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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITE HERE LOCAL 19,
Petitioner,
v.
PICAYUNE RANCHERIA OF
CHUKCHANSI INDIANS, et al.
Respondents.

No. 1:14-cv-01136-MCE-SAB

MEMORANDUM AND ORDER

Through this action, Petitioner Unite Here Local 19 (“Petitioner”) seeks confirmation and enforcement of a labor arbitration award against Respondents Picayune Rancheria of Chukchansi Indians and Chukchansi Economic Development Authority (collectively, “Respondents”). Pending before the Court is Petitioner’s Motion for Judgment on the Pleadings (ECF No. 11). Respondents have filed an Answer to the Petition and an Opposition to Petitioner’s Motion. For the reasons that follow, Petitioner’s Motion for Judgment on the Pleadings is granted.¹

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¹ Because oral argument would not have been of material assistance, the Court ordered this matter submitted on the briefs. E.D. Cal. Local Rule 230(g).

BACKGROUND²

Respondent Picayune Rancheria of Chukchansi Indians (the “Tribe”) is an Indian tribe that owns and operates the Chukchansi Gold Resort and Casino in Madera County, California (the “Casino”). The Tribe also owns Respondent Chukchansi Economic Development Authority (“CEDA”).

Through CEDA, the Tribe entered into a Collective Bargaining Agreement (“CBA”) with Petitioner. The CBA contains a grievance procedure that culminates in arbitration before an arbitrator of the Federal Mediation and Conciliation Service. Pursuant to that grievance procedure, the parties agreed to submit grievances over the terminations of Casino employees Jarrod Woodcock and Mae Pitman to arbitration. Arbitrator Patrick Halter issued a decision on February 24, 2014, which he served on counsel for the parties by email on the same day. The arbitrator’s decision concludes:

In sum, grievants Woodcock and Pitman were suspended and discharged without just cause. The remedy to cure the numerous violations of the CBA is reinstatement with a make whole remedy that includes backpay with interest, tips for Woodcock, restoration of seniority, contributions to retirement, reimbursement of health insurance premiums and expenses, and any other employment benefits unjustly denied due to their wrongful suspensions and discharges. Front pay is also awarded should the Tribe Employer not reinstate the grievants. In other words, the Union’s requested remedy is granted.

Respondents have not reinstated or paid monetary compensation to either Woodcock or Pitman, and therefore have not complied with the arbitrator’s decision.

The Petition includes accurate copies of both the CBA and the arbitrator’s decision.

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² The following statement of facts is taken from Petitioner’s Motion, which supports each factual assertion with accurate citations to both the Petition and Respondents’ Answer. See Petr’s Mot. J. on the Pleadings at 2, Oct. 8, 2014, ECF No.1.

1 encompasses due process in procedure and substance
2 including the consideration of aggravating and mitigating
factors.

3 Pet., Exh. B at 13, July 21, 2014, ECF No. 1. The subsequent analysis—which
4 continued to cite and directly quote the CBA—thoroughly explained the arbitrator’s
5 conclusion that Respondents did not have just cause for terminating either Woodcock or
6 Pitman. Because the arbitrator’s decision is not completely irrational and does not
7 exhibit a manifest disregard of the law, the Court must enforce the arbitration award.
8 See Schoenduve Corp., 442 F.3d at 731.

9 Moreover, the Court may reach that conclusion on Petitioner’s Motion for
10 Judgment on the Pleadings, as Respondents do not dispute that: (1) they entered into
11 the CBA with Petitioner, Answer at 2, Sept. 18, 2014, ECF No. 7; (2) pursuant to the
12 CBA, they agreed to submit the grievances over the terminations of Woodcock and
13 Pitman to arbitration, id. at 3; (3) the arbitrator issued the arbitration award attached to
14 the Petition, id.; and (4) Respondents have neither reinstated nor paid monetary
15 compensation to Woodcock or Pitman, and therefore have not complied with the
16 arbitration award, id. at 3-4. Accordingly, Petitioner has clearly established on the face
17 of the pleadings that it is entitled to judgment as a matter of law.

18 As explained below, neither the affirmative defenses that Respondents raise in
19 their Answer nor the arguments they raise in their Opposition to Petitioner’s Motion
20 create a material issue of fact.

21 **A. Respondents’ Affirmative Defenses**

22 The existence of affirmative defenses may preclude judgment on the pleadings.
23 See Gen. Conference Corp. of Seventh-Day Adventists v. Seventh-Day Adventist
24 Congregational Church, 887 F.2d 228, 230 (9th Cir. 1989) (citing 5 Charles Alan Wright
25 & Arthur R. Miller, Federal Practice and Procedure § 1368 (1969)). However,
26 Respondents’ affirmative defenses raise only questions of law, which do not preclude
27 judgment on the pleadings. See 5C Charles Alan Wright & Arthur R. Miller, Federal
28 Practice and Procedure § 1367 (3d ed. 2004) (“The motion for a judgment on the

1 pleadings only has utility when all material allegations of fact are admitted or not
2 controverted in the pleadings and only questions of law remain to be decided by the
3 district court.”); see also Westport Ins. Corp. v. N. Cal. Relief, ___ F. Supp. 3d ___,
4 No. 3:14-cv-00312-CRB, 2014 WL 7185480, at *9 (N.D. Cal. Dec. 16, 2014) (finding
5 defendant’s affirmative defenses failed to create a material issue of fact and therefore
6 did not preclude judgment on the pleadings).

7 **1. Respondents’ First Affirmative Defense**

8 Respondents’ first affirmative defense is that the Petition fails to state a claim
9 upon which relief can be granted. But the Petition clearly states that Petitioner seeks
10 confirmation and enforcement of the arbitration award. This Court has the authority to
11 grant relief on that claim, “[a]s section 301 of the Labor Management Relations Act
12 authorizes the district courts to enforce or vacate an arbitration award entered pursuant
13 to a collective bargaining agreement.” Sheet Metal Workers’ Int’l Ass’n, 84 F.3d at 1190
14 (citing 29 U.S.C. § 185(a)).

15 Respondents maintain that the Labor Management Relations Act (“LMRA”) does
16 not apply to them because the statute does not expressly abrogate tribal sovereignty.⁵
17 This Court, however, need not determine whether the statute abrogates sovereignty, as
18 Respondents have waived their sovereign immunity and consented to be sued in federal
19 court. See Okla. Tax Comm’n v. Citizen Band Potawatomi Indian Tribe of Okla.,
20 498 U.S. 505, 509 (1991) (“Suits against Indian tribes are thus barred by sovereign
21 immunity absent a clear waiver by the tribe or congressional abrogation.”) (emphasis
22 added). The CBA—which, again, Respondents concede they agreed to—provides:

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26 ⁵ Respondents framed the issue differently in their Answer, arguing that they are not “employer[s]
27 within the meaning of the LMRA.” Answer at ¶¶ 3, 4. In the event that the Respondents in fact intended to
28 assert a definitional argument, their argument is unpersuasive: Respondents have conceded they own
and operate the Casino and that Wood and Pitman “were employed at [the] Casino on the dates alleged.”
Id. at ¶¶ 3, 12 (emphasis added).

1 For the sole purpose of enabling a suit to compel arbitration
2 or to confirm an arbitration award under this Agreement or
3 the Employer’s Tribal Labor Relations Ordinance, the
4 Employer agrees to a limited waiver of sovereign immunity
and consents to be sued in federal court, without exhausting
tribal remedies.

5 Pet., Exh. A at 17 (emphasis added). There is no indication that Respondents entered
6 into this unequivocal waiver involuntarily. See White v. Univ. of Cal., 765 F.3d 1010,
7 1025-26 (9th Cir. 2014) (“A voluntary waiver by a tribe must be unequivocally
8 expressed.”) (internal quotation marks omitted).

9 Contrary to Respondents’ suggestion, the United States Supreme Court’s recent
10 decision in Michigan v. Bay Mills Indian Community, 134 S. Ct. 2024 (2014), does not
11 compel a different result. In fact, that opinion reconfirmed that an Indian tribe may waive
12 its sovereign immunity: “we have time and again treated the doctrine of tribal immunity
13 as settled law and dismissed any suit against a tribe absent congressional authorization
14 or a waiver.” 134 S. Ct. 2030-31 (internal quotation marks, brackets, and parentheses
15 omitted); see also id. at 2035 (“[I]f a State really wants to sue a tribe for gaming outside
16 Indian lands, the State need only bargain for a waiver of immunity.”).

17 Because Respondents unequivocally waived their sovereign immunity—at least
18 for the purpose of enabling a suit to confirm an arbitration award—the Court need not
19 determine whether the LMRA abrogates tribal sovereignty.⁶ Accordingly, the Petition
20 does in fact state a claim for relief, and Respondents’ first affirmative defense does not
21 preclude judgment on the pleadings.

22 **2. Respondents’ Second Affirmative Defense**

23 Respondents’ second affirmative defense is that “the Court lacks subject-matter
24 jurisdiction over Respondents as there is no ‘federal question’ properly raised in the
25 [P]etition.” Answer at 4. But this Court has original jurisdiction over all civil actions

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27 ⁶ Cf. Bodi v. Shingle Springs Band of Miwok Indians, 19 F. Supp. 3d 978, 988 (E.D. Cal. 2014)
28 (“Given that the court has found that the Tribe waived its sovereign immunity through removal, it need not
assess the extent to which Congress may have abrogated tribal immunity in enacting the FMLA.”), appeal
filed, No. 14-16121 (9th Cir. June 11, 2014).

1 arising under the laws of the United States. See 28 U.S.C. § 1331. Because the LMRA
2 is a federal law, this Court has subject-matter jurisdiction by way of federal question
3 jurisdiction.

4 Respondents emphasize that the CBA provides that the Tribal Labor Relations
5 Ordinance—a California Law—“is the applicable law with regard to labor relations within
6 the jurisdiction of the Employer.” Answer at 4. The accuracy of that statement, however,
7 does not divest this Court of subject-matter jurisdiction in this case. And, as previously
8 noted, Respondents consented to be sued in federal court, at least for the purpose of
9 confirming an arbitration award. Pet., Exh. A at 17.

10 Accordingly, the Court has subject-matter jurisdiction and Respondents’ second
11 affirmative defense does not preclude judgment on the pleadings

12 **3. Respondents’ Third Affirmative Defense**

13 Respondents’ third affirmative defense is that Petitioner has failed to join an
14 indispensable party “including, but not limited to, the Tribal Gaming Commission (TGC).”
15 Answer at 4. But Respondents have not provided any factual allegations in support of
16 their conclusory affirmative defense. See Westport Ins., 2014 WL 7185480, at *9 (“to
17 withstand [a] motion [for judgment on the pleadings], [] affirmative defenses must be
18 adequately pleaded—that is, they must contain sufficient factual matter to state a
19 defense that is plausible on its face”) (internal quotation marks omitted). Additionally, the
20 arbitrator’s decision undermines Respondents’ claim that TGC is an indispensable party.
21 See Pet., Exh. B at 12 (“The Tribes uses the TGC in efforts to evade its contractual
22 obligations under the CBA”) and 12-13 (“TGC is not an independent operation.
23 Rather, TGC’s operations are subject to review and oversight by the Tribe through its
24 Tribal Council.”). Respondents’ third affirmative defense does not preclude judgment on
25 the pleadings.

26 **4. Respondents’ Fourth Affirmative Defense**

27 Respondents’ fourth affirmative defense is that the arbitrator’s decision “is invalid
28 and unenforceable as it is beyond the scope of his authority pursuant to section 29,

1 paragraph 3e of the [CBA].” Answer at 5. This affirmative defense is not adequately
2 pleaded, as Respondents have not identified which part of the arbitrator’s decision runs
3 afoul of the CBA. See Westport Ins., 2014 WL 7185480, at *9. Moreover, as previously
4 explained, the Court finds that the arbitrator’s decision is a plausible interpretation of the
5 former. Respondents’ third affirmative defense does not preclude judgment on the
6 pleadings.

7 **5. Respondents’ Fifth and Sixth Affirmative Defenses**

8 Respondent’s fifth affirmative defense is that the arbitrator “acted outside his
9 jurisdiction and in violation of the Indian Gaming Regulatory Act.” Answer at 3.

10 Respondents’ sixth affirmative defense is that the arbitration award is subject to the
11 Indian Gaming Regulatory Act and “is therefore invalid.” Id. Again, Respondents fail to
12 provide any specific supporting information, such as what exactly the arbitrator did in
13 violation of the Indian Gaming Regulatory Act. Additionally, Respondents fail to
14 appreciate that arbitration before an arbitrator of the Federal Mediation and Conciliation
15 Service was the procedure that they agreed to in the CBA. Accordingly, Respondents’
16 fifth and sixth affirmative defenses do not preclude judgment on the pleadings.

17 **6. Respondents’ Seventh Affirmative Defense**

18 Respondents’ seventh affirmative defense suggests that the dispute must “be
19 returned to arbitrator Halter to determine compliance with his award.” Answer at 5.
20 Respondents explain that they and Petitioner agreed that the arbitrator would retain
21 jurisdiction over the case to calculate damages, and that the calculation has not
22 occurred. But, even assuming that the arbitrator has not calculated the damages in the
23 six months since Respondents filed their Answer, “the arbitrator need not complete the
24 mathematical computations of the award for the award to be final and reviewable.”
25 Millmen Local 550 v. Wells Exterior Trim, 828 F.2d 1373, 1377 (9th Cir. 1987).
26 Accordingly, the arbitration award is final and reviewable, and Respondents’ seventh
27 affirmative defense does not preclude judgment on the pleadings.

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7. Respondents’ Eighth Affirmative Defense

Respondents’ eighth affirmative defense is that there is neither statutory nor contractual authority supporting Petitioner’s request for attorneys’ fees in this case. Although not cited in Petitioner’s filings, the Ninth Circuit has held that a prevailing party in an action challenging a labor arbitration award may receive attorneys’ fees if the losing party “acted in bad faith, vexatiously, wantonly, or for oppressive reasons.” Virginia Mason Hosp. v. Wash. State Nurses Ass’n, 511 F.3d 908, 917 (9th Cir. 2007) (quoting Sheet Metal Workers’ Int’l Ass’n, 84 F.3d at 1192). Petitioner did not address Respondents’ eighth affirmative defense in either its Motion or Reply, nor has it made any allegation of bad faith. Nevertheless, because the affirmative defense is a question of law, it does not preclude judgment on the pleadings.

B. Respondents’ Opposition to Petitioner’s Motion

In their Opposition to the Petitioner’s Motion, Respondents argue that the Petition “is not properly before the Court” for four reasons: (1) there is no federal question jurisdiction; (2) the parties by choice of law have agreed that state law is controlling in this matter; (3) the arbitration proceedings are not complete; and (4) the Court should take this matter off calendar and hold it in abeyance because Respondents’ operations are currently closed pursuant to a preliminary injunction issued by the Court. The Court has already addressed and rejected the first three of these arguments, and the Court is not persuaded by the fourth. Although the Court has issued a preliminary injunction order that restrains operation of the Casino, the order makes an exception for “[p]ayments in the ordinary course of business.” California v. Picayune Rancheria of Chuckchansi Indians of Cal., Case No. 1:14-cv-01593-LJO-SAB, ECF No. 48 at 9 (Oct. 29, 2014). Respondents’ compliance with the arbitration award falls within that explicit exception.

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CONCLUSION

For all of the foregoing reasons, Petitioner’s Motion for Judgment on the Pleadings (ECF No. 11) is GRANTED. The arbitration award is hereby confirmed and enforced. The Clerk of the Court is hereby ordered to enter judgment for Petitioner and to close this case.

IT IS SO ORDERED.

Dated: March 27, 2015


MORRISON C. ENGLAND, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT