SEQ CHAPTER \h \r 1

WASHINGTON REDSKINS and
DALLAS COWBOYS,

Claimants,

v.

NATIONAL FOOTBALL LEAGUE and
NATIONAL FOOTBALL LEAGUE
PLAYERS ASSOCIATION,

Respondents

APPEARANCES:
ARBITRATOR

FOR THE WASHINGTON REDSKINS
and DALLAS COWBOYS:
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FOR THE NFL and the NFL
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FOR THE NFL PLAYERS ASSOCIATION:
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555 Eleventh Street, N.W.

BEFORE ACTING SYSTEM

STEPHEN B. BURBANK

RE: TEAM SALARY
REALLOCATIONS

OPINION

Suite 1100
Washington, D.C. 20004-1304

By a demand dated March 19, 2012, the Washington Redskins and Dallas Cowboys (collectively, the "Clubs") initiated a proceeding under Article 14, section 3 of the Collective Bargaining Agreement between the National Football League ("NFL") and the National Football League Players Association ("NFLPA") dated August 4, 2011 (the "CBA"). The Clubs allege violations of Article 12, Section 6(c)(v), Article 13, Section 1, Article 14, Section 2, Article 17, Section 1, and Article 70, Section 9 of the CBA arising out of a March 11, 2012 letter (the "Reallocation Letter"), which was executed by the Commissioner of the NFL (the "Commissioner") and the Executive Director of the NFLPA (the "Executive Director"). The Reallocation Letter reflects the signers' agreement to amend the CBA so as to assess against the Redskins and Cowboys charges to Team Salary of $36 million (Redskins) and $10 million (Cowboys), thereby reducing each Club's Salary Cap Room, to be allocated to the 2012 and 2013 League Years. The Reallocation Letter also provides for the amounts charged to the Clubs' Team Salary to be credited to twenty-eight of the other thirty Member Clubs in the NFL.

By another letter also dated March 11, 2012 (the "Salary Cap Letter"), which was executed by the Vice President-Labor Relations of the NFL and the Executive Director, the parties reached a number of agreements, including agreements with respect to Projected Benefits for the 2012 League Year and the Salary Cap for the 2012 League Year.

Following the initiation of this proceeding, and in response to the Clubs' contention that the Reallocation Letter did not effectively amend the CBA, a resolution, denominated "2012 Resolution MC-3," was considered and voted on at the NFL Annual League Meeting on March 27, 2012 (the "March 27 Resolution"). The March 27 Resolution recites that the Reallocation Letter and the Salary Cap Letter reflect "a unitary agreement" between the NFL and the NFLPA and states the desire of the National Football League Management Council ("Management Council") "to confirm that the March 11 Agreement, including the [R]eallocation [L]etter, is a valid written agreement signed by authorized representatives of the [NFL] and the Management Council." The March 27 Resolution also states the Management Council's desire, for the avoidance of doubt, "to ratify the March 11 Agreement, including the [R]eallocation [L]etter, as well as steps taken prior to the date of this resolution to implement that agreement." Of the thirty-two Member Clubs, twenty-nine voted in favor of the March 27 Resolution; two -- the Clubs -- voted against it, and one abstained.

In response to the Clubs' demand for arbitration, on April 13, 2012 the NFL and the Management Council (collectively, the "League") filed a motion to dismiss or for

judgment. The Clubs responded on April 25; the League replied on May 2, and the Clubs filed a surreply on May 8. A hearing was held on May 10.

The Clubs have sought discovery in this proceeding, which the League has refused to provide. The CBA contains very little guidance concerning the procedures applicable in arbitration before the System Arbitrator. The fact that the League has submitted two declarations and a number of documents in support of its motion suggests that, if the procedural rules governing federal litigation were an apt analogy, I should turn to Rule 56 (summary judgment) rather than to Rule 12(b)(6) (motion to dismiss for failure to state a claim upon which relief can be granted) for guidance. The former contemplates that reasonable discovery will be afforded the party against whom the motion has been made before it is decided. Indeed, on this analogy, the League's motion should be granted only if it does not require consideration of contested (or contestable) material facts and thus only if reliance on extrinsic material submitted by the League does not involve such consideration.

But this is arbitration, not litigation. Under Article 15, Section 3 of the CBA, the System Arbitrator is directed to grant "reasonable and expedited discovery upon the application of any party where, and to the extent, he determines it is reasonable to do so." This provision, which accords greater discretion to the System Arbitrator to control discovery than a federal judge has under the Federal Rules of Civil Procedure, *see* Fed. R. Civ. P. 26-37, suggests that care should also be taken in turning to the Federal Rules for help in determining the standard that governs the League's motion to dismiss or for judgment. Particularly because the discovery sought by the Clubs includes matters of bargaining strategy and the internal operations of the Management Council, I am not inclined to view remote factual contingencies as sufficient to preserve claims that are otherwise untenable as a matter of law.

The Clubs' contentions that the Reallocation Letter violates Article 12, Section 6(c)(v) of the CBA (which prescribes the method for determining the Salary Cap), Article 13, Section 1 (which provides that the "Salary Cap is the same amount for each Club"), Article 14, Section 2 (which proscribes agreements and other transactions that include terms designed to defeat or circumvent the parties' intent as reflected by the CBA), and Article 17, Section 1 (which proscribes collusion to restrict or limit individual Club decision-making concerning designated matters) all must fail as a matter of law if the Reallocation Letter, as originally executed or as ratified by the March 27 Resolution, constitutes a valid amendment of the CBA. Accordingly the Clubs also contend that the Reallocation Letter is invalid pursuant to Article 70, Section 9 of the CBA, which provides that "[t]his Agreement may not be changed, altered or amended other than by a written agreement signed by authorized representatives."

The Clubs' attack on the Reallocation Letter is two-pronged. First, they argue that the Commissioner was not an authorized representative of the Management Council, an unincorporated non-profit association that is the exclusive bargaining representative of its

Members -- all of the Member Clubs of the NFL -- for the purpose of executing the Reallocation Letter. Second, they point out that, even if he had been, the Reallocation Letter could not validly amend the CBA because the Management Council's Articles of Association ("Articles") and Bylaws require CBA amendments to be "approved by no less than three-fourths, or 21, whichever is greater, of the Members." Articles, Art. VI. *See also* Bylaws, Art. II, § 1. These contentions also must fail as a matter of law if (1) the March 27 Resolution effectively ratified the Reallocation Letter, and (2) as so ratified, the Reallocation Letter is a valid amendment of the CBA. Because the answers to the questions underlying these two issues may enable me to avoid deciding the Clubs' other contentions, I turn to them now.

A declaration under penalty of perjury by the Senior Vice-President of the NFL and General Counsel of the Management Council authenticates the March 27 Resolution as having been passed "[a]t the regularly-scheduled Annual League Meeting on March 27, 2012, [by] the Member Clubs of the League and the NFLMC." The Clubs have raised the possibility, however, that there may have been a failure to follow proper procedures. In particular, noting that the Management Council's Articles and Bylaws require Members of the Management Council to designate representatives to act for them in the affairs of that body, *see* Articles, Art. III; Bylaws, Art. IV, the Clubs raise the possibility that those who voted on the March 27 Resolution may not have been the designated individuals.

This is the kind of remote factual contingency to which I referred above. Apart from the fact that any irregularity in that respect could be cured by another vote, Member Clubs of the NFL "agree to be represented at each and every meeting of the League and of the Executive Committee of the League by a representative duly authorized and empowered to cast a binding vote of the member club on all questions coming before such meeting." NFL Constitution and Bylaws, Art. 3.11(H). In addition, it is not clear that the representatives designated to act for Member Clubs in the affairs of the Management Council have exclusive authority to act for them in approving the CBA or CBA amendments. At the hearing, responding to a question based on the fact that the Commissioner signed the CBA on behalf of the NFL, counsel for the Clubs observed:

> I'm not surprised at all that a signature on behalf of the principals was called for by the parties in executing that agreement. It was negotiated by the Management Council with the Union and it was ultimately approved by the Member Clubs, their principals, and it was signed by an authorized representative of the Member Clubs, the Commissioner of the NFL.

I conclude that the March 27 Resolution effectively ratified the Reallocation Letter, which therefore is binding on the Clubs as an amendment to the CBA unless it is invalid for some other reason. *See, e.g.,* Fleckner v. Bank of the United States, 21 U.S. 338, 363 (1823). Anticipating the possibility of that conclusion, the Clubs assert a number of

grounds upon which they urge me to invalidate the Reallocation Letter. Essentially, however, those grounds reduce to two: lack of authority to bind the Clubs by the Reallocation Letter and March 27 Resolution, and public policy.

The Clubs' contention that the terms of the CBA amendment contained in the Reallocation Letter exceeded the Management Council's authority is really a variant of their arguments, discussed below, concerning the duties owed to its Members by the Management Council and those who represent it in collective bargaining with the NFLPA. Considered apart from arguments about the Management Council's duties, the contention must be rejected as a matter of law. "Team Salary" is a defined term in the CBA, *see* Art. 1, at 4, and, as a key component of the Salary Cap rules, it is a permissible (indeed, a mandatory) subject of collective bargaining.

In addition, however, the Clubs argue that they effectively withdrew whatever authority the Management Council had to bind them to the terms of the Reallocation Letter by means of a March 22, 2012 letter to the Chairman of the CEC and the Management Council (the "March 22 Letter"). The March 22 Letter advised its addressees "that the Management Council is not authorized as bargaining representative of either Club to negotiate any proposed amendment to the CBA that would conform the CBA to the terms of the [Reallocation Letter] or otherwise effect a selective Salary Cap reduction or penalize either Club."

Passing the League's argument that the March 22 Letter came too late because of the retroactive effect of the March 27 Resolution, the Clubs have offered no authority for the proposition that a member of a multi-employer bargaining unit has the power selectively to withdraw authority from its bargaining representative. The CBA, the Articles and Bylaws of the Management Council, and federal labor law are to the contrary.

The CBA and valid amendments thereto are binding on the Clubs. *See* CBA, Arts. 2, 70; Articles, Art. VI; Bylaws, Art. I, § 2. Whatever basis there may be in New York agency law for a principal to revoke authority previously conferred on an agent, *see* Restatement (Third) of Agency § 3.16 cmt. c, must yield in the event of conflict with federal law. *See* CBA, Art. 70, § 1. Numerous cases stand for the proposition that a member of a multi-employer bargaining unit *cannot even wholly withdraw* from that unit after negotiations for a new collective bargaining agreement have begun, in the absence of mutual consent or "unusual circumstances." *See*, *e.g.*, Bonanno Linen Service, Inc. v. NLRB, 454 U.S. 404, 410-17 (1982); Resort Nursing Home v. NLRB, 389 F.3d 1262, 1269-70 (D.C. Cir. 2004). No authority has been cited to me, and I have found none, that permits partial or selective withdrawal by a member of a multi-employer bargaining unit. *Cf.* Articles, Art. VI ("Members shall have the right only to reject or approve such negotiated contract or agreement as a whole and not in part.").

The Clubs have not sought to withdraw from the Management Council, probably

because membership is required of all Member Clubs of the NFL in good standing. *See* Articles, Art. III. Moreover, under the Bylaws, resignation from the Management Council requires approval "of no less than three-fourths or 21, whichever is greater, of the other members." Bylaws, Art. I, § 2. That provision further specifies that "[w]ithout such approval, any attempted resignation shall be ineffective and such Member shall remain bound to its obligations, and subject to actions taken, under and pursuant to the Articles of Association and these By-Laws." *Id.* "Multiemployer bargaining units are creatures of mutual consent … The ability to withdraw from a multiemployer bargaining unit is therefore limited by the agreement of the parties." Sheet Metal Workers Local 104 v. Simpson Sheet Metal, Inc., 954 F.2d 554, 555 (9th Cir. 1991). Thus, the Clubs' attempt selectively to revoke the Management Council's authority through the March 22 Letter was ineffective as a matter of law. "An employer may not attempt to 'secure the best of two worlds' by purportedly withdrawing bargaining authority but then remaining a member of a multiemployer unit in the hope of securing advantageous terms through group negotiations." Board of Trustees of Local 392 Pension Fund v. Campbell's Ready-to-Go Excavation, 712 F. Supp. 2d 727, 733 (S.D. Ohio 2010).

I next consider the Clubs' arguments seeking to invalidate the Reallocation Letter as ratified by the March 27 Resolution on a variety of grounds under New York law. The chief such ground is breach of fiduciary duty, but the Clubs also rely on New York cases that have invalidated disciplinary actions of unincorporated associations found to have been arbitrary, and they allege tortious interference with the Clubs' prospective business relations and retaliation against them for refusing to engage in behavior that may have been illegal.

Overarching all of the Clubs' arguments predicated on New York law, and preventing them from acceptance in this proceeding, is federal labor law. Thus, although a few cases have suggested that a multi-employer association may owe something akin to a fiduciary duty to members of the bargaining unit, *see* NLRB v. Unelko Corp., 83 L.R.R.M. (BNA) 2447, 2449 (7th Cir. 1973); NLRB v. Siebler Heating & Air Conditioning, Inc., 563 F.2d 366, 371 (8th Cir. 1977), breach of such a duty has, at most, been deemed an "unusual circumstance" that might warrant withdrawal from the unit after negotiations have commenced. In a few other cases, federal courts have left open the possibility that a member of a multi-employer bargaining unit might be able to bring a civil action for breach of fiduciary duty as a matter of state law. *See* Resort Nursing Home v. NLRB, 389 F.3d 1262, 1270 (D.C. Cir. 2004) ("If an employer is dissatisfied with the representation of its multi-employer association, it retains its remedies against the association under contract and agency law"); Sheet Metal Workers Local Union No. 54 v. Etie Sheet Metal Co., 1 F.3d 1464, 1469-71 (5th Cir. 1993) (breach of fiduciary duty claim not preempted but fails on the merits); KSW Mechanical Services, Inc. v. Mechanical Contractors Assoc. of New York, 2012 U.S. Dist. LEXIS 42248 **16-17 (S.D.N.Y. March 27, 2012) (denying

motion for summary judgment on breach of fiduciary duty claim). The suggestion of a federal duty of fair representation in the former cases has not been embraced even for the limited purpose for which that duty was created, *see supra* note 9; Atlas Transit Mix, 323 N.L.R.B. 1144, 1997 NLRB LEXIS 538 (June 30, 1997), and the possibilities for state law remedies mentioned in the latter cases are just that – possibilities. In no case cited by the Clubs has a court invalidated a collective bargaining agreement entered into on behalf of a multi-employer bargaining unit for breach of duty, federal or state, and I have found none. Rather, it appears that, as a matter of federal law, the only basis upon which the Reallocation Letter as ratified by the March 27 Resolution could be held invalid is public policy, and the Clubs have recast many of their arguments under that rubric.

It is an interesting question whether the Management Council owes any duty to its Members other than duties specified in the agreements that are contained in the Articles and Bylaws. Although, as the Clubs observe, there are differences between the facts in this proceeding and those in Oakland Raiders v. NFL, 32 Cal. Rptr. 3d 266 (Cal. Ct. App. 2005), it is not clear that those differences should lead to a different answer on the question of fiduciary duty. For, assuming New York and California law are essentially the same for these purposes, the fact that multi-employer bargaining units are "creatures of mutual consent" – the quality that limits unilateral withdrawal – presents difficulties for any theory of fiduciary duty akin to those that led to the conclusion that there was no such duty in *Oakland Raiders*. The Clubs rely in particular on the recognized legal relationship of principal and agent to create a fiduciary duty. Yet, it is no easier to find a right to control in this setting than it was in *Oakland Raiders*. *See id.* at 281-82. Indeed, the League's argument that principal-agent theory simply does not work in the multi-employer bargaining context is a powerful one. Just as an insurer is not an insured's agent because it retains the right to consider its own interests on an equal plane, *see id.* at 274, 280, so, it would seem, as to relationships among the Management Council and its Members. *See also* Restatement (Third) of Agency § 8.06 cmt. b ("A relationship between two parties in which it is agreed that one party shall have the right to take action that affects the legal relations of the other party without regard for whether the action is for that party's benefit is not a relationship of agency … Moreover, to the extent that an agent is privileged to take action to protect the agent's own interests … the agent's action is not that of an agent.").

I need not decide whether the Management Council or the other Members owed a fiduciary to the Clubs, however. Any such duty is relevant in this proceeding only if its breach could constitute an offense to public policy sufficient to warrant invalidating the underlying agreement as a matter of federal law. For that purpose, I am required to inquire whether enforcement of the Reallocation Letter as ratified by the March 27 Resolution "would violate 'some explicit public policy' that is 'well defined and dominant, and is to be ascertained "by reference to the laws and legal precedents and not from general considerations of supposed public interests."'" United Paper Workers Int'l Union v. Misco, Inc. 484 U.S. 29, 43 (1987) (quoting W.R. Grace & Co. v. Rubber Workers, 461 U.S. 757, 766 (1983), and Muschany v. United States, 324 U.S. 49, 66 (1945)). As in

NFL Players Ass'n v. NFL, 654 F. Supp. 2d 960 (D. Minn.), *aff'd*, 582 F.3d 863 (8th Cir. 2009), the "question is not whether any behavior by the parties to the [Reallocation Letter as ratified by the March 27 Resolution] violates public policy, but rather whether the [Reallocation Letter as ratified by the March 27 Resolution] itself violates public policy … If the [Reallocation Letter as ratified by the March 27 Resolution] does violate an explicit public policy, the [System Arbitrator] is 'obligated to refrain from enforcing it.' *W.R. Grace*, 461 U.S. at 766. To prevail on this claim the [Clubs] must therefore show that a fiduciary duty exists and was breached, that fiduciary duties are an explicit public policy, and that [the Reallocation Letter as ratified by the March 27 Resolution] violates that public policy by condoning the breach of fiduciary duties." *Id.* at 970.

On the assumption that state common law qualifies as a source of public policy for this purpose, *but see United Paper Workers*, 484 U.S. at 45 n.12; Eastern Associated Coal Corp. v. Mine Workers, 531 U.S. 57, 68 (2000) (Scalia, J., concurring in the judgment), it is not clear that the relevant public policy can properly be ascertained at the level of abstraction suggested by the court in *NFL Players Ass'n*, *supra* ("that fiduciary duties are an explicit public policy"). If not, and if the inquiry does not involve a well-recognized legal relationship for which there is clear precedent establishing a fiduciary duty, it is similarly not clear that the Supreme Court's demanding standards for invalidating the terms of a collective bargaining agreement on public policy grounds can be met. I also need not decide these questions.

Although the legal landscape in which the inquiry is made is federal, the public policy asserted by the Clubs is the public policy of New York. In 1990, the highest court of that state observed:

> We have also recognized that there may be general public policy limitations on collective bargaining that are not derived from statute … However, we have never actually prohibited bargaining or invalidated a collective bargaining agreement on such a nonstatutory public policy ground. As we have noted, a public policy strong enough to require prohibition would "almost invariably involve an important constitutional or statutory duty or responsibility."

In the Matter of Board of Education, 75 N.Y.2d 660, 667-68 (1990) (citations omitted).

The Clubs have cited no authority suggesting that New York law on this question has changed since 1990, and my independent research has not unearthed any evidence of a change. *See, e.g.,* In Re Johnson City Firefighters Arbitration, 898 N.Y.S. 2d 706, 707-08 (N.Y. App. Div. 2010). It is inconceivable that federal law would invalidate a collective bargaining agreement for violating a state's public policy that the state itself regards as insufficiently strong for that purpose. I therefore conclude as a matter of law that the New

York common law bases invoked by the Clubs as sources of public policy are not sufficient as a matter of law to invalidate the Reallocation Letter as ratified by the March 27 Resolution.

Finally, the Clubs suggest that enforcement of the Reallocation Letter as ratified by the March 27 Resolution might (depending on facts as to which they seek discovery) condone violation of the 2006 CBA and perhaps the federal antitrust laws. But, as the League argues, the remedy for any breach of the 2006 CBA is to be found in that agreement, which is not a source of public policy for this purpose. Moreover, anticompetitive behavior in 2012 of the sort the Clubs imagine is similarly shielded from antitrust inquiry, and any remedy must be found in the anti-collusion provisions of Article 17 of the CBA. The Clubs lack standing to enforce those provisions. *See id.*, § 5.

In agreeing with the balance between stability and voluntariness struck in *Chet LaCort*, 315 N.L.R.B. 1036 (1994), where the NLRB determined that early commencement, without notice, of negotiations on a new collective bargaining agreement did not justify untimely withdrawal from a multiemployer bargaining unit – did not constitute "unusual circumstances" – Judge Edwards observed that "the *Chet LaCort* situation does not arise until after an employer voluntarily delegates bargaining authority to a multi-employer association. As the *Chet LaCort* Board itself noted, an employer can always protect itself through its arrangement with the association. For example, an employer could require the association to provide notice before commencing negotiations." *Resort Nursing Home*, 389 F.3d at 1269. Here, as there, if the Clubs "are dissatisfied with the representation of [their] multi-employer association," they retain whatever "remedies [they may have] against the association under contract and agency law." *Id.* at 1270.

The League's motion to dismiss or for judgment is granted.

s/Stephen B. Burbank
May 22, 2012

As defined in the CBA, Article 1, at 3, "Room" means "the extent to which a Team's then-current Team Salary is less than the Salary Cap (as described in Article 13) … ." Under Article 13, Section 2, "No Club may have a Team Salary that exceeds the Salary Cap."

Article 17 of the CBA, which prohibits specified collusive conduct, contains considerably more detailed procedural guidance for proceedings thereunder. *See* CBA, Art.

17, §§ 5-7, 15.

"If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion." FED. R. CIV. P. 12(d).

Although I need not decide this issue, I note that Article VI of the Management Council's Articles of Association, *see infra* note 7, may contemplate that the Commissioner can act as the "agent or representative of the Council." This would help to explain why the Commissioner signed the CBA. *See* CBA at 255. The Clubs' position that he did so exclusively for the NFL, *see infra* note 7 and accompanying text -- as perhaps suggested by the signature block -- begs the question of who signed for the Management Council, which is the only party on the League's side mentioned in the CBA's Preamble. *See* CBA at xiv. Under Article 2, Section 1 of the CBA, its provisions are binding on "all players, Clubs, the NFLPA, the NFL, and the Management Council … For the avoidance of doubt, the NFL shall be considered a signatory to this Agreement."

This method of proceeding may also permit me to avoid deciding whether, as the League contends, past practice obviated the need to comply with the provisions relating to CBA amendments in the Management Council's Articles and Bylaws.

The Clubs' contention that the March 27 Resolution should be declared invalid because obtained through misrepresentation or duress rests on a tendentious reading of that document and, in any event, assumes power in the System Arbitrator that does not exist.

Transcript of May 10, 2012 hearing at 56-57. In that regard, under Article II, Section 1 of the Bylaws, a CBA amendment, being a matter of "major importance," requires approval "by the affirmative vote of no less than three-fourths or 21, whichever is greater, of the Members of the Council." But that provision by its terms addresses situations in which the Council Executive Committee ("CEC") takes action approving, altering, modifying or amending a collective bargaining agreement. Article VI of the Articles (which controls in the event of conflict with the Bylaws) is broader and, if either provision is applicable here, would seem to control. It provides:

> Neither the CEC, nor a Member, officer, agent or representative of the Council shall have the authority to bind *the Council or any of its Members* to any collective bargaining agreement unless and until it is *submitted to all Members* and approved by no less than three-fourths, or 21, whichever is greater, of the Members. Members shall have the right only to reject or approve such negotiated contract or agreement as a whole and not in part. Once approved in accordance with this Article, such contract or agreement shall be binding upon all Members in accordance with its terms.

Articles, Art. VI (emphasis supplied).

The Clubs also rely on NLRB v. D.A. Nolt, Inc., 406 F.3d 200 (3d Cir. 2005). The Third Circuit subsequently granted rehearing, vacated that judgment, and enforced the NLRB's order. *See* NLRB v. D.A. Nolt, Inc., 412 F.3d 477 (3d Cir. 2005).

> The *Siebler* and *Unelko* courts attempt to create this duty [of fair representation]
>
> > for multiemployer associations on a judicial basis; however, they do not derive the duty from the Act. The *Siebler* opinion does not hold that it is an unfair labor practice for the multiemployer association to breach a duty of fair representation to its members. *Siebler* merely holds that when the duty, regardless of its derivation, is breached, the employer may withdraw from the association after bargaining has begun, by hiding behind the unusual circumstances exception. The Eighth Circuit has created a duty out of thin air, which removes a bargaining obligation that an employer would otherwise have
> >
> > had to fulfill. .. *Siebler* and *Unelko* stand alone on the fair representation / conflict of interest oasis… .

Richard A. Bock, *Multiemployer Bargaining and Withdrawing from the Association after Bargaining has Begun: 38 Years of "Unusual Circumstances" under* Retail Associates, 13 HOFSTRA LABOR L.J. 519, 529 (1996).

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