

No. 25-6233

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Jonathon Hill and Phillip Rowton,
Plaintiffs-Appellants,
v.
Amentum Services, Inc.,
Defendant-Appellee.

On Appeal from a Final Judgment of the
United States District Court for the District of Nevada
Civil Action No. 23-CV-1750, Judge Miranda M. Du

**REPLY BRIEF FOR APPELLANTS
JONATHON HILL AND PHILLIP ROWTON**

Eric B. Myers
McCracken, Stemerman &
Holsberry
5241 Spring Mountain Rd., Bldg. B
Las Vegas, NV 89146
(702) 386-5107

Lucas Benjamin*
Lindsey Gradowski*
Galen K. Green
Student Counsel
**Motion to authorize student practice
pending*

Brian Wolfman
Natasha R. Khan
Becca Steinberg
GEORGETOWN LAW APPELLATE
COURTS IMMERSION CLINIC
600 New Jersey Ave., NW
Suite 312
Washington, D.C. 20001
(202) 662-6582

Counsel for Appellants

May 1, 2026

Table of Contents

Reply Brief for Appellants Hill and Rowton	1
Argument.....	1
I. Hill and Rowton are entitled to 90 days of active-duty differential pay under USERRA.	1
A. Hill and Rowton have met Section 4316(b)(1)(B)'s requirements.....	2
1. Amentum's Military Leave Policy generally provides 90 days of differential pay for all Amentum employees who take active-duty leave.	2
2. Hill and Rowton are similarly situated to non-union employees to whom Amentum provides 90 days of differential pay for active-duty leave.....	4
B. Section 4316(b)(1)(B) does not require plaintiffs to show discrimination based on military status.	7
II. Hill's and Rowton's claims are not precluded.....	10
A. Amentum's LMRA Section 301 preemption argument is forfeited and meritless.....	11
B. Amentum's other arbitral preclusion arguments are also forfeited and meritless.....	14
Conclusion	16
Certificate of Compliance	

Table of Authorities

Cases	Page(s)
<i>14 Penn Plaza v. Pyett</i> , 556 U.S. 247, 262 (2009)	15
<i>Alexander v. Gardner-Denver Co.</i> , 415 U.S. 36 (1974).....	15
<i>Atchison, Topeka & Santa Fe Ry. Co. v. Buell</i> , 480 U.S. 557 (1987).....	13
<i>Belaustegui v. Int’l Longshore and Warehouse Union</i> , 36 F.4th 919 (9th Cir. 2022)	4, 8, 9
<i>Bell v. CSX Transp., Inc.</i> , 733 F. Supp. 3d 385 (D. Md. 2024)	15
<i>Caldeira v. County of Kauai</i> , 866 F.2d 1175 (9th Cir. 1989).....	16
<i>Calmat Co. v. U.S. Dep’t of Lab.</i> , 364 F.3d 1117 (9th Cir. 2004)	12
<i>Coleman v. Donahoe</i> , 667 F.3d 835 (7th Cir. 2012).....	16
<i>Columbia Export Terminal, LLC v. Int’l Longshore and Warehouse Union</i> , 23 F.4th 836 (9th Cir. 2022)	13
<i>Felt v. Atchison, Topeka & Santa Fe Ry. Co.</i> , 60 F.3d 1416 (9th Cir. 1995).....	13
<i>Firestone v. S. Cal. Gas Co.</i> , 281 F.3d 801 (9th Cir. 2002).....	12
<i>Henry Schein, Inc. v. Archer & White Sales, Inc.</i> , 586 U.S. 63 (2019).....	14

<i>Lam v. City of Cleveland</i> , 167 N.E.3d 124 (Ohio Ct. App. 2021)	3
<i>McCarrin v. Pollera</i> , 2019 WL 4857464 (E.D. Pa. Sept. 30, 2019)	9, 10
<i>Nance v. Goodyear Tire & Rubber Co.</i> , 527 F.3d 539 (6th Cir. 2008)	15
<i>Natural Grocers v. Rollins</i> , 157 F.4th 1143 (9th Cir. 2025)	10, 11
<i>NLRB v. Ky. River Cmty. Care, Inc.</i> , 532 U.S. 706 (2001)	6
<i>NLRB v. U.S. Postal Serv.</i> , 888 F.2d 1568 (11th Cir. 1989)	5, 6
<i>Noguera v. Davis</i> , 5 F.4th 1020 (9th Cir. 2021)	12
<i>Orr v. Plumb</i> , 884 F.3d 923 (9th Cir. 2018)	14
<i>Russello v. United States</i> , 464 U.S. 16 (1983)	8
<i>Saridakis v. United Airlines</i> , 166 F.3d 1272 (9th Cir. 1999)	13
<i>Shields v. Credit One Bank, N.A.</i> , 32 F.4th 1218 (9th Cir. 2022)	9
<i>Suruki v. Ocwen Loan Serv., LLC</i> , 735 F. App'x 286 (9th Cir. 2018)	11-12
<i>United States v. Dreyer</i> , 804 F.3d 1266 (9th Cir. 2015)	11

United States v. Nevada,
 2024 WL 5120542 (D. Nev. Dec. 16, 2024), *appeal*
docketed, No. 25-935 (9th Cir. Feb. 12, 2025) 9, 10

Statutes and regulation

29 U.S.C. § 152(3) 6
 29 U.S.C. § 152(11) 6
 38 U.S.C. § 4302(b) 10
 38 U.S.C. §§ 4311-4319 13
 38 U.S.C. § 4311(a) 8
 38 U.S.C. § 4313(a)(2)(A) 9
 38 U.S.C. § 4316(b)(1)(B) 2, 4, 5, 7, 8
 38 U.S.C. § 4323(b) 13
 20 C.F.R. § 1002.191 9

Rules

Fed. R. App. P. 28(a)(8)(A) 12
 Fed. R. App. P. 28(b) 12

Reply Brief for Appellants Hill and Rowton

Hill and Rowton are entitled to Amentum's active-duty differential-pay benefit under USERRA. They took active-duty leave under Amentum's generally applicable Military Leave Policy, which—by its words—applies to union and non-union employees alike. Hill and Rowton are covered by the Military Leave Policy because their CBA does not explicitly preclude it. Nothing in Amentum's brief says otherwise.

Amentum no longer defends the issue-preclusion arguments that the district court rejected. Instead, on appeal, it auditions completely different contentions under the banner of arbitral deference, all of which are forfeited—and, in any event, are wrong. Neither Labor Management Relations Act preclusion, nor any other form of arbitral deference, applies here. Rowton can't possibly be bound by an arbitration he was not a party to. As to Hill, his claims are not precluded for a host of reasons, not least because he is seeking to vindicate his USERRA rights in a court with authority to enforce them, rather than seeking review of the arbitration.

For these reasons, further discussed below, this Court should reverse.

Argument

I. Hill and Rowton are entitled to 90 days of active-duty differential pay under USERRA.

USERRA Section 4316(b)(1)(B) imposes two requirements on servicemembers who seek non-seniority benefits: (1) The relevant benefit must be generally provided; and (2) the servicemembers must be

similarly situated to other employees who receive the benefit. 38 U.S.C. § 4316(b)(1)(B). Hill and Rowton satisfy both requirements. And Amentum’s effort to impose another requirement—that they prove discrimination based on military status—is at odds with the statute.

A. Hill and Rowton have met Section 4316(b)(1)(B)’s requirements.

1. Amentum’s Military Leave Policy generally provides 90 days of differential pay for all Amentum employees who take active-duty leave.

a. Hill and Rowton took leave under Amentum’s generally applicable Military Leave Policy. Amentum acknowledges that a benefit can be generally provided when employees take leave under a “contract, agreement, policy, practice or plan.” Amentum Br. 12. And Amentum agrees that it maintains a “generally applicable military leave policy.” *Id.* at 17. But then Amentum takes a wrong turn by focusing on the wrong document. It says that Hill and Rowton sought leave under Article 40 of the CBA, not under Amentum’s Military Leave Policy. *Id.* at 12-13. That’s simply incorrect.

Amentum’s Military Leave Policy provides for 90 days of differential pay for active-duty leave. *See* 2-ER-43. Hill and Rowton took active-duty military leave. 2-ER-148-49. The Policy “applies to all Amentum employees” “unless precluded by explicit language in a Collective Bargaining Agreement.” 2-ER-43. Article 40, Section 1 of the CBA provides that active-duty leave should be granted “in accordance with

Company Policy.” 2-ER-56. So, Hill and Rowton sought a benefit under “Company Policy”—Amentum’s Military Leave Policy—which, as just explained, applies generally to “all Amentum employees.” 2-ER-43.

Despite this clear language, Amentum asserts that Hill and Rowton took leave under the CBA—not the Military Leave Policy—because they received two weeks of differential pay “pursuant to Article 40” of the CBA. Amentum Br. 13. But that can’t be right. Article 40, Section 2 provides two weeks’ pay to employees taking leave for “*temporary training* duty.” 2-ER-56 (emphasis added). No one disputes that Hill and Rowton were on active-duty leave, not temporary-training leave. *See* 2-ER-148-49. So, Amentum’s invocation of Article 40, Section 2 is a non-sequitur.

b. Amentum’s reliance on *Lam v. City of Cleveland*, 167 N.E.3d 124 (Ohio Ct. App. 2021), is also mistaken. *See* Amentum Br. 18. In that case, plaintiff Lam was subject to a CBA. *See Lam*, 167 N.E.3d at 127. The Ohio appellate court held that city employees subject to other CBAs were not proper comparators to Lam because there was no policy, practice, or plan that generally applied to both Lam and the other city employees. *See id.* at 132; Opening Br. at 29.

But *Lam* doesn’t apply here because Amentum *does* maintain a company-wide Military Leave Policy, as the company itself acknowledges. *See* 2-ER-43; Amentum Br. 17. And that Policy expressly contemplates the situation here: It applies to “all Amentum employees”

“unless precluded by explicit language” in a CBA. 2-ER-43. And Amentum cannot point to CBA language that explicitly precludes application of the Military Leave Policy because there is none. 2-ER-43; *see* 2-ER-56. Therefore, Hill and Rowton took active-duty leave under Amentum’s generally applicable Military Leave Policy.

2. Hill and Rowton are similarly situated to non-union employees to whom Amentum provides 90 days of differential pay for active-duty leave.

Under USERRA, an employer who generally provides a non-seniority benefit to its employees must also provide that benefit to servicemembers unless the servicemembers differ in “seniority, status, and pay” in some relevant way from other employees who receive the benefit. 38 U.S.C. § 4316(b)(1)(B); *see* Opening Br. 20. Amentum argues that Hill and Rowton are not similarly situated to the company’s non-union employees only as to their “status.” As we now show, they are similarly situated.

a. Amentum maintains that, under this Court’s decision in *Belaustegui v. Int’l Longshore and Warehouse Union*, 36 F.4th 919 (9th Cir. 2022), union members are per se dissimilarly situated from non-union members because union members derive benefits only from their CBA. *See* Amentum Br. 15-16, 19-20. *Belaustegui* says nothing of the sort. It held only that CBA-established benefits may be protected under USERRA. 36 F.4th at 927; *see* Opening Br. 28.

b. Amentum also argues that Hill and Rowton, as union members, have a “different *status*” from non-union employees because the CBA’s terms are purportedly “dramatically different” from the employment terms for non-union employees. Amentum Br. 15. That argument is misguided too.

Employees do not have to share all—or even most—terms and conditions of employment to be similarly situated. *See NLRB v. U.S. Postal Serv.*, 888 F.2d 1568, 1571 (11th Cir. 1989). Under USERRA, comparator groups must be similarly situated with respect to only the “contract, agreement, policy, practice or plan” that provides the sought-after benefit. 38 U.S.C. § 4316(b)(1)(B). So, Hill and Rowton must show they are similarly situated to non-union employees only as to the Military Leave Policy. *See* Opening Br. 22-24.

Employees are similarly situated under a company’s generally applicable policy—and therefore have the same “status” under USERRA—when that policy applies with equal force across comparator groups. *See* Opening Br. 22-24. Amentum relies on *Postal Service*, 888 F.2d 1568, which involved an employer’s misconduct rule that applied to both non-union supervisors and union employees. Amentum asserts that in *Postal Service* “supervisor status was meaningful” when determining punishment for each group of employees. Amentum Br. 16-17. But Amentum has *Postal Service*’s holding exactly backwards.

The Eleventh Circuit held in *Postal Service* that supervisors and union employees *were* similarly situated, 888 F.2d at 1571, even though supervisors are excluded as a matter of law from union membership, *see* 29 U.S.C. §§ 152(3), 152(11); *NLRB v. Ky. River Cmty. Care, Inc.*, 532 U.S. 706, 708 (2001) (noting that, under the National Labor Relations Act, “supervisors” are “excluded from the protections of the Act”); Opening Br. 22. That’s because the relevant rule—the employer’s prohibition on gambling—“applie[d] equally to supervisors and unit employees” despite each group’s “different degrees of responsibility.” *Postal Serv.*, 888 F.2d at 1571.

Like the policy at issue in *Postal Service*, Amentum’s Military Leave Policy “applies equally to [non-bargaining-unit employees] and unit employees.” 888 F.2d at 1571. So, Hill and Rowton are similarly situated to—and thus have the same status as—non-union employees under USERRA for the only purpose that matters here: eligibility for active-duty differential-pay benefits under the Military Leave Policy.

c. Amentum says that Hill and Rowton are not similarly situated to non-union employees because this Court must first conclude that the CBA does not override the Military Leave Policy and that would impermissibly conflict with the arbitrator’s decision. Amentum Br. 17-18; *see* 2-ER-30-34. That’s not accurate.

The arbitration decision did *not* determine that the CBA overrides the Military Leave Policy. *See* Opening Br. 18-19; *infra* at 13-14. So, this

Court would not have to overturn that decision. Amentum’s Military Leave Policy applies to Hill and Rowton because their CBA does not explicitly preclude the Policy. The arbitrator never addressed that issue one way or the other. *See* Opening Br. 19; *supra* at 3-4.

B. Section 4316(b)(1)(B) does not require plaintiffs to show discrimination based on military status.

We’ve just explained why Hill and Rowton have satisfied the only requirements that matter under USERRA Section 4316(b)(1)(B). They sought a generally applicable benefit that Amentum provides to other, similarly situated Amentum employees.

Tellingly, Amentum focuses most of its firepower on something that doesn’t matter: whether Hill and Rowton can show that Amentum treated them disadvantageously compared to non-servicemembers. *See* Amentum Br. 2, 3, 5, 12, 15, 19, 23, 24, 26. That’s an irrelevant consideration.

1. Amentum points to no language in Section 4316(b)(1)(B) that requires proof of discrimination based on military status—and there is none. Section 4316(b)(1)(B) provides that servicemembers are “entitled to” non-seniority benefits that “are generally provided by the employer” “to employees having similar seniority, status, and pay who” take leave “under a contract, agreement, policy, practice, or plan.” 38 U.S.C. § 4316(b)(1)(B). Nothing in that Section demands discrimination based on military status. To the contrary, as this Court has held, Section

4316(b) may be violated even when the withheld benefit is “available only to servicemembers.” *Belaustegui v. Int’l Longshore and Warehouse Union*, 36 F.4th 919, 927 (9th Cir. 2022); *see* Opening Br. 16-17.

2. Lacking textual support for its position, Amentum argues that “USERRA’s statutory scheme creates an anti-discrimination statute which forbids differentiation on the basis of military service, *not* on the basis of membership in a collective bargaining unit.” Amentum Br. 23. But Section 4316(b)(1)(B) does not require differentiation based on *any* characteristic. As explained above (at 2-7), it simply forbids differential allocation of generally provided benefits among similarly situated employees. *See* 38 U.S.C. § 4316(b)(1)(B); Opening Br. 16.

USERRA Section 4311 further supports our position—and undermines Amentum’s. Unlike the provision at issue here, that Section *does* contain a nondiscrimination right, providing that servicemembers “shall not be denied” “any benefit of employment by an employer on the basis of that membership.” 38 U.S.C. § 4311(a). The requirement to prove military-status discrimination does not, however, expressly appear in Section 4316, indicating that Congress purposefully excluded a status-based-discrimination requirement there. *See Russello v. United States*, 464 U.S. 16, 23 (1983) (“[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely

in the disparate inclusion or exclusion.”) (citation omitted); *Shields v. Credit One Bank, N.A.*, 32 F.4th 1218, 1224-25 (9th Cir. 2022).

Amentum also points to the absence of a so-called escalator provision in Section 4316(b). Amentum Br. 22-23. USERRA’s escalator principle requires employers to reemploy a servicemember “in a position that reflects with reasonable certainty the pay, benefits, [and] seniority” that he “would have attained if not for the period of service.” 20 C.F.R. § 1002.191; *see* 38 U.S.C. § 4313(a)(2)(A). Charitably put, Amentum is comparing apples and oranges. It does not follow from Section 4316(b)’s lack of an express escalator clause that Section 4316(b) impliedly requires proof of discrimination based on servicemember status. *See Belaustegui*, 36 F.4th at 927.

3. Amentum cites two cases for the proposition that Hill and Rowton must establish that they were denied differential pay “*because of their military status.*” Amentum Br. 15; *see id.* at 19, 23 (citing *United States v. Nevada*, 2024 WL 5120542 (D. Nev. Dec. 16, 2024), *appeal docketed*, No. 25-935 (9th Cir. Feb. 12, 2025); *McCarrin v. Pollera*, 2019 WL 4857464 (E.D. Pa. Sept. 30, 2019)). Neither case has anything to do with discrimination based on military status.

In those cases, the servicemembers’ claims failed because their employers had not unlawfully denied them pension benefits under USERRA Section 4318. *See Nevada*, 2024 WL 5120542, at *5; *McCarrin*, 2019 WL 4857464, at *6. Neither case analyzed whether the employer

had discriminated based on military status. Rather, the plaintiffs' claims were rejected because the servicemembers were seeking "*extra* benefits for having served in the military." *McCarrin*, 2019 WL 4857464, at *6 (emphasis added); *Nevada*, 2024 WL 5120542, at *5 (same). Here, Hill and Rowton seek no extra benefit, but only the Military Leave Policy benefits to which all Amentum employees are entitled.

* * *

Hill and Rowton have shown that they were denied differential pay for active-duty leave, a benefit generally provided to full-time Amentum employees. And they have shown that they are similarly situated to full-time, non-union employees in the only respect that matters: their entitlement to benefits under Amentum's Military Leave Policy. Section 4316(b)(1)(B) demands no more, so this Court should reverse.¹

II. Hill's and Rowton's claims are not precluded.

Before addressing Amentum's preclusion arguments, we reiterate that Rowton was not a party to the arbitration, so, as the district court recognized, he "cannot possibly" be bound by it. 1-ER-15 (noting that "[t]he arbitrator did not decide anything about Rowton"); *see* Opening Br. 9, 32. Amentum's answering brief ignores this point and thus forfeits any argument that Rowton could be bound. *See Natural Grocers v. Rollins*,

¹ Amentum does not respond to Hill and Rowton's separate reliance on 38 U.S.C. § 4302(b), so we rest on our opening brief (at 30-32) on that score.

157 F.4th 1143, 1161 (9th Cir. 2025) (citing *United States v. Dreyer*, 804 F.3d 1266, 1277 (9th Cir. 2015)).

In the district court, Amentum made preclusion arguments based solely on the proposition that the arbitrator had been presented with USERRA claims, which, it argued, could not be relitigated in federal court. *See* SER-9-13. The district court rejected those arguments. 1-ER-14, 15-16; *see* Opening Br. 10-11.

On appeal, Amentum makes no mention of those arguments, thus abandoning them. *See Natural Grocers*, 157 F.4th at 1161. Instead, for the first time on appeal, Amentum pivots to arbitral deference under Section 301 of the Labor Management Relations Act and other amorphous arbitral-deference arguments. These points are forfeited because they were not raised below and because they have been raised inadequately in this Court. In any event, they fail on their merits.

A. Amentum’s LMRA Section 301 preemption argument is forfeited and meritless.

In a footnote within its introduction, Amentum argues for the first time that this “Court is preempted by Section 301 of the Labor Management Relations Act and the CBA’s arbitration clauses from reconsidering whether the CBA contains ‘explicit language’ which precludes application of the general policy.” Amentum Br. 2 n.1.

This footnoted assertion is doubly forfeited, as it is “inadequately developed in [Amentum’s] brief and was not presented below.” *Suruki v.*

Ocwen Loan Serv., LLC, 735 F. App'x 286, 288-89 (9th Cir. 2018) (citation omitted). Especially pertinent here is this Court's admonition that "[t]he summary mention of an issue in a footnote, without reasoning in support of the [party's] argument, is insufficient to raise the issue on appeal." *Noguera v. Davis*, 5 F.4th 1020, 1029 n.3 (9th Cir. 2021) (citation omitted); see Fed. R. App. P. 28(a)(8)(A), (b) (noting that a principal brief "must contain" in its "argument" section the "contentions and the reasons for them, with citations to the authorities and parts of the record").

Regardless, the argument is meritless. To start, the arbitrator never decided whether the CBA contained the "explicit language" that would exempt Hill and Rowton from Amentum's generally applicable Military Leave Policy, see Opening Br. 10 (citing 2-ER-32); *supra* at 3-4, 6-7; nor, for that matter, did the district court, see Opening Br. 13 (citing 1-ER-39; 2-ER-43).

Hill cannot be bound by a supposed finding that no decisionmaker has ever made. The arbitrator decided only that the CBA does not affirmatively offer an active-leave differential-pay benefit. See Opening Br. 35-36 (citing *Calmat Co. v. U.S. Dep't of Lab.*, 364 F.3d 1117, 1127 (9th Cir. 2004)); *supra* at 2-3. That has no bearing on whether the CBA "explicit[ly]" overrides the Military Leave Policy. 2-ER-43.

Amentum seeks to bolster its LMRA Section 301 argument with *Firestone v. Southern California Gas Co.*, 281 F.3d 801 (9th Cir. 2002), but that case addresses only LMRA preemption of state tort claims.

Under *Columbia Export Terminal, LLC v. International Longshore and Warehouse Union*, 23 F.4th 836 (9th Cir. 2022), which Amentum never cites, LMRA preclusion may apply to federal statutory claims. *See id.* at 842-43. But that case doesn't help Amentum for two independent reasons.

First, as *Columbia Export* recognizes, LMRA preclusion does not apply to “claims based on federal statutes that contain specific substantive guarantees for workers,” 23 F.4th at 848 (citing *Atchison, Topeka & Santa Fe Ry. Co. v. Buell*, 480 U.S. 557, 565 (1987)), an exception that this Court “consistently observe[s],” *see id.* (citing *Felt v. Atchison, Topeka & Santa Fe Ry. Co.*, 60 F.3d 1416 (9th Cir. 1995); *Saridakis v. United Airlines*, 166 F.3d 1272 (9th Cir. 1999)). That exception applies here: The right that Hill possesses stems not from the CBA, but, as the district court held, *see* 2-ER-14, from USERRA, which provides “substantive guarantees” for employees, *Columbia Exp.*, 23 F.4th at 848; *see* 38 U.S.C. §§ 4311-4319, and a right to sue to enforce those guarantees, *id.* § 4323(b).

Second, Section 301 preclusion applies only when the claim is “substantially dependent on [the] analysis of the CBA.” *Columbia Exp.*, 23 F.4th at 842. Section 301 thus precludes claims that involve “interpreting” a CBA, not “simply looking” at one. *Id.* Here, resolving Hill's claim requires “simply looking” at the CBA for explicit language overriding Amentum's otherwise generally applicable Military Leave

Policy. This Court need only *refer* to CBA Article 40, Section 1 to see that it authorizes active-duty leave “in accordance with Company Policy,” 2-ER-56, and then turn to the Military Leave Policy to understand that it applies to *all* Amentum employees absent explicit contrary language in the CBA, *see* Opening Br. 7; *supra* at 2-3; 2-ER-56.

B. Amentum’s other arbitral preclusion arguments are also forfeited and meritless.

In another footnote, this time in its statement of the case, Amentum asserts that the “Arbitrator’s conclusion” is “preclusive and beyond the jurisdiction or reconsideration of this court.” Amentum Br. 9 n.2. For this proposition, Amentum cites *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 67-69 (2019), which concerned the circumstances under which a private contract can delegate questions of arbitrability to an arbitrator. We do not understand what *Henry Schein* has to do with this case, and Amentum does not say.

Next, Amentum argues, for the first time on appeal, that the arbitrator’s “award is preclusive” as to the arbitrator’s purported “finding” that the CBA affirmatively denies union members active-duty differential-pay benefits. Amentum Br. 27. This argument, too, is forfeited because it was never raised below. *See Orr v. Plumb*, 884 F.3d 923, 932 (9th Cir. 2018). In any event, Amentum is wrong that the arbitrator’s decision is preclusive for four independent reasons.

First, CBA Article 30 established a grievance procedure in which arbitrators lack authority to adjudicate federal claims. *See* Opening Br. 9; 2-ER-126. As our opening brief explains (at 33-36), prior arbitrations over contractual claims cannot preclude related federal statutory claims. *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 56-60 (1974). Further, under *14 Penn Plaza v. Pyett*, statutory claims may be decided through arbitration only when a CBA authorizes it. 556 U.S. 247, 262 (2009). Taken together, *Gardner-Denver* and *14 Penn Plaza* establish that arbitral findings are not preclusive if the arbitration was “conducted pursuant to a CBA that did not expressly empower” resolution of “federal statutory claims.” *Bell v. CSX Transp., Inc.*, 733 F. Supp. 3d 385, 398 (D. Md. 2024). So, as here, when an arbitrator lacks authority to hear federal statutory claims, parties to the arbitration cannot be bound by arbitral findings in a later suit pursuing those statutory claims. *See Nance v. Goodyear Tire & Rubber Co.*, 527 F.3d 539, 548-49 (6th Cir. 2008).

Second, and relatedly, arbitration under the CBA was not mandatory, so Hill’s USERRA claim cannot be precluded. In other words, the CBA did not require union members to arbitrate this dispute and thus did not “expressly waive” Hill’s “right to bring claims in federal court.” *Nance*, 527 F.3d at 549. So, “even if the arbitrator had reached the issue” whether Amentum’s Military Leave Policy provided the benefit that Hill

seeks—which he did not—“his findings would not have preclusive effect here.” *Coleman v. Donahoe*, 667 F.3d 835, 854 (7th Cir. 2012).

Third, “an unreviewed arbitration decision does not preclude a federal court action[.]” *Caldeira v. County of Kauai*, 866 F.2d 1175, 1178 (9th Cir. 1989) (emphasis omitted). Here, no party to the arbitration—neither Hill nor Amentum—has sought court review of the arbitrator’s decision. So, Hill’s USERRA claim is not an impermissible “collateral attack” on the arbitrator’s decision, as Amentum would have it. Amentum Br. 4. Hill is instead pursuing his USERRA rights in a court with authority to adjudicate them. *See* Opening Br. 33-36.

Fourth, and finally, we reiterate that the arbitrator never analyzed the Military Leave Policy on which Hill’s claim is based. *See supra* at 6-7, 13-14. Hill should not be forced to shadowbox with nonexistent arbitral findings to vindicate his USERRA rights.

Conclusion

The Court should reverse the district court’s grant of summary judgment to Amentum and remand for further proceedings.²

² Our opening brief (at 36) indicated that reversal would require a trial on the merits. In fact, reversal would require the trial court to grant Hill and Rowton’s motion for partial summary judgment. *See* D. Ct. ECF 24-2 (Feb. 28, 2025).

Respectfully submitted,

Eric B. Meyers
MCCRACKEN, STEMERMAN &
HOLSBERY
5241 Spring Mountain Rd.,
Bldg. B
Las Vegas, NV 89146
(702) 386-5107

Lucas Benjamin*
Lindsey Gradowski*
Galen K. Green
Student Counsel
**Motion to authorize student
practice pending*

Counsel for Appellants

/s/ Brian Wolfman
Brian Wolfman
Natasha R. Khan
Becca Steinberg
GEORGETOWN LAW
APPELLATE COURTS
IMMERSION CLINIC
600 New Jersey Ave., NW
Suite 312
Washington, D.C. 20001
(202) 662-4071

May 1, 2026

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form08instructions.pdf>

9th Cir. Case Number(s)

I am the attorney or self-represented party.

This brief contains words, including words

manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief (*select only one*):

- complies with the word limit of Cir. R. 32-1.
- is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
- is an **amicus** brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- complies with the longer length limit permitted by Cir. R. 32-2(b) because (*select only one*):
 - it is a joint brief submitted by separately represented parties.
 - a party or parties are filing a single brief in response to multiple briefs.
 - a party or parties are filing a single brief in response to a longer joint brief.
- complies with the length limit designated by court order dated .
- is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov