



**In the Matter of:**

**SAMUEL J. BUCALO,**

**ARB CASE NO. 08-087**

**COMPLAINANT,**

**ALJ CASE NO. 2006-TSC-002**

**v.**

**DATE: July 30, 2010**

**UNITED PARCEL SERVICE,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Complainant:***

**Samuel J. Bucalo, *pro se*, Cincinnati, Ohio**

***For the Respondent:***

**Jason C. Schwartz, Esq., Nikesh Jindal, Esq., *Gibson, Dunn & Crutcher LLP*,  
Washington, District of Columbia**

**BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge*, E. Cooper Brown,  
*Deputy Chief Administrative Appeals Judge*, and Wayne C. Beyer, *Administrative  
Appeals Judge*; Judge Beyer concurring**

**FINAL DECISION AND ORDER**

This case arises under the Toxic Substances Control Act (TSCA)<sup>1</sup> and the Surface Transportation Assistance Act of 1982 (STAA).<sup>2</sup> Samuel J. Bucalo filed a complaint

---

<sup>1</sup> 15 U.S.C.A. § 2622 (Thomson Reuters 2009). The regulations in effect when Bucalo filed his complaint appear at 29 C.F.R. Part 24 (2005).

<sup>2</sup> 49 U.S.C.A. § 31105 (Thomson/West 2007 & Supp. 2010), as amended by the Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, 121 Stat. 266 (Aug. 3, 2007).

alleging that his employer, United Parcel Service (UPS), retaliated against him in violation of the TSCA and STAA. For the following reasons, we deny the complaint.<sup>3</sup>

## BACKGROUND

UPS hired Bucalo in 1979 to work at its facility in Sharonville, Ohio. In 2005, he was employed by UPS as a “22.3 air driver/car wash,” a position that required him to perform various tasks, including unloading trucks and sorting packages. Bucalo was also a union steward and member of Teamsters Local 100.<sup>4</sup>

On May 2, 2005, one of Bucalo’s co-workers asked him if he had been told about a mercury spill inside the building at the Sharonville facility where UPS sorted packages. Bucalo called David Roa, a business agent for Local 100, and told Roa that he was going to investigate the spill.<sup>5</sup> Bucalo also contacted Mary Beth Wiehe, UPS’ Loss Prevention Supervisor, to ask if she knew where he could find Jeff Funk, a UPS Sort Manager. Wiehe told Bucalo that he should first talk to Michael Crump, his immediate supervisor.<sup>6</sup>

Bucalo located Crump and told him that he was concerned about the effect the spill could have on his fellow workers. He also told Crump that he was investigating the spill in his capacity as a union steward.<sup>7</sup> According to Bucalo, Crump told him that the spill was “none of [his] business,” but Bucalo decided to continue his investigation because Crump was “dishonest.”<sup>8</sup> Bucalo clocked out and told Crump that he was going to use his lunch break to further investigate the spill.<sup>9</sup>

After clocking out for his lunch break, Bucalo consulted the Materials Safety Data Sheet (MSDS) book at one of UPS’ “right-to-know” stations. Bucalo called a toll-free number listed in the book to ask how UPS should handle the spill. After reading the MSDS information and speaking to an expert at the toll-free hotline, Bucalo became concerned about the safety of the other employees in the building.<sup>10</sup>

---

<sup>3</sup> See 29 C.F.R. § 24.8(e).

<sup>4</sup> Hearing Transcript (Tr.) at 43-47.

<sup>5</sup> *Id.* at 299-300.

<sup>6</sup> *Id.* at 67-68.

<sup>7</sup> *Id.* at 176.

<sup>8</sup> *Id.* at 178-79. Crump did not testify at the hearing.

<sup>9</sup> *Id.* at 69.

<sup>10</sup> *Id.* at 75, 85-86.

Bucalo went to the rewrap area of the facility and spoke to a UPS employee who indicated that he had touched mercury on one of the sort belts.<sup>11</sup> He then found Funk, who was speaking to other UPS supervisors. Funk directed Bucalo to talk to Gary Willis, UPS Facilities Engineer. Willis told Bucalo about his experience dealing with similar incidents, and he assured Bucalo that UPS was attempting to locate the leaking package. Willis showed Bucalo photographs of the mercury beads, and he pointed to an area about 30 feet away, blocked off by caution tape, where the mercury had been spilled.<sup>12</sup>

During this conversation, Bucalo “began to feel more comfortable with UPS’ response to the mercury spill.”<sup>13</sup> As they conversed, a crew dressed in protective clothing arrived from an outside responder. Bucalo returned to work at the conclusion of his lunch break.

On May 3, 2005, Carlos Garcia, UPS Feeder Division Manager, called Jeff Soule, UPS Division Manager, and told Soule that Bucalo had gone into a “hazardous material area” without permission and had impeded the response to the mercury spill.<sup>14</sup> Soule next met with Crump, who told Soule that he had instructed Bucalo not to go into the area of the spill.<sup>15</sup> Later that day, Bucalo met with Soule, Roa, and Crump. At this meeting, Soule removed Bucalo from service, pending an investigation of the events from the previous day, because Bucalo could have “caused a chaotic situation.”<sup>16</sup> Bucalo was escorted off of UPS’ premises.

On May 4, 2005, Roa contacted Bucalo and told him that UPS had decided to give Bucalo a one-day suspension because he failed to follow Crump’s instructions during the mercury incident. Roa told Bucalo to return to work the following day to meet with Soule. Bucalo and Roa met with Soule on May 5, 2005. Soule testified that he spent forty minutes with Bucalo to explain why it was important for Bucalo to follow UPS’ supervisors’ instructions.<sup>17</sup> According to Bucalo, he told Soule during this meeting

---

<sup>11</sup> *Id.* at 80.

<sup>12</sup> *Id.* at 88-97, 573-76.

<sup>13</sup> Complainant’s Post Hearing Brief at 9.

<sup>14</sup> Tr. at 624.

<sup>15</sup> *Id.* at 625.

<sup>16</sup> *Id.* at 108-09.

<sup>17</sup> *Id.* at 640.

that delivery of a contaminated package “was a Surface Transportation Act violation.”<sup>18</sup> UPS reinstated Bucalo that same day.

On May 6, 2005, at approximately 1:24 a.m., Bucalo clocked out after completing his shift and began to perform a “walk-through” in the facility to see if UPS supervisors were performing hourly work in violation of the collective bargaining agreement between UPS and the Teamsters.<sup>19</sup> During his walk-through he encountered Todd Wachter, a UPS Sort Supervisor. Wachter told Bucalo to “go back to work.” Upon learning that Bucalo was already off the clock, Wachter told him to “leave.”<sup>20</sup> Bucalo told Wachter that he was conducting a steward’s investigation pursuant to the collective bargaining agreement.<sup>21</sup> An argument ensued between Bucalo and Wachter, during which Wachter repeated that he wanted Bucalo to leave. Bucalo insisted on speaking to Wachter’s supervisor, and he threatened to file a grievance. The two men yelled at each other, and the argument ended when Bucalo decided to leave the facility.<sup>22</sup>

After leaving the facility, Bucalo drove to a police station and discussed the incident with a police officer. Bucalo told the officer that he wanted to talk to Wachter’s supervisor. The officer called the facility and spoke to Ray McDaniels, another UPS Sort Manager. Bucalo then went back to the facility to speak to McDaniels. He told McDaniels that he had a right to perform his walk-through. McDaniels replied that he was not well versed in the bargaining agreement rules, and that they could revisit the issue after he spoke to a labor manager.<sup>23</sup>

At 5:00 p.m. on May 6, 2005, Bucalo reported for work and met with Soule, Roa, and Garcia. Soule told Bucalo that UPS was terminating his employment because he had failed to follow instructions the previous night when Wachter asked him to leave the facility.<sup>24</sup>

On or about May 27, 2005, Bucalo filed a complaint with the Occupational Safety and Health Administration (OSHA) alleging that UPS discharged him in violation of several statutes, including the TSCA and STAA. OSHA investigated and denied the

---

<sup>18</sup> *Id.* at 112.

<sup>19</sup> *Id.* at 103-04, 223.

<sup>20</sup> *Id.* at 115.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 116-17.

<sup>23</sup> *Id.* at 120-22.

<sup>24</sup> *Id.* at 123-26. UPS reinstated Bucalo, without back pay, on December 12, 2005.

complaint. Bucalo requested a hearing before an Administrative Law Judge (ALJ). The hearing was conducted on March 13-15, 2007. Following the hearing, the ALJ issued a Decision and Order Denying relief Under the Act (D. & O.), denying Bucalo's claims under the TSCA and STAA.<sup>25</sup> Bucalo appealed the ALJ's ruling on his TSCA claim to this Board (ARB). The ARB automatically reviews an ALJ's STAA decision.<sup>26</sup>

### JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the ARB the authority to issue final agency decisions under the TSCA and STAA.<sup>27</sup> When Bucalo filed his complaint, we reviewed questions of law and fact under the TSCA de novo.<sup>28</sup> A new regulation calls for substantial evidence review of an ALJ's factual findings.<sup>29</sup> Neither party has requested leave to supplement or amend its brief in light of the change in the standard of review for questions of fact. We therefore assume that neither party considers the change in standard of review material to this case.<sup>30</sup> In any event, applying either standard of review, we conclude that UPS did not violate the TSCA, and Bucalo's complaint must be dismissed.

Under the STAA, the ARB is bound by the ALJ's factual findings if they are supported by substantial evidence on the record considered as a whole.<sup>31</sup> The ARB reviews the ALJ's conclusions of law under the STAA de novo.<sup>32</sup>

---

<sup>25</sup> The ALJ denied the STAA portion of Bucalo's complaint in a footnote in the D. & O.

<sup>26</sup> 29 C.F.R. § 1978.109(c).

<sup>27</sup> Secretary's Order No. 1-2010 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 75 Fed. Reg. 3924 (Jan. 15, 2010); 29 C.F.R. § 24.8; 29 C.F.R. § 1978.109(a).

<sup>28</sup> See *Sayre v. VECO Alaska, Inc.*, ARB No. 03-069, ALJ No. 2000-CAA-007, slip op. at 2 (ARB May 31, 2005). Accord 5 U.S.C.A. § 557(b) (West 1996) (Under the Administrative Procedure Act, the ARB, as the Secretary's designee, acts with all the powers the Secretary would possess in rendering a decision under the whistleblower statutes).

<sup>29</sup> 72 Fed. Reg. 44,956 (Aug. 10, 2007), codified at 29 C.F.R. § 24.110(b)(2008).

<sup>30</sup> Cf. Fed. R. App. P. 28(j) (the parties have the burden of calling the court's attention to any pertinent and significant authorities that came to the parties' attention after their briefs have been filed).

<sup>31</sup> 29 C.F.R. § 1978.109(c)(3).

<sup>32</sup> *Olson v. Hi-Valley Constr. Co.*, ARB No. 03-049, ALJ No. 2002-STA-012, slip op. at 2 (ARB May 28, 2004).

## DISCUSSION

### A. Bucalo's Suspension and Discharge Did Not Violate the TSCA

In enacting the TSCA, Congress found that human beings and the environment are exposed to a large number of chemical substances and mixtures whose manufacture, processing, distribution in commerce, use, or disposal may present an unreasonable risk of injury to health or the environment. The purpose of the TSCA is to regulate chemical substances and mixtures that present such risks and to take action against imminent hazards.<sup>33</sup>

To prevail on a TSCA whistleblower complaint, a complainant must establish by a preponderance of the evidence that he engaged in protected activity, that the respondent was aware of the protected activity, that he suffered unfavorable personnel action, and that the protected activity was the reason for the unfavorable personnel action.<sup>34</sup> The ALJ concluded that Bucalo “did not establish either protected activity or a violation of the [TSCA].”<sup>35</sup> We concur.

Bucalo testified that he gathered information regarding the potential hazards that could result from a mercury spill, and that he investigated the mercury spill based upon his concern for his fellow employees. During his testimony, Bucalo twice stated that he told UPS about his concern that a package contaminated by mercury could have left the Sharonville facility.<sup>36</sup> But the remainder of his testimony indicates that he never discussed this concern with UPS managers or supervisors.<sup>37</sup>

Bucalo admitted that he never verbally expressed a concern for the environment or those outside the building.<sup>38</sup> He repeatedly told Willis that he was concerned for the

---

<sup>33</sup> *Culligan v. Am. Heavy Lifting Shipping Co.*, ARB No. 03-046, ALJ Nos. 2000-CAA-020, 2001-CAA-009, -011, slip op. at 9 (ARB June 30, 2004), citing 15 U.S.C.A. § 2601 and *Rollins Envtl. Servs., Inc. v. Parish of St. James*, 775 F.2d 627, 632-33 (5th Cir. 1985).

<sup>34</sup> *See, e.g., Cante v. New York City Dep't of Educ.*, ARB No. 08-012, ALJ No. 2007-CAA-004, slip op. at 4-5 (ARB July 31, 2009).

<sup>35</sup> D. & O. at 7.

<sup>36</sup> Tr. at 134, 236.

<sup>37</sup> *See, e.g., id.* at 175-76, 190-93, 207, 230; *see also id.* at 234 (Q: Did you ever tell anyone at any time in UPS management that you had a concern that the mercury was going to expose the public to a health hazard? A: I don't know if I did or not.).

<sup>38</sup> *Id.* at 199-200.

employees in the building. When he was asked if he ever expressed a concern that mercury could leave the facility, Bucalo stated “I think that’s understood,” but he could not remember if he discussed this concern with Willis.<sup>39</sup> He also stated that his concern about mercury leaving the facility grew over time, but he did not complain to any UPS managers or supervisors because “they were staying pretty clear of [him] that evening.”<sup>40</sup>

We agree with the ALJ’s conclusion that, when he spoke to UPS managers about the toxicity of the mercury, Bucalo “only expressed concerns that would fall under OSHA workplace safety.”<sup>41</sup> As we have noted in previous cases, worker protection for whistleblowing activities related to occupational safety and health is governed by Section 11 of the Occupational Safety and Health Act, and enforced in United States Federal District Courts.<sup>42</sup>

Bucalo’s testimony indicates that he failed to engage in TSCA-protected activity prior to his suspension and discharge. We therefore agree with the ALJ’s conclusion that Bucalo failed to prove that his suspension and discharge violated the TSCA.

## **B. Bucalo’s Suspension and Discharge Did Not Violate the STAA**

The record also indicates that UPS did not violate the STAA by suspending and discharging Bucalo. We note however that the ALJ erred by concluding that Bucalo failed to present “any” evidence regarding “a concern of a violation of the Federal Motor Carrier Safety Act.”<sup>43</sup>

The STAA provides that an employer may not discharge, discipline, or discriminate against an employee-operator of a commercial motor vehicle “regarding pay, terms, or privileges of employment” because the employee has engaged in certain protected activity. The STAA protects an employee who makes a complaint related to a violation of a commercial motor vehicle safety regulation, standard, or order;” who “refuses to operate a vehicle because . . . the operation violates a regulation, standard, or

---

<sup>39</sup> *Id.* at 191.

<sup>40</sup> *Id.* at 192-193.

<sup>41</sup> D. & O. at 13.

<sup>42</sup> *See, e.g., Culligan*, ARB No. 03-046, slip op. at 7 (“As the ARB has long held, safety and health issues that pertain only to a complainant’s workplace are not covered under the whistleblower protection provisions”); *Stephenson v. NASA*, ARB No. 98-025, ALJ No. 1994-TSC-005, slip op. at 15 (ARB July 18, 2000) (environmental statutes confer no jurisdiction over whistleblower complaints arising from purely occupational safety and health concerns).

<sup>43</sup> D. & O. at 1, fn 1.

order of the United States related to commercial motor vehicle safety or health;” or who “refuses to operate a vehicle because . . . the employee has a reasonable apprehension of serious injury to the employee or the public because of the vehicle’s unsafe condition.”<sup>44</sup>

To prevail on a STAA complaint, an employee must prove by a preponderance of the evidence that he engaged in protected activity; that his employer was aware of the protected activity; that the employer discharged, disciplined, or discriminated against him regarding his pay, or terms, or privileges of employment; and that the employer took such action because he engaged in protected activity. The ARB has interpreted “because” to mean that a STAA complainant must show that the protected activity was a “motivating factor” in the employer’s decision to take adverse action.<sup>45</sup>

Bucalo’s OSHA complaint states that he had “protections under the following list of Protections, and others not listed: . . . DOT – Surface Transportation Act” [sic].<sup>46</sup> At the beginning of the hearing, UPS argued that Bucalo’s STAA claim should be dismissed because it had not been given notice that Bucalo intended to seek remedies under the STAA. The ALJ allowed the parties to address the STAA claim. At the end of the hearing, the ALJ stated that “[i]n terms of the Surface Transportation Act, it is my opinion that there has been insufficient evidence presented to invoke the provisions of the Surface Transportation Act and that we are proceeding at this time under the provisions of TSCA. Now, that’s my view.”<sup>47</sup>

The ALJ allowed the parties to submit post-hearing briefs. In his Post-Hearing Brief, Bucalo argued that his inquiry into the location of the package leaking mercury “implicated violations, or potential violations of the United States Department of Transportation’s regulations,” including 49 C.F.R. §§ 171.2(e) (condition of packages); 172.555 (formatting of poison inhalation placards); 177.801 (unacceptable hazardous material shipments); 177.834 (transportation of hazardous materials); 177.841 (transportation of specific poisonous materials); and 177.854 (handling of broken or leaking packages).<sup>48</sup>

The ALJ did not discuss Bucalo’s STAA claim in his D. & O. Instead, he added a footnote stating “I note I dismissed the claim under the Surface Transportation Act upon a motion for directed verdict from Respondent, as Complainant had failed to articulate

---

<sup>44</sup> See 49 U.S.C.A. § 31105(a)(1).

<sup>45</sup> *Carter v. Marten Transp., Ltd.*, ARB Nos. 06-101, -159, ALJ No. 2005-STA-063, slip op. at 11 (ARB June 30, 2008).

<sup>46</sup> Complaint at 1.

<sup>47</sup> Tr. at 33, 702-03.

<sup>48</sup> Post-Hearing Brief at 42-43.



any protected activity under the act. (Tr. 702-03). Complainant presented no evidence of any refusal to drive or a concern of a violation of the Federal Motor Carrier Safety Act.”<sup>49</sup>

We do not agree that Bucalo failed to present “any” evidence that he engaged in STAA-protected activity. At the hearing on his complaint, Bucalo testified that he specifically mentioned the STAA when he discussed the mercury incident with Soule:

Q You didn’t express any concern to Mr. Soule in that meeting on the 3rd about the safety of the general public, did you?

A I believe I did. I believe I told him that, because of the way the package was never found, we don’t know what truck was handling it, and that would fall under the Surface Transportation Act.

Q And you mentioned the Surface Transportation Act?

A I believe I did.

...

Q What were you trying to express when you referred to the Surface Transportation Act, what concept or principle were you expressing?

A That drivers and workers in a transportation company are protected if they bring forward complaints or concerns regarding safety issues. We’ve had supervisors at Sharonville even fired when they allowed -- or, ordered a driver to drive into the building with some kind of leaking, toxic substance onto the roadways, and then UPS had to clean it up. So, I mean, if you bring a concern to them -- for instance, that driver would have said, no, I’m not driving it in, his job should have been protected. But he accepted his orders and went in, and then the supervisor was terminated.<sup>[50]</sup>

The ALJ did not indicate in his D. & O. that he considered these specific remarks in reaching his conclusion that Bucalo failed to articulate any protected activity under the STAA. Although Bucalo’s testimony regarding his alleged STAA-protected activity was inconsistent, this description of his conversation with Soule arguably constitutes the

---

<sup>49</sup> D. & O. at 1, n.1.

<sup>50</sup> Tr. at 206, 234-235. *See also* Tr. at 112 (“I believe I -- it was myself who relayed to Mr. Soule the problems with, you know, the package being cross-contaminated and delivered, and I indicated to him that I thought it was a Surface Transportation Act violation.”).

“presentation” of evidence regarding a STAA claim. We therefore cannot concur with the ALJ’s conclusion that Bucalo failed to present “any” evidence regarding “a concern of a violation of the Federal Motor Carrier Safety Act.”

That the ALJ erred in concluding that Bucalo failed to present evidence of STAA-protected activity does not, however, lead to a reversal of the ALJ’s rejection of his STAA complaint. The evidence of record clearly supports the finding that UPS suspended and discharged Bucalo for reasons unrelated to his alleged protected activities. Bucalo did not deny that he failed to follow orders on May 2 and 6. It was his belief that acting as a union steward gave him the elevated status of a manager. He also believed that, when he clocked out, he was “emancipated from service” and was therefore “free to do as he believe[d] [was] proper.”<sup>51</sup> But Bucalo also testified that the general rule of thumb in the workplace is to follow instructions and grieve later.<sup>52</sup> On the date of the mercury spill, Bucalo did not follow the orders Funk gave him. This resulted in a one-day suspension. After Soule told Bucalo to obey orders from supervisors, Bucalo argued with Wachter about his right to walk through the plant. The ALJ credited the testimony of Soule, who explained that “he could have no effect on Mr. Bucalo, and therefore terminated his employment.”<sup>53</sup>

In sum, the record indicates that UPS suspended and discharged Bucalo because he failed to follow the instructions UPS managers gave him, and his alleged protected activities under the TSCA and STAA played no role in these decisions.

### CONCLUSION

Bucalo failed to prove that he was suspended and discharged for engaging in activities protected by the TSCA or STAA. Accordingly, we **DENY** his complaint.<sup>54</sup>

**SO ORDERED.**

**PAUL M. IGASAKI**  
**Chief Administrative Appeals Judge**

**E. COOPER BROWN**  
**Deputy Chief Administrative Appeals Judge**

---

<sup>51</sup> *Id.* at 179-80.

<sup>52</sup> *Id.* at 214.

<sup>53</sup> D. & O. at 14.

<sup>54</sup> In reaching this conclusion, we express no opinion regarding Bucalo’s rights and remedies under the collective bargaining agreement governing his employment with UPS.

**WAYNE C. BEYER, Administrative Appeals Judge, concurring:**

I concur in the result here, but simply put, Bucalo did not engage in activity that was protected under either the TSCA or STAA; and he was suspended and fired for separate acts of insubordination. In suggesting that Bucalo presented “some” evidence that he engaged in protected activity, it is unclear whether the majority concluded that Bucalo preponderated on that point.

The STAA provides in relevant part that an employer may not “discharge” or “discipline” an employee because the employee “has filed a complaint or begun a proceeding related to a violation of a commercial motor vehicle safety regulation, standard, or order . . .” 49 U.S.C.A. § 31105(a)(1). A verbal complaint to management will satisfy the “file a complaint” requirement, so long as it relates to a commercial motor vehicle safety regulation. *Harrison v. Roadway Express, Inc.*, ARB No. 00-048, ALJ No. 1999-STA-037, (ARB Dec. 31, 2002). An oral communication must be sufficient to give notice that the employee intends it as a complaint. *See Jackson v. CPC Logistics*, ARB No. 07-006, ALJ No. 2006-STA-004, slip op. at 3-4 (ARB Oct. 31, 2008).

In *Luckie v. United Parcel Serv. Inc.*, ARB Nos. 05-026, 05-054, ALJ No. 2003-STA-039 (ARB June 29, 2007), a package on a conveyor belt at a UPS hub caught fire. The local fire department put out the fire and trained hazardous materials inspectors from UPS operations responded and prepared an incident report to the U.S. Department of Transportation. George Luckie was the hub’s security manager, in charge of lost and stolen packages and guard services for the building. Luckie’s boss, the district manager, told him there was no need for further investigation. The ARB concluded that Luckie did not engage in STAA-protected activity. “Luckie testified that he knew of no statute, rule, or regulation that would be violated if UPS did not act on his concerns. . . . Luckie expressed his concerns about the origin of the fire and the lack of investigation, but there is no evidence in this record that he complained to anyone about a violation of a commercial motor vehicle safety regulation, standard, or order.” *Id.* at 14. Moreover, his concerns were directed at the safety of employees in the unloading process, not public safety on the highways. He could not have had a reasonable belief that UPS was violating any safety regulations under the STAA. *Id.* at 14-15.

An employee is also protected under the STAA if he has “begun a proceeding.” The “begun a proceeding” language affords whistleblower protection to “preliminary steps to commencing or participating in a proceeding when those steps could result in exposure to employer wrongdoing.” *Philips v. Stanley Smith Sec., Inc.*, ARB No. 98-020, ALJ No. 1996-ERA-030, slip op. at 18 (ARB Jan. 31, 2001) (arising under the Energy Reorganization Act; additional quotations and citations omitted). Yet to be protected, a

complainant's concerns must be grounded in conditions constituting reasonably perceived violations of the Act at issue. *Id.*

Thus, the case law extends protection to those who provide information to employers about violations of the law at issue, but not to those who merely seek information, like Bucalo. Bucalo heard about the spill from another employee, Elvis Bowman, after the UPS had initiated emergency spill response procedures. Hearing Transcript (Tr.) at 58-59, 64-65, 267. He then saw Mary Beth Wiehe, a UPS loss prevention manager, and asked her whether she knew there had been a mercury spill and whether she knew where sort manager Jeff Funk was. Tr. at 66-67, 175, 236. She directed Bucalo to his immediate boss, Michael Crump. Tr. at 67, 175. Bucalo asked Crump if he had heard about the spill. Bucalo said as union steward he was there "to find out what was happening and if they were properly responding" to the spill. Tr. at 68. Crump told him that it was none of his business, that UPS was responding, and not to enter the area of the spill. Tr. at 68, 175, 625.

Bucalo next went to the "right to know" station for the company's hazardous communications program, called an 800 number, and spoke with an individual identified in the record only as "Scott." Tr. at 73. Bucalo told Scott, "I was just the union steward, and I was asking, I was concerned about a mercury spill, and I wanted to know how we should be responding." Tr. at 75. Bucalo "was really concerned for the employees in the building." Tr. at 75-76.

Disregarding Crump's instructions by entering the emergency spills response staging area, Bucalo spoke with Gary Willis, the facilities engineer for the building. Willis had extensive experience coordinating and implementing UPS's emergency spills response procedures, including those relating to mercury. Tr. at 515-521. Bucalo asked Willis if they had found the package yet, and he said they had not. Tr. at 88. Bucalo then asked Willis "if they should evacuate the building, turn off the belts, because that was what I was told by the guy, Scott . . . ." Tr. at 88, 90. Willis said that was not how they handled it at UPS. Tr. at 90. Willis went on to explain UPS's response and clean-up procedures using outside contractors. Tr. at 550-553. That made Bucalo "a little more comfortable that they knew what they were doing, they had experience with mercury spills." Tr. at 91. Bucalo testified, "[UPS] had brought in a professional company from the outside who was going to respond to the spill. And I believed that I was better going back to work at that time." Tr. at 99.

Three days later, Bucalo met with UPS division manager Jeff Soule regarding discipline to be imposed for violating Crump's order. It is then that Bucalo testified that he "believes" he raised the issue that packages being cross-contaminated and delivered could be a STAA violation. Tr. at 112, 206. While I agree with my colleagues that that is at least "some" evidence that Bucalo had STAA on his mind, I write to emphasize that that it is not enough to preponderate on the issue of whether he engaged in protected activity. As in *Luckie*, during the spill incident, Bucalo **asked for information** out of concern for employee safety. But he **did not provide information** about a violation of a commercial motor vehicle safety regulation, standard, or order that had to be remedied in

a specific way. By merely asking questions, he did not “file a complaint” or “begin a proceeding” within the meaning of the STAA.

**WAYNE C. BEYER**  
**Administrative Appeals Judge**