

**U.S. Department of Labor**

Office of Administrative Law Judges  
36 E. 7th St., Suite 2525  
Cincinnati, Ohio 45202

(513) 684-3252  
(513) 684-6108 (FAX)



**Issue Date: 03 May 2010**

Case Nos.: 2008-SOX-00053  
2008-STA-00059

In the Matter of:

SAMUEL J. BUCALO,  
Complainant

v.

UNITED PARCEL SERVICE, INC.,  
Respondent

and

TEAMSTERS LOCAL 100,  
Respondent

BEFORE: JOSEPH E. KANE  
Administrative Law Judge

**DECISION AND ORDER GRANTING RESPONDENTS'  
MOTIONS FOR SUMMARY DECISION ON TSCA AND SOX COMPLAINTS**

**And**

**RECOMMENDED DECISION AND ORDER GRANTING RESPONDENTS' MOTIONS  
FOR SUMMARY DECISION ON STAA COMPLAINT**

This matter is before the undersigned upon Respondents' Motions for Summary Decision. This proceeding arises under the employee protection provisions of the Surface Transportation Assistance Act of 1982 ("STAA"), 49 U.S.C. § 31105; the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2622; and the Sarbanes-Oxley Act ("SOX"), 18 U.S.C. § 1514A. Complainant, Samuel J. Bucalo, alleges that Respondents United Parcel Service, Inc. and Teamsters Local 100 retaliated against him by refusing to allow him to present his own grievances and by withdrawing his grievances.

## **Background**

Bucalo has been employed by United Parcel Service, Inc. since 1979, and at all times relevant to this litigation, was an employee at UPS's Sharonville, Ohio facility. Bucalo holds an "Air Driver-Car Wash" position. Bucalo is also a member of Teamsters Local 100, which represents Bucalo and other UPS employees for collective bargaining purposes. At times relevant to this litigation, Bucalo served as a union steward for Local 100.

According to Bucalo, in 2000, he filed a concern regarding the mishandling of biological substances. Five years later, in 2005, he filed a concern regarding the mishandling of a mercury spill at the Sharonville facility. About a year later, in October 2006, Bucalo participated in a hearing after UPS was cited for an egress violation during a 2005 OSHA inspection. (Complainant Statement (April 7, 2008)). In addition, according to the Secretary's Findings, Bucalo complained to the Security and Exchange Commission on March 10, 2008. Bucalo alleged that during the 2006 hearing, UPS stated that it would require "billions of dollars" to abate the egress citation. Bucalo believed that UPS was negligent in not notifying their lenders and investors of the "billions of dollars" it would take to abet the violation.

Bucalo's employment is governed by the National Master United Parcel Service Agreement. The Agreement, as supplemented, contains a grievance resolution procedure. Grievances are first to be discussed with an employee's immediate supervisor or his or her shop steward. If the grievance cannot be resolved informally by the employee or the steward within one working day, the employee has five days to submit the grievance to UPS, on a form provided by Local 100. The grievance form states that by presenting the grievance, the employee grants Local 100 "complete authority to present, negotiate and bargain regarding th[e] grievance and agrees to be bound by such disposition . . . ." The form further states that the grievant "may be present at any and all steps of the grievance process." Copies of the completed grievance form are distributed to Local 100, the steward, management, and the employee. According to the parties' briefs, the company and the union then attempt to resolve the grievance at a "local hearing," also referred to by the parties as the "local level." Bucalo stated that in the past, local hearings were informal and that the employee or the union steward would present grievances. The union's Business Agents were generally not involved. Bucalo stated that approximately five years ago, local hearings became more formal and "deliberately slow and ineffective." Bucalo has filed hundreds of grievances since 2003, most related to pay shortages.

Mark Overberg became Treasurer-Secretary of Local 100 in 2004. According to Overberg, Bucalo had several hundred individual grievances pending at that time. At the same time, David Roa became a Business Representative of Local 100. From 2005 through the end of 2007, Roa was assigned to represent UPS workers at Sharonville. Roa avers that he presented Bucalo's grievances in the order that Bucalo suggested; newer grievances were often presented instead of the old pay grievances. Overberg agrees that in the past, Bucalo had been allowed to "cherry-pick" the grievances he wanted to have heard, and thus, the backlog was never reduced. According to Roa, Bucalo had so many pending grievances because Bucalo often came late to meetings and canceled meetings at the last minute. Roa also avers that Bucalo often spoke on his own behalf, although, as the union representative, he (Roa) was responsible for presenting the grievance at the hearing.

In January 2008, Local 100 President Troy Stapleton reassigned the Sharonville bargaining unit to Overberg. Overberg avers that in January 2008, he decided to reduce the backlog grievances filed by Bucalo; the backlog contained some 400 grievances. By letter dated January 7, 2008, Overberg informed Bucalo that he had scheduled some of Bucalo's grievances, all related to pay shortages, to be heard on January 16, 2008. The letter requested that Bucalo provide Overberg with documentation supporting each grievance at least five days prior to the hearing. Overberg avers that he hand-delivered the letter to Bucalo, verbally explained its contents, and gave Bucalo a copy of the grievances that would be heard that day. According to Bucalo, there were 14 grievances, most of which were related to pay shortages. Overberg avers that Bucalo did not provide the requested documentation to support his grievances.

Although Bucalo appears not to have cooperated with Overberg, he personally requested information from UPS. On January 11, 2008 (the deadline Overberg had given Bucalo to provide documentation supporting the first batch of grievances), Bucalo sent a letter to UPS requesting documents, including Bucalo's payroll and timekeeping records for the week ending September 13, 2003, arbitration decisions relating to various pay issues, and "employer notes" related to labor negotiations involving certain pay issues. (Bucalo sent identical letters to UPS each week over the next several weeks.) Bucalo stated that he was requesting the documents "as the union steward." Overberg avers that Bucalo did not discuss the document request with him prior to submitting it. Overberg states that he would not have supported the request because he did not have any information from Bucalo, and thus, did not know whether the requested documents were relevant or necessary. Overberg did not believe that UPS would provide its bargaining notes and believed that Bucalo was engaged in a "fishing expedition." Overberg avers that he had no contact with UPS employees or officials regarding the request prior to the hearing.

Overberg avers that prior to the grievance hearing on January 16, 2008, Bucalo sent Overberg a letter stating that he did not trust Overberg and wanted alternate steward Pat Heiret to be at the meeting. Overberg further avers that, prior to the hearing, Bucalo called Overberg and requested that Overberg postpone the hearing because UPS had not provided the documents that he had requested. Overberg avers that he told Bucalo that the meeting would go forward with or without him. The first local hearing was held as scheduled on January 16, 2008. In attendance were Overberg, Bucalo, John Hurley (a business representative for Local 100), Joe Mullikin (UPS Labor Manager for the Kentucky District) and Dave Andrews (a UPS manager).

Overberg avers that at the beginning of the meeting, Bucalo attempted to make a point of order objecting to the meeting as improper because UPS had not provided the documents he had requested. UPS Labor Manager Joe Mullikin ignored Bucalo and asked Overberg whether he was taking a point of order. Overberg said that he was not.<sup>1</sup> The meeting proceeded and Bucalo's first grievance was considered. Mullikin asked Overberg if he had any evidence supporting the first grievance. Overberg answered that he had requested documentation from Bucalo but had not been provided with any, and therefore did not have any evidence to support the grievance. Overberg avers that he and Mullikin went through each grievance to be considered that day in like fashion. Overberg withdrew each grievance because he did not have any documentation to support Bucalo's claims. Overberg avers that after the second grievance, Bucalo reiterated his objections, threatened to report the parties to the "Labor Board" and left the room. Both Overberg and Mullikin aver that these grievances were withdrawn because of the lack of supporting documentation.

Bucalo sent letters to Union President Troy Stapleton on January 16, 2008, and January 21, 2008. According to Stapleton's response, Bucalo's first letter (apparently sent prior to the January 16 grievance meeting) made "various unsupported complaints" about Overberg and Hurley, including allegations that the two had made "racial" remarks, are bigoted, have acted unprofessionally, have told lies about Bucalo, and hate Bucalo. The letter requested that Stapleton assign different Business Agents to represent employees of UPS. In Bucalo's second letter, he objected to Overberg's withdrawal of his grievances at the January 16 hearing.

On January 17, 2008, Overberg faxed a letter to Bucalo stating that Bucalo's next 18 grievances were scheduled to be heard on January 30, 2008. The letter referenced a conversation from the previous day, during which Overberg gave Bucalo copies of the grievances to be heard. As he had in the previous letter, Overberg requested that Bucalo provide documentation supporting his grievances at least five days prior to the hearing.

Bucalo responded to Overberg's letter on January 24, 2008. Bucalo stated that he had requested documents from UPS related to the grievances. Bucalo stated that the documentation was important to the preparation and presentation of his grievances and that he had not yet received a response from UPS. He requested that the January 30 hearing be postponed if UPS failed to furnish the requested documents in advance of the hearing. Bucalo went on to state:

In case there is any confusion on your part, let me clarify my position. **My presence is required at any grievance hearings regarding my concerns, and I will present my own grievances.** Mr. Overberg, you have demonstrated only hatred and retaliation to [sic] me. I do not trust you. I will cautiously tolerate your presence at my hearing, but you will not present or process my concerns. I have for many years presented my own grievances and concerns, since before you were hired by UPS. Also, as the elected union steward, I have contractual rights (NM Article 4) to present grievances. And, I must be present at any grievance hearings regarding my concerns. Under no circumstances will I tolerate you withdrawing or processing my grievances without my direct involvement. And, I

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<sup>1</sup> According to Overberg, a point of order may only be made by the representative, not the grievant.

will file the appropriate charges, if you attempt to do so. I will require that my Steward Alternate, Mr. Pat Heiert be present at any official hearings.

(UPS Mot. to Dismiss, Ex. C at 13).

The day before the January 30 meeting, a water pipe burst in Bucalo's home, causing his basement to flood. Bucalo called Overberg to notify him and sent a letter to UPS and Overberg stating that he would be unable to attend the hearing and requesting that it be postponed. Overberg faxed a letter to Bucalo on the same day, requesting that Bucalo "contact [his] office with the nature of the pay shortages you are claiming for each grievance to be heard." Overberg further stated that he had previously asked Bucalo for this information, and that if Bucalo could not provide the information or be present at the meeting, "the Union would have no alternative but to withdraw the grievances."

The January 30 hearing went forward without Bucalo. As with the previous hearing, UPS's representative requested evidence supporting each grievance, Overberg stated that he had no evidence, and all of Bucalo's grievances were withdrawn.

Similar meetings were held on February 14, March 13, and March 28. Overberg avers that he again provided Bucalo with notice of the time and date of the hearings and of the grievances that were to be held at each meeting. Overberg further avers that information requests were unsuccessful, as in the past. Other details surrounding these meetings are unclear. For example, Overberg's affidavit (dated October 2009) makes no reference to a February 14 meeting, while his earlier affidavit (dated March 2008) does. *Cf.* Local 100 Mot. for Summ. Decision Attach. 5 *with* UPS Mot. to Dismiss, Ex. C. As another example, Overberg's March 2008 affidavit explains that Bucalo attended (at least initially) at the March 13 meeting and "gave us a letter that he turned UPS over to the Security and Exchange Commission that they were deceiving the shareholders . . . ." (UPS Mot. to Dismiss, Ex. C.) But in the October 2009 affidavit, Overberg states that "Bucalo did not attend the March 13 and March 28 meetings, even though he was informed of them and about the grievances that would be discussed." (Local 100 Mot. for Summ. Decision Attach. 5). Regardless of these ambiguities, Overberg and Mullikin aver that all grievances were withdrawn because of the lack of supporting documentation.

A letter from Union President Troy Stapleton to Bucalo (dated January 28, 2008) sheds additional light on the events surrounding Local 100's handling of Bucalo's grievances. Stapleton wrote in response to two letters from Bucalo, in which Bucalo criticized Overberg's handling of his grievances and requested that Stapleton assign different Business Agents to represent employees. In his letter, Stapleton expressed confidence in Overberg and stated that it was his "right and prerogative" to assign officers and agents to Local 100's various bargaining units. He explained that he used his best judgment in assigning Overberg and would not change assignments based on complaints or requests from individual members. Stapleton further explained his position that "[i]t is the role of the elected officers and Business Agents of this Local Union to . . . present grievances," and that "under the UPS contract . . . the role of the steward is limited to the very early stages of the processing of a dispute." Stapleton's letter goes on to explain to Bucalo, "[t]he fact that you are also a steward does not give you additional rights to present your own grievances at the later stage of the process."

Addressing Bucalo's specific complaints about the handling of his grievances, Stapleton defended Overberg, stating that Overberg properly withdrew the grievances due to Bucalo's failure to provide any supporting documentation. Regarding Local 100's refusal to request information from UPS, Stapleton stated that Bucalo's complaints of his pay being shorted were not specific enough to allow Local 100 to make intelligent requests for relevant information from the company. Regarding pending grievances, Stapleton cautioned Bucalo, "if you cannot provide sufficient information for the union to present a case on your behalf, we will have no choice but to withdraw those grievances, also."

According to the Secretary's Findings, one of Bucalo's grievances was heard by the Ohio Joint State Committee in May 2008, demonstrating that Bucalo had at least one grievance that had not been withdrawn and had moved beyond the local level.

### **Procedural History**

On June 18, 2009, Respondent UPS filed a Motion to Dismiss<sup>2</sup> on the limited ground that it was not responsible for the adverse actions alleged by Complainant. Specifically, UPS contended that the decision to withdraw Complainant's grievances was made solely by Local 100, and that UPS did not have the authority to withdraw grievances. In support of its motion, UPS submitted an affidavit from Mark Overberg, correspondence involving Bucalo, and various other documents.

On July 7, 2009, Respondent Local 100 filed a Motion to Dismiss on the ground that Bucalo failed to state a claim under the applicable statutes. Specifically, Local 100 argued it did not employ Bucalo, that Bucalo did not engage in protected activity, and that it did not take an adverse employment action against Bucalo.

In a Decision and Order dated September 2, 2009, I ruled on Respondents' Motions. As a preliminary matter, I discussed the scope of Bucalo's claim and found that the only potentially adverse actions that would be considered are (1) Local 100's refusal to allow Bucalo to present his own grievances and (2) Local 100's withdrawal of Bucalo's grievances. Thus, issues were whether Local 100 violated the STAA, TSCA, and SOX by refusing to allow him to present his own grievances and by withdrawing his grievances, and whether UPS violated the STAA, TSCA, and SOX by colluding with or inducing Local 100 to prevent Bucalo to present his own grievances and by withdrawing his grievances.

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<sup>2</sup> As I informed the parties in an Order dated June 24, 2009, the motion was treated as a motion for summary decision on the issue of whether UPS took an adverse action against Complainant. The Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges do not expressly provide for the dismissal of a claim. But Federal Rule of Civil Procedure 12(b) may properly be applied when a party moves for dismissal. 29 C.F.R. § 18.1(a); *High v. Lockheed Martin Energy Sys.*, ARB No. 97-109, ALJ No. 1997-CAA-3, slip op. at 3 (ARB Nov. 13, 1997). If matters outside the pleadings are considered by the court, the motion must be treated as one for summary decision and all parties must be given a reasonable opportunity to present material relevant to the motion. Fed. R. Civ. P. 12(d); *Flor v. U.S. Dept. of Energy*, ALJ No. 93-TSC-0001, slip op. at 9 (Sec'y Dec. 9, 1994). Here, UPS relied on documents outside of the pleadings in support of its motion.

I granted UPS's motion in part and denied its motion in part. I found that there was no genuine issue of material fact as to whether UPS was responsible for Local 100's refusal to allow Bucalo to present his own grievances. Consequently, UPS was entitled to summary decision on that issue. Regarding the allegation that UPS colluded with or induced Local 100 to withdraw Bucalo's grievances, I denied UPS's request. I likewise denied Local 100's request, finding Bucalo's allegations sufficient to survive Local 100's Motion to Dismiss.

Following that Decision and Order, both parties moved for Summary Decision. UPS filed a Motion for Summary Decision on November 13, 2009. Respondent Local 100 filed a Motion for Summary Decision on the October 23, 2009. Bucalo has responded in opposition.

### **Issues**

The following issues remain for resolution:

1. Whether UPS violated the STAA, TSCA, or SOX by colluding with or inducing Local 100 to withdraw Bucalo's grievances.
2. Whether Local 100 violated the STAA, TSCA, and SOX<sup>3</sup> by refusing to allow Bucalo to present his own grievances or by withdrawing his grievances.<sup>4</sup>

### **Standard of Review**

The standard for granting summary decision under the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges is similar to that found in Fed. R. Civ. P. 56, which governs summary judgment in the federal courts. *Saporito v. Cent. Locating Servs, Ltd.*, ARB No. 05-004, slip op. at 6 (Feb. 28, 2006). "The administrative law judge may enter summary judgment for either party if the pleadings, affidavits, material obtained by discovery or otherwise . . . show that there is no genuine issue as to any material fact and that a party is entitled to summary decision. . . ." 29 C.F.R. § 18.40(d).

The determination of whether a fact is material is based on the substantive law upon which the claim is based. *Saporito*, slip op. at 5 (*citing Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A material fact is one that might affect the outcome of the suit under the governing law, and a dispute about a material fact is genuine if the evidence is such that a reasonable factfinder could return a verdict for either party. *Id.* "[A] complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." *Reddy v. Medquist, Inc.*, ARB No. 04-123, slip op. at 5 (Sep. 30, 2005) (*citing Celotex*, 477 U.S. at 322-23 (1986)). "When a motion for summary decision is made and supported . . . a party opposing the motion may not rest upon the mere allegations or denials of

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<sup>3</sup> Local 100's disagreement that Bucalo properly raised a claim under the SOX is noted for the record.

<sup>4</sup> I assume *arguendo* that Local 100 is a covered employer as defined by the STAA, TSCA, and SOX. Because Local 100's Motion is granted based on another ground, I make no finding regarding Local 100's status as an employer. Local 100's disagreement regarding the existence of an employer-employee relationship is noted for the record.

[the] pleading[s]. Such response must set forth specific facts showing that there is a genuine issue of fact for the hearing.” 29 C.F.R. § 18.40(c).

### **Law and Analysis**

Bucalo’s remaining claim against UPS is that that UPS violated the STAA, TSCA, and SOX by colluding with or inducing Local 100 to withdraw his grievances. Both of Bucalo’s initial claims against Local 100 remain; Bucalo claims that Local 100 violated the STAA, TSCA, and SOX by refusing to allow him to present his own grievances and by withdrawing his grievances.

#### **I. UPS’s Motion**

UPS again seeks dismissal of the claim on the basis that the adverse action alleged by Bucalo was not taken by UPS, and therefore, cannot constitute the foundation of a claim against UPS. In support of its motion, UPS offers the affidavit of Joe Mullikin, UPS Labor Manager for the Kentucky District. Mullikin testified that he never improperly influenced or attempted to influence Overberg to withdraw any of Bucalo’s grievances. Mullikin acknowledged that he has represented UPS’s position that meritless grievances should be withdrawn and that “on more than one occasion” a meritless grievance filed by Bucalo should be withdrawn. But regarding the grievances at issue in this case, Mullikin stated that he specifically “did not in any manner influence or attempt to influence Overberg to withdraw such grievances.”

Consistent with Mullikin’s statements, Overberg’s affidavit and letter, along with Stapleton’s letter, support UPS’s contention that Local 100 handled Bucalo’s grievances pursuant to union policy and the Master Agreement. Overberg avers that he withdrew Bucalo’s grievances because Bucalo did not provide supporting documentation. In fact, Overberg’s correspondence establishes that he went out of his way to work with Bucalo in presenting his grievances. The evidence suggests that Local 100 officials fairly represented Bucalo and withdrew his grievances for legitimate reasons.

Bucalo responds that Mullikin and Overberg agreed to withdraw his grievances and that “Overberg relied on Mullikin’s advice when making his decision to withdraw these grievances.” Bucalo further alleges that “Mullikin and Lang not only influenced Overberg, but may have been the most decisive factors in his decision-making.” Bucalo also suggested that Overberg acted as an agent of UPS, because while serving in the union, he was on leave from UPS, intended to return to employment with UPS, and owned UPS stock. (Overberg denied owning any UPS stock.) As evidence of a collusive relationship between UPS and Local 100, Bucalo offered an affidavit by Jim Napier, a former Business Agent for Local 100. Napier testified that as a Business Agent, he represented workers at UPS. He further testified that union agents were pressured by UPS managers to withdraw grievances and to not properly defend some employees. He further claims that this fact “will be disputed in court by the testimony of UPS employees and UPS managers.”

Although Bucalo relies on Napier’s affidavit as evidence of a disputed fact, Napier affidavit is generalized in nature and offers no specific names or facts. He suggests that improper deal-making was “common” between UPS managers and union agents. But Mullikin



specifically denied influencing or attempting to influence Overberg to withdraw Bucalo's grievances. And, aside from Napier's affidavit, Bucalo offers no evidence to the contrary. Instead, he makes vague claims that "UPS employees and UPS managers" will offer contrary testimony.

As the party opposing the motion, Bucalo may not rest upon the mere allegations or denials in his pleadings. His response must set forth specific facts showing that there is a genuine issue of fact for the hearing. Bucalo has failed to set forth specific facts showing that there is a genuine issue of fact for the hearing. UPS has shown that there is no genuine issue of material fact as to whether UPS colluded with Local 100 to withdraw Bucalo's grievances. Because the adverse action alleged by Bucalo was not taken by UPS, there can be no claim against UPS under the STAA, TSCA, or SOX. UPS's Motion for Summary Decision is granted, and Bucalo's remaining claim against UPS is dismissed.

## **II. Local 100's Motion**

Local 100 seeks dismissal of the claim on two grounds. Local 100 first argues that it took no adverse employment action against Bucalo. Local 100 also disputes whether any of its conduct towards Bucalo was related to his protected activities.

In response, Bucalo cites two instances where Local 100 acted against Bucalo. According to Bucalo, union stewards are allowed to present grievances at hearings, and Overberg's actions, which prevented Bucalo from doing so, constituted an adverse employment action. Further, Bucalo maintains that the grievances were withdrawn in retaliation for his alleged protected activities.

The ARB has decided that the *Burlington Northern* "materially adverse" standard applies to the anti-retaliation laws adjudicated before the Department of Labor. *Melton v. Yellow Trans. Inc.*, ARB No. 06-052, ALJ No. 2005-STA-002, slip op. at 24 (ARB Sept. 30, 2008). *Burlington Northern* held that for the employer action to be deemed "materially adverse," it must be such that it "could well dissuade a reasonable worker from making or supporting a charge of discrimination." *Id.* slip op. at 19 (citing *Burlington Northern & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 71-73 (2006)). For purposes of the retaliation statutes that the Labor Department adjudicates, the test is whether the employer action could dissuade a reasonable worker from engaging in protected activity. *Id.* slip op. at 19-20. According to the Court, a "reasonable worker" is a "reasonable person in the plaintiff's position." *Id.* slip op. at 20.

Local 100 argues that the National Master United Parcel Service Agreement does not give an individual grievant any right to present their own grievances; rather it is the Business Agent's duty to present the grievance to the committee on behalf of the individual grievant. Local 100 further argues that because Bucalo's grievances were without merit, withdrawal was ultimately proper. In support of its arguments, Local 100 offers relevant sections of the Agreement, the affidavits of Overberg, Roa, and Mullikin, and other documents.

Bucalo responds that, as a union steward, he had the "right to present his own grievances." He alleged that his grievances were meritorious, and if favorably decided, would have resulted in the recovery of substantial back pay. Bucalo alleges that by withdrawing his

grievances and not allowing him to present his own grievances, Local 100 prevented him from recovering these wages. He claims that Overberg and Mullikin “make deals” and that his grievances were withdrawn in retaliation for his protected activities. As supporting evidence, Bucalo offers relevant sections of the Agreement and an excerpt from a hearing transcript, and other documents (which speak to the issue of whether union stewards may present grievances).

There is evidence that Overberg withdrew Bucalo’s grievances based on Bucalo’s failure to provide the requested information. Overberg’s letters to Bucalo suggest that he was acting in good faith and in an attempt to work with Bucalo, notwithstanding Bucalo’s contentiousness and disrespect toward Overberg. Overberg explained that it is important for the Business Agent to present grievances so that Local 100 can present a consistent and unified position. Roa agreed; but he further explained that grievants, including Bucalo, may participate in hearings. Thus, it seems that Bucalo is conflating his role as an individual grievant with his role as union steward when he argues that he had the “right to present his own grievances.”

I decline to make a legal determination regarding a union steward’s rights under the Agreement. But, although Bucalo is likely misconstruing the role he should play at the grievance hearings, he has provided evidence that, as an individual grievant, he was allowed to play a more active role in prior grievance hearings. Bucalo points to an excerpt from a hearing transcript, where he was represented by Business Agent Roa and permitted to speak on his own behalf. (Complainant’s Opposition to Mots. for Summ. J., Attach. 5.) This evidence shows that Bucalo responded to a question from the panel, and, along with Roa, presented his case. *Id.* The evidence on this issue is conflicting, and Bucalo’s claim will not be dismissed on this ground.

Although Local 100 is not entitled to summary decision on the adverse employment action ground, there is no evidence of a causal connection between the protected activity and the adverse action as required by the STAA, *Williams v. Capitol Entertainment Services, Inc.*, ARB No. 05-137, ALJ No. 2005-STA-27 (ARB Dec. 31, 2007), TSCA, *Dixon v. United States Dept. of Interior, Bureau of Land Management*, ARB Nos. 06-147, -160, ALJ No. 2005-SDW-8 (ARB Aug. 28, 2008), and SOX, *Robinson v. Morgan Stanley*, ARB No. 07-070, ALJ No. 2005-SOX-44 (ARB Jan. 10, 2010) (noting a “contributing cause” standard under the SOX). Here, Bucalo complained to UPS that biological and toxic substances were mishandled. Bucalo also participated in a safety violation hearing and filed a complaint with the SEC. Even assuming that Local 100 had knowledge of these complaints, as I must when construing the evidence in favor of Bucalo, the evidence does not show any nexus between the protected activity and the adverse action.

As discussed above, the evidence shows that UPS did not improperly influence Local 100 to withdraw Bucalo’s grievances. Overberg and Mullikin specifically denied influencing or attempting to influence Overberg to withdraw Bucalo’s grievances. Local 100 further points out that Local 100 and UPS have “an arms-length, and even adversarial, relationship.” Aside from Napier’s affidavit, which is generalized in nature and offers no specific names or facts, Bucalo offers no evidence to the contrary. Instead, he makes vague claims that “UPS employees and UPS managers” will offer contrary testimony.

Moreover, there is an extensive gap between the most of the protected activity and the adverse employment action. *See Simpkins v. Rondy Co., Inc.*, ARB No. 02 097, ALJ No. 2001 STA 59 (ARB Sept. 24, 2003) (ARB affirmed the ALJ's finding that Complainant had not established a causal link based, in part, on lack of temporal proximity between the protected activity and the adverse employment action.) Bucalo's grievances were first withdrawn in January 2008. He participated in the safety violation hearing two years earlier, in 2006. Bucalo complained to UPS that toxic substances were mishandled a year before that, in 2005. Bucalo complained to UPS that biological were mishandled filed several years before that, in 2000. Bucalo contends that Local 100's decisions were "tainted by the prejudice" of UPS, but offers no evidence linking the activities to Local 100's actions. The protected activities are too far removed in time and too indirectly connected to the grievance hearings.

The only potentially protected activity that bears a close temporal proximity is Bucalo's complaint to the Security and Exchange Commission on March 10, 2008. Thus, any subsequent hearings may not be too far removed in time; however, Bucalo's complaint centered on UPS's alleged negligence in not notifying their lenders and investors of the "billions of dollars" it would take to abet the violation. As Secretary-Treasurer of *Local 100*, Overberg specifically stated that he made the decision to withdraw the grievances solely because of Bucalo's failure to cooperate with the presentation of his claims. Overberg further stated that he believed that there was no SOX claim against Local 100 until my Decision and Order in September 2009 (finding that Bucalo had stated a SOX claim against Local 100, despite the union's arguments to the contrary). There is nothing to connect Local 100's actions in this instance.

Again, as the party opposing the motion, Bucalo may not rest upon the mere allegations or denials in his pleadings. His response must set forth specific facts showing that there is a genuine issue of fact for the hearing. Bucalo has failed to set forth specific facts showing that there is a genuine issue of fact for the hearing. Relying on Overberg's affidavit, and the extensive gap between the protected activity and the adverse employment action, I find that Local 100 has shown that there is no genuine issue of material fact and there is no evidence of a causal connection between the protected activity and the potentially adverse action. Because Local 100's conduct toward Bucalo was not related to his alleged protected activities, there can be no claim against Local 100 under the STAA, TSCA, or SOX. Local 100's Motion for Summary Decision is granted, and Bucalo's claim against Local 100 is dismissed.

## Conclusion

While I am mindful of Bucalo's *pro se* status, the evidence fails to support his claims under the STAA, TSCA, or SOX. Respondents United Parcel Service, Inc. and Teamsters Local 100 are entitled to summary decision. Therefore, IT IS HEREBY ORDERED that their respective Motions are granted, and Samuel J. Bucalo's claims are dismissed.

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JOSEPH E. KANE  
Administrative Law Judge

**NOTICE OF APPEAL RIGHTS (TSCA and SOX):** This Decision and Order will become the final order of the Secretary of Labor unless a written petition for review is filed with the Administrative Review Board within 10 business days of the date of this decision. The petition for review must specifically identify the findings, conclusions or orders to which exception is taken. Any exception not specifically urged ordinarily will be deemed to have been waived by the parties. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing. If the petition is filed in person, by hand-delivery or other means, the petition is considered filed upon receipt. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Ave., NW., Washington, DC 20210.

At the same time that you file your petition with the Board, you must serve a copy of the petition on (1) all parties, (2) the Chief Administrative Law Judge, U.S. Dept. of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8001, (3) the Assistant Secretary, Occupational Safety and Health Administration, and (4) the Associate Solicitor, Division of Fair Labor Standards. Addresses for the parties, the Assistant Secretary for OSHA, and the Associate Solicitor are found on the service sheet accompanying this Decision and Order.

If the Board exercises its discretion to review this Decision and Order, it will specify the terms under which any briefs are to be filed. If a timely petition for review is not filed, or the Board denies review, this Decision and Order will become the final order of the Secretary of Labor. See 29 C.F.R. §§ 1980.109(c) and 1980.110(a) and (b); 29 C.F.R. §§ 24.109(e) and 24.110, found at 72 Fed. Reg. 44956-44968 (Aug. 10, 2007).

**NOTICE OF REVIEW (STAA):** The administrative law judge's Recommended Decision and Order, along with the Administrative File, will be automatically forwarded for review to the Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington, DC 20210. See 29 C.F.R. § 1978.109(a); Secretary's Order 1-2002, ¶4.c.(35), 67 Fed. Reg. 64272 (2002).

Within 30 days of the date of issuance of the administrative law judge's Recommended Decision and Order, the parties may file briefs with the Board in support of, or in opposition to, the administrative law judge's decision unless the Board, upon notice to the parties, establishes a different briefing schedule. See 29 C.F.R. § 1978.109(c)(2). All further inquiries and correspondence in this matter should be directed to the Board.