



In the Matter of:

**OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR,
PLAINTIFF,**

CASE NO. 86-OFC-9

DATE: June 20, 1996

and

**JAMES W. THOMPSON
INTERVENOR,**

v.

**PPG INDUSTRIES, INC.,
DEFENDANT.**

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

ORDER OF REMAND

On February 20, 1989, PPG Industries, Inc. (PPG) filed motion to stay implementation of the January 9, 1989, Final Decision and Remand Order on Remedy (Remand Order) in this case to give it an opportunity to obtain judicial review of the Remand Order. PPG then sought review of the Department's decision in district court under the APA, requesting, *inter alia*, a

^{1/} This is matter was originally filed before the Assistant Secretary for Employment Standards pursuant to the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (1988). On April 17, 1996, a Secretary's Order was signed delegating authority to issue final agency decisions under this statute and the implementing regulations, 41 C.F.R. part 60-741 (1988) to the newly created Administrative Review Board. Secretary's Order 2- 96, Apr. 17, 1996, 61 Fed. Reg. 19978, May 3, 1996 (copy attached).

Secretary's Order 2-96 contains a comprehensive list of the statutes, executive orders, and regulations under which the Administrative Review Board now issues final agency decisions. A copy of the final procedural revisions to the regulations, 61 Fed. Reg. 19982, implementing this reorganization is also attached.

declaration that the waiver regulation under which OFCCP relied in asserting jurisdiction was invalid. While the parties' cross- motions for summary judgement were pending, in *Washington Metro. Area Transit Auth. v. DeArment*, 55 Empl. Prac. Dec. Par. 40,507 (D.D.C. Jan. 3, 1991)(*WMATA*), holding that the waiver regulation impermissibly extended that original statute's coverage beyond those employees hired to "carry out" the federal contract. *Id.* at 65,560.

After determining it would not appeal the WMATA decision, the Department of Labor filed a motion for remand in this case, to allow OFCCP the opportunity to establish proof, following the *WMATA* decision, that Thompson would have worked on a covered federal contract or subcontract. The district court denied the motion for remand and granted PPG's motion for summary judgment on the jurisdictional issue. The Department of Labor appealed to the U.S. Court of Appeals for the D.C. Circuit. On April 21, 1995, the court handed down a decision reversing the district court with instructions to remand the case to the Department of Labor for further proceedings. On June 23, 1995, the district court remanded the case to the Department for action consistent with the decision of the Court of Appeals.

The parties have now requested that a settlement judge be appointed. We REMAND the case to the Chief Administrative Law Judge for the appointment of a settlement judge.

SO ORDERED.

DAVID A. O'BRIEN
Chair

KARL J. SANDSTROM
Member

JOYCE D. MILLER
Alternate Member