UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 3, 2009

CBCA 1289-RELO

In the Matter of FORREST S. FORD

Stewart R. Smith of Lacy Kane, P.S., East Wenatchee, WA, appearing for Claimant.

Kim Hickman, Branch Chief, Labor Relations, Albuquerque Service Center, Department of Agriculture, Albuquerque, NM, appearing for Department of Agriculture.

DRUMMOND, Board Judge.

Mr. Ford seeks reconsideration of our decision in *Forest S. Ford*, CBCA 1289-RELO (May 22, 2009). We dismissed the earlier action for lack of jurisdiction since the dispute was amenable to resolution under the provisions of a collective bargaining agreement.

Mr. Ford seeks reconsideration of our previous decision on two grounds. First, he alleges that the Board erred in dismissing his action for lack of jurisdiction. To that end, Mr. Ford contends that our earlier determination that he is a member of a bargaining unit is incorrect because he: (1) received no prior notice that he belongs to a bargaining unit; (2) has never paid dues; and (3) is a "supervisor" and therefore excluded from the bargaining unit. Second, he alleges that the agency was "estopped from asserting the lack jurisdiction issue after directing . . . [him] to proceed to the CBCA [Board]."

The agency has filed a response opposing Mr. Ford's motion. The agency asserts that, as previously demonstrated, Mr. Ford is "properly included in a collective bargaining unit, and as such, the collective bargaining agreement . . . applies to the issue at hand. The CBA [collective bargaining agreement] contains the grievance procedures which are to be followed to resolve complaints, including claims resulting from a Transfer of Station." The agency further asserts that management is under no statutory obligation to notify an

employee whether he or she belongs to a bargaining unit, or to provide the employee with a copy of his applicable collective bargaining agreement. The agency also asserts that the payment of dues is entirely voluntary and does not affect status in a unit. Finally the agency notes that Mr. Ford's position description, "GS-462-6, Forestry Technician," does not include any supervisory duties and responsibilities listed by Office of Personnel Management rules and regulations and the Federal Service Labor-Management Statute, 5 U.S.C. § 7103(10) (2006), for the title "supervisor."

The Board did not error in dismissing the earlier action for lack of jurisdiction since the dispute was amenable to resolution under the provisions of a collective bargaining agreement. Except for his general assertion, Mr. Ford has offered no evidence that proves he is excluded from the bargaining unit. Mr. Ford's assertion concerning this issue is not evidence. Under the Board's Rules of Procedure, "[m]ere disagreement with a decision . . . already made is not a sufficient ground for seeking reconsideration." Rule 407 (48 CFR 6104.407 (2008). In the absence of evidence to the contrary, the Board will not revisit its determination concerning this issue.

In addition, the Board finds no merit in Mr. Ford's argument that the agency was "estopped from asserting the lack jurisdiction issue after directing . . . [him] to proceed to the CBCA [Board]." Whether Mr. Ford received incorrect advice concerning his appeal options is not material to this proceeding. If a claim concerning travel or relocation expenses is subject to resolution under the terms of a grievance procedure mandated within a collective bargaining agreement, we lack authority to settle the claim using our administrative procedures unless the agreement explicitly and clearly excludes the claim from its procedures. *Robert Stanislaw*, CBCA 1503-RELO (July 13, 2009). The record contains no evidence that his claim is specifically excluded from the agreement's grievance procedures.

Mr. Ford's request for reconsideration is denied.

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JEROME M. DRUMMOND
Board Judge