NO. _____

In the Supreme Court of the United States

KEVIN D. WICKSTROM, ET AL.,

Petitioners,

v.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

John M. Pierce
Counsel of Record
JOHN PIERCE LAW P.C.
21550 Oxnard Street, 3rd Floor
Woodland Hills, CA 91367
(321) 961-1848
jpierce@johnpiercelaw.com

February 12, 2026 *Counsel for Petitioners*

SUPREME COURT PRESS ♦ (888) 958-5705 ♦ BOSTON, MASSACHUSETTS

QUESTIONS PRESENTED

1. Whether a union's duty of fair representation under the Railway Labor Act includes an obligation to enforce the Act's status quo requirements under 45 U.S.C. § 156, or whether union "discretion" extends to declining enforcement of mandatory statutory process and protections when members face termination.

2. Whether a duty of fair representation claim alleging a union's failure to enforce mandatory statutory requirements may be dismissed at the pleading stage for failure to prove subjective bad faith or discriminatory intent before discovery.

PARTIES TO THE PROCEEDINGS

Petitioners and Plaintiffs-Appellants below

- Kevin D. Wickstrom
- James R. Breitsprecher
- John Ellis
- Christopher P. Gates
- Forace Hogan
- Erik W. Wichmann
- Robert D. Williamson

Respondent and Defendant-Appellee below

- Air Line Pilots Association, International

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioners state that no Petitioner is a corporation.

LIST OF PROCEEDINGS

Pursuant to Supreme Court Rule 14.1(b)(iii), the following proceedings are directly related to this case:

- *Wickstrom v. Air Line Pilots Ass'n, Int'l*, No. 1:23-cv-02631 (N.D. Ill.), dismissed with prejudice on September 5, 2023; motion for leave to amend denied December 11, 2024.
- *Wickstrom v. Air Line Pilots Ass'n, Int'l*, No. 25-1036 (7th Cir.), affirmed October 8, 2025; petition for rehearing en *banc* denied November 14, 2025.

TABLE OF CONTENTS

TABLE OF CONTENTS (Cont.)

TABLE OF CONTENTS (Cont.)

Page

APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

REHEARING ORDER

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES (Cont.)

JUDICIAL RULES

OPINIONS BELOW

The Seventh Circuit's opinion affirming the district court's dismissal was issued on October 8, 2025, in *Wickstrom v. Air Line Pilots Ass'n, Int'l*, No. 25-1036 (7th Cir.), and is reproduced in the Appendix at App.1a–14a. The Seventh Circuit's order denying rehearing en banc is reproduced in the Appendix at App.54a.

The district court's order granting the motion to dismiss is available at *Wickstrom v. Air Line Pilots Ass'n, Int'l*, 2023 WL 5720989 (N.D. Ill. Sept. 5, 2023), and is reproduced in the Appendix at App.37a-53a. The district court's order denying leave to amend is reproduced in the Appendix at App.16a-30a. The district court's judgment is reproduced in the Appendix at App.31a.

JURISDICTION

The Seventh Circuit entered judgment on October 8, 2025. App.1a. The court denied Petitioners' timely petition for rehearing en banc on November 14, 2025. App.54a. This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition is timely filed within ninety days of the denial of rehearing.

STATUTORY PROVISIONS INVOLVED

45 U.S.C. § 152, First provides:

> It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

45 U.S.C. § 152, Seventh provides:

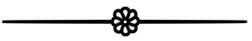
> No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title.

45 U.S.C. § 156 provides in relevant part:

> Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions . . . .
>
> In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not

> be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

These provisions impose mandatory bargaining and status-quo obligations designed to prevent unilateral changes to working conditions pending completion of the Railway Labor Act's dispute-resolution procedures.



INTRODUCTION

This case presents fundamental questions about the duty of fair representation owed by labor unions to their members under the Railway Labor Act ("RLA"), 45 U.S.C. § 151 *et seq.* Specifically, it asks whether a union's statutory role as exclusive bargaining representative carries a corresponding obligation to enforce the federal law that grants it that authority, or whether union "discretion" permits a union to decline enforcement of mandatory statutory protections governing changes to employees' working conditions.

Petitioners are seven former United Airlines pilots who were terminated following United's implementation of a new employment policy. They brought suit against their union, the Air Line Pilots Association, International ("ALPA"), alleging that ALPA breached its duty of fair representation by refusing to enforce the RLA's mandatory status quo requirements, which prohibit carriers from unilaterally altering working conditions

without following prescribed bargaining procedures. *See* 45 U.S.C. §§ 152, Seventh; 156.

The district court granted ALPA's motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), and the Seventh Circuit affirmed, holding that ALPA's conduct fell within the "wide range of reasonableness" afforded to unions under *Air Line Pilots Ass'n, Int'l v. O'Neill*, 499 U.S. 65 (1991). In so holding, the courts below conflated two distinct concepts: union discretion in bargaining strategy and grievance handling, which is entitled to deference, and union authority to decline enforcement of mandatory federal statutory requirements, which this Court has never held to be discretionary.

The RLA imposes binding obligations on both carriers and unions. Section 152, Seventh prohibits carriers from changing rates of pay, rules, or working conditions "except in the manner prescribed" by the statute. Section 156 provides that during bargaining, "rates of pay, rules, or working conditions shall not be altered" until the Act's dispute-resolution procedures are exhausted. These provisions are not aspirational; they are federal mandates designed to simultaneously preserve labor stability and protect worker rights by preventing unilateral action while statutory processes unfold.

The decision below effectively authorizes a regime in which employees may be disciplined or discharged before statutory bargaining obligations are enforced—a "terminate first, arbitrate later" approach—while insulating the exclusive bargaining representative from judicial review so long as the union characterizes its inaction as a discretionary choice.

That result is incompatible with the structure of the Railway Labor Act, this Court's duty-of-fair-representation jurisprudence, and the foundational premise that exclusive representation carries corresponding responsibilities. This Court's review is necessary to clarify that union discretion under *O'Neill* and *Vaca v. Sipes*, 386 U.S. 171 (1967), does not extend to disregarding federal statutory mandates, and to ensure that employees are not left without recourse when their exclusive representative declines to enforce the law governing their employment.

STATEMENT OF THE CASE

A. The Railway Labor Act Framework

The Railway Labor Act establishes a comprehensive framework governing labor relations in the railroad and airline industries. 45 U.S.C. § 151 *et seq.* Congress enacted the RLA "to promote stability in labor-management relations by providing a comprehensive framework for resolving labor disputes." *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 252 (1994). The Act's fundamental purposes include avoiding "any interruption to commerce" and promoting "the prompt and orderly settlement of all disputes." 45 U.S.C. § 151a.

Central to this framework is the status quo requirement. Section 152, Seventh provides that "[n]o carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title." 45 U.S.C. § 152, Seventh.

Section 156 establishes the procedures that must be followed before any such change may occur. It requires at least thirty days' written notice of intended changes and mandates that "rates of pay, rules, or working conditions shall not be altered by the carrier" until the statutory procedures, including mediation if necessary, have been exhausted. 45 U.S.C. § 156. These procedures are designed to preserve existing working conditions while bargaining and dispute-resolution mechanisms are underway—before any employee faces discipline or discharge.

These provisions are not permissive; they impose mandatory obligations. The status quo requirement is "designed to prevent either party from altering the status quo during the pendency of bargaining in order to exert economic pressure and frustrate negotiations." *Detroit & Toledo Shore Line R.R. v. United Transp. Union*, 396 U.S. 142, 150 (1969).

The duty of fair representation arises from the union's role as exclusive bargaining representative under § 152, Fourth. As this Court has explained, this duty is "implied from the union's exclusive authority under the RLA to represent all members of a designated bargaining unit" and requires the union to represent "all members of the bargaining unit 'without hostile discrimination, fairly, impartially, and in good faith.'" *O'Neill*, 499 U.S. at 74 (citations omitted). That exclusive authority exists within—and is constrained by—the statutory framework governing collective bargaining and dispute resolution under the RLA.

B. The United Pilot Agreement and ALPA's Representation

ALPA is the exclusive bargaining representative for pilots employed by United Airlines pursuant to the United Pilot Agreement ("UPA"), the collective bargaining agreement between ALPA and United. App.2a. The UPA grants ALPA exclusive representation "regarding hours of labor, wages and other employment conditions covering the pilots and flight instructors in the employ of the Company in accordance with the provisions of Title II (§ 152) of the Railway Labor Act, as amended." UPA § 1-A.

The UPA establishes procedures governing disputes between pilots and the Company. Nondisciplinary pilot grievances permit pilots to challenge Company conduct, but such grievances may be appealed to the System Board of Adjustment only if ALPA elects to advance them. App.2a. When ALPA declines to advance a pilot's grievance, the pilot may seek review before the Grievance Review Panel ("GRP"), an internal union body that may nominally direct ALPA to advance the grievance; however, the MEC Chairman and MEC Grievance Chairman retain joint authority to determine that a grievance shall not be submitted to or shall be withdrawn from the System Board. *Id.* The grievance process thus does not permit individual pilots to pursue arbitration independently of ALPA.

The UPA also contains provisions governing changes to Company personnel policies. Section 21-K provides that "[c]ompany personnel policy which affects pilots shall not be changed without giving advance notice to the Association and affording them the opportunity to comment," and further states that "no change shall be made to any Company personnel policy which is

contrary to any of the terms of this Agreement." UPA § 21-K.

Section 21-U further provides that "[n]othing in this Agreement shall be construed as a waiver of any Pilot's right(s) under any applicable laws and regulations." UPA § 21-U.

In addition to the UPA, ALPA is governed by its Constitution and By-Laws. Those governing documents provide that any agreement "that, in the opinion of the MEC, substantially affects the pay, working conditions, retirement, or career security of member pilots will be subject to membership ratification."

Further, ALPA's Anti-Discrimination/Anti-Harassment policy states.

> ALPA members shall not engage in discrimination or harassment, including but not limited to . . . *medical status* . . . . ALPA members shall adhere to this policy and the Code of Ethics at all times while performing duties or otherwise acting in a professional capacity as a pilot, ALPA member or volunteer.

(Emphasis added).

C. United's Implementation of a New Employment Policy and ALPA's Response

In May 2020, ALPA warned its United pilots that the airline might attempt to unilaterally alter the United Pilot Agreement in response to the COVID-19 pandemic and called for a unified response to prevent such changes. App.3a.

In January 2021, after United indicated it might implement a vaccination requirement, ALPA took the

position that the UPA permitted such action, departing from its earlier warnings. At the same time, ALPA pledged to Congress union support for aggressive vaccine campaigns. *Id.*

In May 2021, United and ALPA entered into Letter of Agreement 21-02 ("LOA 21-02"). LOA 21-02 prohibited a mandate during its term however included a provision allowing United to unilaterally revoke this agreement. LOA 21-02 provided large financial incentives for voluntary vaccination and reporting, created new work rules that threatened significant financial loss to pilots electing to remain unvaccinated by restricting certain flying assignments to vaccinated pilots and removing unvaccinated pilots from trips without pay. App.3a. The agreement acknowledged that adverse vaccine reactions could affect a pilot's Federal Aviation Administration-required medical certification, recognizing the potential career implications of vaccination for pilots. *Id.* ALPA's public position remained that the vaccine policy to be implemented was permitted by the UPA and that any pilot remaining unvaccinated when the LOA was revoked would be subject to termination or forced unpaid leave.

Membership was not notified that LOA 21-02 bargaining was commencing and the final product was not submitted for membership ratification, notwithstanding ALPA's constitutional requirement that agreements substantially affecting pilots' career security be subject to a membership vote.

On August 5, 2021, in anticipation of United's announcement of a vaccination requirement, ALPA's legal department instructed union representatives not to communicate with pilots regarding the forthcoming policy, citing anticipated litigation. App.3a.

On August 6, 2021, United announced a vaccination requirement for pilots, effective September 27, 2021. App.3a. On August 23, 2021, United notified ALPA that LOA 21-02 would be revoked as of September 27, 2021. *Id.*

On August 24, 2021, several United pilots, including Petitioners, filed nondisciplinary grievances asserting that United's implementation of the vaccination requirement constituted a violation of the RLA's status quo requirements because the UPA had become amendable and bargaining was ongoing. App.3a. The grievances identified multiple alleged conflicts between the new policy and existing UPA provisions, including provisions governing furlough protections, pay guarantees, and other working conditions.

ALPA did not assist in the preparation or advancement of these grievances and refused to file an MEC grievance challenging the alleged status quo violation, notwithstanding its exclusive authority under the UPA to pursue certain contractual claims. App.4a.

The September, 2021, issue of ALPA magazine stated, "While U.S. law doesn't prohibit companies from taking this type of action, the Association has been very clear that any vaccination requirements are an issue that must be bargained for and ultimately agreed to by each ALPA pilot group." ALPA, as an organization, understood the RLA bargaining requirements.

The deadlines for vaccination or obtaining an accommodation preceded the revocation of LOA 21-02 in early September. ALPA ignored this LOA violation and further served as the enforcement arm for the company.

On September 10, 2021—approximately two weeks before the policy took effect—the Chairman of ALPA's Master Executive Council communicated to United's Senior Vice President for Flight Operations that ALPA would not support the status quo grievances the pilots had filed. This communication was not disclosed to the membership. *Id.*

On September 27, 2021, LOA 21-02 was revoked and pilots who had not voluntarily vaccinated during the period when LOA 21-02 was in effect were immediately subjected to disciplinary proceedings. Terminations commenced on November 1, 2021. App.4a. More than 350 United pilots were either terminated or placed on indefinite unpaid leave.

On September 28, 2021—the day after the vaccination requirement took effect and the violative act was allowed to occur but prior to contacting affected pilots —ALPA filed an "instant grievance" asserting that unvaccinated status constituted a pilot qualification issue rather than a status quo violation requiring bargaining. App.4a. The grievance did not challenge United's authority to impose the policy, but addressed only the policy consequences of noncompliance citing what the System Board determined to be an irrelevant scheduling provision that could not be applied to vaccination. The act of filing the grievance claiming that the policy consequences violated the UPA is in direct conflict ALPA's claim that the UPA permitted the vaccine policy under Section 21-K.

On February 15, 2022—the System Board of Adjustment denied the grievance. The Board concluded that United's vaccination requirement was not a pilot qualification but rather "a new company-wide requirement"

for employment. ALPA failed to act based on that Board finding. App.4a.

The facts presented clearly indicate a pattern of intentional union conduct contrary to federal law, the UPA, and ALPA governing documents that was intended to coerce then eventually weed out any pilot failing to conform with ALPA's vaccine agenda, a distinction based solely on medical status.

D. The Grievance Proceedings

United's Chief Pilot denied the pilots' nondisciplinary grievances asserting a violation of the RLA's status quo requirements, and ALPA declined to support their appeals. App.4a. After United denied the appeals, the pilots requested that the Grievance Review Panel ("GRP") advance the grievances to the System Board of Adjustment.

The GRP conducted a two-day hearing. However, under ALPA's Master Executive Council Policy Manual, the GRP's role was not to adjudicate the merits of the grievance. Rather, the GRP was charged with determining "whether the grievance seeks relief from the System Board, which, if granted, would establish a result that would be contrary to the agreements, commitments, understandings or policies of this organization as the representative of the United pilots." App.4a. The standard thus asked not whether the pilots' rights had been violated, but whether vindicating those rights might conflict with ALPA's own institutional interests.

The GRP unanimously denied the pilots' request to advance the grievance, concluding that it was "baseless" and reasoning that Section 21-K of the UPA

permitted United to implement the vaccination requirement. App.4a. In its written decision, the GRP stated:

> It is the Panel's unanimous decision that this grievance could establish "a result that would be contrary to the agreements, commitments, understandings or policies of this organization as the representative of the United Pilots," and should not be advanced to the System Board.

The two-day hearing produced a two-page conclusory report. The GRP's decision did not address how Section 21-K—which provides that personnel policies may not be changed if "contrary to any of the terms of this Agreement"—could be reconciled with other UPA provisions identified in the grievance. Most importantly the GRP dismissed, without explanation, Section 1-A which requires compliance with the RLA and the need to maintain status quo.

In a larger sense, if ALPA at this point elected to sponsor a Section 1-A grievance, ALPA would be placed in the position of admitting their refusal to support and resolve the grievance before the policy took effect was a direct violation of the UPA and federal law to which over 350 member pilots suffered significant adverse employment action and substantial financial loss, among other damages. The outcome of the GRP hearings was determined long before the two-day event occurred, particularly given the commitment the MEC Chairman made to United on September 10, 2021, ensuring this grievance would not be supported by the MEC. App.4a.

Separately, ALPA filed termination grievances on Petitioners' behalf challenging their discharges. App.4a. Those grievances remain pending at Petitioners' request. *Id.* The termination grievances framed the

sole issue as whether United had "just cause" to terminate the pilots but did not identify any specific UPA provision governing just cause for termination. The lack of a UPA provision regarding just cause for termination places into question the Boards jurisdiction from the outset and ALPA's intent in filing an improper grievance.

The grievances sought a remedy returning pilots to "a flight status consistent with that offered to other unvaccinated Pilots who are subject to the reasonable accommodation process." App.4a. This remedy exceeds the System Board jurisdiction because, if ordered, it would be creating a new UPA provision which is strictly prohibited by the UPA.

The Seventh Circuit found, without meritorious review, that these grievances were not perfunctory citing only the activity of the events, avoiding the substance of the grievances themselves.

E. Procedural History

In September 2022, Petitioners filed suit against ALPA alleging breach of the duty of fair representation. After venue was transferred to the Northern District of Illinois, ALPA moved to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

The district court denied ALPA's motion to dismiss for lack of ripeness under Rule 12(b)(1), concluding that Petitioners' alleged injuries—including termination—had already occurred and that the dispute was concrete. App.5a–7a.

The district court granted dismissal under Rule 12(b)(6), holding that Petitioners failed to state a plausible claim for breach of the duty of fair represent-

ation. The court reasoned that Petitioners had not adequately addressed ALPA's contention that Section 21-K of the UPA permitted United's implementation of the vaccination requirement. App.10a–11a.

Petitioners moved for leave to file an amended complaint expressly alleging that ALPA's conduct violated both the UPA and the RLA, including detailed allegations concerning Sections 1-A, 21-K, and 21-U of the UPA. The district court denied leave to amend on the grounds that amendment would be futile. App.32a–44a.

The Seventh Circuit affirmed. App.1a–14a. The court held that ALPA's decision not to seek injunctive relief was not arbitrary because its conclusion that such relief would present a "minor dispute" under the RLA was "not irrational." App.9a–10a. The court further concluded that Petitioners had waived certain arguments concerning Section 21-K by raising them in a reply brief. App.10a–11a.

Addressing the discrimination and bad faith prongs of the duty-of-fair-representation standard, the court held that Petitioners failed to allege facts demonstrating "subjective intent to discriminate" or an "improper motive." App.11a–14a. Although the court acknowledged that LOA 21-02 established different work rules based on vaccination status, it concluded that the complaint did not support an inference that ALPA acted with discriminatory intent. App.12a. The court rejected Petitioners' allegations of bad faith, characterizing assertions of collusion as conclusory. App.13a.

Petitioners timely sought rehearing en banc. The court denied rehearing on November 12, 2025. App.15a.

REASONS FOR GRANTING THE PETITION

I. THE SEVENTH CIRCUIT'S DECISION CONFLICTS WITH THIS COURT'S PRECEDENT ON THE SCOPE OF UNION DISCRETION UNDER THE DUTY OF FAIR REPRESENTATION

The Seventh Circuit's decision rests on a fundamental misapprehension of the scope of union discretion under the duty of fair representation. While this Court has afforded unions a "wide range of reasonableness" in matters of bargaining strategy and grievance handling, *Air Line Pilots Ass'n, Int'l v. O'Neill*, 499 U.S. 65, 78 (1991), that discretion has never extended to permitting a union to decline enforcement of mandatory federal statutory requirements that govern the collective bargaining process itself.

A. A Union's Statutory Authority Under the RLA Carries a Corresponding Obligation to Enforce Statutory Requirements

The duty of fair representation arises directly from the union's statutory role as exclusive bargaining representative. As this Court explained in *Steele v. Louisville & Nashville Railroad*, the union's authority to act on behalf of all employees "involves the assumption toward them of a duty to exercise the power in their interest and behalf." 323 U.S. 192, 202 (1944). That duty is "akin to the duty owed by other fiduciaries to their beneficiaries." *O'Neill*, 499 U.S. at 74.

The Railway Labor Act's structure depends on the exclusive representative serving as the principal mechanism for enforcing the Act's procedural safe-

guards. Section 152, First imposes an affirmative duty on carriers and employees to "exert every reasonable effort" to make and maintain agreements through the Act's prescribed processes. Section 152, Seventh prohibits carriers from altering rates of pay, rules, or working conditions "except in the manner prescribed" by the statute. Section 156 mandates maintenance of the status quo while bargaining and dispute-resolution procedures are ongoing.

Those provisions would be rendered ineffectual if the exclusive representative—the only entity empowered to invoke and enforce them on behalf of employees—could elect not to do so based on asserted "discretion." This Court has repeatedly emphasized that while Congress left the *substance* of collective bargaining to the parties, it "generally regulated only 'the process of collective bargaining.'" *O'Neill*, 499 U.S. at 77 (quoting *H.K. Porter Co. v. NLRB*, 397 U.S. 99, 102 (1970)). Unions may exercise broad discretion within that process, but they may not disregard it. Or worse, unions use their discretion to circumvent the RLA bargaining requirements if the process could create a roadblock to union leadership's personal agenda.

The question presented here is narrow: whether ALPA breached its duty of fair representation by failing to invoke and enforce the mandatory procedural requirements Congress established as the foundation of the RLA's scheme. This is not a case asking the Court to second-guess the substance of a negotiated agreement. It is a case about whether a union may altogether bypass the statutory process through which any such agreement must be reached. That failure is categorically different from the discretionary decisions this Court has held warrant deference.

In *O'Neill*, the Court applied the "wide range of reasonableness" standard to a union's decision to settle litigation concerning seniority integration—an area in which the governing statute imposed no mandatory procedural command beyond good-faith representation. 499 U.S. at 81–84. The Court's deference in *O'Neill* presupposed compliance with the statutory framework and addressed only how the union exercised judgment within it.

Here, by contrast, the legal landscape included express statutory provisions requiring maintenance of the status quo and adherence to defined bargaining procedures. Where Congress has imposed such mandates, union discretion does not include the authority to decline enforcement.

B. The Decision Below Improperly Extends Union Discretion to Encompass Non-Enforcement of Federal Law

The Seventh Circuit held that ALPA acted within its discretion in declining to challenge United's alleged violation of the RLA's status quo requirements. App.9a–11a. The court reasoned that ALPA's conclusion that the dispute would be classified as "minor" under the RLA was "not irrational," and therefore that ALPA was not required to seek judicial relief. App.10a.

That analysis improperly conflates two distinct inquiries: the classification of a dispute for purposes of determining the appropriate forum for resolution, and the union's obligation, as exclusive representative, to pursue available remedies for an alleged violation of federal statutory requirements. Even where a dispute is properly classified as "minor" and subject to arbitration rather than injunctive relief, the union remains respon-

sible for invoking and pursuing the statutory and contractual processes through which that dispute may be resolved. The major/minor distinction determines *where* a dispute is heard; it does not determine *whether* the exclusive representative must act at all.

The decision below effectively treats a union's discretionary assessment of forum as a basis for declining enforcement altogether. Nothing in the RLA or this Court's precedent authorizes such a result. To the contrary, the Act presumes that disputes—whether major or minor—will be addressed through the procedures Congress prescribed, with the exclusive representative acting on behalf of the bargaining unit.

The Seventh Circuit's acceptance of ALPA's reliance on Section 21-K of the UPA reflects the same analytical error. Section 21-K permits changes to personnel policies only so long as those changes are not "contrary to any of the terms of this Agreement." ALPA argued that nothing in the UPA specifically prohibited the vaccine mandate, and that Section 21-K therefore permitted it. But contractual silence does not authorize unilateral changes to matters covered by the RLA. As the Seventh Circuit itself has recognized, "such a rule cannot be squared with the RLA" because "any change to pay, rules, or conditions must be authorized by contract or as the result of bargaining." *Brotherhood of Locomotive Engineers & Trainmen v. Union Pacific Railroad*, 879 F.3d 754, 757 (7th Cir. 2018). Whether the vaccine mandate was "contrary to" the UPA presents a question of contract interpretation committed to the arbitral process — a merits inquiry far exceeding what is permitted at the pleading stage. By allowing the union to preempt that process through its own asserted interpretation of Section 21-K, the

decision below permits the exclusive representative to insulate contested policy changes from the very dispute-resolution mechanisms the RLA requires.

Finally, the court's forfeiture and waiver rulings compound the structural problem. Under the rule adopted below, a union's decision not to invoke mandatory statutory procedures may foreclose judicial review altogether, so long as individual employees fail to anticipate and rebut the union's litigation posture at the pleading stage—before discovery and without access to the union's internal deliberations. That allocation of burdens is incompatible with the structure of the RLA and this Court's duty-of-fair-representation jurisprudence, which imposes fiduciary obligations on the exclusive representative, not on the employees it represents.

C. This Case Presents an Issue of National Importance

The Seventh Circuit's decision has significant implications for labor relations throughout the airline and railroad industries governed by the Railway Labor Act. If unions may invoke "discretion" to decline enforcement of the Act's mandatory status quo requirements, employees lose the principal statutory safeguard Congress enacted to prevent unilateral changes to working conditions during bargaining.

The status quo requirement lies at the core of the RLA's framework. As this Court has explained, it is designed to prevent either party "from altering the status quo during the pendency of bargaining in order to exert economic pressure and frustrate negotiations." *Detroit & Toledo Shore Line R.R. v. United Transp. Union*, 396 U.S. 142, 150 (1969). If an exclusive repre-

sentative may elect not to invoke that protection, the statutory scheme no longer functions as Congress intended.

The rule adopted below creates a structural accountability gap with nationwide consequences. Under the RLA, individual employees generally lack authority to enforce status quo obligations independently; enforcement depends on action by the exclusive bargaining representative. The duty of fair representation is the sole judicial mechanism for ensuring that this exclusive authority is exercised in accordance with statutory requirements. By holding that union discretion encompasses the decision not to enforce federal law, the Seventh Circuit's decision leaves employees without any effective remedy when their exclusive representative declines to act.

This Court's review is warranted to clarify that union discretion under *O'Neill* and *Vaca v. Sipes*, 386 U.S. 171 (1967), does not extend to abandoning enforcement of mandatory federal statutory protections, and to ensure uniform application of the Railway Labor Act across the industries it governs.

II. THE SEVENTH CIRCUIT'S APPLICATION OF THE *O'NEILL* STANDARD IMPROPERLY HEIGHTENS PLEADING REQUIREMENTS FOR DFR CLAIMS

The Seventh Circuit's decision imposes a pleading standard for duty-of-fair-representation claims that conflicts with this Court's precedent and the Federal Rules of Civil Procedure. By requiring plaintiffs to plead evidence of subjective bad faith and discriminatory intent at the motion-to-dismiss stage, the decision below effectively forecloses DFR claims before discovery

can occur and transforms the "wide range of reasonableness" standard into a pleading-stage immunity.

A. The Decision Below Requires Proof of Subjective Intent at the Pleading Stage

Addressing the discrimination prong of the duty-of-fair-representation standard, the Seventh Circuit held that Petitioners failed to plausibly allege that ALPA acted with "subjective intent to discriminate" against unvaccinated pilots. App.12a. Although the court acknowledged that the challenged conduct resulted in different work rules and consequences based on vaccination status, it concluded that allegations of disparate treatment were insufficient absent specific allegations of discriminatory intent. App.11a–12a. The decisions ALPA made throughout the process were calculated and intentional with a consistent theme of excluding membership from any opportunity to meaningfully protect their personal decision to remain unvaccinated consistent with the protections provided by the UPA and federal law.

The court applied a similar approach to Petitioners' bad-faith allegations, requiring "subsidiary facts" demonstrating improper motive and dismissing allegations of collusion as conclusory. App.12a–13a. In both contexts, the court demanded factual detail regarding internal decision-making and motivation that is ordinarily unavailable to plaintiffs prior to discovery and uniquely within the control of the union.

Nothing in this Court's duty-of-fair-representation jurisprudence requires plaintiffs to plead evidence of subjective intent at the threshold. To the contrary, allegations of arbitrary, discriminatory, or bad-faith conduct have traditionally been evaluated based on

the plausibility of the alleged course of conduct, with discovery serving as the mechanism for testing intent and motivation.

B. The Seventh Circuit's Approach Conflicts With This Court's Pleading Precedent

The pleading requirements imposed by the decision below are inconsistent with this Court's decisions in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). Those cases require a complaint to allege sufficient factual content to permit a reasonable inference of liability—not to prove the plaintiff's case at the outset.

As this Court has emphasized, plausibility "does not impose a probability requirement," and a complaint may proceed even where actual proof appears uncertain or unlikely. *Twombly*, 550 U.S. at 556. Rule 8 permits intent to be pleaded generally, with discovery providing the means to test subjective motivation and internal deliberations. *See* Fed. R. Civ. P. 9(b); *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 511 (2002).

This case is complex and analysis of ALPA's actions for arbitrariness or bad faith conduct require a contextual understanding of multiple areas of the UPA and past practice, far exceeding what is permitted in the pleading stage. Here, Petitioners alleged concrete actions taken by the exclusive bargaining representative that, viewed collectively, plausibly suggested arbitrary or bad-faith conduct. Rather than accepting those allegations and drawing reasonable inferences in Petitioners' favor, the Seventh Circuit weighed competing explanations, credited the union's asserted conclusory justifications, and rejected Petitioners' infer-

ences as implausible. That analysis resembles summary judgment, not a Rule 12(b)(6) inquiry.

C. The Decision Below Exacerbates Confusion Over the Proper Pleading Standard for DFR Claims

The Seventh Circuit's approach highlights a broader lack of uniformity among the courts of appeals regarding the pleading standard applicable to duty-of-fair-representation claims. Some circuits permit such claims to proceed to discovery based on plausible allegations of arbitrary or bad-faith conduct, while others impose heightened requirements that effectively demand evidence of intent at the pleading stage.

This divergence creates uncertainty for both unions and employees operating under federal labor statutes. Absent clarification from this Court, similarly situated workers may be denied access to discovery—and to any judicial forum—based solely on the circuit in which they work.

This Court's review is warranted to clarify that the duty-of-fair-representation standard does not override ordinary pleading principles, and that plausible allegations of arbitrary, discriminatory, or bad-faith conduct are sufficient to permit discovery and adjudication on the merits.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court grant the petition for a writ of certiorari.

This case presents fundamental questions concerning the duty of fair representation under the Railway Labor Act: whether a union's discretion as exclusive bargaining representative extends to declining enforcement of mandatory federal statutory requirements, and whether duty-of-fair-representation claims may be dismissed at the pleading stage based on an asserted failure to provide substantial evidence or prove subjective intent before discovery.

The Railway Labor Act's framework depends on the exclusive representative serving as the principal mechanism for enforcing statutory bargaining and status quo obligations. If unions may decline to invoke those protections based on assertions of discretion, employees are left without effective means of enforcing the statutory scheme Congress enacted. The decision below expands union discretion beyond the limits this Court has recognized and undermines the statutory framework governing labor relations in the airline and railroad industries.

This Court's review is warranted to restore the proper balance between union discretion and statutory obligation, and to ensure uniform application of the duty of fair representation across the federal courts.

Respectfully submitted,

John M. Pierce
Counsel of Record
JOHN PIERCE LAW P.C.
21550 Oxnard Street, 3rd Floor
Woodland Hills, CA 91367
(321) 961-1848
jpierce@johnpiercelaw.com

Counsel for Petitioners

February 12, 2026