**U.S. Department of Labor**

Administrative Review Board
200 Constitution Avenue, N.W.
Washington, D.C. 20210

In the Matter of:

**BERT WILLIAMS,**

**COMPLAINANT,**

**v.**

**PUBLIC SERVICE ELECTRIC & GAS CO.,**

**RESPONDENT.**

**ARB CASE NO. 96-160**

**ALJ CASE NO. 94-ERA-2**

**DATE: January 15, 1997**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD[1/]

## FINAL DECISION AND ORDER

In 1994 the Secretary of Labor approved a settlement agreement and dismissed this case arising under the employee protection provision of the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988 and Supp. V 1993). Under a term of the settlement agreement retaining jurisdiction in the Department of Labor, Complainant Bert Williams sought enforcement of a provision of the agreement that required Respondent Public Service Electric & Gas Co. (PSE&G) to provide Williams with "a retirement benefit based upon a single life annuity" in a specified amount. The controversy centered on whether PSE&G had violated the settlement agreement by withholding federal and state income taxes and FICA prior to purchasing the annuity in Williams' name. The Secretary stated:

> I question whether PSE&B was required to make all the deductions up front, if most of the resulting net amount paid is again taxable to Williams. Accordingly I shall remand to the ALJ to receive evidence regarding the appropriate tax treatment of the annuity and whether PSE&B breached the Agreement.

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[1/] On April 17, 1996, a Secretary's Order was signed delegating jurisdiction to issue final agency decisions under this statute and the implementing regulations (29 C.F.R. Part 24) to the newly created Administrative Review Board. Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order, and regulations under which the Administrative Review Board now issues final agency decisions.

The ALJ received evidence and issued a Recommended Decision and Order on Remand (R. D. O. R.) in which he found that PSE&G did not breach the settlement agreement "when it purchased an annuity for only the net amount due to Bert Williams after required tax withholdings." R. D. O. R. at 4.

Respondent's motion to strike portions of Complainant's Reply Brief is denied. The Reply Brief is accepted as filed.

After a review of the record, including the parties' briefs and other submissions, we agree with the ALJ and find that PSE&G has not breached the settlement agreement. PSE&G explained fully the tax treatment of the annuity it purchased for Williams in order to comply with the agreement. We are satisfied that Williams is not being taxed twice on the same funds. We adopt the ALJ's R. D. O. R. and deny Williams' motion to enforce the settlement agreement. This is a final decision.

**SO ORDERED.**

**DAVID A. O'BRIEN**
Chair

**KARL J. SANDSTROM**
Member

**JOYCE D. MILLER**
Alternate Member