UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BAKERY, CONFECTIONERY, TOBACCO WORKERS and GRAIN MILLERS, INTERNATIONAL UNION and LOCAL UNION NO. 3-G. BAKERY, CONFECTIONERY, TOBACCO WORKERS AND GRAIN MILLERS,

Plaintiffs,

v.

KELLOGG COMPANY,

Defendant.
_____/

Case No. 1:16-CV-1180

HON. GORDON J. QUIST

ORDER GRANTING MOTION FOR RECONSIDERATION

On September 13, 2017, the Court entered an Opinion and separate Order denying the Unions' motion to compel arbitration. (ECF Nos. 22, 23.) In its Opinion, the Court rejected Kellogg's judicial estoppel argument, but nonetheless concluded that the Memorandum of Agreement, read in conjunction with the provisions of the Master and Supplemental Agreements, made clear that those agreements apply only to regular employees as members of the Battle Creek plant bargaining unit and not to casual employees. (ECF No. 21 at PageID.1695–96.)

Pursuant to Local Rule 7.4(a), the Unions have filed a motion requesting that the Court reconsider its September 13, 2017, Order denying their motion to compel. In particular, the Unions note that, in spite of the language the Court cited stating that the bargaining unit consists of "all *regular* hourly employees in the Battle Creek Plant of the Company," (*id.* at PageID.1695 (quoting Supplemental Agreement § 201(b) (italics added))), Kellogg did not argue that casual employees are not part of the bargaining unit because both the Unions and Kellogg understand and acknowledge that casual employees are considered part of the bargaining unit. (ECF No. 24-1 at

PageID.1705–07 & 1706 n.1.) The Unions argue that, with this factual error corrected, the Court must reconsider its decision, conclude that the grievances are arbitrable, and order Kellogg to arbitrate the grievances at issue.

Western District of Michigan Local Rule 7.4 provides the standard that governs the instant motion. To prevail on a motion for reconsideration, the movant must "not only demonstrate a palpable defect by which the Court and the parties have been misled, but [must] also show that a different disposition of the case must result from a correction thereof." *See* W.D. Mich. LCivR 7.4(a). A motion for reconsideration "is not properly used as a vehicle to re-hash old arguments or to advance positions that could have been argued earlier, but were not." *Gulley v. Cnty. of Oakland*, 498 F. App'x 603, 612 (6th Cir. 2012) (citing *Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 374 (6th Cir. 1998)). Rather, a court may reconsider a prior ruling "to address an erroneous factual conclusion, because the Court overlooked or misconstrued the record, or to correct a misunderstanding of the law, because the Court applied the wrong standard, wrong test, relied on bad precedent, or something similar." *Fleet Eng'rs, Inc. v. Mudguard Techs., LLC*, No. 1:12-CV-1143, 2013 WL 12085183, at *1 (W.D. Mich. Dec. 31, 2013).[1]

As the Unions note, although the Court relied on language in the Supplemental Agreement to conclude that casual workers are not part of the bargaining unit at the Battle Creek plant, this was a mistaken factual conclusion because the parties *do* consider casual employees part of the bargaining unit. With this correction in mind, the Court again considers the provisions at issue.

[1]Local rule 7.4(b) prohibits the nonmoving party from filing a response to a motion for reconsideration, but notes that "a motion for reconsideration will *ordinarily* not be granted in the absence of [a] request [for a response]." (Italics added). Because the Union's motion is based solely upon a factual error that is not in dispute, the Court finds it unnecessary to request a response from Kellogg, particularly given that the motion and the parties' arguments were extensively briefed and the Court heard oral argument.

The arbitration clauses set forth in the Master and Supplemental Agreements are broad in scope. The Master Agreement defines "grievance" as "any dispute involving the application or interpretation of any provision of this Agreement." (ECF No. 1-1 at PageID.56.) The Supplemental Agreement defines a "grievance" as "any complaint, dispute, or difference of opinion concerning any matter." (ECF No. 1-2 at PageID.137.) In cases involving a broad arbitration clause, the Sixth Circuit "has found the presumption of arbitrability 'particularly applicable,' and only an express provision excluding a particular grievance from arbitration or 'the most forceful evidence of a purpose to exclude the claim from arbitration can prevail.'" *United Steelworkers of Am. v. Mead Corp.*, 21 F.3d 128, (6th Cir. 1994) (quoting *AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 650, 106 S. Ct. 1415, 1419 (1986) (internal citation omitted)); *see also Cleveland Elec. Illuminating Co. v. Utility Workers Union of Am.*, 440 F.3d 809, 814 (6th Cir. 2006) (noting that "the presumption of arbitrability is particularly applicable where the arbitration clause provides for arbitration of any controversy involving the interpretation of the CBA"). Thus, the Court "should apply a presumption of arbitrability, resolve any doubts in favor of arbitration, and should not deny an order to arbitrate unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *United Steelworkers of Am. v. Cooper Tire & Rubber Co.*, 474 F.3d 271, 277–78 (6th Cir. 2007) (quoting *Int'l Union v. Cummins, Inc.*, 434 F.3d 478, 485 (6th Cir. 2006)). Moreover, if a "provision attempting to exclude a dispute from arbitration is equally consistent with opposing interpretations, and the language employed does not 'clearly and unambiguously describe[] the issue or issues excluded from arbitration,' the . . . language 'cannot be said to *expressly exclude* that issue.'" *United Steelworkers of Am. v. Century Aluminum of Ky.*, 157 F. App'x 869, 873–74 (6th Cir. 2005) (quoting *United Steelworkers of Am. v. Lukens Steel Co.*, 969 F.2d 1468, 1476 (3d Cir. 1992)) (emphasis in original).

Kellogg relies on the first sentence of paragraph 1 of the Memorandum of Agreement—that "[t]he terms and conditions of the Supplemental and Master Agreements will not apply to Casual employees,"—to show that disputes involving casual employees are excluded from the grievance and arbitration provisions. While the phrase "terms and conditions" is broad in scope and literally applies to the grievance and arbitration provisions of the Master and Supplemental Agreements (because they are "terms" of those agreements), the quoted sentence is also included within a paragraph that addresses only fringe benefits and the wage rate for casual employees. The phrase "terms and conditions," read within the context of paragraph 1, thus can reasonably be interpreted to apply only to fringe benefits contained in the Master and Supplemental Agreements. Paragraph 8, on the other hand, suggests that most disputes concerning casual employees are subject to the grievance and arbitration provisions. Paragraph 8 states that Kellogg "may discontinue employment [of casual employees] without such action being subject to the grievance procedure." If, as Kellogg contends, paragraph 1 means that casual employees are entirely excluded from the grievance and arbitration procedure, paragraph 8 would be unnecessary. In any event, Kellogg fails to cite any provision expressly excluding the instant matter from the broad grievance and arbitration provisions, and in light of paragraph 8, the Court cannot say that the first sentence of paragraph 1 constitutes "the most forceful evidence of a purpose to exclude the claim from arbitration." *AT&T Techs., Inc.*, 475 U.S. at 650, 106 S. Ct. at 1419 (quoting *United Steelworkers of Am. v. Warrior & Gulf Nav. co.*, 363 U.S. 574, 585, 80 S. Ct. 1347, 1354 (1960)).[2]

Finally, in its brief in opposition to the Unions' motion, Kellogg argued that the Court should deny the motion to compel because the relief the Unions seek is beyond the arbitrator's authority

[2]Kellogg argued in its brief and at oral argument that paragraph 8 pertains to bargaining over casual employee terminations. However, nothing in paragraph 8 refers to bargaining over terminations; it expressly refers to "the grievance procedure."

to award. That is, Kellogg contends that the provisions in the Master and Supplemental Agreements stating that an arbitrator has "no power to add to, take from, amend, modify or alter" provide a basis for the Court to refuse to compel arbitration. (ECF No. 12 at PageID.1002.) Kellogg's argument, however, is not germane to the Court's decision about whether to compel arbitration because it pertains to the merits of the parties' dispute. *See Mead Corp.*, 21 F.3d at 131 (noting that in deciding whether a grievance is arbitrable, "a court is not to consider the merits of the underlying claim"). The issue for the arbitrator is whether the "[f]irst vote" language of the of the 2015 Master Agreement Best Offer/Memorandum of Agreement applies to all employees, as the Unions contend, or only to regular employees, as Kellogg contends.

Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' Motion for Reconsideration of the Court's September 13, 2017, Opinion and Order (ECF No. 24) is **GRANTED**.

IT IS FURTHER ORDERED that the September 13, 2017, Opinion and Order (ECF Nos. 21, 22) are **VACATED**, and Plaintiffs' Motion to Compel Arbitration of Grievance Nos. 40-15 and 54-15 (ECF No. 11) is **GRANTED**.

Dated: October 19, 2017

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE