

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

DAVID KIRKLAND,

Plaintiff,

Civil No. 10-1467-ST

v.

O R D E R

THE BOEING COMPANY, an Illinois  
corporation,

Defendant.

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HAGGERTY, District Judge:

Magistrate Judge Stewart issued a Findings and Recommendation [11] in this action that recommended that if plaintiff fails to submit any evidence contesting that he is covered by the Collective Bargaining Agreement (CBA) and failed to exhaust all grievance and arbitration procedures mandated by the CBA, then defendant's Motion to Dismiss pursuant to Federal Rule

of Civil Procedure 12(b)(6) for failure to state a claim [5], which has been converted to a motion for summary judgment, should be GRANTED, and a judgment should be entered dismissing this case with prejudice. By separate Order [10], the *pro se* plaintiff was advised that he was compelled to set out specific facts in his briefing to overcome defendant's dispositive motion.

No objections were filed to the Findings and Recommendation, and the case was referred to me. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b). When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation of the Magistrate. *Campbell v. United States District Court*, 501 F.2d 196 (9th Cir. 1974).

No clear error appears on the face of the record. This court adopts the Findings and Recommendation.

### **CONCLUSION**

The Magistrate Judge's Findings and Recommendation [11] is adopted. The failure to file any objections is construed as a failure by plaintiff to submit any evidence contesting that he is covered by the CBA and failed to exhaust all grievance and arbitration procedures mandated by the CBA. Accordingly, defendant's Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim [5], which has been converted to a motion for summary judgment, is GRANTED. This case is dismissed with prejudice.

IT IS SO ORDERED.

Dated this 16 day of February, 2011.

/s/ Ancer L. Haggerty  
Ancer L. Haggerty  
United States District Judge