



In the Matter of:

**OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS,**

PLAINTIFF,

v.

AMERICAN AIRLINES,

DEFENDANT.

ARB CASE NO. 97-111

ALJ CASE NO. 94-OFC-9

DATE: May 28, 1999

REMAND ORDER

On May 30, 1997, Administrative Law Judge Alfred Lindeman issued an order recommending that the Secretary of Labor dismiss the April 29, 1994 Administrative Complaint in this case. This recommendation was based upon the Memorandum Opinion and Order of U.S. District Judge Terry Means in *American Airlines v. Herman*, 4:94-CV-594-Y, dated April 8, 1997, finding that the Secretary does not have authority to pursue the administrative proceeding commenced by the filing of the April 29, 1994 Administrative Complaint. The Office of Federal Contract Compliance Programs (OFCCP) filed exceptions to the ALJ's recommended order with the Administrative Review Board.

On July 24, 1997, the district court entered a final judgement in *American Airlines v. Herman*. The district court permanently enjoined the Department of Labor from "administratively prosecuting American in the Nashville Action." Order and Declaratory Judgement, 4:94-CV-594-Y (Jul. 24, 1997) at 5. In response, OFCCP filed a motion requesting the Board to stay its ruling on the recommendation of dismissal until the agency's federal appellate rights were exhausted. OFCCP noted that failure to stay its decision "could have the effect of rendering the Federal appeal moot, and would leave OFCCP with no vehicle through which to reinstate the administrative enforcement action should the district court's ruling be reversed." OFCCP's Notice of Decision and Request for a Stay at 2.

We decline to adopt the ALJ's recommendation that the Secretary dismiss the Administrative Complaint. While the district court's injunction precluded the ALJ from conducting further

proceedings on the complaint, this injunction was subject to further judicial review.^{1/} We agree with OFCCP that dismissal of the complaint prior to the culmination of the judicial review proceedings would be premature. Accordingly, we **REMAND** this case to the ALJ, who shall stay further litigation of the complaint, in accordance with the district court's injunction, until such time as the review proceedings before the courts are completed.

SO ORDERED.

PAUL GREENBERG

Chair

E. COOPER BROWN

Member

CYNTHIA L. ATTWOOD

Member

^{1/}In fact, on May 17, 1999, the Fifth Circuit Court of Appeals reversed the district court's judgment and dismissed the case for lack of subject matter jurisdiction. *American Airlines v. Herman*, ___ F.3d ___ (No. 97-10895).