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. 98-102

ALJ CASE NO. 94-ERA-2

DATE: March 17, 1998

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

REMAND ORDER

In 1994 the Secretary of Labor approved a settlement agreement and dismissed this case, which arises under 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 (Williams), sought enforcement of a provision of the agreement pertaining to a retirement benefit. The Secretary remanded Williams' request for enforcement to an Administrative Law Judge (ALJ) to take evidence on the issue. After reviewing the evidence, the ALJ issued, in June 1996, a Recommended Decision and Order (R.D. and O.) finding that Respondent, Public Service Electric & Gas Co. (PSE&G), did not breach the settlement agreement as concerns the retirement benefit. In a Final Decision and Order, this Board adopted the ALJ's decision and denied Williams' motion to enforce the settlement agreement.

On petition for review of the Board's decision, the United States Court of Appeals for the Third Circuit held that "the Secretary of Labor does not have the authority, even with the consent of the parties, to enforce a settlement agreement resolving a retaliation claim brought by an employee/whistleblower against his employer under the Energy Reorganization Act." *Williams v. Metzler*, 132 F.3d 937, 940 (1997). The Court of Appeals also concluded that "the Secretary misconstrued the agreement when he found no breach of the agreement by the employer." *Id.* Accordingly, the Court of Appeals remanded the case for further proceedings consistent with its opinion.

In light of the court's finding that the Secretary lacked jurisdiction to enforce a settlement agreement under the ERA, we **VACATE** the Board's January 15, 1997 decision. We **REMAND**

the case to the ALJ with direction to vacate the Recommended Decision and Order issued in June 1996.

SO ORDERED.

DAVID A. O'BRIEN
Chair

KARL J. SANDSTROM
Member