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

WILLIE ENGLISH, RICARDO LOZA, BRENDA WOODALL, BASHIR B. NURUDDIN, TOM HALEY, and LEONARD SIMPSON,	)	
Plaintiffs,	)	**No. 18 C 5272**
v.	)	**Judge Jorge L. Alonso**
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 73, and DENISE POLOYAC, individually and as former Trustee of SEIU, LOCAL 73,	)	
Defendants.	)	

ORDER

Defendants' motion to dismiss [107] is granted in part and denied in part. The motion is granted as to Counts II and III, which are deemed abandoned. It is denied as to Count I.

STATEMENT

Plaintiffs, Willie English, Ricardo Loza, Brenda Woodall, Bashir B. Nuruddin, Tom Haley, and Leonard Simpson, have filed a second amended complaint against their former employer and labor union, Service Employees International Union ("SEIU") Local 73, and Denise Poloyac, formerly one of the trustees in charge of SEIU Local 73. Plaintiffs claim that they were terminated in violation of their rights under their collective bargaining agreement and the constitutions and bylaws of SEIU and Local 73. Defendants moved to dismiss each of plaintiff's prior complaints for failure to state a claim, and on each occasion this Court granted the motion, with leave to amend. (*See* ECF Nos. 56 & 94.) Plaintiffs have filed a second amended complaint, and defendants have moved to dismiss yet again.

I. Background

The Court assumes familiarity with its previous opinions in this case, in which it set forth the relevant factual background. *See English v. Serv. Employees Int'l Union, Local 73*, 458 F. Supp. 3d 948, 951 (N.D. Ill. 2020); *see also English*, No. 18 C 5272, 2019 WL 4735400, at *1 (N.D. Ill. Sept. 27, 2019). The core allegations of plaintiff's Second Amended Complaint are the same as before, but he has attempted to cure the defects the Court previously identified by adding the following paragraphs:

> 72. At all times relevant prior to, during and after Plaintiffs' suspensions and terminations, Trumaine Reeves was a member of Local 73, SEIU and SESU. At all relevant times, Trumaine Reeves opposed the dispute raised by Plaintiffs over the direction of Local 73, along with the "Members Leading Members" political slate supported by Plaintiffs.
> 73. Trumaine Reeves was the SESU representative responsible for the decision by SESU not to pursue the grievances filed by Plaintiffs arising from their suspensions and terminations. This decision was motivated by Trumaine Reeves' opposition to Plaintiffs' dispute within Local 73 and the "Members Leading Members" leadership slate supported by Plaintiffs, and was specifically intended to punish and seek retribution against Plaintiffs for their lawful and protected political activities within Local 73.
> 74. Moreover, on information and belief, POLOYAC and PALMER directed Trumaine Reeves to deny Plaintiffs' demands for grievance to punish them for opposing the groome[d] political slate of HENRY, led by Local 73 Presidential candidate PALMER.
> 75. On information and belief, Trumaine Reeves was rewarded for his role in punishing the Plaintiffs with a pay increase and promotion within SESU.
> 76. On information and belief, PALMER was rewarded for her role in punishing the Plaintiffs with an illegal pay increase once she was elected President of Local 73, without consent and approval of the Executive Board.
> 77. The motive of SEIU was manifest by election tampering and fraud committed by PALMER and her political slate against the "Members Leading Members" slate, resulting in the Local 73 officer election being overturned by the Department of Labor.
> 78. When Plaintiffs formed the "Members Leading Members" slate, which opposed HENRY's groomed candidate slate, on information and belief, HENRY directed POLOYAC and PALMER to punish Plaintiffs by suspending and terminating them without charges, an opportunity to formulate a defense, or a hearing for the express written purpose of their participation in the "Members Leading Members" political slate.
> 79. The improper and illegal motive behind the termination and denial of grievances of Plaintiffs was HENRY's desire to control the leadership of Local 73 and ensure the vote of the Local 73 President in HENRY's campaign for her third term re-election campaign as President of SEIU.

(2d Am. Compl. ¶¶ 72-79, ECF No. 102; *see also* Pls.' Resp. Br. in Opp'n at 5-6, ECF No. 114 (citing this language in response to motion to dismiss).)

II. Analysis

Defendants move for dismissal under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim on which relief may be granted. Under Rule 8(a)(2), a complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The short and plain statement must "'give the defendant fair notice of what . . . the claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)

(quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). Under this standard, a plaintiff's "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Id*. Stated differently, "a complaint must 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 *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*. (citing *Twombly*, 550 U.S. at 556). "In reviewing the sufficiency of a complaint under the plausibility standard, [courts must] accept the well-pleaded facts in the complaint as true, but [they] 'need[ ] not accept as true legal conclusions, or threadbare recitals of the elements of a cause of action, supported by mere conclusory statements.'" *Alam v. Miller Brewing Co.*, 709 F.3d 662, 665-66 (7th Cir. 2013) (quoting *Brooks v. Ross*, 578 F.3d 574, 581 (7th Cir. 2009)).

Plaintiffs' complaint consists of three counts: Count I, for breach of the collective bargaining agreement ("CBA") between Local 73 and the Service Employees Staff Union ("SESU"), the exclusive collective bargaining representative of Local 73 employees; Count II, for breach of the SEIU Constitution and bylaws; and Count III, for breach of the Local 73 Constitution and bylaws.

In support of their motion, defendants argue that (1) the claim in Count I must be dismissed because plaintiffs have not plausibly alleged any misconduct that rises to the level of a breach of the CBA, and (2) the claims in Counts II and III are identical to the claims in Counts II and III of the First Amended Complaint, which the Court previously dismissed, so the Court should dismiss them again for the same reasons.

Plaintiff makes no response to defendants' argument regarding Counts II and III, so the Court considers the claims forfeit and grants defendants' motion as to those claims. *See Jones v. Connors*, No. 11 C 8276, 2012 WL 4361500, at *7 (N.D. Ill. Sept. 20, 2012) ("A party's failure to respond to arguments the opposing party makes in a motion to dismiss operates as a waiver or forfeiture of the claim and an abandonment of any argument against dismissing the claim."); *Jones v. U.S. Bank Nat. Ass'n*, No. 10 C 0008, 2011 WL 663087, at *2 (N.D. Ill. Feb. 14, 2011) ("[O]nce a motion to dismiss has been filed pursuant to Federal Rule of Civil Procedure 12(b)(6), it becomes the plaintiff's obligation to present legal argument and citations to relevant authority for purposes of substantiating the plaintiff's claims. If the plaintiff fails to respond to legitimate arguments raised by the defendant, the plaintiff's claims may be dismissed.") (internal citation omitted).

As for Count I, plaintiffs argue that they have cured the defects that the Court previously identified by adding allegations to establish that SESU acted discriminatorily and/or in bad faith by failing to pursue plaintiffs' grievances. Plaintiffs' claim for breach of the CBA is governed by Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185(a), which "provides for federal subject-matter jurisdiction over '[s]uits for violation of contracts between an employer and a labor organization,'" including collective bargaining agreements. *Lippert Tile Co. v. Int'l Union of Bricklayers & Allied Craftsmen, Dist. Council of Wis. & Its Local 5*, 724 F.3d 939, 944 (7th Cir. 2013) (quoting 29 U.S.C. § 185(a)). Plaintiffs assert that Local 73 terminated them without just cause and without performing its obligations during the grievance process, in violation of Articles 11 and 12 of the CBA. To prevail on this claim, plaintiffs must establish not

only that defendants breached the CBA but also that plaintiffs' collective bargaining representative, SESU, breached the duty of fair representation that it owed to them. *See Yeftich v. Navistar, Inc.*, 722 F.3d 911, 914 (7th Cir. 2013) ("When union members sue their employer for breach of contract under section 301 of the LMRA, they must also state a prerequisite claim of breach of their union's duty of fair representation."). "In other words, a section 301 suit is a "hybrid" claim consisting of both a breach-of-fair-representation element"—even if the plaintiff does not name the union as a defendant—"and a breach-of-contract element." *Id.* at 914. Although a union has "considerable discretion in dealing with grievance matters," *Garcia v. Zenith Elecs. Corp.*, 58 F.3d 1171, 1176 (7th Cir. 1995) (internal quotation marks omitted), its discretion is not unlimited, and it breaches its 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). By adding allegations suggesting that SESU declined to pursue their grievances in collusion with Local 73 leadership and to punish plaintiffs for challenging it, plaintiffs argue, they have plausibly alleged that SESU acted discriminatorily or in bad faith, and therefore pleaded a breach of the duty of fair representation. *See id.* at 398; *see also Rupcich v. United Food & Commercial Workers Int'l Union*, 833 F.3d 847, 860 (7th Cir. 2016) (describing evidence of "attempts by the union and management to conceal an agreement to not pursue" the plaintiff's grievance as evidence of an "improper motive" that might demonstrate bad faith).

The Court agrees with plaintiffs that they have met their pleading burden on the duty-of-fair-representation element of their § 301 claim, and indeed, defendants appear to concede as much. Nevertheless, defendants argue, plaintiffs do not meet their pleading burden on the breach of contract element. Plaintiffs' theory of breach is that Local 73 terminated them without the "just cause" and "progressive discipline" that the CBA requires and without permitting them to grieve their discharge. Defendants point out, as the Court has explained in dismissing plaintiffs' first two complaints, that the Labor Management Reporting and Disclosure Act of 1959 ("LMRDA"), 29 U.S.C. § 401 *et seq*., does not protect appointed union employees from termination, particularly to the extent that the basis for termination is disagreement between the employees and union management over internal union politics or union governance. Instead, under the LMRDA, defendants argue, a union leader has "[un]restrict[ed] . . . freedom to choose a staff whose views are compatible with his own," *Finnegan v. Leu*, 456 U.S. 431, 441 (1982), and, correspondingly, to discharge those employees whose views are not. If that is the case, the argument goes, it would seem that Local 73 must have had "just cause" to terminate plaintiffs, to the extent that it determined that their views on the governance of Local 73 were incompatible with those of union leadership.

In support of this argument, defendants cite a line of state cases holding, in light of *Finnegan*, that the LMRDA preempts state causes of action for wrongful discharge that would hold union employers liable for failing to meet just-cause or good-faith requirements in terminating appointed, policymaking union employees. *See Packowski v. United Food & Commercial Workers Local 951*, 796 N.W.2d 94, 96, 101 (Mich. App. Ct. 2010), *Vitullo v. Int'l Brotherhood of Electrical Workers, Local 206*, 75 P.3d 1250, 1255-56 (Mont. 2003); *Screen Extras Guild, Inc. v. Superior Court*, 800 P.2d 873, 879 (Cal. 1990).

Plaintiffs assert no state causes of action in this case, so these cases are not directly on point. Their reasoning may bear some relevance to the extent that they suggest that *Finnegan* and

the LMRDA should be interpreted to give unions wide discretion to terminate appointed employees, the employees' rights derived from other sources notwithstanding, but the cases are not uniform in that regard. The Sixth Circuit, in an unpublished, nonprecedential decision analogous to the above-cited cases, arrived at a different outcome:

> The most glaringly obvious defect in the defendant's reliance on *Finnegan* is that *Finnegan* is inapposite to the case at hand. *Finnegan* simply held that the petitioners in that case did not have a cause of action under the LMRDA because the protections of the LMRDA do not apply to union employees who have been terminated for political reasons. This holding has nothing to do with the instant case because Ardingo is not asserting a cause of action under the LMRDA. Instead, he is suing to enforce his state-law contract rights under his just-cause employment contract, and these contract rights simply are not impacted by *Finnegan*. It would be a non-sequitur to say that Ardingo is precluded from bringing a lawsuit to enforce his contract rights simply because the LMRDA does not provide him with a cause of action against the defendant. Indeed, there are many federal laws that do not provide Ardingo with a cause of action, but that does not mean that each one of them preempts his wrongful-discharge lawsuit. In short, when a union chooses to offer a just-cause employment contract to an employee, there is nothing in *Finnegan* or the LMRDA that would prevent that contract from being enforced.
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> The defendant erroneously believes that *Finnegan* is relevant to this case because the defendant misinterprets *Finnegan* as standing for the proposition that the LMRDA gives union officials unfettered discretion in employment matters. The holding of *Finnegan*, however, clearly does not support this interpretation. The fact that the LMRDA does not provide a cause of action to union employees who have been fired for political reasons does not mean that state law could never restrict a union leader's discretion to terminate a union employee. *See Bloom v. Gen. Truck Drivers, Office, Food & Warehouse Union, Local* 952, 783 F.2d 1356, 1360-62 (9th Cir.1986) (holding that a wrongful-discharge lawsuit was not preempted by the LMRDA where a business agent claimed to have been terminated for refusing to violate state law). Such a question was not even before the *Finnegan* Court. ***Therefore, it would be wrong to say that* Finnegan *stands for the proposition that the LMRDA gives union officials unlimited discretion in employment matters***.

Ardingo v. Local 951, United Food And Commercial Workers Union, 333 F. App'x 929, 936 (6th Cir. 2009) (emphasis added). Similar is *Rutledge v. Aluminum, Brick & Clay Workers International Union*, 737 F.2d 965, 968-69 (11th Cir. 1984), in which the court upheld summary judgment for the union employer on its policymaking employee's claim that his termination for insubordination violated the LMRDA, but reversed and remanded for trial on his claim that his termination violated his rights under the union constitution, which stated that the union "may remove or suspend any such employee for just cause." The Court reasoned that the latter claim was "correctly characterize[d] . . . as a contractual one which should be addressed separately from claims brought under the LMRDA." *Id.* at 969.

The Court finds the reasoning of *Ardingo* and *Rutledge* persuasive, at least at this early stage, in the absence of fuller briefing and the fuller factual context that later stages of the case might bring. Defendants have cited no authority directly holding that, as a matter of law, *Finnegan* permits a union employer to terminate an appointed policymaking employee at its sole discretion, regardless of any "just cause" protections afforded him in the applicable CBA. In the absence of such authority, the Court concludes that plaintiffs are entitled to the protections of Articles 11 and 12 of their CBA. Further, as in *Rutledge*, the Court is unwilling to extend its dismissal of plaintiffs' LMRDA claims to their contractual claims, without an independent examination of whether defendants acted with just cause and otherwise in accord with the CBA. "'Just cause is a flexible concept, embodying notions of equity and fairness,'" *Crider v. Spectrulite Consortium, Inc.*, 130 F.3d 1238, 1242 (7th Cir. 1997) (quoting *Arch of Illinois, Div. of Apogee Coal Corp. v. Dist. 12, United Mine Workers of Am.*, 85 F.3d 1289, 1294 (7th Cir. 1996)), and although the question of whether an employee was terminated for just cause is one of law for the Court, it is a heavily fact-bound inquiry, to be made "on a case by case basis." *Scott v. Riley Co.*, 645 F.2d 565, 568 (7th Cir. 1981). A fuller explication of the facts and circumstances surrounding plaintiffs' termination is necessary before the Court can determine how that "flexible concept," and the other contractual provisions plaintiffs rely on, apply here. *See Crider*, 130 F.3d at 1242 (making just cause determination at summary judgment, not pleading stage); *see also Rupcich*, 833 F.3d at 860 (ruling that "the issue of whether there was just cause to terminate [the plaintiff's] employment [was] not appropriate for summary judgment" and remanding for trial).

SO ORDERED.

ENTERED: January 21, 2021

HON. JORGE ALONSO
United States District Judge