



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 26, 2017

CBCA 5689-RELO

In the Matter of VALERIE A. MASTRIANO

Robin Smith, General Counsel, Federal Education Association, Fairfax, CA, appearing for Claimant.

Alexa Rukstele, Office of General Counsel, Department of Defense Education Activity, Department of Defense, Alexandria, VA, appearing for Department of Defense.

RUSSELL, Board Judge.

Claimant, Valerie A. Mastriano, appeals a decision by the Department of Defense Dependents Schools denying her request to change her location of actual residence on record. Ms. Mastriano requests that the Board order the Department of Defense Education Activity (DoDEA) to change her location of actual residence from Hightstown, New Jersey, to Port Ludlow, Washington, and pay attorney fees and costs. In response to Ms. Mastriano's claim, the DoDEA raises two jurisdictional arguments. The DoDEA's first argument is that the Board lacks jurisdiction because Ms. Mastriano's claim is not ripe for decision. The DoDEA's second argument is that the claim is exclusively covered by a collective bargaining agreement (CBA). For the reasons stated below, we dismiss the claim for lack of jurisdiction.

Background

Ms. Mastriano's duty location is Naples, Italy. The Overseas Federation of Teachers (OFT) is the exclusive representative bargaining unit that represents non-supervisory professional school-level personnel in Italy. Ms. Mastriano's position is one for which the OFT serves as the bargaining agent. In the CBA between the DoDEA and the OFT, article

31, section 1 states that the CBA's employee grievance procedure "shall be the exclusive procedure available for settlement of grievances." Additionally, article 31, section 3 states:

Matters Covered. This grievance procedure will be used to process any matter of concern or dissatisfaction to an employee or group of employees, to include adverse actions against temporary employees, and excluding those matters identified in Section 4 of this article. These matters will include all matters that are determined to be appropriate under the Civil Service Reform Act of 1978 (PL 96-454, Title VII, section 7121).

Section 4 of the CBA lists a number of exclusions from the negotiated grievance procedure provided by the CBA. However, none of the exclusions cover the issue that is in dispute in Ms. Mastriano's claim.

Discussion

Claims for travel and relocation expenses must first be filed with the claimant's own agency before they become ripe and before the Board has jurisdiction over the claims. 31 U.S.C. § 3702 (2012); Rule 401 (48 CFR 6104.401 (2012)); *Christopher G. Cover*, CBCA 3520-RELO, 14-1 BCA ¶ 35,505, at 174,034; *Charles Wright*, CBCA 3484-RELO, 13 BCA ¶ 35,432, at 173,797. The DoDEA states, and Ms. Mastriano concedes, that she has not submitted such a claim. On this basis alone, Ms. Mastriano's claim is subject to dismissal for lack of jurisdiction.

However, even if Ms. Mastriano's claim were ripe for review, the DoDEA argues that her claim would still be subject to dismissal for lack of jurisdiction because the governing CBA provides the exclusive remedy for claims like the one brought by Ms. Mastriano. To examine this argument, we must first determine whether Ms. Mastriano is subject to the terms of the CBA, and if so, whether the CBA deprives the Board of jurisdiction over her claim. *Thomas F. Cadwallader*, CBCA 1442-RELO, 09-1 BCA ¶ 34,077, at 168,484. Here, Ms. Mastriano's position is one for which the OFT serves as the bargaining unit. Thus, the governing CBA's provisions apply to her.

The Civil Service Reform Act provides that CBAs between unions and agencies provide the exclusive administrative procedure for the settlement of grievances for most matters that fall under the agreements' coverage. 5 U.S.C. § 7121(a)(1); *see also Robert Gamble*, CBCA 1854-TRAV, et al., 11-1 BCA ¶ 34,655, at 170,743; *Thomas F. Cadwallader*, 09-1 BCA at 168,484. Unless a matter is explicitly and unambiguously excluded from a CBA's grievance procedures, the Board does not have jurisdiction over the

claim. *Robert Gamble*, 11-1 BCA at 170,743. The matter at issue here, the actual place of residence, is not among the list of matters expressly excluded from the CBA's coverage.

Thus, the Board lacks jurisdiction over Ms. Mastriano's claim for two separate reasons. First, the claim has not been submitted to the agency and therefore is not ripe for the Board's review. And second, the CBA between the DoDEA and the OFT provides the exclusive administrative procedure for the resolution of Ms. Mastriano's claim.

For the reasons stated above, the claim is dismissed for lack of jurisdiction.

BEVERLY M. RUSSELL
Board Judge