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OPINIONS AND ORDERS

REHEARING ORDER

OPINION, U.S. COURT OF APPEALS FOR THE SEVENTH CIRCUIT (OCTOBER 8, 2025)

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

KEVIN D. WICKSTROM, ET AL.,

Plaintiffs-Appellants,

v.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,

Defendant-Appellee.

No. 25-1036

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 23 C 2631 – Matthew F. Kennelly, Judge.

Argued September 9, 2025 —
Decided October 8, 2025

Before: Amy J. ST. EVE, John Z. LEE, Joshua P. KOLAR, Circuit Judges.

ST. EVE, *Circuit Judge*. United Airlines terminated the plaintiffs pursuant to its newly adopted COVID-19 vaccine mandate. The plaintiffs then sued their labor union, the Air Line Pilots Association ("ALPA"), alleging that it breached its duty of fair representation

by insufficiently opposing United's vaccination policies. The district court granted ALPA's motion to dismiss and then denied leave to amend as futile. We affirm.

I. Background

A. United and ALPA's Internal grievance Procedures

Because much of the dispute here concerns how ALPA acted (or did not act) with respect to pilot grievances, we begin with a brief summary of the scheme governing internal grievances between United and ALPA.[1] As relevant here, the United Pilot agreement ("UPA")—ALPA and United's collective bargaining agreement—provides for three types of grievances: non-disciplinary pilot grievances, Master Executive Council ("MEC") grievances, and termination grievances.

Nondisciplinary pilot grievances permit United pilots to challenge the airline's conduct, except as it pertains to discipline or discharge. United's Chief Pilot initially decides such grievances, which pilots may appeal to a more senior United official. If that official also decides against the pilot, only ALPA may take a further appeal. That appeal lies with the System Board of Adjustment (the "Board"), the UPA's arbitral body. If ALPA elects not to appeal the pilot's grievance to the Board, however, the pilot may contest that

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[1] We draw this background from the proposed amended complaint and accept as true the well-pleaded facts. *Esco v. City of Chicago*, 107 F.4th 673, 678 (7th Cir. 2024). Like the district court, we also—without protest from the plaintiffs—consider documents referred to in and critical to the complaint. *See Wertymer v. Walmart, Inc.*, 142 F.4th 491, 498 (7th Cir. 2025).

decision before the grievance Review Panel ("GRP"), which may order the grievance advanced to the Board.

Next consider MEC grievances. Under the UPA, ALPA's MEC can request that United review "an alleged misapplication or misinterpretation of" the UPA. ALPA may appeal an unsatisfactory decision to the Board.

Last are termination grievances. United may terminate pilots only for "just cause," and the UPA establishes a process to challenge terminations as unjustified.

B. Factual Background

In May 2020, ALPA warned its United pilots that the airline may attempt to unilaterally alter the UPA in response to the COVID-19 pandemic. ALPA called for a united front to prevent such changes. In January 2021, however, after United indicated that it might eventually implement a vaccine mandate, ALPA claimed the UPA permitted this action.

Then, in May 2021, United and ALPA adopted Letter of agreement ("LOA") 21-02. Instead of mandating the vaccine, LOA 21-02 financially incentivized inoculation and restricted certain destinations to vaccinated pilots.

But on August 6, 2021, United notified ALPA that it intended to terminate LOA 21-02 and instead implement a vaccination mandate, effective September 27, 2021. ALPA did not take action to oppose the vaccine mandate, but on August 24, 2021, several United pilots, including at least some of the plaintiffs here, filed non-disciplinary grievances. These grievances argued in part that United breached its status quo obligation

under the Railway Labor Act ("RLA"). That obligation requires parties to a lapsed collective bargaining agreement to continue following the terms of the agreement until a new one is reached. Because the UPA had expired, the pilots argued that United's imposition of the vaccine mandate constituted a status quo violation under the UPA.

ALPA did not assist with these grievances, which United's Chief Pilot denied, nor did ALPA file its own grievance to challenge the alleged status quo violation. After United denied the pilots' appeal, they asked the GRP to advance their grievance to the Board. The GRP held a two-day hearing, after which it denied the pilots' request as "baseless," reasoning that UPA § 21-K permits United to unilaterally alter personnel policies.

While ALPA did not support the status quo grievances, it was not idle. The day after the vaccine mandate went into effect, ALPA opted to file an MEC grievance, taking the position that United violated the UPA by terminating the unvaccinated pilots because, as ALPA argued, unvaccinated status was merely a "pilot qualification" issue, which was not grounds for termination. The Board denied the grievance.

Following the plaintiffs' terminations, ALPA filed termination grievances on their behalf. Those grievances remain pending at the plaintiffs' request.

C. Procedural History

After United terminated them, the plaintiffs sued ALPA for breach of the duty of fair representation. ALPA moved to dismiss under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), arguing the plaintiffs' complaint was unripe and failed to state a claim,

respectively. The district court denied the Rule 12(b)(1) motion but granted the Rule 12(b)(6) motion. The court then denied the plaintiffs' request to file an amended complaint as futile, holding that it would also fail to state a claim. This appeal followed.

II. Discussion

A. Ripeness

We begin with jurisdiction, reviewing de novo the district court's determination that this case is ripe. *See Church of Our Lord & Savior Jesus Christ v. City of Markham*, 913 F.3d 670, 676 (7th Cir. 2019).

Under Article III of the Constitution, only cases and controversies are justiciable. *See* U.S. Const. art. III, § 2. One dimension of justiciability is ripeness, which "is peculiarly a question of timing." *Blanchette v. Conn. Gen. Ins. Corps.*, 419 U.S. 102, 140 (1974); *see Sweeney v. Raoul*, 990 F.3d 555, 560 (7th Cir. 2021). As such, the "doctrine's underlying objective is to avoid premature adjudication and judicial entanglement in abstract disagreements." *Church of Our Lord*, 913 F.3d at 676. And the doctrine achieves that goal by deeming a claim unripe "when the parties point only to hypothetical, speculative, or illusory disputes as opposed to actual, concrete conflicts." *Mathis v. Metro. Life Ins. Co.*, 12 F.4th 658, 664 (7th Cir. 2021) (quoting *Wis. Cent., Ltd. v. Shannon*, 539 F.3d 751, 759 (7th Cir. 2008)). Put another way, a case is ripe if it is "not dependent on 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Trump v. New York*, 592 U.S. 125, 131 (2020) (per curiam) (quoting *Texas v. United States*, 523 U.S. 296, 300 (1998)).

ALPA contends that the plaintiffs' claim is unripe because of the pending termination grievances, which, if successful, could reinstate and grant backpay to the plaintiffs, thereby mooting this dispute. But of the many cases ALPA cites to establish this theory, none does the trick. Each instead suffers from a common flaw: In the cited cases, the plaintiffs' alleged harm had not yet come to pass, whereas here, the plaintiffs' alleged harm (termination) has occurred.

Take, for example, *George Fischer Foundry Systems, Inc. v. Adolph H. Hottinger Maschinenbau GmbH*, 55 F.3d 1206 (6th Cir. 1995). There, the plaintiff alleged that a foreign arbitration proceeding might not recognize his U.S. statutory antitrust rights, which would harm him by denying him treble damages. *Id.* at 1208. But the foreign arbitrator was yet to decide what jurisdiction's law would apply, so it remained unclear whether the plaintiff would face any harm. *Id.* at 1210.

Jennings v. Auto Meter Products, Inc., 495 F.3d 466 (7th Cir. 2007), another case upon which ALPA relies, suffers the same problem. The plaintiff in *Jennings* had a patent application pending before the Patent and Trademark Office. He brought state law claims against the defendant for misleading the Office into believing that he had not invented the product underlying his application. *Id.* at 469. But we found the claims unripe because the Office had not yet ruled on the plaintiff's patent application, so it was possible that the plaintiff would never suffer harm. *Id.* at 476–77. The rest of the cases ALPA cites fit the same mold, and thus do not support its argument. *See, e.g.*, *Dolan v. Ass'n of Flight Attendants*, 1996 WL 131729, at *3 (N.D. Ill. Mar. 20, 1996).

In the end, United terminated the plaintiffs and the plaintiffs allege ALPA helped cause that harm by breaching its duty of fair representation. The parties' dispute is thus concrete, not abstract, and we can proceed to the merits.[2]

B. Duty of Fair representation

Where, as here, "a district court denies a motion for leave to amend as futile, our review is de novo, and we ask whether the proposed amended complaint would fail to state a claim." *Anderson v. United Airlines, Inc.*, 140 F.4th 385, 388 (7th Cir. 2025).[3] The proposed amended complaint thus "must allege 'enough facts to state a claim to relief that is plausible on its face' or, in other words, contain 'factual content that allows the court to draw the reasonable inference that

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[2] In between ALPA's ripeness argument and its duty of fair representation argument, it argues that most of the plaintiffs' claims are time-barred. The plaintiffs' claims are subject to a six-month statute of limitations, *United Indep. Flight Officers, Inc. v. United Air Lines, Inc.*, 756 F.2d 1262, 1270 (7th Cir. 1985), but the statute of limitations is tolled while the plaintiffs pursue internal union remedies, *Frandsen v. Bhd. of Ry., Airline & S.S. Clerks, Freight Handlers, Exp. & Station Emps.*, 782 F.2d 674, 681 (7th Cir. 1986). Because the statute-of-limitations and tolling questions here concern factual matters not made clear by the pleadings, we do not address them. *See Hyson USA, Inc. v. Hyson 2U, Ltd.*, 821 F.3d 935, 939 (7th Cir. 2016).

[3] The district court dismissed the original complaint on September 5, 2023, and denied the plaintiffs' request to file an amended complaint on December 11, 2024. The plaintiffs' briefs focus on the latter, mentioning the former only in passing. But, because the de novo standard of review applies to both orders here and the amended complaint only adds allegations to buttress the prior claim, we too will focus on the proposed amended complaint.

the defendant is liable for the misconduct alleged.'" *Cielak v. Nicolet Union High Sch. Dist.*, 112 F.4th 472, 479–80 (7th Cir. 2024) (quoting *Bronson v. Ann & Robert H. Lurie Child.'s Hosp. of Chi.*, 69 F.4th 437, 447 (7th Cir. 2023)). At this stage, "we accept the well-pleaded facts in the complaint as true and draw reasonable inferences in plaintiffs' favor—but we do not presume the truth of legal conclusions and conclusory allegations." *Id.* at 475.

The plaintiffs' complaint asserts just one claim: breach of the duty of fair representation. This duty "arises out of a union's role as the exclusive representative of all employees in a collective bargaining unit," *Taha v. Int'l Bhd. of Teamsters, Loc. 781*, 947 F.3d 464, 469 (7th Cir. 2020), and it is "akin to the duty owed by other fiduciaries to their beneficiaries," *Air Line Pilots Ass'n, Int'l v. O'Neill*, 499 U.S. 65, 74 (1991). A union breaches its duty of fair representation if its actions are either (1) arbitrary, (2) discriminatory, or (3) made in bad faith. *Bishop v. Air Line Pilots Ass'n, Int'l* (*Bishop I*), 900 F.3d 388, 397 (7th Cir. 2018). We address each prong in turn.

1. Arbitrariness

A union acts arbitrarily "only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a 'wide range of reasonableness' as to be irrational." *O'Neill*, 499 U.S. at 67 (quoting *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953)). This analysis is, as it sounds, objective. *Bishop v. Air Line Pilots Ass'n Int'l* (*Bishop II*), 5 F.4th 684, 693 (7th Cir. 2021). Put differently, our task is not to play Monday-morning quarterback; "[a]ny substantive examination of a union's perform-

ance . . . must be highly deferential. . . ." *O'Neill*, 499 U.S. at 78.

A few additional principles guide our analysis in the grievance context. "Although a union may not arbitrarily ignore a meritorious grievance or process it in a perfunctory fashion, it has considerable discretion in handling grievances." *Sullers v. Int'l Union Elevator Constructors, Loc. 2*, 141 F.4th 890, 898–99 (7th Cir. 2025) (cleaned up). That discretion recognizes that the union "is not required to pursue all grievances through arbitration" and "may consider all members' interests 'when deciding whether or not to press the claims of an individual employee.'" *Id.* at 899 (quoting *Garcia v. Zenith Elecs. Corp.*, 58 F.3d 1171, 1176 (7th Cir. 1995)). Accordingly, the union may "act in consideration of such factors as the wise allocation of its own resources, its relationship with other employees, and its relationship with the employer." *Neal v. Newspaper Holdings, Inc.*, 349 F.3d 363, 369 (7th Cir. 2003).

At bottom, the proposed amended complaint alleges that ALPA insufficiently resisted United's imposition of the COVID-19 vaccine mandate. But we cannot reasonably infer from its allegations that any of ALPA's decisions were arbitrary, i.e., irrational.

The plaintiffs first fault ALPA for not seeking a judicial injunction to prevent United's alleged status quo violation. The RLA's distinction between "major" and "minor" disputes spoils this argument. "Major disputes arise over the creation of contractual rights, while minor disputes concern the interpretation or application of already existing agreements." *Int'l Bhd. of Teamsters v. Republic Airways Inc.*, 127 F.4th 688, 693 (7th Cir. 2025). The terms "major" and "minor" are thus "terms of art," not reflections of "the size or significance

of a dispute." *Id.* Critically, "[f]ederal courts only have jurisdiction to hear major disputes; minor disputes are resolved in arbitration." *Id.* at 693–94. And the bar for deeming a dispute minor is low; an employer's position need only be "arguably justified by the terms of the parties' agreement (i.e., the claim is neither obviously insubstantial or frivolous, nor made in bad faith) . . . ." *Consol. Rail Corp. v. Ry. Labor Execs.' Ass'n*, 491 U.S. 299, 310 (1989). All of this means "there is a large thumb on the scale in favor of minor, and hence arbitration." *Bhd. of Locomotive Eng'rs & Trainmen (Gen. Comm. of Adjustment, Cent. Region) v. Union Pac. R.R.*, 879 F.3d 754, 758 (7th Cir. 2017).

ALPA did not act arbitrarily, as the complaint alleges, in declining to seek a judicial injunction because its conclusion that such a lawsuit would have presented a minor dispute was not irrational. As ALPA notes, UPA § 21-K, which authorizes United to modify employee personnel policies, at least arguably justified United's imposition of the vaccine mandate. In their opening brief, the plaintiffs contend that this dispute was major because of its high stakes, but this approach misunderstands that "[w]hether a dispute is major or minor in no way relates to a court's estimation of the dispute's relative importance." *BLET GCA UP v. Union Pac. R.R.*, 988 F.3d 409, 412 (7th Cir. 2021). The plaintiffs try a different approach in their reply brief, by which point it is too late. *See Int'l Ass'n of Fire Fighters, Loc. 365 v. City of East Chicago*, 56 F.4th 437, 452 (7th Cir. 2022) (finding waiver in this circumstance).

Next, the plaintiffs challenge ALPA's decisions with respect to grievances. Specifically, the plaintiffs take issue with ALPA's choices not to support their status quo grievances, advance them to the Board, or

file its own such grievance. But throughout the proceedings, ALPA has maintained that each of these decisions shares a common justification: UPA § 21-K. This provision, on ALPA's view, permitted United to unilaterally institute the vaccine mandate, and the plaintiffs have failed to timely engage with that argument. As the district court held, the plaintiffs forfeited the issue by failing to respond to ALPA's § 21-K argument. And in their opening brief, the plaintiffs did not address this conclusion or otherwise contest ALPA's reading of § 21-K. While they do so in their reply brief, by that point, they had already waived the argument. *See id.* We thus have no basis to reasonably infer that ALPA acted irrationally.

Nor have the plaintiffs plausibly alleged that ALPA addressed their grievances in a perfunctory fashion. In declining to advance the plaintiffs' status quo grievances to the Board, the GRP conducted a two-day hearing in which the grievants had hours to present their case. The GRP ultimately concluded that a status quo claim would be "baseless" because of UPA § 21-K. Moreover, ALPA did not stand idle in response to United's policies: it filed an MEC grievance taking the position that, notwithstanding the permissibility of the vaccine mandate, United lacked just cause to terminate unvaccinated pilots. The plaintiffs point to no caselaw suggesting that, under these circumstances, ALPA transgressed the bounds of a union's "'considerable discretion' in handling grievances." *Sullers*, 141 F.4th at 898–99 (quoting *Garcia*, 58 F.3d at 1176); *see also Neal*, 349 F.3d at 369.

2. Discrimination

The second way in which a union may breach its duty of fair representation is through discrimination. Unlike with arbitrariness, whether a union discriminated "calls for a subjective inquiry and requires proof that the union acted (or failed to act) due to an improper motive." *Bishop II*, 5 F.4th at 694 (quoting *Neal*, 349 F.3d at 369). Recognizing "the union's concurrent obligations to its collective membership and to the individual members," we have also explained that "discriminatory *impact*" is not in itself sufficient. *Bishop I*, 900 F.3d at 398. Further, to rise to the level of a duty of fair representation breach, "discriminatory conduct must be 'intentional, severe, and unrelated to legitimate union objectives.'" *Bishop II*, 5 F.4th at 694 (quoting *Amalgamated Ass'n of Street, Elec. Ry. & Motor Coach Emps. of. Am. v. Lockridge*, 403 U.S. 274, 301 (1971)).

On appeal, the plaintiffs' cursory argument for discrimination is predicated on LOA 21-02, the policy that financially incentivized vaccination and restricted certain destinations to vaccinated pilots. But, conclusory assertions aside, none of the complaint's factual allegations permit the inference that ALPA adopted LOA 21-02 with the subjective intent to discriminate against unvaccinated pilots. "The mere fact that plaintiffs [are] a minority group within their union organization and that they were adversely affected by the actions of the union [does] not establish that the union acted with hostile or discriminatory intent." *Id.* Because the plaintiffs lack more, they failed to plausibly allege discrimination.

3. Bad Faith

Finally, the plaintiffs attempt to make out their duty of fair representation theory under the bad faith prong. As with claims of discrimination, claims of bad faith call for a "subjective inquiry" and require that the union had "an improper motive." *Id.* (quoting *Neal*, 349 F.3d at 369). Further, "a plaintiff must support an allegation of bad faith with 'subsidiary facts,' not just '[b]are assertions of the state of mind.'" *Bishop I*, 900 F.3d at 397 (alteration in original) (quoting *Yeftich v. Navistar, Inc.*, 722 F.3d 911, 916 (7th Cir. 2013)); *see also Taha*, 947 F.3d at 472.

Here again, the plaintiffs fail to allege bad faith. The proposed amended complaint repeatedly asserts that ALPA and United "colluded" to implement the vaccine mandate, but we need not accept as true such a conclusory label, and no well-pleaded factual allegations support it. The plaintiffs also allege that ALPA permitted United to implement the vaccine mandate to keep federal funding flowing to United. The complaint acknowledges, however, that such funding was conditioned on not laying off or furloughing pilots. We fail to see how a union acts in bad faith by seeking to protect its members from layoffs or pay cuts.

The final basis for ALPA's alleged bad faith is that it switched positions on the permissibility of a vaccine mandate. Recall that in May 2020, ALPA warned its United members that the airline might unilaterally alter the UPA in response to the pandemic. Then, in January 2021, ALPA claimed that United was contractually permitted to mandate vaccination. The plaintiffs' argument, however, cannot overcome two hurdles. First, it is unclear that ALPA switched positions at all, as the May 2020 communication was not specifically

related to vaccines. In other words, the plaintiffs' argument that ALPA changed positions implicitly relies on the premise that imposing the vaccination mandate was the kind of unilateral change referred to in May 2020, but ALPA's argument regarding UPA § 21-K calls into question that premise. Second, even assuming ALPA changed its position over those eight months, the complaint provides no basis for inferring that the union did so for an improper motive—such as "*solely* for the benefit of a stronger, more politically favored group over a minority group," *Barton Brands, Ltd. v. NLRB*, 529 F.2d 793, 798–99 (7th Cir. 1976)—without which there can be no bad faith.

* * *

The judgment of the district court is

AFFIRMED.

JUDGMENT, U.S. COURT OF APPEALS FOR THE SEVENTH CIRCUIT (OCTOBER 8, 2025)

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

KEVIN D. WICKSTROM, ET AL.,

Plaintiffs-Appellants,

v.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,

Defendant-Appellee.

No. 25-1036

District Court No: 1:23-cv-02631
Northern District of Illinois, Eastern Division.
District Judge Matthew F. Kennelly

Before: Amy J. ST. EVE, John Z. LEE, Joshua P. KOLAR, Circuit Judges.

FINAL JUDGMENT

The judgment of the District Court is AFFIRMED, with costs, in accordance with the decision of this court entered on this date.

/s/ Christopher Conway
Clerk of Court

MEMORANDUM OPINION AND ORDER, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS (DECEMBER 11, 2024)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KEVIN D. WICKSTROM, ET AL.,

Plaintiffs,

v.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,

Defendant.

Case No. 23 C 2631

Before: Matthew F. KENNELLY, United States District Judge.

MEMORANDUM OPINION AND ORDER

MATTHEW F. KENNELLY, District Judge:

Kevin D. Wickstrom, Robert D. Williamson, Erik W. Wichmann, James R. Breitsprecher, Tony H. McKenzie, Jon A. Sterling, Forace Hogan, Christopher P. Gates, and John Ellis (collectively, Wickstrom), assert that their union, Air Line Pilots Association, International (ALPA), breached its duty of fair represent-

ation. The Court previously granted ALPA's motion to dismiss for failure to state a claim. *Wickstrom v. Air Line Pilots Ass'n, Int'l*, No. 23 C 2631, 2023 WL 5720989, at *7 (N.D. III. Sept. 5, 2023). In granting ALPA's motion, the Court stated that unless plaintiffs filed "a proposed amended complaint stating at least one viable claim over which the Court has jurisdiction, the Court will enter judgment in favor of defendant." *Id.*

Plaintiffs have moved for leave to file a first amended complaint (FAC) against ALPA. For the reasons stated below, the Court denies plaintiffs' motion and directs the Clerk to enter judgment against them.

Background

The Court's previous order granting ALPA's motion to dismiss for failure to state a claim outlines the relevant history of this case. See *id.* at *1-2. To briefly reiterate: Wickstrom, an ALPA member and United pilot, was terminated for refusing to comply with United's COVID-19 vaccination policy announced on August 6, 2021. Prior to announcing the vaccine policy, United and ALPA adopted Letter of agreement (LOA) 21-02. LOA 21-02 provided monetary incentives for pilots who received the vaccine while also restricting certain destinations to vaccinated pilots only.

Wickstrom alleges that ALPA's response to United's COVID-19 vaccination policy breached its duty of fair representation. His main contention centers on how ALPA addressed grievances to United's vaccine policy. Under the United Pilots agreement (UPA)—the collective bargaining agreement between United and ALPA—pilots may file with United's Chief

Pilot grievances concerning any United action, except for matters involving discipline or discharge. Pilots may appeal the Chief Pilot's decision to United's Senior Vice President-Flight Operations. If United denies the grievance, ALPA may appeal the denial to United's System Board of Adjustment, which includes a neutral arbitrator. If ALPA decides not to appeal from the denial of the grievance, the pilot may seek review of that determination from ALPA's MEC grievance Review Panel.

On August 24, 2021, United pilots, including several of the plaintiffs in this case, filed non-disciplinary "status quo" grievances opposing the vaccine mandate. See First Am. Compl. ¶ 35. One of the contentions raised in these grievances was that because the collective bargaining agreement had lapsed, United's vaccine mandate violated the company's obligation under section 6 of the Railway Labor Act to maintain the status quo. *See id.* ALPA did not assist with those grievances, and United denied the grievances. The pilots appealed to the grievance Review Panel which, after a two-day hearing, denied the pilots' requests.

On September 28, 2021, ALPA filed an instant grievance "on behalf of approximately 12 pilots, including several Plaintiffs," before the System Board of Adjustment. First Am. Compl. ¶ 43. The instant grievance "challenge[d] [United's] termination of twelve (12) pilots for refusing to receive a COVID-19 vaccination" and asked the Board to consider whether United violated certain provisions of the UPA, whether the requirement to become vaccinated against COVID-19 was a pilot qualification within the meaning of the UPA, and whether United could discipline any pilot

who did not meet the vaccination requirement. App. to Def. ALPA's Opp'n to Pls.' Mot. for Leave to Amend at 134-35.[1]

In February 2022, the Board denied the grievance. First, the Board determined that the vaccination requirement was not a pilot qualification under the meaning of the UPA, and thus it rejected ALPA's argument that the twelve pilots should have been placed on "not qualified" status rather than be terminated. *Id.* at 164. Based on this determination, the Board concluded that United had not violated the relevant section of the UPA when it opted to terminate the twelve pilots at issue rather than place them on non-qualified status. *Id.* at 173. The Board found that the UPA did not "preclude [United] from using the discipline process for violation of its COVID-19 vaccination policy." *Id.*

Now seeking leave to file a first amended complaint, Wickstrom largely reiterates the facts

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[1] Under Federal Rule of Civil Procedure 10(c), "[a] statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes." Fed. R. Civ. P. 10(c). The Seventh Circuit has found that district courts may examine "[d]ocuments that a defendant attaches to a motion to dismiss . . . if they are referred to in the plaintiffs complaint and are central to her claim." *Albany Bank & Tr.* Co. *v. Exxon Mobil Corp.*, 310 F.3d 969, 971 (7th Cir. 2002) (quoting *Venture Assocs. Corp. v. Zenith Data Sys. Corp.*, 987 F.2d 429, 431 (7th Cir. 1993)); *see also Tierney v. Vahle*, 304 F.3d 734, 738 (7th Cir. 2002) (noting that Seventh Circuit precedent serves as an "exception to Rule 12(b)" that "follow[s] from Rule 10(c)" and "allow[s] the defendant to submit the document to the court, and the court to consider it, without need for conversion to [a motion for summary judgment]").

alleged in his initial complaint. After parsing the two documents and comparing their contents, the Court has determined that the proposed FAC alleges three new facts to support the claim that ALPA breached its duty of fair representation.

The first addition involves LOA 21-02. Wickstrom alleges:

> LOA 21-02 established a two-tier structure for pilots within United. vaccinated pilots were allowed to fly virtually all routes within the system while unvaccinated pilots were limited to specific routes. Pilots who were unvaccinated began to suffer financial loss as their routes were limited and their options for taking on alternative routes were shut down by the terms of the LOA.

First Am. Compl. ¶ 24.

Second, Wickstrom newly alleges:

> As part of its [reasonable accommodation process], United began illegal inquiries into the religious practices of its employees who claimed religious exemptions from the vaccine mandate. This included Defendant's members. Although the United Pilots' agreement (Sec. 21-U and 21-G) contained a specific provision allowing the union to intervene on a pilot's behalf regarding matters of discrimination and violations of federal law, Defendant continued to take a hands-off stance in the fact of these violations.

Id. ¶ 31.

Third, Wickstrom newly alleges:

> The conduct alleged [in the FAC] either directly or indirectly violated the United Pilots agreement (Section 1(a)) between Defendant and United, as well as the provisions of the [Railway Labor Act]. Notwithstanding its earlier representation that the vaccine mandate would be a mandatory subject of collective bargaining before implementation, Defendant instead elected to not only ignore United's illegal actions, but to endorse and support them.

Id. ¶ 56.

Discussion

In the proposed FAC, Wickstrom again asserts a single claim alleging that ALPA breached its duty of fair representation under the Railway Labor Act, 45 U.S.C. §§ 151, 156. ALPA contends that the Court should deny Wickstrom leave to amend because his proposed FAC still does not supply facts that plausibly support a claim for relief and thus any amendment would be futile.

Federal Rule of Civil Procedure 15 outlines when and how amended and supplemental pleadings may be filed. Rule 15(a) typically allows a party leave to amend its pleading "once as a matter of course" before trial. Fed. R. Civ. P. 15(a). Courts should deny leave to amend following the granting of a motion to dismiss only if "it is *certain* from the face of the complaint that any amendment would be futile or otherwise unwarranted." *Runnion ex ref. Runnion v. Girl Scouts of Greater Chi. & Nw. Ind.*, 786 F.3d 510, 519-20 (7th Cir. 2015). An amendment is futile if it "restat[es] the same facts using different language, reassert[s]

claims previously determined, fail[s] to state a valid theory of liability, and [is unable] to survive a motion to dismiss." *Garcia v. City of Chicago*, 24 F.3d 966, 970 (7th Cir. 1994) (internal citations omitted).

The Court finds that granting leave to amend would be futile. As explained in more detail below, Wickstrom's proposed FAC alleges only three new facts (outlined above) while restating the originally-pleaded facts using different language. The new factual allegations do not nudge Wickstrom's claim across the line to plausibility, and therefore the claim still would not survive a motion to dismiss. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

A. Duty of fair representation

"A union breaches a duty of fair representation only if its actions are arbitrary, discriminatory, or in bad faith." *Neal v. Newspaper Holdings, Inc.*, 349 F.3d 363, 369 (7th Cir. 2003) (citing *Vaca v. Sipes*, 386 U.S. 171, 190 (1967)). plaintiffs contend that ALPA breached its duty of fair representation by acting arbitrarily, discriminatorily, and in bad faith.

1. Arbitrariness

"A union's actions are arbitrary only if the union's behavior is so far outside a wide range of reasonableness as to be irrational." *Neal*, 349 F.3d at 369. A court determines whether a union's actions are arbitrary under an objective standard. *Id.* This is an "extremely deferential standard," and courts may not substitute their own judgment for that of the union "even if, with the benefit of hindsight, it appears that the union could have made a better call." *Id.* (citation and quotation marks omitted). Mere negligence, "even

in the enforcement of a collective bargaining agreement," is not sufficient. *Id.* (quoting *United Steelworkers of Am. v. Rawson*, 495 U.S. 362, 372-73 (1990)).

Regarding its handling of member grievances, "a union may not arbitrarily ignore meritorious grievances or process them in a perfunctory fashion." *Neal*, 349 F.3d at 369 (quoting *Vaca*, 386 U.S. at 191). A union is not required to take all member grievances to arbitration. *Neal*, 349 F.3d at 369 (citing *Vaca*, 386 U.S. at 191). Rather, a union "must provide some minimal investigation of employee grievances," the thoroughness of which "depends on the particular case." *Garcia v. Zenith Elecs. Corp.*, 58 F.3d 1171, 1176 (7th Cir. 1995). "[O]nly an egregious disregard for union members' rights constitutes a breach of the union's duty." *Id.* (citation and quotation marks omitted). To survive a motion to dismiss for failure to state a claim, a plaintiff "must include enough details about the subject-matter of the case to present a story that holds together." *Taha v. Int'l Bhd. of Teamsters, Loc. 781*, 947 F.3d 464, 470 (7th Cir. 2020) (citation and quotation marks omitted).

Wickstrom fails to present such a story. The Court previously determined that Wickstrom failed to plausibly allege that ALPA behaved arbitrarily. See *Wickstrom*, 2023 WL 5720989, at *5-6. The new facts offered in the proposed first amended complaint, noted above, do not alter that determination.

The thrust of Wickstrom's argument remains the same: ALPA failed to challenge United's vaccine mandate. Specifically, Wickstrom contends that ALPA acted arbitrarily because it "failed to challenge [United's vaccine] mandate by filing a status quo grievance." First Am. Compl. ¶ 42. But ALPA did file an

"instant grievance on behalf of approximately 12 pilots, including several Plaintiffs." *Id.* ¶ 43. In this grievance, as discussed earlier, ALPA challenged United's termination of twelve pilots who refused to receive a COVID-19 vaccination and took the position that the vaccine requirement was a pilot qualification, rather than a change in working conditions, and therefore refusal to receive the vaccine could not be grounds for termination. *See* App. to Def. ALPA's Opp'n to Pls.' Mot. for Leave to Amend at 149-54; see *also id.* ¶ 43 (alleging that, in filing the instant grievance, "[t]he union took the position that it would not challenge the vaccine mandate as a violation of the collective bargaining agreement, but rather requested that the company treat unvaccinated pilots as lacking qualification and therefore subject to limited discipline").

The fact that ALPA took this step puts the lie to the plaintiffs' contention that ALPA handled the grievances in a perfunctory manner or egregiously disregarded union members' rights. Rather, the above facts taken from the FAC and documents attached to ALPA's motion reflect that ALPA made a discretionary decision on how to address the vaccine mandate. When deciding how to proceed with a member grievance, the union may consider "such factors as the wise allocation of its own resources, its relationship with other employees, and its relationship with the employer." *Neal*, 349 F.3d at 369. In electing to file an instant grievance, ALPA likely believed that this was the best allocation of its resources and/or the best way to meet the needs of all its members. The important point is that Wickstrom's amended complaint does not supply facts that permit a plausible inference that

ALPA chose to file the instant grievance, rather than the status quo grievance, because it was addressing his complaint in a perfunctory manner or egregiously disregarded his rights.

Wickstrom further contends that ALPA's actions were arbitrary because after the System Board of Adjustment arbitrator "found that the vaccine mandate was not a 'pilot qualification' issue," ALPA failed to "challenge the mandate as a term or condition of employment." First Am. Compl. ¶¶ 49-50. Instead, according to the FAC, ALPA's grievance Review Panel "denied Plaintiffs' grievance from moving forward to the system board of adjustment where the 'terms and conditions of employment' argument could be raised formally through the parties' grievance system." *Id.* ¶ 50.

Wickstrom's argument is not persuasive. The grievance Review Panel conducted a hearing over two days that consisted of formal presentations of the merits of the grievance, a question-and-answer session, and multiple sessions of deliberations by the panel. According to the panel's decision, it determined that United "could impose the vaccination requirement under the UPA, and any lawsuit alleging that United violated the RLA status quo obligation would be baseless." App. to Def. ALPA's Opp'n to Pls.' Mot. for Leave to Amend at 124. Even taking plaintiffs' allegations as true, ALPA provided well more than the required "minimal investigation" into Wickstrom's grievance following the clarification by the System Board of Adjustment arbitrator. Given the deferential standard granted to ALPA's decision in this context, the Court cannot find that ALPA acted arbitrarily in addressing Wickstrom's grievance. In sum, Wickstrom

has not alleged facts that plausibly support a contention that ALPA's decision to not take his *specific* grievance to arbitration, after a two-day hearing, was arbitrary. *See Yeftich v. Navistar, Inc.*, 722 F.3d 911, 916 (7th Cir. 2013) ("[D]eclining to pursue a grievance as far as a union member might like isn't by itself a violation of the duty of fair representation.").

In sum, the Court finds that Wickstrom has not sufficiently alleged facts that plausibly show ALPA breached its duty of fair representation by acting arbitrarily in addressing his grievances.

2. discrimination and bad faith

A court's determination of whether a union acted discriminatorily or in bad faith involves a subjective inquiry "and requires proof that the union acted (or failed to act) due to an improper motive." *Neal*, 349 F.3d at 369. Mere suggestion by the plaintiffs that the union "may have failed to pursue grievances on their behalf for improper reasons" is insufficient without more. *Id.* As the Seventh Circuit has noted, "unions often must make decisions that distinguish among different categories of employees," which may at times mean that the "interests of individual employees sometimes may be compromised for the sake of the larger bargaining collective." *Bishop v. Air Line Pilots Ass'n, Int'l*, 900 F.3d 388, 398 (7th Cir. 2018). At this phase, plaintiffs must plausibly allege facts that show that ALPA's actions were fraudulent, deceitful, or dishonest. *See id.*; *see also Amalgamated Ass'n of St., Elec. Ry. & Motor Coach Emps. of Am. v. Lockridge*, 403 U.S. 274, 299 (1971).

Wickstrom alleges throughout the proposed FAC that ALPA colluded with United to enforce the COVID-

19 vaccination policy. *See* First Am. Compl. ¶¶ 21, 31, 57, 62, 64. But in making these allegations, Wickstrom fails to put forth any facts that plausibly support a finding that ALPA acted with an improper motive in addressing United's vaccination policy. The majority of Wickstrom's allegations are wholly conclusory statements ascribing the label of "collusion" to ALPA's actions without saying much else. More to the point, however, the Court already determined that the facts alleged in the initial complaint were not sufficient to plausibly allege that ALPA breached its duty of fair representation by acting in a discriminatory manner or in bad faith. *See Wickstrom*, 2023 WL 5720989, at *6-7. Considering the additional facts alleged in the proposed FAC, the Court again finds that Wickstrom has not plausibly alleged that ALPA's actions were discriminatory or taken in bad faith.

In the proposed FAC, Wickstrom alleges that "[a]lthough the United Pilots' agreement (Sec. 21-U and 21-G) contained a specific provision allowing the union to intervene on a pilot's behalf regarding matters of discrimination and violations of federal law," ALPA took a "hands-off stance." First Am. Compl. ¶ 31. Wickstrom contends that this "is yet another example of ALPA's collusive conduct." *Id.* ¶ 31, n.1. This allegation is the type of "mere suggestion" that the court found insufficient in *Neal*, and it is no more effective here. To support a claim of bad faith, Wickstrom must plausibly allege "fraud, deceitful action or dishonest conduct." *Lockridge*, 403 U.S. at 299. The allegation that the UPA allowed ALPA to intervene on the pilot's behalf, but that ALPA did not intervene, is not sufficient to plausibly allege

fraudulent, deceitful, or dishonest conduct without more.

Wickstrom next contends that ALPA acted in bad faith by colluding with United "to impose vaccine mandates on its workforce in full or in part to maintain federal funding." First Am. Compl. ¶ 21. Putting aside that this allegation is wholly conclusory, it also fails to plausibly show that ALPA acted in bad faith. A desire to maintain federal funding—if that is what motivated ALPA—does not suggest an improper motive because, as the Court previously noted, "preventing pilot layoffs and pay cuts are legitimate union purposes, as is protecting ALPA's members' health." *Wickstrom*, 2023 WL 5720989, at *6.

Wickstrom further alleges that ALPA gave members incorrect advice regarding United's religious accommodations process. These allegations fail to plausibly state a claim for the same reason the Court previously determined: at no point in the proposed FAC does Wickstrom allege that he sought or wished to seek a religious exemption under United's vaccine mandate. Therefore, even if ALPA's incorrect advice constituted a breach of the duty of fair representation, any such breach was harmless. A "plaintiff cannot recover for [a] harmless breach of duty of fair representation." *Garcia*, 58 F.3d at 1180.

Wickstrom next alleges that ALPA "fail[ed] to follow its own policies that required member ratification of LOAs" and that this is evidence of its "collusion with United to not oppose an alternation to the company's basic employment conditions." First Am. Compl.

¶ 62.[2] Wickstrom contends that the promulgation of LOA 21-02 is one link in a chain of events that shows ALPA's bad faith. Specifically, Wickstrom alleges that ALPA initially "advised plaintiffs and the United pilot membership that they should expect United management to try to unilaterally alter the collective bargaining agreement with respect to working conditions as a result of the COVID-19 pandemic and called for a united front to forestall United management efforts." *Id.* ¶ 18. But then, according to Wickstrom, ALPA changed its tune and "erroneously claimed that a vaccine mandate was contractually permissible." *Id.* ¶ 20. All of this was done, Wickstrom contends, because ALPA and United wanted "in full or in part to maintain federal funding." *Id.* ¶ 21. As a result of this "collusion," Wickstrom alleges, ALPA "assisted United management in instituting a two-tier system limiting compensation for unvaccinated pilots," causing "[p]ilots who were unvaccinated . . . to suffer financial loss." *Id.* ¶¶ 23-24.

Wickstrom's allegations do not support a plausible contention that ALPA acted fraudulently, deceitfully, or dishonestly. Though ALPA appears to have changed its position on the vaccine mandate, Wickstrom does not allege specific facts that show that it acted due to an improper motive as opposed to "considering the larger bargaining collective." See *Bishop*, 900 F.3d at 398; see *also Bishop v. Air Line Pilots Ass'n, Int'l*, 5 F.4th 684, 698 (7th Cir. 2021) (affirming the grant of

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[2] Wickstrom makes clear that he contends that "ALPA's promulgation of LOA 21-02 is evidence of the union's collusion with plaintiffs employer" and that he does not allege ALPA's failure to present LOA 21-02 for member ratification as a basis for his claim. Pls.' Reply in Supp. of Proposed Am. Compl. at 5.

summary judgment because, though plaintiffs did identify a "specific misrepresentation" made by ALPA to justify adopting a policy, this misrepresentation was not evidence that the *"sole* motivation in adopting [the policy] was discriminatory or in bad faith").

All other allegations in the proposed FAC have previously been addressed by the Court and found not to sufficiently allege that ALPA acted fraudulently, deceitfully, or dishonestly. See *Wickstrom*, 2023 WL 5720989, at *6-7. The Court's analysis of these allegations remains unchanged based on the FAC. In sum, the Court finds that Wickstrom has not plausibly alleged that ALPA breached its duty of fair representation by acting discriminatorily or in bad faith.

Conclusion

The Court concludes that Wickstrom has again failed to allege a plausible claim that ALPA breached its duty of fair representation. For this reason, his proposed amendment would be futile, and the Court therefore denies his motion for leave to amend [dkt. no. 52]. At this point, Wickstrom has had a sufficient opportunity to state a viable claim against ALPA, and he has been unable to do so. The Court therefore directs the Clerk to enter judgment stating: This case is dismissed with prejudice.

/s/ Matthew F. Kennelly
United States District Judge

Date: December 11, 2024

JUDGMENT, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS (DECEMBER 11, 2024)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

KEVIN D. WICKSTROM, ET AL.,

Plaintiff(s),

v.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,

Defendant(s).

Case No. 23 C 2631

Before: Matthew F. KENNELLY, United States District Judge.

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☒ other: This case is dismissed with prejudice.

This action was (check one):

☒ decided by Judge Matthew F. Kennelly on a motion

Thomas G. Bruton, Clerk of Court
Melissa Astell, Deputy Clerk

Date: 12/11/2024

NOTICE OF ISSUANCE OF MANDATE, U.S. COURT OF APPEALS FOR THE SEVENTH CIRCUIT (NOVEMBER 24, 2025)

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

KEVIN D. WICKSTROM, ET AL.,

Plaintiffs-Appellants,

v.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,

Defendant-Appellee.

No. 25-1036

District Court No: 1:23-cv-02631
Northern District of Illinois, Eastern Division.
District Judge Matthew F. Kennelly

NOTICE OF ISSUANCE OF MANDATE

To: Thomas G. Bruton
UNITED STATES DISTRICT COURT
Northern District of Illinois
Chicago, IL 60604

Herewith is the mandate of this court in this appeal, along with the Bill of Costs, if any. A certified

copy of the opinion/order of the court and judgment, if any, and any direction as to costs shall constitute the mandate.

AMOUNT OF BILL OF COSTS (do not include the $):

357.00

DATE OF MANDATE OR AGENCY CLOSING LETTER ISSUANCE:

11/24/2025

RECORD ON APPEAL STATUS:

No record to be returned

BILL OF COSTS

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

KEVIN D. WICKSTROM, ET AL.,

Plaintiffs-Appellants,

v.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,

Defendant-Appellee.

No. 25-1036

District Court No: 1:23-cv-02631
Northern District of Illinois, Eastern Division.
District Judge Matthew F. Kennelly

Taxed in Favor of: Appellee Air Line Pilots Association, International

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The mandate or agency closing letter issued in this cause on November 24, 2025.

BILL OF COSTS issued in the amount of: $357.00.

1. For docketing a case on appeal or review or docketing any other proceeding:
2. For reproduction of any record or paper, per page:
3. For reproduction of briefs:

$357.00 (Total Cost Each Item)

TOTAL: $357.00

MEMORANDUM OPINION AND ORDER, U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS (SEPTEMBER 5, 2023)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KEVIN D. WICKSTROM, ET AL.,

Plaintiffs,

v.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,

Defendant.

Case No. 23 C 2631

Before: Matthew F. KENNELLY, United States District Judge.

MEMORANDUM OPINION AND ORDER

MATTHEW F. KENNELLY, District Judge:

Kevin D. Wickstrom, Robert D. Williamson, Erik W. Wichmann, James R. Breitsprecher, Tony H. McKenzie, Jon A. Sterling, Forace Hogan, Christopher P. Gates, and John Ellis (collectively, Wickstrom), assert that their union, Air Line Pilots Association, International (ALPA), breached its duty of fair repre-

sentation. ALPA has moved to dismiss for lack of subject matter jurisdiction and for failure to state a claim. For the reasons stated below, the Court grants the motion to dismiss for failure to state a claim.

Background

On August 6, 2021, United Airlines announced that all employees would be required to be fully vaccinated against COVID-19. Wickstrom, an ALPA member and United pilot, was terminated for refusing to comply with United's COVID-19 vaccination policy.

A. ALPA's response

In his complaint,[1] Wickstrom describes ALPA's response to United's developing COVID-19 vaccination policies as follows.

In May 2021, ALPA and United adopted Letter of agreement (LOA) 21-02, which prohibited United from mandating COVID-19 vaccinations and instead provided monetary incentives for pilots to receive the vaccine. LOA 21-02 also restricted certain destinations to vaccinated pilots only. Wickstrom alleges that when an ALPA member "raised an objection to the emergency use authorization status of the vaccine," ALPA's Master Executive Council's (MEC) Chair told

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[1] The Court also refers to the documents that ALPA attaches to its motion to dismiss, namely, the collective bargaining agreement, LOA 21-02, and the parties' grievances, which are "referred to in [Wickstrom]'s complaint and are central to his claim." *Burke v. 401 N. Wabash Venture, LLC*, 714 F.3d 501, 505 (7th Cir. 2013) (internal quotation marks omitted). Wickstrom did not object to ALPA's contention that these documents may be considered in deciding a motion to dismiss.

that member to "go get a fucking shot and collect $4K or he can STFU." Compl. ¶ 29.

Wickstrom alleges that United then breached LOA 21-02 by requiring pilots to justify their requests for vaccine exemptions and by increasing the number of countries designated as destinations for vaccinated pilots. ALPA did not challenge United's alleged breaches. United eventually terminated LOA 21-02 when it established the vaccine mandate in August 2021. United created an accommodation process "for vaccine objectors." *Id.* ¶ 32. Wickstrom alleges that ALPA did not assist members in seeking religious accommodations and provided "incorrect legal advice concerning the religious accommodation process." *Id.* ¶ 36. In his complaint, Wickstrom does not allege that the vaccine violates any plaintiffs religious practices or that any plaintiff sought a religious accommodation.

A. The grievance process

Wickstrom alleges that because United and ALPA's collective bargaining agreement (CBA) had lapsed, "all parties were required by the Railway Labor Act to maintain the terms and conditions of the previous [CBA] until a new contract was signed." *Id.* ¶ 20.

Under the CBA, pilots may file grievances concerning any United action, except for matters involving discipline or discharge, with United's Chief Pilot. Pilots may appeal the Chief Pilot's decision to United's Senior Vice President-Flight Operations. If United denies the pilot's grievance, ALPA may appeal the grievance to United's System Board of Adjustment, which includes a neutral arbitrator. If a pilot disputes ALPA's decision not to appeal the grievance, the pilot

may seek review from ALPA's MEC grievance Review Panel.

On August 24, 2021, United pilots, including three of the plaintiffs, filed non-disciplinary grievances opposing the vaccine mandate. One of the contentions the pilots raised was that because the CBA had lapsed, United's vaccine mandate violated the company's obligation under section 6 of the Railway Labor Act (RLA) to maintain the status quo. ALPA did not assist with those grievances, and United denied the grievances. The pilots appealed to the grievance Review Panel, asking ALPA to submit their grievances to the System Board of Adjustment. On March 11, 2022, the grievance Review Panel, after a two-day hearing, declined the pilots' request. The Panel reasoned that "any lawsuit alleging that United violated the RLA status quo obligation would be baseless" and that "Section 21-K [of the CBA] recognizes that United may change personnel policies upon notice to ALPA, even though ALPA does not have to agree beforehand to any such changes." Dkt. no. 47-1 at 124-25.

On September 28, 2021, ALPA filed a grievance "on behalf of approximately 12 pilots, including several Plaintiffs," to the System Board of Adjustment. Compl. ¶ 44. ALPA interpreted the vaccine mandate as a "pilot qualification" issue, rather than a "condition of employment." *Id.* In its grievance, ALPA argued that pilots who were unqualified because they were unvaccinated were "subject to limited discipline," meaning that United lacked just cause to terminate them. *Id.* In February 2022, the Board denied the grievance, finding that ALPA "did not meet its burden of showing that [United] violated Section 20-A-5-d of the [CBA]

when it refused to place unvaccinated pilots on non-qualified status" and that the CBA "does not appear to preclude [United] from using the discipline process for violation of its COVID-19 vaccination policy." Dkt. no. 47-1 at 173. The Board "ma[de] no determination as to whether the discipline imposed on the pilots who form the subject of this grievance was for just cause or not," because that question was outside the scope of the Board's jurisdiction. *Id.*

After the plaintiffs were terminated, ALPA also filed termination grievances for each plaintiff. The grievance process for each plaintiff is still ongoing.

Discussion

ALPA has moved to dismiss under Federal Rule of Civil Procedure 12(b)(1), contending that the Court lacks subject matter jurisdiction over Wickstrom's claim because his claim is not ripe and over the claims of six plaintiffs who failed to exhaust ALPA's internal grievance procedures. ALPA has also moved to dismiss the complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).

A. Subject matter jurisdiction

First, ALPA contends that Wickstrom's suit is not ripe because the plaintiffs' termination grievances are ongoing. If the plaintiffs' termination grievances are ultimately successful, ALPA argues, this will resolve their claimed harm.

"The ripeness doctrine arises out of the Constitution's case-or-controversy requirement, as claims premised on uncertain or contingent events present justiciability problems." *Church of Our Lord & Savior*

Jesus Christ v. City of Markham, 913 F.3d 670, 676 (7th Cir. 2019); *see also Wis. Right to Life State Pol. Action Comm. v. Barland*, 664 F.3d 139, 148 (7th Cir. 2011) ("Ripeness doctrine is based on the Constitution's case-or-controversy requirements as well as discretionary prudential considerations."). "Whether a claim is ripe for adjudication depends on 'the fitness of the issues for judicial decision' and 'the hardship to the parties of withholding court consideration.'" *Barland*, 664 F.3d at 148 (quoting *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 201 (1983)). "A case is not ripe when the parties point only to hypothetical, speculative, or illusory disputes as opposed to actual, concrete conflicts." *Mathis v. Metro. Life Ins. Co.*, 12 F.4th 658, 664 (7th Cir. 2021) (internal quotation marks omitted).

ALPA does not dispute that the plaintiffs were terminated from their employment, and the plaintiffs allege that their termination was because of ALPA's failure to fairly represent them. Thus, the plaintiffs' claims are not "premised on uncertain or contingent events." *Church of Our Lord*, 913 F.3d at 676; *see also Mathis*, 12 F.4th at 664 (holding that "the case was ripe" where the plaintiff "claimed [the defendant] damaged him by its past conduct"). ALPA does not cite any authority for the proposition that the plaintiffs' claims are not ripe because there is a possibility that "successful resolution of their Grievances would moot their claims." Def.'s Opening Mem. at 8. Rather, it is ALPA's mootness argument that "involves uncertain or contingent events that may not occur as anticipated, or not occur at all." *Berland*, 664 F.3d at 148. The Court therefore concludes that the plaintiffs' claims

are ripe "as of the date of its decision." *Church of Our Lord*, 913 F.3d at 677.

The only case ALPA cites in the duty of fair representation context illustrates the point. *See Dolan v. Ass'n of Flight Attendants*, No. 95 C 7071, 1996 WL 131729 (N.D. Ill. Mar. 20, 1996). In *Dolan*, the plaintiffs alleged that the union's intended bargaining position might cause them to lose their jobs. *See id.* at *3. The court held that the plaintiffs' duty of fair representation claim was not ripe because the "loss of jobs alleged by plaintiffs is a remote injury that may or may not occur." *Id.* In this case, by contrast, the plaintiffs have already been terminated. The case is therefore ripe.

Next, ALPA contends that the Court lacks subject matter jurisdiction over the claims of the six plaintiffs who did not exhaust the grievance process outlined in the CBA. Although ALPA primarily relies on cases interpreting the Labor Management Relations Act, rather than the RLA, Wickstrom does not dispute that his claim is subject to some kind of exhaustion requirement. He argues, however, that various exceptions to the requirement apply in this case, including futility.

As a preliminary matter, it is not clear that exhaustion is truly a jurisdictional issue. *See Staudner v. Robinson Aviation, Inc.*, 910 F.3d 141, 148 (4th Cir. 2018) (holding that the exhaustion requirement for a duty of fair representation claim brought under the Labor Management Relations Act "is a nonjurisdictional precondition to suit rather than a jurisdictional limit"); *Emswiler v. CSX Transp., Inc.*, 691 F.3d 782, 790 (6th Cir. 2012) ("[C]ompletion of the RLA-mandated arbitral process does not affect a district

court's subject matter jurisdiction over a claim but instead goes to the court's ability to reach the merits of a dispute and grant relief. . . ."); *Miller v. Sw. Airlines Co.*, 926 F.3d 898, 901 (7th Cir. 2019) (noting that "[n]one of this circuit's [RLA] decisions considers the effect of the Supreme Court's modern understanding of the difference between 'jurisdiction' and other kinds of rules"). As both parties recognize, the exhaustion requirement is subject to equitable exceptions. *See Clayton v. Int'l Union, United Auto., Aerospace, & Agr. implement Workers of Am.*, 451 U.S. 679, 689 (1981) ("[C]ourts have discretion to decide whether to require exhaustion of internal union procedures."). Because courts have "no authority to create equitable exceptions to jurisdictional requirements," *Bowles v. Russell*, 551 U.S. 205, 214 (2007), it follows that the exhaustion requirement is not jurisdictional.

That said, Wickstrom does not argue this point, contending instead that he has sufficiently alleged that exhaustion would have been futile in this case. The Court agrees. "Among the (non-exclusive) factors bearing on" whether to dismiss a duty of fair representation claim for failure to exhaust "are: (1) whether the union has manifested such hostility to the plaintiffs grievance as to render exhaustion of his internal appeal rights futile, (2) whether the internal union appeals procedures are inadequate either to reactivate the grievance or to result in complete relief to the plaintiff, and (3) whether demanding exhaustion would cause undue delay in the resolution of the plaintiffs complaint." *Bell v. DaimlerChrysler Corp.*, 547 F.3d 796, 805 (7th Cir. 2008). At the motion to dismiss stage, Wickstrom has sufficiently alleged

that ALPA's hostility toward his grievances about the vaccine mandate rendered exhaustion futile. *See Lewis v. Loc. Union No. 100 of Laborers' Int'l Union of N. Am.*, 750 F.2d 1368, 1381 (7th Cir. 1984) ("Mt is unreasonable to impose an exhaustion requirement solely on the basis of the pleadings when it is clear that the issue of union hostility has been raised and that the resolution of that issue requires further factual development."); *Stevens v. Nw. Indiana Dist. Council, United Bhd. of Carpenters*, 20 F.3d 720, 733 n.30 (7th Cir. 1994) ("Mere allegations of union hostility may suffice to forestall dismissal at the pleading stage of a suit when the opportunity for factual development has not yet occurred . . . ."). Most of the cases ALPA cites are resolved on summary judgment and are therefore inapposite.

In sum, the Court denies ALPA's motion to dismiss for lack of subject matter jurisdiction.

B. Failure to state a claim

To survive dismissal under Federal Rule of Civil Procedure 12(b)(6), a complaint need only "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The Court must accept as true all well-pleaded factual allegations in the complaint and draw all reasonable inferences in the plaintiffs favor. *See NewSpin Sports, LLC v. Arrow Elecs., Inc.*, 910 F.3d 293, 299 (7th Cir. 2019). The complaint must provide sufficient factual allegations to allow the Court to "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

First, ALPA contends that Wickstrom's claim must be dismissed because he has failed to allege a breach of the CBA. "Success in a hybrid contract/DFR suit depends on showing *both* that the employer violated the contract *and* that the union did not represent the workers fairly." *Cunningham v. Air Line Pilots Ass'n, Int'l*, 769 F.3d 539, 541 (7th Cir. 2014). ALPA argues that this is a "hybrid" suit because Wickstrom alleges that United breached the CBA and that ALPA violated the duty of fair representation by failing to challenge the breach.

Wickstrom does not clearly explain the basis of his duty of fair representation claim.[2] On the one hand, Wickstrom does not challenge ALPA's contention that he has brought a hybrid suit. *See* Pls.' Resp. Br. at 4 ("Although the employer is not named as a Defendant in this action, plaintiffs understand that the Court may nevertheless qualify this case as a hybrid lawsuit."). On the other hand, Wickstrom also alleges that ALPA violated the duty of fair representation by failing to challenge United's change to his working conditions while section 6 negotiations under the RLA were ongoing. *See Air Line Pilots Ass'n, Int'l v. United Air Lines, Inc.*, 802 F.2d 886, 916 (7th Cir. 1986) ("Section 6 requires maintenance of the status quo with respect to rates of pay, rules, and working conditions."). This allegation is not necessarily premised on a violation of the existing CBA. *See id.* ("We have stressed that the status quo extends to those

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[2] Wickstrom does specifically note that he does not assert a duty of fair representation claim premised on his "allegations regarding LOA 21-02." Pls.' Resp. Br. at 6 n.1. Thus, the Court need not address ALPA's contention that such a claim, if it were asserted, must be dismissed.

actual, objective working conditions out of which the dispute arose, and clearly these conditions need not be covered in an existing agreement." (quoting *Detroit & T.S.L.R. Co. v. United Transp. Union*, 396 U.S. 142, 153 (1969))). Thus, the Court examines both potential theories underlying Wickstrom's duty of fair representation claim.

First, regarding ALPA's failure to challenge United's alleged CBA violation, Wickstrom does not respond to ALPA's contention that United's vaccine requirement was permitted by Section 21-K of the CBA. Thus, Wickstrom has forfeited any argument that United violated the CBA. *See Bonte v. U.S. Bank, N.A.*, 624 F.3d 461, 466 (7th Cir. 2010) ("Failure to respond to an argument . . . results in waiver."). By forfeiting this point, Wickstrom's duty of fair representation claim premised on ALPA's failure to process his grievance that United violated the CBA necessarily fails. *See White v. Gen. Motors Corp.*, 1 F.3d 593, 595 (7th Cir. 1993) ("When an employee's underlying contractual claim lacks merit as a matter of law, the employee cannot complain that the union breached its duty of fair representation in failing to process his or her grievance."); *Nemsky v. ConocoPhillips Co.*, 574 F.3d 859, 868 (7th Cir. 2009) (holding that, where the plaintiff failed to advance a "viable breach of contract theory," "his hybrid claim therefore c[ould] not succeed").

Second, regarding ALPA's failure to challenge United's alleged status quo violation, "[a] union breaches the duty of fair representation if its actions are (1) arbitrary, (2) discriminatory, or (3) made in bad faith." *Bishop v. Air Line Pilots Ass'n, Int'l*, 900 F.3d 388, 397 (7th Cir. 2018). "[E]ach prong must be

considered separately in determining whether or not a breach has been pleaded." *Id.* (alteration accepted) (internal quotation marks omitted). Wickstrom contends that he has alleged a breach of the duty of fair representation under all three theories. The Court addresses each in turn.

1. Arbitrary

First, "[t]he Supreme Court has held that a 'union's actions are arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a wide range of reasonableness, as to be irrational." *Rupcich v. United Food & Corn. Workers Int'l Union*, 833 F.3d 847, 854 (7th Cir. 2016) (quoting *Air Line Pilots Ass'n, Int'l v. O'Neill*, 499 U.S. 65, 67 (1991)). In determining whether ALPA acted arbitrarily, the Court "employ[s] an objective inquiry." *Bishop*, 900 F.3d at 397 (internal quotation marks omitted). "[A]ny substantive examination of a union's performance must be highly deferential, recognizing the wide latitude that negotiators need for the effective performance of their bargaining responsibilities." *Id.* at 398 (alterations accepted) (quoting *O'Neill*, 499 U.S. at 78).

"Insofar as grievances are concerned, 'a union may not arbitrarily ignore a meritorious grievance or process it in a perfunctory fashion." *Neal v. Newspaper Holdings, Inc.*, 349 F.3d 363, 369 (7th Cir. 2003) (quoting *Vaca v. Sipes*, 386 U.S. 171, 191 (1967)). "But . . . only an egregious disregard for the union members' rights constitutes a breach of the union's duty." *Id.* (alteration accepted) (internal quotation marks omitted). "At the pleading stage, [the plaintiff] need not prove that the union acted irrationally; that

said, he must include enough details about the subject-matter of the case to present a story that holds together." *Taha v. Int'l Bhd. of Teamsters, Loc. 781*, 947 F.3d 464, 470 (7th Cir. 2020) (internal quotation marks omitted).

Wickstrom's contention that ALPA acted irrationally does not hold together. He alleges that ALPA failed to challenge the vaccine mandate. But, as explained above, he failed to respond to ALPA's contention that the CBA permitted United to require COVID-19 vaccinations. To the extent Wickstrom alleges that ALPA should have filed suit to prevent the vaccine mandate, ALPA contends that it could not have done so because such a dispute would be a "minor dispute" under the RLA and therefore not a basis for a lawsuit in court seeking an injunction. *See* Def.'s Opening Mem. at 11. Wickstrom does not respond to this contention. Although Wickstrom points to the System Board of Adjustment's opinion that being unvaccinated was not a "pilot qualification" issue, Pls.' Resp. Br. at 16, he does explain how that suggests that ALPA's determination that it could not pursue an injunction was "so far outside a 'wide range of reasonableness' that it is wholly 'irrational." *Bishop*, 900 F.3d at 398 (quoting *O'Neill*, 499 U.S. at 78).

Moreover, Wickstrom has not alleged that ALPA pursued their grievances in a perfunctory way. Rather, he alleges that ALPA did pursue to arbitration grievances challenging United's vaccine mandate, but on different grounds than he would have preferred. But ALPA "is not obliged to take all member grievances to arbitration," and it may consider "such factors as the wise allocation of its own resources, its relationship with other employees, and its relationship with the

employer" in declining to do so. *Neal*, 349 F.3d at 369. Wickstrom has not alleged any facts suggesting that ALPA's MEC Grievance Review Panel's decision, after a two-day hearing, not to take his specific grievance to arbitration was arbitrary. *See Yeftich v. Navistar, Inc.*, 722 F.3d 911, 916 (7th Cir. 2013) ("[D]eclining to pursue a grievance as far as a union member might like isn't by itself a violation of the duty of fair representation.").

In short, Wickstrom has failed to allege that ALPA breached the duty of fair representation by acting arbitrarily.

2. discrimination and bad faith

To allege that "a union's actions are discriminatory or in bad faith," a plaintiff must allege "that the union acted (or failed to act) due to an improper motive." *Bishop*, 900 F.3d at 398 (internal quotation marks omitted). This "calls for a subjective inquiry into the union's motives." *Id.* The Seventh Circuit has recognized that "[t]he interests of individual employees sometimes may be compromised for the sake of the larger bargaining collective." *Id.* (internal quotation marks omitted). Thus, "a claim of discrimination or bad faith must rest on more than a showing that a union's actions treat different groups of employees differently." *Id.* Put another way, "[a] union member's claim must be based on more than the discriminatory *impact* of the union's otherwise rational decision to compromise." *Id.* Examples of improper motives include "disfavor[ing] members who supported a losing candidate for union office," "mak[ing] decisions for no apparent reason other than political expediency," or "mak[ing] decisions solely for the benefit of a

stronger, more politically favored group over a minority group." *Id.* at 398-99 (internal quotation marks omitted). "A conclusory allegation of bad faith conduct, without more, does not show illegality." *Taha*, 947 F.3d at 472.

Wickstrom's allegations that ALPA discriminated against unvaccinated pilots by failing to pursue his grievances or challenge the vaccine mandate in the manner he wished do not suggest an improper motive. Wickstrom does not allege that ALPA acted for "no apparent reason other than political expediency." *See Bishop*, 900 F.3d at 399 (internal quotation marks omitted). Rather, he alleges that ALPA was motivated to demonstrate that "it was deserving of money from the government because all of its pilots were vaccinated." Pls.' Resp. Br. at 18. This does not amount to an improper motive because, as ALPA points out, "preventing pilot layoffs and pay cuts are legitimate union purposes, as is protecting ALPA's members' health." Def.'s Reply Br. at 6. Thus, Wickstrom has not alleged that ALPA "arbitrarily cho[se] to disregard [his] interests" as an unvaccinated pilot "in favor of the interests of the stronger, more politically favored majority" of vaccinated pilots, but rather that ALPA was required to "make decisions" about its response to the COVID-19 pandemic that had a "discriminatory *impact*" on unvaccinated pilots. *See Bishop*, 900 F.3d at 398-99 (internal quotation marks omitted).

Wickstrom alleges that ALPA's hostility toward unvaccinated pilots is illustrated by the MEC Chair's response to a "member who raised an objection to the emergency use authorization status of the vaccine to 'go get a fucking shot and collect $4K or he can STFU.'" Compl. ¶ 29. But this response, made months earlier

before United established its vaccine mandate, does not plausibly allege that, in declining to pursue a grievance challenging the claimed status quo violation, ALPA acted on the basis of hostility toward vaccine objectors. Indeed, the fact that ALPA filed a grievance against United's vaccine mandate and a termination grievance on Wickstrom's behalf "tends to show that it bore no ill will toward him." *Souter v. Int'l Union, United Auto., Aerospace & Agr. implement Workers of Am., Loc. 72*, 993 F.2d 595, 599 (7th Cir. 1993).

In short, Wickstrom has not plausibly alleged that ALPA's actions were discriminatory or made in bad faith.

Lastly, Wickstrom alleges that ALPA gave members incorrect advice about United's religious accommodation process. But this allegation fails to state a claim for breach of the duty of fair representation. First, Wickstrom does not allege that he sought or wished to seek a religious exemption to United's vaccine mandate. Thus, even assuming ALPA's incorrect advice on the process breached the duty of fair representation, the breach was harmless. A "plaintiff cannot recover for [a] harmless breach of duty of fair representation." *Garcia v. Zenith Elecs. Corp.*, 58 F.3d 1171, 1180 (7th Cir. 1995) (holding that the plaintiffs union's "misrepresentations regarding his right to consult an attorney," even if made "arbitrarily or in bad faith," could not establish a viable claim where "there [wa]s no [ ] evidence of harm"). Second, Wickstrom does not respond to ALPA's contention that it does not have the exclusive ability to enforce United's religious accommodation process, which arises from Title VII, not the CBA. "If a union does not serve

as the exclusive agent for the members of the bargaining unit with respect to a particular matter, there is no corresponding duty of fair representation." *Freeman v. Loc. Union No. 135*, 746 F.2d 1316, 1321 (7th Cir. 1984).

In sum, the Court holds that Wickstrom has failed to allege that ALPA breached its duty of fair representation. The Court therefore need not address ALPA's contention that Wickstrom's claim is time-barred.

Conclusion

For the reasons stated above, the Court denies defendant's motion to dismiss for lack of subject matter jurisdiction but grants defendant's motion to dismiss for failure to state a claim [dkt. no. 47]. Unless plaintiffs file, by September 26, 2023, a proposed amended complaint stating at least one viable claim over which the Court has jurisdiction, the Court will enter judgment in favor of defendant. The case is set for a telephonic status hearing on September 29, 2023 at 9:00 a.m., using call-in number 888-684-8852, access code 746-1053.

/s/ Matthew F. Kennelly
United States District Judge

Date: September 5, 2023

ORDER DENYING PETITION FOR REHEARING, U.S. COURT OF APPEALS FOR THE SEVENTH CIRCUIT (NOVEMBER 14, 2025)

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

KEVIN D. WICKSTROM, ET AL.,

Plaintiffs-Appellants,

v.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,

Defendant-Appellee.

No. 25-1036

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 1:23-cv-02631
Matthew F. Kennelly, Judge.

Before: Amy J. ST. EVE, John Z. LEE,
Joshua P. KOLAR, Circuit Judges.

On consideration of appellants' petition for rehearing, no judge in regular active service has requested a vote on the petition for rehearing en bane and the judges on the original panel have voted to deny rehearing. It is, therefore, ORDERED that the petition for rehearing is DENIED.