UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 20, 2009

CBCA 1442-RELO

In the Matter of THOMAS F. CADWALLADER

Thomas F. Cadwallader, Lake Worth, FL, Claimant.

Debra J. Murray, Chief, Travel Section, National Finance Center, Customs and Border Protection, Department of Homeland Security, Indianapolis, IN, appearing for Department of Homeland Security.

GOODMAN, Board Judge.

Claimant, Thomas F. Cadwallader, requests this Board's review of the denial by the United States Customs and Border Protection (CBP) of the Department of Homeland Security of claimant's request for reimbursement of costs incurred pursuant to a permanent change of station (PCS) transfer.

Background

In September 2007, claimant was issued travel orders to accomplish a PCS from Toronto, Canada, to West Palm Beach, Florida. Claimant requests that the Board review the CBP's denial of reimbursement to him for real estate closing costs he incurred in his transfer. The agency asserts that claimant is not entitled to reimbursement because his first duty station was in a foreign area and he therefore is not legally entitled to reimbursement. As a threshold issue, the agency asserts this Board does not have jurisdiction to resolve this matter as claimant is an employee subject to a collective bargaining agreement that provides the sole dispute resolution procedure for this matter. Claimant states that he is not a member of the union that is a party to the bargaining agreement, and has asserted additional facts and arguments to support his position.

Discussion

The former Immigration and Naturalization Service (now CBP)[1] and the National Immigration and Naturalization Service Council of the American Federation of Government Employees (AFGE) executed a collective bargaining agreement (CBA) in 2000, which, by its terms, governs all nonprofessional employees employed by CBP. We must first decide whether claimant is subject to the terms of the CBA, and if so, whether that agreement deprives us of authority over this matter.

The agency asserts even though the CBA has expired, the parties to the agreement continue to adhere to its provisions. There is no evidence in the record contrary to this assertion. Accordingly, the agreement remains in effect. *Rafal Filipczyk*, CBCA 1122-TRAV, 08-2 BCA ¶ 33,886, *aff'd on reconsideration*, 08-2 BCA ¶ 33,953.

The CBA states that the "[agency] recognizes the American Federation of Government Employees . . . as the bargaining agent for all personnel of the Immigration and Naturalization Service, except professionals, employees assigned to Border Patrol Sectors, and those employees excluded from coverage [by law]." CBA art. 1. The agency asserts that as an immigration inspector, and now a CBP officer, claimant is a bargaining unit employee and covered by the terms of the CBA. While claimant asserts that he is not a member of the AFGE, the terms of the CBA are clear that the AFGE is the bargaining agent for him, as his position is one for which the AFGE serves as the bargaining agent.

As claimant is an employee covered by the CBA, we must determine if there is a dispute provision in the CBA which applies and deprives us of authority over this matter. Federal statute provides that the procedures established in a CBA for the settlement of disputes "shall be the exclusive administrative procedures for resolving grievances which fall within its coverage." 5 U.S.C. § 7121(a)(1) (2006). Unless a matter is specifically excluded, it is covered by the provisions of the collective bargaining agreement. 5 U.S.C. § 7121(a)(2).

In accordance with this statute, the CBA provides for the settlement of grievances of employees and states that "[t]his negotiated procedure shall be the *exclusive* procedure available to the Union and employees in the unit for resolving grievances which come within its coverage, except as specifically provided . . . below." CBA art. 47 (emphasis added).

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[1] The Homeland Security Act of 2002, Pub. L. No. 107-296, 111 Stat. 2135 (codified at 6 U.S.C. § 291 (2006)), abolished the Immigration and Naturalization Service and transferred its inspection functions and inspection employees to the CBP.

"Grievance" is defined in the CBA as:

> a complaint either by a unit employee concerning his or her conditions of employment, by the Union in its own behalf concerning condition of employment of any employee, or alleged contractual violations by the Service, or by the Service concerning alleged contractual violations by the Union. Unless excluded below, such a complaint may concern the adverse impact of:
>
> > (1) Violation of Agreements. The effect of interpretation, or claim of breach of this Master Agreement, or other written agreement between the parties; or
> >
> > (2) Violation of Law, Rule, and Regulation. Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

Id.

A dispute concerning relocation costs is a dispute concerning conditions of employment.[2] The agreement is clear that a grievance would encompass a complaint of an alleged violation of law (statute)[3], rule, or regulation. While the agreement does exclude certain matters from its coverage, claims asserted by employees in connection with their relocation are not specifically excluded.

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[2] See *Michael F. McGowan*, CBCA 1290 (Jan. 15, 2009), in which we dismissed a request for review of a dispute as to relocation expenses by a CBP employee, as he was covered under another CBA with the agency containing provisions substantially similar to those in the CBA in the instant case.

[3] It appears that the merits of claimant's dispute are governed in part by 5 U.S.C. §5724a(d)(2), which requires agencies to pay the closing costs incurred by an employee who buys a house at his new duty station if the employee was transferred from a post outside the continental United States to a station within the United States, but only if the new station is other than the official station within the United States from which the employee was transferred when assigned to the foreign tour of duty. The agency cites additional regulations and Board precedent in its submission.

In a prior case, one of our predecessor boards stated:

> Under the Civil Service Reform Act of 1978, where a collective bargaining agreement provides procedures for resolving grievances which are within the scope of the agreement, and the agreement does not explicitly and unambiguously exclude the disputed matter from these procedures, the procedures are the exclusive administrative means for resolving the dispute. *Claudia J. Fleming-Hewlett*, GSBCA 14236-RELO, 98-1 BCA ¶ 29,534; *Larry D. Morrill*, GSBCA 13925-TRAV, 98-1 BCA ¶ 29,528. This matter, therefore, must be dismissed for lack of jurisdiction, since the claimant must follow the disputes procedure mandated by the collective bargaining agreement.

Byron D. Cagle, GSBCA 15369-RELO, 01-1 BCA ¶ 31,333, at 154,761; *see also Roy Burrell*, GSBCA 15717-RELO, 02-2 BCA ¶ 31,860; *Robert M. Blair*, GSBCA 15570-RELO, 01-2 BCA ¶ 31,511.

Based upon the explicit language of the CBA, the grievance procedure in the CBA provides the exclusive administrative means to resolve this dispute. We lack authority to resolve it.

Decision

The claim is dismissed. If he chooses, claimant may avail himself of the grievance procedure in the CBA to resolve this dispute.

ALLAN H. GOODMAN
Board Judge