in response to "free riders," Congress amended the Act to permit carriers and unions to compel union membership through "union security agreements," and to deduct associated payments from wages. Then the Supreme Court, in response to freedom of association concerns, specified that the Act did not require employees to support union activities unrelated to collective bargaining, like political spending. So carriers and unions began to replace their "union-shop" agreements, which require all employees to join the union, with "agency-shop" agreements, which allow employees to forgo union membership as long as they pay "agency fees" to support collective bargaining. And the Supreme Court affirmed that the Act permits these agreements.

Ali Bahreman worked as a flight attendant at Allegiant Air, a carrier under the Act. Allegiant and the Transport Workers Union negotiated a Collective Bargaining Agreement that gives employees a choice between paying dues to join the union or paying agency fees without joining. The Agreement's novel enforcement mechanism, in effect, gives employees a third choice: pay neither dues nor fees, and lose seniority-based bidding privileges for work schedules. Bahreman chose not to pay and lost his bidding

privileges. He sued Allegiant and the Union, claiming that the Agreement violates several provisions of the Act. The central question that Bahreman's claims present is whether the Act prohibits a collective bargaining agreement that conditions seniority-based bidding privileges—not continued employment—on payment of either union dues or agency fees. In agreement with the district court, we answer no.

I. Bahreman's challenge to the Agreement

Allegiant and the Transport Workers Union, which represents flight attendants for that carrier, entered a Collective Bargaining Agreement. Section 29 of the Agreement, entitled "Union Security," offers flight attendants a choice between becoming dues-paying members of the Union or paying an agency fee in the form of a "service charge." A flight attendant who fails to pay membership dues (for members) or the service charge (for nonmembers) loses bidding privileges for work schedules, including for flight assignments and leave. Flight attendants receive their flight assignments, work schedules, and other benefits such as vacation and leave through a seniority-based bidding program, so a loss of bidding privileges means a loss of important benefits.

Bahreman began working for Allegiant as a flight attendant in 2015. He chose not to join the Union or pay the service charge. Allegiant therefore suspended his bidding privileges under the Agreement, beginning in 2019 and lasting until his resignation in 2022. Bahreman sued Allegiant and the Union, seeking declaratory relief, injunctive relief, and damages resulting from a loss of his bidding privileges. He claims that the Agreement's suspension of bidding privileges for nonpayment of agency fees violates the Act in three ways. First, it deviates from the employment-termination remedy in the Act's "union security agreements" provision. Second, it coerces him to join the Union in violation of

the Act's "anti-coercion" provision. Third, it violates the Union's duty of fair representation to nonunion workers.

The district court granted summary judgment to Allegiant and the Union on all claims. Bahreman timely appeals. We review the district court's summary judgment order de novo. *Desire, LLC v. Manna Textiles, Inc.,* 986 F.3d 1253, 1259 (9th Cir. 2021).

II. The Railway Labor Act

Congress passed the Act to promptly resolve disputes between rail carriers and their employees to avoid interrupting the transportation that sustains interstate commerce. Railway Labor Act, Pub. L. No. 69-257, 44 Stat. 577 (1926); *see also* 45 U.S.C. § 151a(1). The Act does so by imposing a duty on both parties "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions" and "to settle all disputes" through the Act's arbitration processes. 45 U.S.C. § 152, First. After the 1926 enactment, labor unions soon complained "that the carriers interfered with the employees' freedom of choice of representatives by creating company unions." *Int'l Ass'n of Machinists v. Street*, 367 U.S. 740, 759 (1961). Congress responded in 1934 by amending the Act to guarantee employees "the right to organize and bargain collectively through representatives of their own choosing," and prohibiting carriers from "influenc[ing] or coerc[ing] employees" in their choice of union membership. 45 U.S.C. § 152, Fourth; Act of June 21, 1934, ch. 691, 48 Stat. 1187. Congress extended the Act to air carriers two years later. 45 U.S.C. § 181; *see* Act of April 10, 1936, ch. 166, 49 Stat. 1189.

A decade later, the Supreme Court held that, under the Act, "a union's status as exclusive bargaining representative carries with it the duty fairly and equitably to represent all employees…,

union and nonunion." *Street*, 367 U.S. at 761 (citing *Steele v. Louisville & Nashville R.R. Co.,* 323 U.S. 192 (1944)). This created a "free rider" problem, as "[n]onunion members . . . share[d] in the benefits derived from collective agreements negotiated by the railway labor unions but b[ore] no share of the cost of obtaining such benefits." *Id.* at 761-62 (quoting H.R. Rep. No. 81-2811, at 4 (1950)). Again, Congress responded. In 1951, it amended the Act to permit carriers and unions "to make agreements, requiring as a condition of continued employment, that . . . all employees shall become members of the labor organization representing" them. 45 U.S.C. § 152, Eleventh(a); Act of Jan. 10, 1951, ch. 1220, 64 Stat. 1238. In short, the Act permits but does not require union shops. It also permits "checkoff" agreements, under which employees can authorize the carrier to deduct "any periodic dues, initiation fees, and assessments" from paychecks and pay them to the union. 45 U.S.C. § 152, Eleventh(b).

In 1961, the Supreme Court further clarified the Act's scope. *Street*, 367 U.S. at 767. The Court explained that Section 2, Eleventh "contemplated compulsory unionism to force employees to share the costs of negotiating and administering collective agreements" and settling disputes under them, *Id.* at 764. But, the Court held, "unions must not support [political] activities, against the expressed wishes of a dissenting employee, with his exacted money." *Id.* at 770. Unions and carriers adapted by negotiating new terms in collective bargaining agreements. Instead of union-shop agreements, some unions and carriers negotiated agency-shop agreements, which do not require formal union membership or payment of union dues. Instead of joining the union, an employee can pay an agency fee, used only to support collective bargaining and administration of the contract. *See Ellis v. Bhd. of Ry., Airline & S.S. Clerks*, 466 U.S.

435, 439, 446-48 (1984) (analyzing under Section 2, Eleventh an agreement interpreted so that "employees need not become formal members of the union, but must pay agency fees"). An agency shop "places the option of membership in the employee while still requiring the same monetary support as does the union shop." *NLRB v. Gen. Motors*, 373 U.S. 734, 744 (1963) (applying the National Labor Relations Act).

Although Section 2, Eleventh refers to "members" and "membership" of a "labor organization," the Supreme Court has read the Act to permit agreements under which nonmembers also must also [sic] financially support unions' collective bargaining activity. In other words, the Act "allows … agency-shop agreements." *Air Line Pilots Ass'n v. Miller*, 523 U.S. 866, 872 (1988) (citing 45 U.S.C. § 152, Eleventh); *see also Ellis*, 466 U.S. at 446-48. This interpretation of the Act permits a form of collective bargaining agreement that arose after its enactment: the agency-shop agreement. *See Ellis*, 466 U.S. at 447. As the Court explained in authorizing agency-shop agreements under the similar language of the National Labor Relations Act, any "difference between the union and agency shop … is more formal than real," because "[m]embership' as a condition of employment is whittled down to its financial core." *Gen. Motors,* 373 U.S. at 742, 744. Thus, for present purposes, the terms "members" and "membership" include employees who join the union and those who pay agency fees. *See Air Line Pilots*, 523 U.S. at 872; *Klemens v. Air Line Pilots Ass'n, Int'l*, 736 F.2d 491, 494 (9th Cir. 1984).

III. The Agreement does not violate the Act.

The question presented here is whether the Act permits a collective bargaining agreement that conditions only bidding privileges, and not continued employment, on payment of either union dues or

agency fees. All parties agree that, because it does not condition continued employment on payment of dues or fees, the Agreement is not a "union security agreement" as defined by the Act. They disagree on what follows. To Bahreman, this means that the Agreement is not permitted by the union security authorization in Section 2, Eleventh, which he contends is the only exception to the anti-coercion prohibition in Section 2, Fourth. To Allegiant and the Union, this means that the Agreement is not contemplated by either the Act's union security authorization or its anti-coercion prohibition. On that view, like any other negotiated term of employment not covered by the Act, the Agreement is lawful.

A. The Agreement does not induce employees to join the Union in violation of Section 2, Fourth.

Bahreman claims the Agreement violates the Act's anti-coercion provision in Section 2, Fourth. To protect employees' "right to organize and bargain collectively through representatives of their own choosing," Section 2, Fourth prohibits carriers from "influenc[ing] or coerc[ing] employees in an effort to induce them to join … any labor organization." 45 U.S.C. § 152, Fourth. Under the Agreement, an employee who pays neither dues nor fees loses bidding privileges regardless of union membership. So we ask whether an agreement that treats union members the same as any other bargaining unit member coerces employees to join the union. We hold that it does not.

Bahreman argues that the Agreement induces him to join the Union by requiring that he either pay agency fees or forgo bidding privileges. But requiring agency fees does not incentivize union membership because, under the Agreement, those fees cannot exceed union dues. In fact, according to Bahreman, monthly agency fees at Allegiant were $25 compared with $31 for union dues. Because it would cost

Bahreman less to pay agency fees than to pay union dues, there is no financial inducement to join the Union. Similarly, the suspension of bidding privileges for nonpayment of agency fees does not induce union membership because members face the same consequence for nonpayment of union dues. Employees who pay union dues or agency fees maintain their bidding privileges. Those who do not make those payments lose their bidding privileges. Allegiant cannot very well coerce Bahreman into the Union by employing him under terms that treat union members and nonmembers alike.

So Bahreman turns to a different statute not at issue: Section 8(a)(3) of the National Labor Relations Act. 29 U.S.C. § 158(a)(3). Section 8(a)(3) prohibits reductions in seniority for nonpayment of union dues in the absence of a valid union security agreement. *See Radio Officers' Union of Com. Telegraphers Union, AFL v. NLRB*, 347 U.S. 17, 24, 41-42 (1954). Bahreman argues that, because Section 8(a)(3) of the NLRA and Section 2, Eleventh(a) of the Act share "nearly identical language," *Comm'ns* [sic] *Workers of Am. v. Beck*, 487 U.S. 735, 745-46 (1988), we should import this prohibition into Section 2, Fourth. This argument fails. The NLRA does not apply to Allegiant and "cannot be imported wholesale into the railway labor or arena." *Trans World Airlines, Inc. v. Indep. Fed'n of Flight Attendants*, 489 U.S. 426, 439 (1989) (quoting *Bhd. of R.R. Trainmen v. Jacksonville Terminal Co.,* 394 U.S. 369, 383 (1969)). Because the Act lacks the NLRA's language prohibiting "discrimination in regard to … any term or condition of employment," 29 U.S.C. § 158(a)(3), there is no analogous textual grounding for an attack on the Agreement's seniority-related provisions. Neither the NLRA nor *Radio Officers' Union* controls.

Nor does the Agreement violate Section 2, Fourth's prohibition on "deduct[ing] from the wages of

employees any dues, fees, assessments, or other contributions payable to labor organizations." That is because Section 2, Eleventh(b) expressly permits a carrier and a labor organization together "to make agreements providing for the deduction" of these payments. 45 U.S.C. § 152, Eleventh(b). As the First Circuit explained, "[r]ead together, §§ 152, Fourth and Eleventh(b) provide that carriers may not unilaterally deduct dues from employee wages, but may do so upon the agreement of all parties involved." *Wightman v. Springfield Terminal Ry. Co.*, 100 F.3d 228, 235 (1st Cir. 1996). And the Act allows checkoff agreements for agency fees. *See Felter v. S. Pac. Co.*, 359 U.S. 326, 330-31 (1959). "Thus, even in the absence of a union shop agreement" permitted by Eleventh(a), "employees and carriers may agree to a dues deduction schedule under § 152, Eleventh(b). *Wightman*, 100 F.3d at 235.

B. Section 2, Eleventh(a) does not prohibit the Agreement.

Bahreman also claims that the Agreement violates Section 2, Eleventh(a). That provision permits a carrier and a union "to make agreements, requiring, as a condition of continued employment, that … all employees shall become members of the labor organization representing their craft or class." 45 U.S.C. § 152, Eleventh(a). The Agreement does not require employees to join the Union or pay agency fees as "a condition of continued employment." So we ask whether this permissive statute prohibits an agreement with different terms. We hold that it does not.

Two material terms distinguish the Agreement here from the agreements contemplated by Eleventh(a). First, the Agreement does not require membership in a union. Instead, it allows employees to pay an agency fee to support "the administration of the Agreement and the representation of" employees.

And as we have observed, "[a]lthough the statute explicitly authorizes only union-shop agreements, it also permits agency-shop agreements." *Klemens*, 736 F.2d at 494. Second, unlike a typical agency-shop agreement, the Agreement does not require payment of agency fees "as a condition of continued employment." Instead of being fired, employees who fail to pay agency fees, like member employees who fail to pay union dues, forgo their bidding privileges, This second distinction, Bahreman claims, disqualifies the Agreement under Section 2, Eleventh(a).

The text of Section 2, Eleventh(a) is permissive. It provides that carriers and unions "shall be permitted" to enter into agreements that require payment of union dues as a condition of continued employment. 45 U.S.C. § 152, Eleventh(a). It does not by its terms prohibit carriers and unions from reaching collective bargaining agreements other than those it explicitly permits, including agency-shop agreements. *See Street,* 367 U.S. at 766-67; *Ellis*, 466 U.S. at 438-39. Bahreman's alternate, prescriptive gloss on the Act contravenes its purpose: to provide the means for carriers and unions to collectively bargain for the pay, rules, and working conditions that the parties want. The Agreement reflects the deal struck by Allegiant and the Union. It links the bargained-for bidding privileges to the agency fees that support the bargaining. This resolves the problem of nonpaying employees taking a free ride to the bidding privileges the Union negotiated. Thus, the Agreement arose from the Act's collective-bargaining process, does not contradict its text, and is consistent with its anti-free rider purpose.

Bahreman points to cases, like *Ellis*, 466 U.S. at 438-39, and *Klemens*, 736 F.2d at 494, 496-98, that he says limit the enforcement of agency-shop agreements to termination. But *Ellis* holds only that unions and

carriers may negotiate a contract "requiring all employees to become members of *or* to make contributions to the union." 466 U.S. at 448 (emphasis added). *Ellis* says nothing about whether the Act permits other types of agreements that encourage payment of agency fees. *Klemens* offers even less help to Bahreman. There, we held that the Act allows "a cause of action against unions that attempt to enforce agency shop agreements in a manner inconsistent with" Section 2, Eleventh(a). *Klemens*, 736 F.2d at 496. We explained that unions may collect dues or fees only under a lawful collective bargaining agreement, but we said nothing about the other terms that such an agreement could contain. *See id.* at 496, 498 n.5. These cases do not require a departure from the permissive plain meaning of Section 2, Eleventh(a).

IV. The Union did not violate its duty of fair representation.

When a union becomes the exclusive bargaining representative for a group of workers, it must "represent fairly the interests of all bargaining-unit members." *Int'l Bhd. of Elec. Workers v. Foust*, 442 U.S. 42, 47 (1979); *see also Demetris v. Transp. Workers Union of Am., AFL-CIO*, 862 F.3d 799, 804-05 (9th Cir. 2017) (explaining this duty also applies to unions under the Act). A union breaches this duty "when its conduct toward a member of the bargaining unit is arbitrary, discriminatory, or in bad faith." *Demetris,* 862 F.3d at 805 (quoting *Marquez v. Screen Actors Guild, Inc.*, 525 U.S. 33, 44 (1998)). The Union's actions here were not discriminatory because all employees who fail to pay union dues or agency fees face the same result, and no individual employee is singled out. *See Amalgamated Ass'n of St., Elec. Ry & Motor Coach Emps. of Am. v. Lockridge,* 403 U.S. 274, 301 (1971). Nor were they arbitrary, discriminatory, or in bad faith because the Union acted according to the Agreement when it suspended Bahreman's

bidding privileges. *See Burkevich v. Air Line Pilots Ass'n, Intern.* [sic], 849 F.2d 346, 349 (9th Cir. 1990); *Demetris*, 862 F.3d at 805.

* * *

The Railway Labor Act empowers carriers and their employees, through unions, to collectively bargain the terms of employment. Its protections neither prescribe termination nor proscribe alternative conditions on agency-fee agreements made and maintained through its processes. Allegiant therefore does not unlawfully induce union membership under Section 2, Fourth. Nor is the Agreement prohibited by Section 2, Eleventh. And the Union does not violate its duty of fair representation in enforcing the Agreement equally among all members of the bargaining unit.

AFFIRMED.

Appendix B

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ALI BAHREMAN, Plaintiff, v. ALLEGIANT AIR, LLC and TRANSPORT WORKERS UNION OF AMERICA LOCAL 577, Defendants.	Case No. 2:20-cv-00437-ART-DJA ORDER

Before the Court are Motions for Summary Judgment by Plaintiff Ali Bahreman ("Bahreman") (ECF No. 79), and Defendants Allegiant Air, LLC ("Allegiant") (ECF No. 76), and Transport Workers Union of America, Local 577 ("TWU") (collectively, "Defendants") (ECF No. 77). The question before the Court is whether Section 29 of the Collective Bargaining Agreement ("CBA") ("Section 29") between Allegiant and TWU is unlawful because it suspends bidding privileges for union members and nonmembers if they fail to pay their union dues or agency fees, respectively. For the reasons stated below, the Court denies Bahreman's Motion for Summary Judgment (ECF No. 79) and grants

Defendants' Motions for Summary Judgment. (ECF Nos. 76, 77)

I. BACKGROUND

Bahreman was employed by Allegiant as a flight attendant between April 6, 2015, and June 10, 2022. (ECF No. 79 at 2). Allegiant is a common carrier by air within the meaning of Section 201 of the Railway Labor Act. 45 U.S.C. §152; (ECF No. 77 at 3). TWU is the exclusive representative of the craft or class of flight attendants employed by Allegiant. (*Id.*)

On December 21, 2017, Allegiant and TWU entered into a CBA. (*Id.*) Section 29 of the CBA is at issue in this litigation. Section 29 requires any flight attendant to either apply for union membership within 60 days after the date of employment and pay union dues upon admittance to the TWU, or not join the union and pay a monthly "service charge"—commonly referred to as an "agency fee"—that contributes to TWU's representation of Allegiant's flight attendants but does not fund TWU's political activities. (*Id.* at 3-4). As discussed below, a flight attendant's bidding privileges are suspended under Section 29 if they pay neither union dues nor agency fees.

Bidding is the process by which Allegiant flight attendants are assigned work and vacation schedules. (ECF No. 76 at 5). Flight attendants "bid" on particular trips or days off to build their schedules for the upcoming month. (*Id.*) Allegiant processes attendants' bids in order of seniority, and flight attendants' work schedules are thereby awarded based on their seniority. (*Id.*).

Because bids are processed in the order of seniority, a flight attendant with lower seniority is less likely to be awarded the most desirable work schedules. For example, flight attendants with lower seniority are more likely to be assigned "reserve lines" that require 14-hour on-call periods on some days

when no trip is assigned. (*Id.* at 5-6).

Under Section 29 D and E of the CBA, an Allegiant flight attendant's bidding privileges are suspended if they pay neither union dues nor agency fees. (ECF No. 77 at 4). This means that, although the attendant retains their seniority for other purposes, e.g., pay rates, their seniority is not taken into consideration in the bidding process, (ECF No. 76 at 7). The parties strongly disagree about the magnitude of the impact suspension of bidding privileges has on a given flight attendant's work schedule and pay, among other benefits. In plain terms, however, a flight attendant who pays either union dues or agency fees will have a higher likelihood of obtaining their preferred schedule than an attendant of equivalent seniority who pays neither their dues or fees and consequently has their bidding privileges suspended.

On September 3, 2019, Allegiant emailed Bahreman and informed him that his bidding privileges were suspended due to nonpayment of union dues or agency fees. (ECF No. 79 at 6). Bahreman's bidding privileges remained suspended due to nonpayment until he resigned his employment at Allegiant on June 10, 2022. (*Id.*).

Bahreman initiated this action on March 3, 2020. On March 21, 2021, District Judge Richard F. Boulware II denied Defendants' Motion to Dismiss without prejudice. (ECF No. 42).

On September 14, 2022, Defendants filed their Motions for Summary Judgment. (ECF Nos. 76, 77). On the same day, Bahreman filed his own Motion for Summary Judgment. (ECF No. 79).

On July 10, 2023, this Court held oral argument on the Parties' Motions to Dismiss. (ECF Nos. 76, 77, 79).

For the reasons discussed herein, the Court grants Defendants' Motions for Summary Judgment

(ECF Nos. 76, 77) and denies Bahreman's Motion for Summary Judgment. (ECF No. 79).

II. LEGAL STANDARD

"The purpose of summary judgment is to avoid unnecessary trials when there is no dispute as to the facts before the court." *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.,* 18 F.3d 1468, 1471 (9th Cir. 1994) (citation omitted). Summary judgment is appropriate when the pleadings, the discovery and disclosure materials on file, and any affidavits "show there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). An issue is "genuine" if there is a sufficient evidentiary basis on which a reasonable factfinder could find for the nonmoving party and a dispute is "material" if it could affect the outcome of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248-49 (1986). Where reasonable minds could differ on the material facts at issue, however, summary judgment is not appropriate. *See id.* at 250-51. "The amount of evidence necessary to raise a genuine issue of material fact is enough 'to require a jury or judge to resolve the parties' differing versions of the truth at trial.'" *Aydin Corp. v. Loral Corp.,* 718 F.2d 897, 902 (9th Cir. 1983) (quoting *First Nat'l Bank v. Cities Service Co.,* 391 U.S. 253, 288-89 (1968)). In evaluating a summary judgment motion, a court views all facts and draws all inferences in the light most favorable to the nonmoving party. *See Kaiser Cement Corp. v. Fishbach & Moore, Inc.,* 793 F.2d 1100, 1103 (9th Cir. 1986) (citation omitted).

The moving party bears the burden of showing that there are no genuine issues of material fact. *See Zoslaw v. MCA Distrib. Corp.,* 693 F.2d 870, 883 (9th Cir. 1982). Once the moving party satisfies Rule 56's requirements, the burden shifts to the party resisting the motion to "set forth specific facts showing that

there is a genuine issue for trial." *Anderson*, 477 U.S. at 256. The nonmoving party "may not rely on denials in the pleadings but must produce specific evidence, through affidavits or admissible discovery material, to show that the dispute exists," *Bhan v. NME Hosps., Inc.,* 929 F.2d 1404, 1409 (9th Cir. 1991), and "must do more than simply show that there is some metaphysical doubt as to the material facts." *Orr v. Bank of Am.,* 285 F.3d 764, 783 (9th Cir. 2002) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 586 (1986)). "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient[.]" *Anderson*, 477 U.S. at 252.

III. DISCUSSION

A. Section 2, Eleventh of the RLA

Bahreman asserts three claims: that Section 29 violates § 2, Eleventh (a) of the RLA because termination is the sole remedy under the RLA for nonpayment of union membership dues or service fees (Claim I); that service fees are "discriminatory" and coercive in violation of § 2, Fourth (Claim II); and that the Defendants have violated the RLA's duty of fair representation by conditioning bidding privileges on payment of membership dues or agency fees (Claim III). Bahreman seeks summary judgment on all three claims, as does each Defendant. There are no disputed issues of fact relevant to these claims, which turn on whether an employee can lawfully have their bidding privileges suspended for nonpayment of union membership dues or service fees.

The parties agree that Section 29 is not a union security agreement within the statutory meaning of § 2, Eleventh (a) of the RLA, but disagree about whether it is lawful for employees to lose bidding privileges – rather than face termination – for failing to pay union dues or agency fees. (*See* ECF Nos. 76 at 3; 77 at 17; 92 at 19). Because such a contractual term is lawful,

Defendants are entitled to summary judgment.

Congress enacted § 2, Eleventh of the RLA in 1951 to eliminate so-called "free riders." *Ellis v. Bhd. of Ry., Airline & S.S. Clerks, Freight Handlers, Exp. & Station Emps,* 466 U.S. 435, 447 (1984) ("We remain convinced that Congress' essential justification for authorizing the union ship was the desire to eliminate free riders ….") Free riders are employees who receive the benefits of union representation (e.g., a negotiated collective bargaining agreement) without paying anything towards the costs of collective bargaining and other related activities. *See Int'l Ass'n of Machinists v. Street*, 367 U.S. 740, 762 (1961) (explaining that the freeriding issue was "decisive with Congress" in enacting § 2, Eleventh). The Supreme Court in *Steele v. Louisville & N.R. Co.,* 323 U.S. 192, 202 (1944), required that unions represent the interests of both union and nonunion members fairly and equitably. After *Steele*, unions lobbied Congress for a mechanism to avoid freeriding by employees who would receive the benefits of union representation but not pay anything towards the expenses of that representation. Congress responded by enacting § 2, Eleventh (a), which authorizes a "union security agreement." Under § 2, Eleventh (a), carriers and labor organizations may "make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment . . . all employees shall become members of the labor organization representing their craft or class . . . ." 45 U.S.C. § 152, Eleventh (a).

As interpreted by the Supreme Court, a union security agreement gives employees a choice: they are not required to join the union but must pay their fair share for union representation by paying either union membership dues or an "agency fee" for nonmembers. Three aspects of this choice are important and well-

settled. First, union membership is not required as the Supreme Court recognized in *Street*, 367 U.S. at 770, *Ellis*, 466 U.S. at 455-56, and other cases. Second, in lieu of membership dues unions may extract a lesser "agency fee" from nonmembers that pays for activities associated with collective bargaining and general representation but does not fund any political activities on the part of the union. *See Street*, 367 U.S. 740 at 770; *Ellis,* 466 U.S. at 447. In *Railway Emp. Dept. v. Hanson*, the Supreme Court found agency fees imposed under § 2, Eleventh (a) constitutional, holding that "the requirement for financial support of the collective-bargaining agency by all who receive the benefits of its work is within power of Congress." *Railway Emp. Dept. v. Hanson*, 351 U.S. 225, 238 (1956). Third, a "union security agreement" requires payment of membership dues or agency fees "as a condition of continued employment," so it authorizes termination for nonpayment of either membership dues or agency fees. 45 U.S.C. § 152, Eleventh (a).

Bahreman argues that Section 29 is an "illegal union security agreement" because it provides for suspension of bidding privileges, not termination, for nonpayment dues or fees. Bahreman insists that termination from employment is the sole remedy for combating freeriding, (ECF No. 79 at 21 ("The RLA is clear: termination from employment is the only permissible enforcement of a lawful 'union security' contract; loss or discrimination of any other CBA benefit is not permissible or legal.")) Section 29 is neither a "union security agreement" nor unlawful. Neither the statutory text nor the case law mandates termination nor prohibits lesser penalties for nonpayment of dues or fees.

To fall within the statutory definition under § 2, Eleventh (a), a union security agreement requires termination as a remedy for nonpayment of dues or

fees. *See* 45 U.S.C. § 152, Eleventh (a) (requiring union membership – construed to include payment of agency fees – within 60 days of employment "as a condition of continued employment.") Section 29 is not a "union security agreement" precisely because it does not impose termination as a penalty for nonpayment of dues or fees. *See, e.g., Bhd. of Locomotive Engineers v. Kansas City S. Ry. Co.,* 26 F.3d 787, 790, 792-793 (8th Cir. 1994); *Corzine v. Bhd. of Locomotive Engineers,* 147 F.3d 651, 653-54 (7th Cir. 1998). That Congress authorized termination to combat free riders in no way indicates that Congress barred parties from negotiating lesser penalties. Bahreman's argument that termination is the only contractual penalty for nonpayment of dues or fees cannot be squared with the statutory text or the Supreme Court's jurisprudence around § 2, Eleventh (a).

First, the Supreme Court's jurisprudence around § 2, Eleventh (a) makes clear that it is not subject to a strict textualist reading that would literally require an employee to join the union or be terminated. The Supreme Court foreclosed such a reading of § 2, Eleventh (a) when it held in *Street, Ellis*, and other cases that employees need not join the union to satisfy the union security agreement—they may also not join the union and pay a reduced agency fee that does not subsidize the union's political activities. Bahreman argues that there is one authorized remedy for failing to pay union dues or agency fees: termination. (ECF No. 79 at 21). Bahreman's implied insertion of "only" into the statutory text (carriers "shall be permitted to [only] make agreements, requiring, as a condition of continued employment, that . . . all employees shall become members of the labor organization") directly conflicts with the Supreme Court's express allowance of agency fees in lieu of union membership to satisfy § 2, Eleventh (a).

Second, Bahreman fails to distinguish so-called

"dual unionism" cases, where courts from the First, Seventh, and Eighth Circuits have uniformly held that seniority-based penalties for failure to pay dues or agency fees are lawful under § 2, Eleventh (a) and (c). Dual unionism cases are directly analogous to the present case because they involve contractual clauses that freeze or eliminate seniority for employees if they do not pay an agency fee. This is precisely the type of contractual arrangement Bahreman insists is unlawful because it includes a seniority-based penalty for nonpayment, rather than termination.

Dual unionism cases arise where an employee begins work in a class represented by one union (for sake of discussion, "Union A"), and then advances into a different class represented by a different union, "Union B"). Dual unionism cases are most common in the railroad context, where "[A]spirant engineers started as firemen, belonging to [Union A], and rose to be engineers, at which point they might want to belong to [Union B]." *Corzine v. Bhd. of Locomotive Engineers,* 147 F.3d 651, 653 (7th Cir. 1998). Employees in this situation are reluctant to give up their membership and seniority in Union A, especially if they may need to return to a Union A job in the future. To avoid the burden of being a member of two unions at once, Congress passed § 2, Eleventh (c), which allows employees to satisfy the requirements of § 2, Eleventh (a) through membership in a national union. *See* 45 U.S.C. §152 Eleventh (c). This "allows engineers who belong to [Union A] by virtue of having started as firemen to work as engineers without having to join [Union B] in order to retain seniority in both crafts . . ." *Corzine*, 147 F.3d at 653. § 2, Eleventh (c) therefore relieves these employees "of the dual expenses of 'dual unionism.'" *Id.* (citations omitted). The combined effect of § 2, Eleventh (a) and (c) is that a collective bargaining agreement cannot require that the employee simultaneously enter into

union security agreements with more than one union. *Id.* at 654.

Two features of the dual unionism cases are germane here. They confirm, first, that the CBA, specifically Section 29, is not a union security agreement and, second, that CBA's [sic] can impose non-termination penalties for nonpayment of fees or dues. In the dual unionism cases, the "dormant" union— Union A in the example above —inserted clauses into its CBA requiring employees either stay members of Union A *or* pay agency fees to Union A to retain their seniority. Courts have uniformly concluded that such clauses are lawful even though they are *not* union security agreements because Union A was not "conditioning [the employee's] *employment* in the engineers' craft on their belonging to [Union A], but only their *retention of seniority* in the train service—a very different thing." *Corzine*, 147 F.3d at 654 (emphasis in original); *see also Wightman v. Springfield Terminal Ry.,* 100 F.3d 228, 229-30, 231, 233 (1st Cir. 1996) (Conditioning seniority rights upon payment of dues or agency fees did not violate [sic] RLA. "Article 21 does not require an engineer to choose between dual union membership or unemployment; Article 21 simply requires an engineer to choose whether to retain and continue to accrue seniority in the train service craft."); *Bhd. of Locomotive Engineers v. Kansas City S. Ry. Co.,* 26 F.3d 787, 790, 792-93 (8th Cir. 1994) (Holding provision at issue was not a union security agreement and lawful under § 2, Eleventh.); *Dempsey v. Atchison, Topeka and Santa Fe Ry., Co.,* 16 F.3d 832, 834 (7th Cir. 1994) (same).

Although Bahreman argues that the dual unionism cases do not apply, he misapprehends their significance. Bahreman argues that he is being forced to choose between paying an agency fee or "surrender[ing] CBA seniority-based benefits to

which[he] is already legally entitled," whereas the dual unionism cases "concerned non-bargaining unit railroad employees seeking CBA benefits to which they were not entitled from unions who did not represent them."[1] (ECF No. 92 at 10-11). As cited here, dual unionism cases stand for the proposition that a contractual agreement between a union and a carrier including seniority-related penalties for nonpayment is not a "union security agreement" within the statutory language of § 2, Eleventh (a) because the penalty for nonpayment is something other than termination. *See Corzine*, 147 F.3d at 655 (holding an agreement including seniority-based penalties for nonpayment was not a union security agreement and lawful under § 2, Eleventh (a) and (c)); *see also Bhd. of Locomotive Engineers*, 26 F.3d at 792-93. To hold, as Bahreman urges, that § 2, Eleventh (a) *only* authorizes union security agreements and that § 2, Fourth bans *any* other kind of agreement (that is to say clauses with penalties for nonpayment other than termination) would require ignoring the dual unionism jurisprudence by the First, Seventh and Eighth Circuits, which have uniformly found that employees may be lawfully required to pay agency fees to a union or lose their seniority with that union under § 2, Eleventh.

For the foregoing reasons, the Court concludes that Section 29 of the CBA is lawful under § 2, Eleventh of the RLA.

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[1] The Court notes that any seniority-based benefits are creatures of the CBA which created them, not a legal right to which an employee is independently entitled. *See, e.g., Wightman*, 100 F.3d at 232 ("[U]nion contracts typically define the scope and significance of seniority rights . . . . Seniority, therefore, does not stem from the employer-employee relationship and by extension become and [sic] employment right, but rather from either a statute or the four corners of a collective bargaining agreement. . . .")

B. Section 2, Fourth of the RLA

Next, Bahreman argues that Section 29 violates § 2, Fourth's prohibition on carriers "influec[ing] or coerc[ing] employees in an effort to join or remain or not to join or remain members of any labor organization . . ." 45 U.S.C. § 152, Fourth.[2]

Bahreman argues that Section 29 violates § 2, Fourth because the suspension of Bahreman's bidding privileges "coerced him in his right not to join *or pay* the union." (ECF No. 79 at 19-20) (emphasis added). According to Bahreman, "[c]oercion to pay mandatory union service fees or charges is the same as influence or coercion to join." (*Id.* at 20). Bahreman provides no pertinent citations to support this argument. Although Bahreman cites *Ellis*, 466 U.S. at 455 and *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 303 n.10 (1986), neither provides support.[3] *Ellis*, which concerned the use of nonmember agency fees, affirmed the legality of those fees, holding that "employees may

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[2] § 2, Fourth primarily addresses the "precertification rights and freedoms of unorganized employees." *Trans World Airlines, Inc. v. Indep. Fed'n of Flight Attendants*, 489 U.S. 426, 440 (1989). Although this case arises in the post-certification context, the Court considers Bahreman's arguments here in the interests of completeness.

[3] Bahreman additionally cites *Radio Officers' Union of Commercial Telegraphers v. NLRB*, 347 U.S. 17 (1954), which is inapposite because it arose under the NLRA, rather than the RLA, and involved claims that union members were treated differently than nonmembers. In *Radio Officers*, a union member was stripped of his seniority in route assignments for failing to timely pay union dues. *Id.* at 26-27. The plaintiff's seniority was affected because he was a union member; he would not have lost seniority as a nonmember. *See Teamsters Loc. 41 (Byers Transportation, Inc.),* 94 NLRB 1494, 1495 (1951). Here, union members and nonmembers, governed by the RLA, face the same seniority-based penalty for nonpayment. Another *Radio Officers* plaintiff alleged differential wage treatment for union and nonunion members. *See Radio Officers*, 347 U.S. at 46. Bahreman makes no such claim here.

be compelled to pay their fair share" of expenses associated with collective bargaining, grievances, and related expenses. *Ellis*, 466 U.S. at 448. *Hudson*, which concerned the union's procedures for processing agency fees from nonmembers to avoid subsidizing union political activity, is inapposite because Bahreman makes no claim that his agency fees would be used for an unauthorized purpose. *See Hudson*, 475 U.S. at 302-03.

At oral argument, Bahreman advanced a similar argument that "membership" is a "term of art" in the RLA that includes paying agency fees to a union. Therefore, according to Bahreman § 2, Fourth's prohibition on "influenc[ing] or coerc[ing] employees in an effort to join or remain or not to join or remain members of any labor organization" applies to influencing employees to *pay* their agency fees or union dues. 45 U.S.C. § 152, Fourth. This argument fails for two reasons. First, reading § 2, Fourth in the way Bahreman suggests would require overturning the dual unionism jurisprudence of the First, Seventh, and Eighth Circuits because the seniority-based penalties in the dual unionism cases discussed above were held lawful under § 2, Fourth and Eleventh. *See, e.g. Locomotive Engineers,* 26 F.3d at 795; *Dempsey,* 16 F.3d at 843. Second, collapsing membership in a union with the payment of agency fees to a union undermines the entire rationale of cases like *Street* and *Ellis*, where the Supreme Court explicitly found compelling agency fees lawful under the RLA by *differentiating* union membership from the payment of agency fees. *See, e,g., Ellis,* 466 U.S. at 447-48 ("Only a union that is certified as the exclusive bargaining agent is authorized to negotiate a contract requiring all employees to *become members of or make contributions to* the union." (emphasis added)).

Fundamentally, Section 29 does not coerce an employee to become a member of the TWU. Section 29

imposes precisely the same penalty on both union members and nonmembers when they fail to pay either their union dues or agency fees. Therefore, the Court finds that Section 29 is lawful under § 2, Fourth of the RLA.

C. Duty of Fair Representation

Finally, Bahreman claims that TWU violated its duty of fair representation by "targeting Bahreman and other union-represented flight attendants" by denying them seniority-based privileges for "refusing to join and pay the union." (ECF No. 79 at 29). The RLA requires fair representation of and prohibits "hostile discrimination against" any person represented but the union, regardless of membership. *Steele*, 323 U.S. at 202-03. "A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." *Vaca v. Sipes,* 386 U.S. 171, 190 (1967).

Here, TWU's enforcement of Section 29 is not arbitrary, discriminatory, or in bad faith because Section 29 treats all nonpayers alike regardless of their membership in the union. Section 29.D states that if a flight attendant fails to pay either their "membership dues or service charge" they will be "subject to loss of all bidding privileges." (ECF No. 31-1 §29). Congress and the Supreme Court have plainly authorized the extraction of agency fees from nonmembers to pay their share of collective bargaining costs. Section 29 is merely a mechanism to encourage payments from union members and nonmembers alike. As Bahreman has made no claim that TWU personally discriminated against him on the basis of his status as a nonmember (as opposed to his status as a *nonpayer*), Bahreman's duty of fair representation claim accordingly fails.

Finally, Bahreman's citation to *Addington v. U.S. Pilots Ass'n*, 791 F.3d 967 (9th Cir. 2015) is unhelpful.

(*See* ECF No. 92 at 13 n.67, 23 n.120, 123). *Addington* did not involve union security agreements or either § 2, Fourth or Eleventh.[4] Instead, *Addington* concerned a "raw exercise of political power" by one group of pilots over another during a merger where one group of pilots were treated "as though they were nonunion members." *Addington*, 791 F.3d at 985. In *Addington*, the union "clearly favor[ed] one side in the intra-union dispute." *Id.* at 988. Unlike in *Addington*, here union members and nonmembers are subject to the same penalty for not paying dues or agency fees.

For the foregoing reasons, the Court holds that Section 29 does not violate TWU's duty of fair representation.

IV. CONCLUSION

Under the RLA as interpreted by the Supreme Court, unions like TWU have a statutory duty to represent nonmembers and members equally. Therefore, TWU may require payment of member dues or agency fees as a condition of employment and may uniformly impose seniority-related penalties for nonpayment of member dues or agency fees.

The Court notes that the parties made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion as they do not affect the outcome of the motions before the Court.

Therefore, it is ordered that Bahreman's Motion for Summary Judgment (ECF No. 79) is denied.

It is further ordered that TWU's Motion for Summary Judgment (ECF No. 77) is granted.

It is further ordered that Allegiant's Motion for

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[4] This is also true of another case Bahreman repeatedly cites as binding Ninth Circuit precedent, *Bernard v. Air Line Pilots Ass'n, Int'l*, 873 F.2d 213 (9th Cir. 1989).

Summary Judgment (ECF No. 76) is granted.

DATED THIS 9th day of August 2023.

s/

ANNE R. TRAUM
UNITED STATES DISTRICT JUDGE

Appendix C

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Ali Bahreman

Plaintiff,

v.

Transport Workers Union of America Local 577

Defendants.

JUDGMENT IN A CIVIL CASE

Case Number: 22:20-cv-00437-ART-DJA

_____ **Jury Verdict**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

_____ **Decision by Court**. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

__X__ **Decision by Court**. This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

JUDGMENT in favor of Defendants, Transport Workers Union of America Local 577, Allegiant Air, LLC, and against Plaintiff, Ali Bahreman. It is ordered that Bahreman's Motion for Summary Judgment is denied. It is further ordered that TWU's Motion for Summary Judgment is granted. It is further ordered that Allegiant's Motion for Summary Judgment is granted.

08/09/2023 DEBRA K. KEMPI

Date Clerk

/s/ A. Zamora
Deputy Clerk

[FILED August 31, 2023]

Appendix D

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

[FILED January 22, 2025]

ALI BAHREMAN, *Plaintiff-Appellant*, v. ALLEGIANT AIR, LLC; TRANSPORT WORKERS UNION OF AMERICA LOCAL 577, *Defendants-Appellees.*	No. 23-16156 D.C. No. 2:20-cv-00437-ART-DJA District of Nevada, Las Vegas ORDER

Before: McKEOWN, KOH, and JOHNSTONE, Circuit Judges.

Judges Koh and Johnstone voted to deny the petition for rehearing en banc, and Judge McKeown recommended denial of the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 40.

The petition for rehearing en banc (Dkt. No. 52) is DENIED.

Appendix E

Statutory Provisions

45 U.S.C. § 152 (Fourth)

Fourth. Organization and collective bargaining; freedom from interference by carrier; assistance in organizing or maintaining organization by carrier forbidden; deduction of dues from wages forbidden

Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. No carrier, its officers, or agents shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this chapter shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a

carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

45 U.S.C. § 152 (Eleventh)

Eleventh. Union security agreements; check-off

Notwithstanding any other provisions of this chapter, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted–

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided*, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties)

uniformly required as a condition of acquiring or retaining membership: *Provided*, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) of this paragraph shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in the First division of paragraph (h) of section 153 of this title defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) of this paragraph shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: Provided, however, That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services, such employee, as a condition of

continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: Provided, further, That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

(d) Any provisions in paragraphs Fourth and Fifth of this section in conflict herewith are to the extent of such conflict amended.

Appendix F

Agency Fee Requirement

[excerpt from the December 21, 2017 collective bargaining agreement between Allegiant Air, LLC, and Transport Workers Union of America Local 577]

SECTION 29

UNION SECURITY

A. Any Flight Attendant who, on the effective date of this Agreement, is eligible to become a member of the Union will do so. A Flight Attendant will become a Union member upon the completion of her/his initial probationary period (the first six (6) months of employment). For the purpose of this Section, a Flight Attendant shall be considered a member of the Union if she/he tenders the initiation fees and periodic dues uniformly required as a condition of membership.

B. All new Flight Attendants of the Company hired on or after the effective date of this Agreement, shall make application for membership in the Union within sixty (60) days after the date of employement with the Company and shall thereafter maintain membership in the Union as provided for in Paragraph A of this Section.

C. In lieu of making application for membership as provided above in paragraphs A and B, Flight Attendants may elect instead to pay the Union each month a contribution for the administration of the Agreement and the representation of such Flight Attendant ("service charge"). The service charges will be calculated in a manner consistent with the Union's "Agency Fee formula", however,

a service charge will not exceed the amount of the monthly dues paid by members of the Union as required under this Section.

D. If a Flight Attendant becomes delinquent in the payment of her/his initialion fee, membership dues, or service charge such Flight Attendant shall be notified by Union via registered mail, return receipt requested, copy to the Company, that she/he is delinquent in the payment of initiation fee, membership dues or service charge as specified herein and as is subject to loss of all bidding privileges. Such letter shall also notify the Flight Attendant that she/he must remit the requirement payment within a period of fifteen (15) calendar days, or the Flight Attendant will lose all bidding privileges.

E. If upon expiration of the fifteen (15) days, the Flight Attendant still remains delinquent, the Union shall, in a written order, certify to the Company, with a copy to the Flight Attendant, that the Flight Attendant has failed to remit payment within the grace period allowed, and is, therefore, to loss all of her/his bidding privileges. Such loss of bidding privileges shall be deemed to be for just cause.

F. Any determination under the terms of this Section shall be based solely upon the failure of the Flight Attendant to pay or tender payment of initiation fee, membership dues, or service charge and not because of denial or termination of membership in the Union upon any other grounds.

[subsequent sections of Section 29 and other portions of the collective bargaining act are omitted]