In the

United States Court of Appeals

For the Seventh Circuit

No. 22-1469

UNITED NATURAL FOODS, INC., *et al.*,

Plaintiffs-Appellees,

v.

TEAMSTERS LOCAL 414,

Defendant-Appellant.

Appeal from the United States District Court for the
Northern District of Indiana, Fort Wayne Division.
No. 1:21-cv-00020-HAB-SLC — **Holly A. Brady**, *Judge*.

ARGUED SEPTEMBER 29, 2022 — DECIDED JANUARY 31, 2023

Before SYKES, *Chief Judge*, and ROVNER and JACKSON-AKIWUMI, *Circuit Judges*.

ROVNER, *Circuit Judge*. United Natural Foods, Inc., and its corporate affiliates filed suit against Teamsters Local 414 contending that the Local breached its collective bargaining agreement with the company by initiating two strikes at United Natural's Fort Wayne, Indiana distribution center. The question presented in this appeal is whether United Natural is compelled by the grievance and arbitration provisions of

the collective bargaining agreement to arbitrate this claim. We agree with the district court that it is not. *See United Natural Foods, Inc. v. Teamsters Local 414*, 2022 WL 767165 (N.D. Ind. Mar. 14, 2022).

I.

We take the following facts from United Natural's complaint. For present purposes, these facts are not disputed, and Local 414 has included them in its own account of the underlying circumstances.

United Natural and Local 414 were parties to a collective bargaining agreement (the "agreement" or "CBA") effective from June 2017 to September 2019, covering certain employees working at United Natural's Fort Wayne, Indiana distribution center. Article 5 of the agreement prohibits both strikes and lock-outs during the life of the agreement, with one exception not applicable here. Article 35 of the agreement contains an "evergreen clause" providing for automatic renewal of the contract absent written notice of termination or desired modification at least 60 days prior to the expiration date. There appears to be no dispute that such notice was given here, which led to bargaining over the terms of a new agreement.

Negotiations over a successor agreement commenced in August 2019 and were ongoing when the expiration date of the existing agreement came and went on September 14, 2019. Section 35:03 of the agreement envisions in such circumstances that the parties will continue to bargain over a new agreement in good faith until they reach a "complete agreement and understanding" on a new contract or "until either or both parties conclude that it is not probable that further

negotiations will result in an agreement." R. 1-1 at 34, § 35:03 ¶ 1. So long as negations are ongoing, all terms and provisions of the existing CBA will continue to apply. *Id.*, ¶ 2. However, "[i]n the event of a strike, the provisions of this section do not apply." *Id.*, ¶ 3.

Bargaining over a new agreement came to a standstill on September 20, 2019, without agreement on a new contract and without additional bargaining dates being scheduled. Union representatives advised United Natural that Local 414 was unwilling to meet again until all of the company proposals to which the Local had previously objected were dropped.

On December 12, 2019, Local 414 and its members went on strike and established a picket line at the Fort Wayne distribution center. On December 17, Local 414 members began additional picketing at United Natural's Hopkins, Minnesota, and Green Bay, Wisconsin distribution centers. According to the complaint, the purpose of the pickets was to cause workers at those facilities to go on strike as well and, indeed, those workers honored the picket lines and walked off the job. On December 18, Local 414 ended the strike at the Fort Wayne distribution center and ceased picketing at the other two distribution sites. On July 23, 2020, Local 414 and its members engaged in another strike at the Fort Wayne distribution center and picketed that facility. No picketing was initiated at United Natural's other facilities.

In January 2021, United Natural filed suit against Local 414 pursuant to section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185,[1] alleging as relevant here

[1] "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce

that by engaging in the December 2019 and July 2020 strikes, the Local had violated the no-strike provisions of the CBA, which according to United Natural, remained in effect on and after the September 14, 2019, expiration date of the CBA. United Natural also pursued a state-law claim that the Local had tortiously interfered with the company's contractual rights by inducing union members at other facilities to walk off the job and breach the no-strike provisions of their own collective bargaining agreements with United Natural.[2]

As relevant here, Local 414 responded to the suit by moving to compel arbitration of the section 301 claim, contending that the parties' dispute was arbitrable under Article 14 of the CBA, which lays out a "Grievance and Arbitration Procedure." R. 25, 26; *see Republic Steel Corp. v. Maddox*, 379 U.S. 650, 652, 85 S. Ct. 614, 616 (1965) ("As a general rule in cases to which federal law applies, federal labor policy requires … use of the contract grievance procedure agreed upon by employer and union as the mode of redress.").[3] The pertinent provisions of Article 14 provide as follows:

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as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." 29 U.S.C. § 185(a).

[2] United Natural's complaint includes claims against the two union locals representing employees at the Hopkins and Green Bay facilities who honored Local 414's picket lines at those facilities. Those claims are not at issue here.

[3] Separately, Local 414 also argued that United Natural's section 301 claim for breach of contract should be dismissed because it was filed outside of the statute of limitations and because, at the time of the strikes, the Local had concluded that further negotiations with the company would not result in a new agreement and consequently, the provisions of the

> 14:01 The aggrieved employee must contact his/her supervisor within ten (10) calendar days, with any occurrence, differences, disputes or complaints arising over the interpretation or application of the contents of this agreement. Any issue which cannot be resolved between the aggrieved employee and a supervisor within twenty-four (24) hours (one workday) will be moved to Step #1 within ten (10) calendar days.
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> 14:01 Step #1—by conference between the aggrieved employee, shift steward and the shift supervisor. The [s]hift supervisor will schedule the conference with the grievant and steward within ten (10) calendar days. Both parties should identify information, participants, or witnesses that are material to the Step [1] decision. This information can be documented on the grievance or notice of discipline. If the supervisor[']s position is not given within twenty-four (24) hours (one work day), or the conference [is] not scheduled or the grievance remains unresolved, it will be reduced to writing in ten (10) calendar days and moved to [S]tep #2.
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> Step #2—If no satisfactory adjustment is agreed upon in Step #[1], a grievance meeting will be

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collective bargaining agreement, including the no-strike provision, were no longer in effect. The district court rejected those arguments. 2022 WL 767165, at *7–*8. The district court did agree with Local 414, however, that § 301 preempted United Natural's claim against the Local for tortious interference with contract, and the court dismissed that claim. *Id.*, at *9. Those interlocutory rulings are not before this court in the instant appeal.

> conducted. The Step 2 Committee will consist of the Warehouse Manager and/or Transportation Manager, Human Resources Director, or their designees, and the Business Agent, or his designee. The Committee will determine information, participants, or witnesses that are material from the previous step. The Step [2] Committee shall have the right to uphold or deny said grievance and such decision shall be final and binding on the parties. Hearing days will be set for the third Wednesday and Thursday of each month. These days can be changed by mutual agreement. At the time the dates are agreed to be changed, new dates must be confirmed. Grievances filed as a result of such Step #2 hearing shall be scheduled on the next Step #2 agenda. By mutual consent of the parties, such grievance may be moved directly to Step #3.
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> Step #3—If no satisfactory adjustment is agreed upon in Step #2, this grievance shall be moved to the two (2) person Labor-Management Council. Such Labor-Management Council shall be comprised of the Secretary-Treasurer, Teamsters Local 414 or his designated representative, and the other representative shall be the General Manager, Fort Wayne Distribution Center or his designated representative. Such Council shall have the power and authority to settle the grievance, and such settlement shall be final and binding on the parties. Meetings of this Council shall be held no less than quarterly, or

> as needed, and at such places as the Council members may elect.
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> Step #4—Arbitration—In the event the Labor-Management Council, as described herein, cannot reach agreement, the grievance may be submitted by either party to the Federal Mediation and Conciliation Service. Such a decision to move to F.M.C.S. must be done by the local parties within 30 days of the Step #3 impasse or the grievance is considered resolved. If either party elects to pursue the case to F.M.C.S., the arbitrator shall be picked as follows: The F.M.C.S shall be requested by either party signatory hereto [to] name five (5) arbitrators. The Union and the Employer shall alternately strike one (1) name from the list of arbitrators with the moving party to arbitration striking first. The remaining name shall be the [A]rbitrator. The Arbitrator may interpret the Agreement and apply it to the particular case presented to him, but he shall, however, have no authority to add to, subtract from, or in any way modify the terms of this Agreement or any agreements made supplementary. The decision of the Arbitrator must be awarded to the involved parties within thirty (30) calendar days from the close of the hearing. The thirty (30) day period shall commence following receipt by the Arbitrator of post-hearing documents, such as transcripts, post-hearing briefs, etc. There shall be no lockouts, strikes, or work stoppages pending the settlement of the grievance in the manner above outlined.

> 14:03 The Arbitrator shall have the authority to make an employee whole, which shall include compensation for all wages and benefits which he would have received but for the Employer's improper conduct and shall include, but not be limited to, overtime pay, holiday pay, funeral pay, vacation pay, and sick leave pay.

R. 1-1 at 9–10.

The district court denied Local 414's motion to compel arbitration, concluding that the company's claim for the alleged breach of the no-strike provision of the CBA was not governed by the arbitral remedies set forth in Article 14, Step 4 of the CBA. The court began by noting that § 14:01 requires the "aggrieved employee" to initiate the grievance and arbitration procedures set forth in Article 14. "Without action by the 'aggrieved employee' …, the procedures in Article 14 are never implicated." 2022 WL 767165, at *4. References to the "aggrieved employee" and to the "grievance" pursued by that employee are repeated in the other provisions laying out the various steps in the grievance and arbitration process. *Id.* Relying principally on *Faultless Div. v. Local Lodge No. 2040 of Dist. 153, Int'l Machinists & Aerospace Workers*, 513 F.2d 987, 990–91 (7th Cir. 1975), the court concluded that the employee-oriented nature of the CBA's grievance and arbitration process did not give the employer the authority to initiate arbitration over anything except for an employee grievance. *Id.*, at *5. The court acknowledged that, in this case, unlike *Faultless*, Article 14 gives the employer as well as the Union the right to initiate arbitration at Step 4 of the grievance and arbitration process. But nothing suggested that the dispute-resolution

process (including arbitration) applied to anything other than an employee-instigated grievance. *Id.*

The district court was not persuaded to follow the contrary conclusion of the court in *Eberle Tanning Co. v. Section 63L, FLM Joint Bd., Allegheny Div., United Food & Commercial Workers Int'l Union*, 682 F.2d 430, 432–33 (3d Cir. 1982), which relied on a CBA's broad definition of "grievance" (coupled with a provision for monthly meetings between the parties' representatives to resolve unsettled grievances, as so defined) to hold that the arbitration provision at issue in that case applied to any alleged violation of the agreement or any dispute over the meaning and application of the agreement terms. The Third Circuit reasoned that although the first four steps of the grievance procedure outlined in the CBA were employee-oriented, the CBA's broad definition of "grievance" gave rise to an ambiguity as to the reach of the arbitration clause; thus, consistent with federal labor policy, which strongly favors arbitration, the company was required to arbitrate its dispute with the union. *Id.* at 433–34.

The district court reasoned that the result the court reached in *Eberle Tanning* was not warranted in this case given a key difference in the language of the agreement between United Natural and Local 414:

> Article 14 defines a grievance only by its reference to "any occurrence, differences, disputes or complaints arising over the interpretation or application" of the CBA by an "**aggrieved employee.**" The four steps of the grievance procedure flow from this language. The inclusive language defining a grievance in *Eberle Tanning* is absent from the Fort Wayne CBA, and the CBA

> fails to evidence any intention by the employer to arbitrate its disputes arising from actions of the union.

Id., at *6 (emphasis in district court's opinion).

II.

Pursuant to section 16(a) of the Federal Arbitration Act, the denial of Local 414's motion to compel arbitration is immediately appealable. 9 U.S.C. § 16(a)(1)(A); *Boomer v. AT&T Corp.*, 309 F.3d 404, 412–13 (7th Cir. 2002); *see also Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 121 S. Ct. 1302 (2001) (FAA applies to employment agreements of workers other than those in maritime, railway, and other transportation industries); *Pryner v. Tractor Supply Co.*, 109 F.3d 354, 359–60 (7th Cir. 1997) (arbitration provisions in collective bargaining agreements applicable to workers other than those transportation industries are subject to FAA, including section 16).

We review the district court's decision denying the motion to compel arbitration de novo. *E.g.*, *Int'l Bhd. of Elec. Workers Local 2150 v. NextEra Energy Point Beach, LLC*, 762 F.3d 592, 593–94 (7th Cir. 2014). For purposes of this appeal, there is no dispute over the relevant facts. The dispute instead is over whether the pertinent terms of the collective bargaining agreement require United Natural to submit its dispute with Local 414 regarding the strikes to arbitration. This presents a question of (federal) law. *See Geneva Secs., Inc. v. Johnson*, 138 F.3d 688, 691 (7th Cir. 1998); *Aluminum Co. of Am. v. N.L.R.B.*, 159 F.2d 523, 525 (7th Cir. 1946); *see also John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 548, 84 S. Ct. 909, 914 (1964) (noting that "[f]ederal law, fashioned from the policy of our national labor laws, controls" the interpretation and application of

collective bargaining agreements) (cleaned up); *Merk v. Jewel Food Stores, Div. of Jewel Cos.*, 945 F.2d 889, 892 (7th Cir. 1991) (same).

The Supreme Court's jurisprudence has established four principles that guide our analysis. *AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 648, 106 S. Ct. 1415, 1418 (1986). The principles derive in the first instance from the *Steelworkers Trilogy* of 1960: *United Steelworkers of Am. v. Am. Mfg. Co.*, 363 U.S. 564, 80 S. Ct. 1343 (1960); *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 80 S. Ct. 1347 (1960); and *United Steelworkers of Am. v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 80 S. Ct. 1358 (1960). Later cases have supplied amplification and clarification of these principles.

First and foremost, it is the parties' contract that determines the duty to arbitrate. *AT&T Techs.*, 475 U.S. at 648–49, 106 S. Ct. at 1418 (citing *Warrior & Gulf.*, 363 U.S. at 582, 80 S. Ct. at 1353, and *Am. Mfg.*, 363 U.S. at 570–71, 80 S. Ct. at 1364–65 (Brennan, J., concurring)); *Granite Rock Co. v. Int'l Bhd. of Teamsters*, 561 U.S. 287, 299, 130 S. Ct. 2847, 2857 (2010); *Faultless*, 513 F.2d at 990; *see also Oil, Chem. & Atomic Workers Int'l Union, Local 7-1 v. Amoco Oil Co.*, 883 F.2d 581, 584 (7th Cir. 1989) (describing this as "[t]he foundational principle derived from the *Steelworkers Trilogy*"). "Arbitration is strictly a matter of consent and thus is a way to resolve those disputes—*but only those disputes*—that the parties have agreed to submit to arbitration." *Granite Rock*, 561 U.S. at 299, 130 S. Ct. at 2857 (emphasis in *Granite Rock*) (cleaned up). A party cannot be compelled to arbitrate a particular dispute if it has not agreed to do so. *Warrior & Gulf*, 363 U.S. at 582, 80 S. Ct. at 1353; *Drake Bakeries, Inc. v. Local 50, Am. Bakery & Confectionery*

Workers Int'l, 370 U.S. 254, 256, 82 S. Ct. 1346, 1348 (1962); *see also Faultless*, 513 F.2d at 990.

Second, whether the parties have agreed to arbitrate a particular issue is presumptively a question for judicial determination. *John Wiley & Sons*, 376 U.S. at 547, 84 S. Ct. at 912–13. "Unless the parties clearly and unmistakably provide otherwise, the question of whether the parties agreed to arbitrate is to be decided by the court, not the arbitrator." *AT&T Techs.*, 475 U.S. at 649, 106 S. Ct. at 1418 (collecting cases).

Third, a court must determine whether a claim is subject to arbitration without consideration of the underlying merits of the case. *Id.* at 649–50, 106 S. Ct. at 1418. Our focus is limited to what subjects the parties have agreed to arbitrate and whether the matter at issue is among them. We must resist any temptation to assess the strength or weakness of the claim for any reason, even if it is only to satisfy ourselves that the claim is not frivolous. *See ibid.*; *Am. Mfg.*, 363 U.S. at 568–69, 80 S. Ct. at 1346–47; *Amoco Oil*, 883 F.2d at 584.

Fourth, where the contract includes an arbitration clause, but the language of that clause is ambiguous as to whether it applies to the particular matter at hand, there is a rebuttable presumption of arbitrability in the sense that "[a]n order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." *Warrior & Gulf*, 363 U.S. at 582–83, 80 S. Ct. at 1353; *Granite Rock*, 561 U.S. at 301, 130 S. Ct. at 2858–59; *AT&T Techs.*, 475 U.S. at 650, 106 S. Ct. at 1419; *see also NextEra Energy Point Beach*, 762 F.3d at 594. "Such a presumption is particularly applicable where the clause is as broad as" one

providing for the arbitration of any dispute related to the interpretation of the agreement or the parties' performance thereunder. *AT&T Techs.*, 475 U.S. at 650, 106 S. Ct. at 1419.

Turning to the grievance and arbitration procedure set forth in the agreement between Local 414 and United Natural, what is immediately apparent is that the process is employee-oriented from beginning to end. Section 14:01 provides that it is "[t]he aggrieved employee" who must contact his or her supervisor "with any occurrence, differences, disputes or complaints arising over the interpretation or application of the contents of this agreement." Thus, at the very outset, the agreement indicates that the grievance and arbitration procedure is one meant to address employee concerns and disputes. That focus is reinforced in the outline of Step 1 of the grievance process, which involves a conference between the "aggrieved employee," the shift steward, and the shift supervisor. The next two steps on the grievance procedure proceed from that initial meeting. The fourth step is arbitration, which may be initiated by either party, as to a grievance that remains unresolved at the conclusion of Step Three in the resolution process.

The provision for arbitration is not a stand-alone arbitration clause allowing either party to arbitrate anything and everything that might arise under the collective bargaining agreement. Rather, it constitutes the final step in a four-step procedure designed to resolve a particular set of grievances. The only type of grievance referenced in these four steps is an employee-initiated grievance; no mention is made of an employer-initiated grievance. *See Adirondack Transit Lines, Inc. v. United Transp. Union, Local 1582*, 305 F.3d 82, 87 (2d Cir. 2002) (although agreement permitted either party to request

arbitration, "in this case we have an arbitration clause that narrowly limits arbitration to those disputes that have proceeded through the grievance procedure after filing by the union"); *Lehigh Portland Cement Co. v. Cement, Lime, Gypsum, & Allied Workers Div.*, 849 F.2d 820, 824–25 (3d Cir. 1988) ("The introductory language [of the contract's grievance and arbitration procedure] explicitly identifies the grievance procedure as belonging to the employee. … Each subsequent step in the grievance procedure is contingent upon the preceding steps, each of which requires that the grievance be prosecuted by an employee."). Section 14:03 then lays out the arbitrator's remedial power "to make an employee whole," including compensation for lost wages and benefits, confirming that arbitration is intended as a means of resolving the employee-initiated disputes referenced in the preceding provisions describing the grievance procedure. Nowhere does the contract signal that the reach of the arbitration provisions is meant to be broader than that of the grievance process and, if so, what types of additional issues the parties agreed to submit to arbitration. *Cf. Laundry, Dry Cleaning & Dye House Workers Int'l Union, Local 93 v. Mahoney*, 491 F.2d 1029, 1032–33 (8th Cir. 1974) (en banc) (although contractual grievance procedure was employee-oriented, contract's broad "purpose" language, coupled with savings clause providing for arbitration of matters other than grievances, triggered *Warrior & Gulf* presumption that wage dispute was subject to arbitration).

The process as laid out in the agreement is thus one limited to employee grievances, and it is those grievances that the parties agreed to arbitrate. This stands in marked contrast to the arbitration clause at issue in *Drake Bakeries*, for example, which reflected the parties' intent to submit all of their

respective disputes to the specified grievance and arbitration procedure:

> The parties agree that they will promptly attempt to adjust all complaints, disputes or grievances arising between them involving questions of interpretation or application of any clause or matter covered by this contract or any act or conduct or relation between the parties hereto, directly or indirectly.

370 U.S. at 257, 82 S. Ct. at 1348. The agreement then set forth a multi-step procedure for resolving such disputes, culminating in arbitration at the request of either party. The quoted language describing the scope of the grievance and arbitration procedure was, as the Court said, "broad language, indeed," *ibid.*, and absent qualification plainly swept within its reach the employer's claim that the union had violated the no-strike provision of the agreement, *id.* at 25—60, 82 S. Ct. at 1349-50; *see also Pietro Scalzitti Co. v. Int'l Union of Operating Eng'rs, Local No. 150*, 351 F.2d 576, 579 (7th Cir. 1965) ("While the contract language before us [which requires resort to grievance and arbitration procedure "whenever any difference or dispute shall arise as to interpretation or application of the terms of this Agreement …"] may not be wholly identical to the arbitration clause in *Drake Bakeries*, yet the instant contract excludes nothing from arbitration and clearly falls within the rationale of *Drake Bakeries*."); *Reid Burton Constr., Inc. v. Carpenters Dist. Council*, 535 F.2d 598, 602 (10th Cir. 1976) (although initial language regarding scope of contractual grievance and arbitration procedure was ambiguous, subsequent language providing that "[i]f the two parties are unable to reach a settlement, the dispute shall be reduced to

writing and the aggrieved party shall notify the other party the dispute is being referred to the Board of Adjustment" made clear that either party could initiate the procedure). In this case, however, the parties have outlined a grievance and arbitration procedure that is confined to employee grievances. True, the agreement does not directly define the term "grievance," nor does it expressly state that the claims and complaints of the employer are excluded from this process (including arbitration), *see Drake Bakeries* 370 U.S. at 257, 82 S. Ct. at 1348–49 (distinguishing *Atkinson v. Sinclair Refining Co.*, 370 U.S. 238, 82 S. Ct. 1318 (1962), *overruled in part on other grounds by Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235, 90 S. Ct. 1583 (1970), on this basis). But in describing a process that from start to finish involves employee grievances alone, with no mention anywhere of employer-initiated disputes, the agreement unmistakably conveys the message that the dispute resolution procedure, including the provision for the arbitration of unresolved grievances, is one applicable solely to employee grievances. *See Adirondack Transit Lines*, 305 F.3d at 87–88.

Given the wholly employee-focused character of the process set forth in the CBA, our decision in *Faultless* makes clear that United Natural is not obligated to arbitrate its dispute over the strikes. *Faultless* focused on the employee-oriented nature of an agreement's grievance and arbitration procedure to conclude that the agreement did not permit the employer to initiate its own grievances and take them to arbitration. The agreement in this case is materially no different. Indeed, the language of section 14:01, emphasizing that it is the "aggrieved employee" who initiates the process, is even stronger than the comparable language at issue in *Faultless*. It is true that the final step of the procedure at issue in *Faultless*

permitted only the Union to take an unresolved grievance to arbitration, whereas in this case, the agreement permits either party at Step Four to take such a grievance to arbitration. But we are not convinced that this difference is material, let alone dispositive.

Both parties have an obvious interest in how the provisions of the collective bargaining agreement are interpreted and applied, and to that extent both have a corresponding interest in the guidance that a neutral arbitrator might supply on disputed issues. To be sure, arbitration awards are not precedential in the same way that judicial decisions are, *see Bhd. of Locomotive Eng'rs & Trainmen Gen. Comm. of Adjustment, Cent. Region v. Union Pac. R.R. Co.*, 522 F.3d 746, 754–55 (7th Cir. 2008), but arbitration nonetheless is a key way of giving meaning to the terms of a collective bargaining agreement. *See United Parcel Serv., Inc. v. Mitchell*, 451 U.S. 56, 63–64, 101 S. Ct. 1559, 1564 (1981) (citing *Warrior & Gulf*, 363 U.S. at 581, 80 S. Ct. at 1352), *overruled in part on other grounds by DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151, 103 S. Ct. 2281 (1983). So it does not surprise us that the company would insist on having the same right as the union to take an unresolved grievance to arbitration, regardless of who initiated the grievance. *See G.T. Schjeldahl Co. v. Local Lodge 1680 of Dist. Lodge No. 64 of Int'l Ass'n of Machinists*, 393 F.2d 502, 504 (1st Cir. 1968).

It remains the case here that the grievance procedure outlined in Article 14 is otherwise entirely oriented toward employee grievances and does not speak to employer grievances. The fact that the agreement gives the employer the right to take such a grievance to arbitration does nothing to create ambiguity as to whether the company's own claims might be

subject to arbitration.[4] Indeed, as we have also noted, the concluding provision regarding the arbitrator's remedial authority confirms that the scope of the grievance and arbitration procedure is confined to issues and disputes raised by the employee, not the employer. And, finally, for what it is worth, *Faultless* noted the union's exclusive right to initiate arbitration as a circumstance that made the employer's case against being compelled to arbitrate "stronger" than was the case in *G.T. Schjeldahl*, where the arbitration clause, like the one at issue here, gave both parties the right to demand arbitration. *Faultless*, 513 F.2d at 992. We did not indicate that the difference was dispositive. Indeed, the First Circuit in *G.T. Schjeldahl* had likewise concluded that the employer's dispute was not subject to arbitration, despite the mutuality of the arbitration clause. 393 F.2d at 504.

Nor does the Third Circuit's decision in *Eberle Tanning* suggest to us that there is an ambiguity in the CBA which might bring the presumption in favor of arbitration into play. *Eberle Tanning* cited two principal reasons for concluding that the grievance and arbitration provisions in the agreement at issue in that case were ambiguous, first among them the agreement's broad definition of "grievance" to include any and all disputes about the interpretation and application of the terms of the agreement. It is true that § 14:01 uses language

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[4] The arbitration clause provides, *inter alia*, that "[t]he Arbitrator may interpret the Agreement and apply it to the particular case presented to him … ." R. 1-1 at 10, § 14:03, Step #4. We do not view the use of the term "case" as suggesting that arbitration might be available as a means of resolving disputes other than employee-initiated grievances, nor are we convinced that the use of that term gives rise to an ambiguity as to the scope of the clause.

similar to that highlighted by the Third Circuit in *Eberle Tanning*—specifically, the reference "any occurrence, differences, disputes or complaints arising over the interpretation or application of the contents of this agreement"—but here the sentence containing that language begins with qualifying language indicating that it is "[t]he *aggrieved employee*" who must contact his/her supervisor in reference to such an occurrence, difference, dispute, or complaint. That key limiting language eliminates the first of two ambiguities relied on by the Third Circuit. *See Jim Walter Resources, Inc. v. United Mine Workers*, 663 F.3d 1322, 1328 (11th Cir. 2011) (notwithstanding aspirational language in the contract encouraging the resolution of disputes through contractual means rather than by litigation, "the employee oriented grievance machinery in the parties' contract qualifies and limits the universe of claims and grievances subject to arbitration, and the language negates the intention that the employer's claim for damages must be submitted to arbitration"); *United Parcel Serv., Inc. v. Int'l Bhd. of Teamsters*, 1998 WL 699670, at *4 (N.D. Ill. Sept. 30, 1998) (Bucklo, J.) (where first sentence of contract section setting forth grievance and arbitration procedure was "open-ended" but was followed by language describing grievance procedure that was "completely employee-oriented," *Faultless* applied and contract did not require employer to arbitrate its claim).

The second provision cited by the court in *Eberle Tanning* as giving rise to ambiguity was a clause giving the employer as well as the union the right to take unresolved grievances to arbitration. Indeed, *Eberle Tanning* distinguished our decision in *Faultless* on this basis. 682 F.2d at 435 n.6. Given how broadly the contract in *Eberle Tanning* defined "grievance," the fact that both parties had a right to request arbitration

could be read to suggest that the employer's claims and disputes were subject to arbitration just as those of union members were. Here too the CBA gives the company as well as the Local the right to demand arbitration, but the language of the agreement makes clear that what can be arbitrated are grievances that have not been resolved at prior steps in the dispute resolution procedure; and as we have been at pains to emphasize, that procedure from the very start is focused on employee grievances and no other category of disputes. We have just explained why the employer might reasonably want the right to ask for arbitration of unresolved employee grievances. So the fact that the CBA gives United Natural that authority does not give rise to an ambiguity here as it did in *Eberle Tanning*.

As the district court emphasized, the focus on "the aggrieved employee" limits the universe of disputes arising from the agreement that are subject to the grievance and arbitration procedure, and the four delineated steps in that procedure flow from this initial, limiting provision. *See Friedrich v. Local No. 780, IUE-AFL-CIO-CLC*, 515 F.2d 225, 229 (5th Cir. 1975) ("Although [the arbitration clause] permits either party to request arbitration, it limits [that right] to disputes not resolved after Step 6 of the grievance procedures of Article VII. Thus, by requiring all arbitrable disputes to have passed through the employee-oriented steps of the mandatory grievance procedures, this agreement limits arbitration to employee initiated disputes."); *Jim Walter Resources*, 663 F.3d at 1327; *Affiliated Food Distribs., Inc. v. Local Union No. 229*, 483 F.2d 418, 420–21 (3d Cir. 1973); *G.T. Schjeldahl*, 393 F.2d at 504.

Local 414 insists that it makes no sense to construe the CBA's arbitration clause as limited to employee-instigated

grievances. The result, the Local emphasizes, is that although an employee grievance related to a strike would be subject to arbitration, the employer's own claim as to the propriety of the strike would not. That is a fair point, although one might draw a distinction between an employee's individual, fact-bound contention that she was improperly disciplined for participating in a strike, for example, and the employer's baseline contention that the strike itself was contrary to the provisions of the parties' contract. In any event, our task is to construe the agreement as written, and where the contract language is plain as it is here, our task is to give effect to that language rather than to second-guess the manner in which the parties drafted the agreement.

In short, there is no ambiguity in the CBA which might trigger the presumption in favor of arbitration. The grievance and arbitration procedure that the parties have agreed to is focused exclusively on employee-initiated grievances and does not envision or apply to employer-initiated grievances. We can say with confidence that the arbitration clause is not reasonably susceptible to an interpretation that includes an employer-initiated dispute regarding the meaning and application of the terms of the agreement. Thus, United Natural is not obligated to submit its dispute over the two strikes to arbitration.

III.

We AFFIRM the district court's judgment.