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Issue Date: 30 April 2008

CASE NO.: 2007-AIR-00010

In the Matter of

RICHARD LANIGAN
Complainant

v.

ABX AIR, INC.
Respondent

Appearances:

Richard Lanigan, Warwick, Rhode Island,
pro se

Peter J. Petesch (Ford & Harrison),
Washington, D.C., for Respondent

Before: Daniel F. Sutton, Administrative Law Judge

**DECISION AND ORDER GRANTING SUMMARY DECISION
AND DISMISSING COMPLAINT**

I. Statement of the Case

The above matter, which arises from a complaint alleging a violation of the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (the "Act" or "AIRA"), 49 U.S.C.A. § 42121 (West 2008), is before the administrative law judge for an evidentiary hearing pursuant to section 42121(b)(2)(A) of the Act, 49 U.S.C. § 42121(b)(2)(A), and the implementing regulation at 29 C.F.R. § 1979.107.¹ The Complainant, Richard Lanigan, alleges that the Respondent, ABX Air, Inc., caused his employment as a mechanic at an air cargo hub to be terminated on February 2, 2007 in retaliation for his engaging in activities protected under section 42121.

¹ The hearing was initially scheduled to convene, on an expedited basis pursuant to 29 C.F.R. § 1979.107(b), on September 24, 2007. Thereafter, several continuances were allowed at the parties' request to allow them to explore settlement and complete discovery. Most recently, the hearing was set to convene on April 28, 2008; however, a further continuance was ordered by the ALJ to permit ruling on the Respondent's motion for summary decision.

On March 28, 2008, the Respondent filed a Motion for Summary Decision, supported by affidavits and other documents, in which it asserted that there is no genuine issue of material fact surrounding the termination of the Complainant's employment and that the Respondent is entitled to summary decision as a matter of law because the undisputed facts do not establish any violation of the Act. The Complainant filed his response on April 10, 2008, alleging that the Respondent's motion and supporting documents contain false statements and arguing that he can prove that the Respondent retaliated against him because of his knowledge of ongoing safety violations if he is allowed to proceed to hearing.²

Upon consideration of the matter, I have concluded for the reasons set forth below that no genuine issue of material fact exists and that the Respondent is, therefore, entitled to summary decision dismissing Lanigan's complaint alleging that his employment was terminated in violation of the Act.

II. Procedural History

The Complainant filed a complaint letter with the Department of Labor's Occupational Safety and Health Administration ("OSHA") on May 2, 2007. In the complaint, he alleged that his "concerns and efforts to get major FAA, and State of Rhode Island violations at the Coventry Hub addressed began a series of events ending in the loss of my job" as a mechanic on February 2, 2007, after 14 years of employment. Mot. for Sum. Dec. at Tab B (Mar. 14, 2008 Deposition of Richard Lanigan, Dep. Exhibit 2). After an investigation, OSHA issued its findings on June 18, 2007 that there was no reasonable cause to believe that the Act had been violated. On July 18, 2007, the Complainant filed his objections to OSHA's preliminary order dismissing his complaint with the Chief Administrative Law Judge. The matter was then referred to this ALJ for hearing.

III. The Motion for Summary Decision

In its motion, the Respondent sets forth the following statement of undisputed facts:

A. Richard Lanigan Worked as a Mechanic at ABX's New England Sort Hub

ABX is an airline flying overnight and express freight, now for DHL. Cousineau Affidavit, ¶ I (Tab A); March 14, 2008 Deposition Transcript of Richard Lanigan ("Lanigan Tr.") at 12 (Tab B).^{*} [Fn. Excerpts from Mr. Lanigan's deposition are attached as Tab B. The exhibits identified at his deposition (referenced herein as "Lanigan Ex.") are provided in Tab C.]³ ABX not only flies the freight for DHL, but it also processes and sorts the freight at a

² While not mandatory in the First Circuit, the Complainant was given notice of his obligation under Rule 56(e)(2) of the Federal Rules of Civil Procedure, 28 U.S.C.A., FRCP Rule 56(e)(2) (West 2008), to respond to the motion for summary decision with affidavits and / or other permissible evidence showing that there is a genuine issue of material fact warranting a hearing. *See generally Forsyth v. Fed'n Employment and Guidance Serv.*, 409 F.3d 565, 570 (2d Cir.2005) (requiring notice before allowance of summary judgment against a *pro se* litigant).

³ Footnotes in the Respondent's statement of undisputed facts are noted with an asterisk "*" followed by the text of the footnote in brackets "[Fn. . . .]."

number of sort hubs. Cousineau Affidavit, ¶ 1, 2. At these hubs, packages are received, sorted, and placed in airworthy containers which in turn are loaded on to ABX's aircraft. Cousineau Affidavit, ¶ 2. Given the nature of the overnight and express delivery industry, DHL must impose high expectations on ABX to provide timely, efficient and reliable service. Cousineau Affidavit, ¶ 1. Break-downs at the hub result in the freight not getting out, which is "not good." Lanigan Tr. at 33.

ABX did not always fly freight for DHL. Previously, ABX flew overnight and express freight for Airborne Express. Cousineau Affidavit, ¶ 2; Lanigan Tr. at 12. The operational concept was similar to the operation today, though the volume of packages through Providence increased significantly under ABX's relationship with DHL. Cousineau Affidavit, ¶ 4.

Richard Lanigan worked at ABX's New England sort hub, located near Providence, Rhode Island. Cousineau Affidavit, ¶ 3. As with any ABX hub, freight and packages coming through the New England hub would travel within the hub on heavy-duty conveyer belts. In order for the sorters at the hub to meet their tight, demanding schedule to move the packages, the belts and other equipment at the hub had to keep working. Cousineau Affidavit, ¶ 2; Lanigan Tr. at 33. This warranted having a hub mechanic on hand to maintain the equipment. Starting around 2000, Mr. Lanigan filled this role until February 2, 2007. Cousineau Affidavit, ¶ 3; Lanigan Tr. at 22.*[Fn. Mr. Lanigan started working at the hub in 1993, in the position of sorter. Lanigan Tr. at 7.] He performed preventative maintenance during the daytime, and would respond to malfunctions occurring during the busy night time hours, when most of the freight is sorted. Cousineau Affidavit, ¶ 3; Lanigan Tr. at 26. He serviced anything that needed repair, and was responsible for anything that moved freight in the building. Lanigan Tr. at 26-27.

B. Tensions Arose Over Mr. Lanigan's Schedule and Over Expanded Duties at the Hub and the New Annex

As discussed above, ABX's relationship with DHL resulted in substantial growth in the volume of freight and packages handled at the hubs. This included the volume of freight traveling through the New England hub. Cousineau Affidavit, ¶ 4; Lanigan Tr. at 18. Mr. Lanigan described this volume of freight as "getting ridiculous." Lanigan Tr. at 18. By the time Mr. Lanigan left ABX, the volume had increased to at least four times the volume handled before the DHL relationship began in 2003. Lanigan Tr. at 18-19. In the later portion of 2006, ABX expanded its single-site New England hub to include a separate annex building, with its own additional equipment. Cousineau Affidavit, ¶ 4; Lanigan Tr. at 29-30.* [Fn. Mr. Lanigan was first called to perform work at the annex around mid-September of 2006. Lanigan Tr. at 31.] All of this resulted in a lot more work for Mr. Lanigan. Lanigan Tr. at 31.* [Fn. Mr. Lanigan also testified that new conveyor belts at the hub installed beginning in August 2006 were also

breaking down and in need of attention — much more so than the old belts. Mr. Lanigan described these new belts as “disastrous” and a “major headache.” Lanigan Tr. at 32-34.] Other changes were occurring at the hub as well. Earlier in 2006, the hub’s longstanding manager, Bill Pontarelli, left the company. Cousineau Affidavit, ¶ 4; Lanigan Tr. at 14. He was ultimately replaced by a new hub manager, Greg Jackson. Cousineau Affidavit, ¶ 4; Lanigan Tr. at 16. Mr. Jackson only lasted at the hub until December 2006. Lanigan Tr. at 16.

The final quarter of 2006 therefore brought a great deal of changes to the job that Mr. Lanigan had been performing for ABX. Cousineau Affidavit, ¶ 4. This expansion in volume of freight and the physical expansion in facilities meant that ABX expected Mr. Lanigan to maintain more equipment, and perform duties at the annex. Cousineau Affidavit, ¶ 5; Lanigan Tr. at 39-40; Lanigan Ex. 5 (October 2 e-mail requesting that Mr. Lanigan perform work at the annex). This was not popular with Mr. Lanigan. *See* Lanigan Tr. at 30-34. By mid-October, Mr. Lanigan had made it abundantly clear that he objected to servicing equipment at the annex. Specifically, he objected to having to transport tools and equipment in his own vehicle. Cousineau Affidavit, ¶ 5; Lanigan Tr. at 35-36, 44-45, 55. As he explained, he was “going nuts” with his own hub. Lanigan Tr. at 35. In a chain of e-mails beginning on October 19, 2006, ABX asked Mr. Lanigan to adjust his work schedule and reiterated to him that the equipment at the annex was also Mr. Lanigan’s responsibility. Cousineau Affidavit, ¶ 5; Lanigan Ex. 4; Lanigan Tr. at 36-37. In his October 19, 2006 message, ABX Director MHE Maintenance Jim Osborne wrote:

[Dave Petko] said that Rick [Lanigan] indicated to him that the annex building is not a part of his responsibility? Just because this MHE is not in the same building doesn’t mean it is not Rick’s responsibility. If that annex is operated under the responsibility of ABX then yes it is Rick’s responsibility. If it is solely operated by DHL then it is DHL’s responsibility. Granted there may be enough work where a second mechanic is needed as I know they were trying for and should be a part of the managements justification. But the annex is Rick’s if it is [run] by ABX.

Lanigan Ex. 4 (identified in Lanigan Tr. at 36-37). Christine Cousineau, ABX’s human resource representative responsible for the New England hub, then relayed to Mr. Lanigan the need to adjust his working hours to account for his added responsibilities. *Id.*

Mr. Lanigan chafed at these changes. *E.g.* Lanigan Tr. at 41-42, 46-47. He viewed ABX’s expectations of him as “unrealistic,” and the addition of duties at the annex as “totally unfair.” Lanigan Tr. at 41, 43-44. He felt insulted. Lanigan Tr. at 48. He saw fault with the new equipment at the hub and the annex. Lanigan Ex. 4.; Lanigan Tr. at 32-34. On October 20, he responded to Ms. Cousineau, Mr. Jackson, and Mr. Osborne:

As for servicing the Annex, as I told you before, I will not use my personal vehicle to transport myself, tools, ladders, parts and supplies back and forth between the Annex and the hub all day long. The Annex needs to be stocked with the same tools, and supplies I use on a daily basis here at the hub, and a casual mechanic should be hired to backup the Annex.

Lanigan Ex. 4; Lanigan Tr. at 51. On the topic of schedule changes, he wrote:

My hours are 7:00am till 3:00pm, Monday thru Friday, just like they have been throughout my six years on this job. I have other obligations including another part-time job so it is absolutely impossible to change my schedule.

If you are adamant to change my work schedule, I reserve my right to refuse.

I am not a quitter Christine...

Regards,

Rick

Lanigan Ex. 4.* [Fn. Mr. Lanigan explained at his deposition that a change in schedule would conflict with the workout regimen he had been fastidiously following. Lanigan Tr. at 47-48.] This exchange concerned Ms. Cousineau a great deal, and she felt that something would have to give. Cousineau Affidavit, ¶ 6. She urged Mr. Lanigan to be flexible and support the needs of the hub as it grows. Lanigan Ex. 4. The communications remained cordial and hopeful, but Mr. Lanigan stood fast in his unwillingness to change his hours. Lanigan Ex. 4. Ms. Cousineau also asked Mr. Lanigan for a task log, documenting his duties in order to justify hiring additional help. She did not receive this log from Mr. Lanigan. Cousineau Affidavit, ¶ 6; Lanigan Ex. 4.* [Fn. Mr. Lanigan testified that he later provided this log to his manager, Mr. Jackson. Lanigan Tr. at 45-46, 57.]

C. ABX Dragged Mr. Lanigan Into an Inquiry Over Inaccurate Scale Readings

Five days after the documented exchange between Mr. Lanigan and Ms. Cousineau on Mr. Lanigan's objections over his job duties, a wholly unrelated event occurred. On October 25, DHL alerted ABX to discrepancies with scale readings for material coming from the New England hub. Lindsay Steinhauer of Astar Cargo alerted individuals at DHL of this weight variance problem (variances falling beyond the FAA threshold) at 1:15 p.m. on October 25. Lanigan Ex. 13. Mr. Lanigan was not alerted to the problem at this point. Officials from DHL called for an immediate investigation. Lanigan Ex.13 at OSH 32. The inquiry was directed to Greg Jackson of ABX and William Shea of DHL. Lanigan

Ex. 13 at OSH 31.* [Fn. Mr. Shea was a DHL manager stationed at the New England hub. Lanigan Tr. at 13.] That evening, William Shea of DHL responded to others at DHL and to ABX New England hub manager Greg Jackson as follows:

During a pre-sort inspection of the scale this afternoon, a long roller was discovered wedged under the scale. This roller would have impeded the scale in its ability to record the correct weight. The scale had been sitting on top of the roller thus causing a discrepancy. We removed the roller and conducted several compliance checks with empty and full cans. The problem seems to be fixed. The scale is checked by Mechanic Rick Lanigan each day, usually some time before the sort begins. Going forward, we will ensure the scale is checked thoroughly by Rick, as well as a supervisor before the loading of the A Cans [airworthy containers in which packages are placed] begin.

Lanigan Ex.13 at OSH 31.* [Fn. Mr. Lanigan was not even included on this string of e-mails. He saw this string of e-mails the next day, posted on a bulletin board. Lanigan Tr. at 84-85.] DHL's William Shea then e-mailed Rick Lanigan at 11:01 p.m. that evening, informing Mr. Lanigan of the scale discrepancy and asking Mr. Lanigan whether he was conducting daily scale checks. Lanigan Ex. 14 at LAN 25-26; Lanigan Tr. at 92.

DHL and ABX were extremely concerned over the scale discrepancies well before Mr. Lanigan became involved in the conversation. Mr. Lanigan only found out about this exchange on the scales the next morning, on October 26, when he came into work and checked his e-mails. Lanigan Tr. at 81-82, 83 (identifying Lanigan Ex. 14). Mr. Lanigan informed OSHA (incident to the investigation of his AIR 21 complaint) and confirmed in his testimony that this was "my first contact regarding the scale problem." Lanigan Tr. at 81-82, 83-84; Lanigan Ex. 2 at OSH 14.* [Fn. Mr. Lanigan verified that his statement that he authored to OSHA (Lanigan Ex. 2) was true. Lanigan Tr. at 28.] In his submission to OSHA (but not in any communications with ABX while he worked there), he accused DHL of scapegoating him for the problem and for the resulting operational delay. Lanigan Ex. 2 at OSH 14; Lanigan Tr. at 85-86, 101-02. Still, no disciplinary action was ever taken. Lanigan Tr. at 86.

On the morning of October 26, Mr. Lanigan responded to DHL's William Shea and his manager, Greg Jackson. He agreed that objects should be cleared from the scales before anything is weighed, and suggested installing side guards which would at least stop large objects from getting wedged underneath the scales. Lanigan Ex. 14 at LAN 25. On the next day, Mr. Lanigan informed Jim Osborne at ABX in Wilmington, Ohio that he had checked the scale, fixed what he believed to be the problem, and again reiterated his suggestion of adding side guards. Lanigan Ex. 14 at LAN 25; Lanigan Tr. at 91. He informed his managers that there were inaccurate readings on the next day, this time due to an adjustable

gate that had broken and was hitting the scale. Lanigan Tr. at 93. He received no response to that observation. Lanigan Tr. at 93, 95.

Mr. Lanigan never expressed any individual concerns over air safety or violations of Federal Aviation Administration air safety standards. Lanigan Tr. at 99.* [Fn. As Mr. Lanigan's written account to OSHA in support of his AIR 21 complaint describes, a DHL manager — William Shea -- posted a memo on the air safety significance of inaccurate scale readings. Lanigan Ex. 2 at OSH 13; Lanigan Tr. at 97, 99; Lanigan Ex. 17 (the posting from William Shea of DHL, identified at Lanigan Tr. at 100). Mr. Lanigan did not post this memo. He simply read it.] He had no special awareness of the air safety significance of the scale readings;* [Fn. He was not aware of any FAA regulations relating to the scale problem, other than the fact that the scales were FAA-certified. Lanigan Tr. at 98.] he simply felt as if he was being blamed for the operational delays stemming from the weight discrepancies. Lanigan Tr. at 97. Responding to these inquiries and concerns was the sum and substance of Mr. Lanigan's involvement in the dialogue initiated by DHL on the scales. He was not the one who brought the problem to anyone's attention. Rather, William Shea of DHL brought the problem to Mr. Lanigan's attention and asked him to help fix the problem. Lanigan Tr. at 85, 107.

Later, Mr. Lanigan discussed the scale issue one more time, pointing out that nothing was being done to correct the scale readings. Lanigan Tr. at 103-04. He discussed the issue in mid-January once with Tom Shaw of ABX, explaining that guards should be installed to prevent shrink wrap from falling under the scale. He showed Mr. Shaw the scale itself. Lanigan Tr. at 104-05. That was the end of the conversation. Lanigan Tr. at 105. Mr. Lanigan testified, however, that Mr. Shaw had nothing to do with Mr. Lanigan's later resignation or departure from ABX. Lanigan Tr. at 80. He also testified that Ms. Cousineau was not involved in these later conversations. Lanigan Tr. at 106.

As mentioned above, Mr. Lanigan was never disciplined for anything relating to the scales. Lanigan Tr. at 86. Nobody ever threatened him. Lanigan Tr. at 95. He was not party to any further e-mail communications on the scales other than a separate October 31 message to Mr. Jackson (who was gone by the time Mr. Lanigan resigned in February 2007) over another inaccurate reading. Lanigan Tr. at 88-89, 94-95; Lanigan Ex. 16.

D. Mr. Lanigan Again Threatened to Quit Over Unresolved Disagreements Over His Expanded Duties

The conflict from before October 19 stemming from Mr. Lanigan's expanded duties at the hub continued into December 2006. Cousineau Affidavit, ¶ 7. Both ABX and Mr. Lanigan remained entrenched in the positions taken in mid-October. The disagreement still centered on duties at the annex, Mr. Lanigan's request for more help, and his objections to using his own vehicle to transport

parts and equipment. Cousineau Affidavit, ¶ 7; Lanigan Tr. at 52. As Mr. Lanigan explained:

So I mean, all this craziness started in, like, from August until the middle of October when the main hub went online with all the new stuff. So it all started from there, and nothing ever happened, and I left in 2-2 and nothing ever happened.

Lanigan Tr. at 52. He still objected to being expected to use his car to haul parts and equipment. Lanigan Tr. at 55. He explained “so I was not going to use my car anymore, and I was making a stand on that, I didn’t want to use my car.” Lanigan Tr. at 56.

Mr. Lanigan and Ms. Cousineau spoke by telephone on December 22, 2006. Again, Mr. Lanigan argued that the annex should not be his responsibility. Cousineau Affidavit, ¶ 7. Again, Ms. Cousineau asked Mr. Lanigan for his task log (requested previously in October) in order to help her justify hiring more help. Cousineau Affidavit, ¶ 7. In a follow-up e-mail exchange from that conversation, Ms. Cousineau summarized Mr. Lanigan’s statement that “I am not covering that building,” referencing the annex, along with his ongoing objections to using his vehicle to transport tools and equipment. Lanigan Ex. 9 (identified at Lanigan Tr. at 57-58). Her e-mail said:

You said you did not want to be driving back and forth between the buildings with your tools in your private vehicle, we needed to hire another mechanic for the annex. I told you that I wanted to work with you. I reminded you that I had asked you before to make a daily job log to show me what you did and how much time it took you to complete. I explained that before I could request additional staff, I had to justify the business need. I told you we could look at obtaining an old van and equipping it with the tools necessary to conduct basic work at the annex. In the mean time, this was part of your job. You then said you would have to “do what I have to do”. I asked you what you meant by “do what you needed to do” and you said “well I’ll have to look for other employment.” I asked you to send me an email outlining your intentions and we would go from there.

Lanigan Ex. 9; Cousineau Affidavit, ¶ 7. She added:

I then said we needed to revisit your earlier comment that you would not cover the maintenance in the annex. You said, you were not going to cover that building. I told you I needed to be clear on what you were telling me because your refusal would be considered insubordination and there would be consequences. Consequences meaning that you would be, as you stated earlier, looking for other employment. You said if I was going to consider that insubordination, you were sorry, but I should take it as high as I

needed to, you were not going to cover the maintenance in the other building.

Id. Mr. Lanigan then responded:

I have said to you that I have said this in email, and now again I will say this on the phone, that I am not going to cover the Annex, I am totally inundated with work here at the Hub, in fact, just trying to keep up with the new bestflex belts is a full time job, they are breaking down daily and are a huge problem in the sort... Also, I said I am not going to be running back and forth between both buildings all day long picking up a screw for this, a washer for that, a fuse, etc... You did mention that if it meant getting a van from ILN [Wilmington, Ohio, at ABX's main base] and filling it with the needed tools and parts to be able to service both the Annex and the Hub then that could be looked into. I said if this is going to be made part of my job, you said it is, then I guess I will need to look into employment options because I cannot physically cover both buildings.

Lanigan Ex. 9.* [Fn. Mr. Lanigan explained that this candid and “insane” exchange with Ms. Cousineau stemmed from holiday pressure on Ms. Cousineau from an important official at DHL, who was concerned over a security problem at the annex. Lanigan Tr. at 58-59.] As Mr. Lanigan admitted, he was frustrated. Lanigan Tr. at 59.* [Fn. ABX was becoming frustrated with this impasse as well. ABX posted a hub mechanic position on the internet on or about December 22. It had good reason to do so: (1) the need to maintain mechanic coverage at the New England hub in the event that Mr. Lanigan made good on his express threat to leave ABX or (2) to recruit someone to help Mr. Lanigan in the event that corporate approved a new position. Cousineau Affidavit, ¶ 8. In these proceedings, Mr. Lanigan looked to a printout of the job listing and contends that the job was posted on December 21, 2006. Lanigan Tr. at 79-80; Lanigan Ex. 12, 18. He did not, however, actually see the listing on December 21. Lanigan Tr. at 78-79, 108.] Ms. Cousineau followed up further with a December 27 e-mail to Mr. Lanigan asking to meet on his position on performing maintenance at both buildings until the company could justify hiring more help, and on Mr. Lanigan's ability and willingness to respond to emergency maintenance calls. Lanigan Ex. 10 (identified at Lanigan Tr. at 62). In Mr. Lanigan's personal opinion, he felt that Ms. Cousineau was getting ready to fire him. Lanigan Tr. at 62-63. He felt as if he was being pushed into leaving his job over the dispute over his duties and ABX's previously described “unrealistic” expectations. Lanigan Tr. at 63-64.* [Fn. Mr. Lanigan testified at his unemployment compensation hearing that the addition of the annex to his hub responsibilities was “insane” and that he did not have enough time in the day to do it. Lanigan Ex. 3, pp. 6-7. In perspective, however, he admitted that he only worked at the annex on “maybe three occasions.” *Id.* at 7. Mr. Lanigan also testified that he was working an intense 8-hour schedule. Lanigan Tr. at 42. He feared being expected to work longer hours. *Id.* at 43-44. His schedule hours (7:00 am, to 3:00 p.m.), however, never changed. *Id.* at 46.] It

was the same dispute over the annex that started in mid-October. Lanigan Tr. at 64-65.

Ms. Cousineau was again informed of Mr. Lanigan's continued reluctance to service the annex and threat to seek other employment by Melissa Meurer, who reported her mid-January 2007 conversation with Mr. Lanigan on to Ms. Cousineau. Cousineau Affidavit, ¶ 7. Mr. Lanigan confirmed that he met with Ms. Meurer, and told her that he was having problems with having the annex forced on him and being expected to use his own vehicle to move parts and equipment. Lanigan Tr. at 67. He expressed concern over his impasse with Ms. Cousineau. Lanigan Tr. at 68. Right after their meeting, Mr. Lanigan pulled up a prior message from Ms. Cousineau -- again asking Mr. Lanigan to service some broken belts at the annex. Lanigan Tr. at 68-69. Mr. Lanigan concluded that this was not going to work out. Lanigan Tr. at 68-69. His stress was again all related to the annex dispute from October. Lanigan Tr. at 69-70. Mr. Lanigan explained:

It's all — everything is related to, you know, wanting me to do something that I'm already — you know, I'm already working really hard to do what I'm doing at the hub, they did all these expansions, hundreds and hundreds of feet of new conveyor systems and all these new best flex belts. I was swimming. Swimming.

Lanigan Tr. at 70.

E. Mr. Lanigan Resigned from ABX on February 2

Once the holiday rush passed, Mr. Lanigan took a vacation. Lanigan Tr. at 69. In mid-January, he also took approximately two weeks of sick leave. Lanigan Tr. at 70. Upon his return, he met with Ms. Cousineau and John Chiaffitelli of ABX regarding his maintenance duties, and the expectation that he would service the annex as well. Cousineau Affidavit, ¶ 9; Lanigan Tr. at 77. He sensed that he was going to get fired. Lanigan Tr. at 71, 77-78. Mr. Lanigan said that he would service the annex one day a week if he were converted to being paid hourly. Cousineau Affidavit, ¶ 9; Lanigan Tr. at 74. He repeated his request for a van. Lanigan Tr. at 73-74. Mr. Chiaffitelli responded that they could not agree to those conditions without approval, and asked Mr. Lanigan if he would work at the annex in the interim. Cousineau Affidavit, ¶ 9. Mr. Lanigan responded that he would not, and said he was giving his two weeks notice of resignation. Cousineau Affidavit, ¶ 9.

Mr. Lanigan's version of the meeting is slightly different, but the material facts are the same. According to Mr. Lanigan, he told Ms. Cousineau and Mr. Chiaffitelli that he would give it a shot servicing the annex if he was converted to being paid hourly. At that point, the room fell silent, and Mr. Lanigan broke the silence by resigning. Lanigan Tr. at 74-75.* [Fn. Mr. Lanigan testified similarly at his unemployment compensation hearing. Lanigan Ex. 3 at 25-26 (identified in

Lanigan Tr. at 28-29).] Nobody asked him to resign or leave ABX. Lanigan Tr. at 77.

ABX was finally able to hire an individual to replace Mr. Lanigan in March 2007. That one individual services both the New England hub as well as the annex — performing the same duties that Mr. Lanigan had objected to performing. Cousineau Affidavit, ¶ 11.

Mot. for Sum. Dec. at 4-14. The Respondent contends that it is entitled to summary decision on these facts because: (1) the Complainant's participation in (and not the initiation of) communications regarding the scales does not amount to protected activity under the Act; (2) the Complainant's resignation on February 2, 2007 is not an adverse action under the Act; (3) there is no causal nexus between the Complainant's resignation and any arguably protected activity; and (4) it has articulated a legitimate non-discriminatory reason for its concerns over the Complainant's refusal to service the Annex and for posting a mechanic position while the Complainant was still employed. *Id.* at 17-23.

IV. The Complainant's Response

The Complainant responded to the motion for summary decision with a four-page statement that is accompanied by several exhibits. In his response, the Complainant initially states,

On May 15, 2006, I specifically requested in email that OSHA (**see CX2**), or the FAA conduct an immediate unannounced inspection of the Coventry, RI. DHL sort center. The DHL facility was not inspected by either government agency and my right to ask for the inspection and also to accompany them on the inspection was denied (**see CX3**).

Comp. Resp. at 1 (emphasis and citations in original).⁴ The Complainant then criticizes OSHA for providing his complaint and supporting evidence to the Respondent during the investigation, while failing to provide him with a copy of the Respondent's position statement. *Id.* Regarding the position statement that the Respondent's attorney submitted to OSHA during the investigation, the Complainant asserts the following factual errors

⁴ Attached to the Complainant's Response as Exhibit CX 2 is a copy of an e-mail dated "May 16, 2007" from the Complainant to an OSHA investigator in which the Complainant inquires as to the status of the complaint that he filed on May 2, 2007 and makes the following request:

Since aviation safety at DHL/ABX has been compromised in the past resulting in at least one air disaster due to inaccurate aviation scale readings, I am requesting an immediate **unannounced** OSHA/FAA inspection of the DHL/ABX Sort center's aviation scale on dock door #14, located at 70 Centre of New England Way, in Coventry, Rhode Island.

Comp. Resp. at CX 2, pp. 1-2 (emphasis in original). Thus, the Complainant's exhibit shows that he requested the unannounced inspection in May of 2007 after his February 2, 2007 resignation and after he filed his complaint with OSHA, not in may of 2006..

- He stated to OSHA that I never contacted management regarding my safety concerns (see **CX9—ABX-0284**). OSHA had supplied him with all my email alerts to DHL, and ABX managers regarding scale compliance issues and the lack of Fire Alarm/Sprinkler safety inspections at the main hub.
- In his response to my Violation #1, Fire alarm/Sprinkler Inspection complaint that notified management that we had not had an inspection of the fire safety equipment in over a year. He supplied OSHA with the annual ABX Air, Inc. Safety Department Audit, which was completed on June 27/28, 2006. A company safety audit does not constitute an official inspection by a licensed inspector that is required by Rhode Island law. In RI, Fire alarm and sprinkler inspection and testing code mandates that a quarterly inspection of the fire safety equipment must be conducted by a licensed contractor—RI 13.8.10.9.2 (see **CX4**). RI has the strict Comprehensive Fire Safety Act of 2003, which was enacted after the Station fire tragedy, where 100 people lost their lives in a nightclub fire. I have enclosed the letter (see **CX5**) I received from Fire Marshal Mark Vincent of the Coventry, Rhode Island, Hopkins Hill Fire Department who cover the DHL/NEH Sort Center. He states that there were only two inspections recorded for the DHL facility located in Coventry, for the time period I had requested which was between 9/28/2005 and 04/2007. According to Hopkins Hill's record of licensed inspections of the Hub's fire safety equipment, an inspection took place on July 21, 2005, and the next inspection was recorded on December 07, 2006. There is a gap of nearly seventeen months between inspections.
- he stated a roller from the flexible belt system caused the scale incident (see **CX6**). The roller that was described by Bill Shea, the DHL/NIEH manager to Michael Collins, the DHL scale incident investigator was described as a "large roller" (see **CX7**). The Bestflex flexible belts system have the shortest rollers of all the freight handling equipment in the building.
- he claimed that it was my daily responsibility to provide daily calibration, maintenance and repair to the electronic scales and he produced his (**Exhibit 6**) as proof. I was not responsible for the aircraft scale in any way, Mr. Starkovich's Vital Functions document is for an Air Park Services Department employee, I was a Ground Department employee. I never received or signed a preventative maintenance inspection document for this scale, I was never trained to perform maintenance or calibration, or even provided with a maintenance manual for the aircraft scale, and the first time I saw this Vital Functions document was on 11/19/2007 in ABX's discovery responses.
- he stated that I did not provide a task log to Management (see **CX8**). On November 27, 2006, I did email this task log to Management.

- in his conclusion statement (**see CX9**), he stated “When safety concerns or ideas are brought to the attention of the Safety Department or Operations Management, action is taken. Mr. Lanigan did not utilize either of these avenues.”

Id. at 1-2 (quotation marks, emphasis and citations in original). The Complainant notes that OSHA relied on the foregoing “false accusations” in its June 18, 2007 preliminary findings letter. *Id.* at 2. The Complainant then challenges certain of the facts alleged by the Respondent to be undisputed and counters with the following version:

In Section A, on page 6 of Mr. Petesch’s Affidavit of Christine Cousineau (**see CX10**), Mrs. Cousineau states “Rick Lanigan was involved with others from ABX in ensuring that the scales were properly calibrated, and that debris that had contributed to inaccurate scale readings was cleared away. To the best of my knowledge, the problem was rectified, and by December 20, DHL got back to us with positive feedback on the scale problem discovered by DHL in late October.” This is a false statement which she provided under oath, the aircraft cargo scale at the main NEH hub was not fixed in December of 2006, in fact there was another scale incident on December 14, 2006 (**see CX11**), but this time it was the Annex aircraft scale producing false readings, David Petko, another high ranking DHL manager forwarded this second scale incident email to Christine Cousineau, and a CC to Nunzio DiSavino, the DHL Director of Strategic Projects. Nunzio then emailed Cousineau, and Jan Woolums, another ABX manager, and sent a CC back to David Petko. Nunzio states “Who & What will be done to fix these A can issues. They just continue to happen.”

Mrs. Cousineau replied to Nunzio with a request for help:

She wrote (**see CX11**): “We need to obtain the test weights to perform checks on the scales.” And then she wrote: “The ball decking has not been in for 90 days so it has probably not been calibrated since its installment. That’s my assumption, I do not have the paperwork for that. I do have a contact # for the Company that has conducted the calibrations on the scales in the main building, would they also be the resource to check the ball decking scales in the annex? I can contact them, but there may be a fee for them to come outside a scheduled time frame, will you approve?”

After she received approval from Nuzio, she called for emergency scale maintenance. That same day the Alliance scale technician reported to me at the main hub, I gave him my annex access pass card so he could work on the annex aircraft scale. He came back to the main hub to return my card and reported to me that the problem causing the false readings was that a shrink wrap roll had gotten wedged under the scale. I signed his work order which documented his findings and he left.

On January 13, 2007, Bill Shea, the DHL/NEH manager, sent an email message to Michael Collins, the DHL scale incident Investigator, and sent Cc’s to David

Petko, Nunzio DiSavino, and Christine Cousineau. Shea states "I will be contacting JCI on Monday, asking them to get a person into both buildings and install some type of guard around the bottom of both ball mat scales. Debris is getting under them each day and we cannot afford to miss a piece of wood or bottle that could quite possibly fluctuate calibrations. Are you aware what other buildings use to block the debris (see CX12)."

All levels of DHL and ABX management had knowledge of the fact that until side guards were installed around the perimeter of both aircraft container scales the scale reading could easily be compromised by something as common as an errant plastic water bottle getting jammed under the scale. I notified all managers on 10/26/2006, 10/27/2006, 10/31/2006, and the last time on 1/16/2007 in the main hub, when I pointed out visually to Tom Shaw, an ABX Sort Maintenance supervisor, the exact repairs and upgrades I had been insisting on for the past three months. I told Tom until this is done the readings off this scale are unreliable. I then made my comment about the Pilots Union finding out what is going on here. (see CX13).

On 10/26/2006, after I read Bill Shea's email from the previous night sort, I checked the scale, found debris jammed under it, and sent Shea and ABX management email that recommended the installation of perimeter guards that I felt were needed to be installed in order to prevent the debris from causing another incident. I alerted my managers to these facts in emails which were sent in October, November, and in person on January but nothing was done to address the issue of debris getting jammed under them because no side guards were installed on either scale.

On a hunch, on January 3, 2008, I telephoned Dan Hayman, a local maintenance services handyman, business phone #401-438-4224, cell # 401-261-5703, the owner of Dan The Handyman Inc. who had in the past worked at both hubs as a subcontractor for Johnson Controls Inc., DHL's provider of facility maintenance (see CX14). Dan The Handyman provided handyman services at both DHL buildings in Coventry, RI. I had met and talked to Dan several times over the last couple years at my job. I asked Dan on the phone if he had ever been hired to install side guards on the aircraft scales. After checking his records he said yes that he did, he said that he installed 4x4's (lumber) along the perimeters of the annex and the main hub ball mat scales. He did this work on March 6, and March 7, 2007. He then stated that Johnson Controls contacted Best Retail Solutions, telephone # 817-337-5507, Best Retail Solutions then hired him to install the guards. He then gave me his work order for the ball mats scales guard installation which is #61231 JONCO.

So now we all know when ABX and DHL management decided to take action. Even though there were two scale incidents that I know of, one in October 2006 in the main hub, and the other in the middle of December 2006 in the annex, not one measure even a simple fix like installing scale side guards was taken for nearly

four and a half months after the fact of being alerted by me that scale guards should be installed.

Id. at 2-3 (quotation marks, emphasis and citations in original). The Complainant then offers the following summation of the “false statements” allegedly made by the Respondent in support of the motion for summary decision:

Your Honor, false statements under oath were made and sworn to in the ABX Motion for Summary Decision, the ABX Position Statement, and in the sworn Affidavit, 3/07/08, of Christine Cousineau regarding the aircraft scales, the Fire alarm and sprinklers inspections, and my reasonable right for not wanting to use my vehicle to service the annex especially when management failed to supply the tools needed to service the annex (**see CX15**). In fact, any statement made by any member of management regarding any date that the scale issues were addressed is false. I believe that the facts show that management knew with my email alerts (**see CX16**) that they had been in violation of the RI Fire Protection Code for more than a year and deliberately mislead OSHA with a non official ABX Safety Inspection date, and as I pointed out there was not one but two scale incidences; one that occurred in the main hub in October 2006, and the other in the annex in December 2006. I can only guess how many more times the scale readings were compromised before Dan The Handyman installed the guards on March 6&7, 2007. ABX and DHL managers wanted me out of my job because they knew that I was the only person outside of their management circle, who knew the seriousness of the violations going on there, and the subsequent non action taken by management to alleviate the situation.

Id. at 3 (emphasis and citations in original). In conclusion, the Complainant urges denial of Respondent’s motion so that he can have the opportunity, at hearing to prove “that management did retaliate against me to get rid of me because of my knowledge of the ongoing safety violations that were taking place up to my separation of employment on 2/02/2007, and beyond my last day into March 2007, and longer perhaps.” *Id.* at 4.

V. Discussion, Findings and Conclusions

A. Availability of Summary Decision

The regulations implementing the Act’s employee protection provisions state that “[e]xcept as provided in this part, proceedings will be conducted in accordance with the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges, codified at subpart A, of 29 CFR part 18.” 29 C.F.R. § 1979.107(a). 29 C.F.R. § 18.40 contains a summary decision procedure which is applicable in administrative proceedings conducted under the Act. *Friday v. Northwest Airlines, Inc.*, USDOL/OALJ Reporter ARB Case No. 03-132, ALJ Case Nos. 2003-AIR-19 & 2003-AIR-20 at 3-4, 2005 WL 1827745*2-3 (ARB Jul. 29, 2005).

The OALJ summary decision rule provides that “[a]ny party may . . . move with or without supporting affidavits for a summary decision on all or any part of the proceeding.” 29 C.F.R. § 18.40(a). “[An] administrative law judge may enter summary judgment for either party if . . . there is no genuine issue as to any material fact and [the] party is entitled to summary decision.” 29 C.F.R. § 18.40(d). A “material fact” is one whose existence affects the outcome of the suit. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Santiago-Ramos v. Centennial P.R. Wireless Corp.*, 217 F.3d 46, 52 (1st Cir.2000). A “genuine issue” exists “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson* at 248. When a moving party demonstrates the absence of evidence supporting the non-moving party’s position, the burden shifts to the non-moving party to establish the existence of an issue of fact that could affect the outcome of the litigation. *Hodgens v. General Dynamics Corp.*, 144 F.3d 151, 158 (1st Cir. 1998). However, “[t]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.” *Velazquez-Garcia v. Horizon Lines Of Puerto Rico, Inc.*, 473 F.3d 11, 15 (1st Cir. 2007) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248 (1986)). Thus, “[n]either wishful thinking . . . nor conclusory responses unsupported by evidence will serve to defeat a properly focused [summary judgment] motion.” *Griggs-Ryan v. Smith*, 904 F.2d 112, 115 (1st Cir.1990). In considering a motion for summary decision, a court must consider “the entire record in the light most hospitable to the party opposing summary judgment, indulging all reasonable inferences in that party's favor.” *Griggs-Ryan v. Smith*, 904 F.2d 112, 115 (1st Cir.1990).

B. The Act’s Protection and Evidentiary Requirements

The Act prohibits air carriers, contractors, and their subcontractors from discharging or otherwise discriminating against any employee with respect to the employee’s compensation, terms, conditions, or privileges of employment because the employee “provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the employer or Federal Government information relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States.” 49 U.S.C. § 42121(a). The implementing regulations provide that an employer violates the Act if it intimidates, threatens, restrains, coerces, or blacklists an employee because of protected activity. 29 C.F.R. § 1979.102(b). Therefore, a complainant must demonstrate that the following elements: (1) that he or she engaged in protected activity; (2) that the employer knew of the protected activity; (3) that the employee suffered an unfavorable or “adverse” personnel action; and (4) that the employee’s protected activity was a contributing factor in the unfavorable personnel action. *Clemmons v. Ameristar Airways, Inc.*, USDOL/OALJ Reporter ARB Nos. 05-048, 05-096, ALJ No. 2004-AIR-11 at 6, 2007 WL 1935557*4 (ARB June 29, 2007). At the hearing stage before an ALJ, a complainant is required to prove by a preponderance of the evidence that protected activity was a “contributing factor” that motivated an employer to take adverse action in order to establish a violation of the Act. *Brune v. Horizon Air Industries, Inc.*, USDOL/OALJ Reporter, ARB No. 04-037, ALJ No. 2002-AIR-8 at 13, 2006 WL 282113*8 (ARB Jan. 31, 2006). If a complainant meets his or her burden of proving

unlawful discrimination or retaliation by a preponderance of the evidence, the burden shifts to the employer to demonstrate “by clear and convincing evidence” that it would have taken the same unfavorable personnel action in the absence of the complainant’s protected activity. *Brune*, 2006 WL 282113*9. Within this statutory framework, I will now examine the record in the light most favorable to the Complainant to determine whether he has demonstrated that there is any genuine issue of material fact warranting a hearing.

C. Protected Activity

The Act protects an employee who provides “information” to an employer, or to the Federal government with the employer’s knowledge, “relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety” 49 U.S.C. § 42121(a)(1). The information provided “must be specific in relation to a given practice, condition, directive or event, and the employee “reasonably must believe in the existence of a violation.” *Simpson v. United Parcel Service*, USDOL/OALJ Reporter ARB No. 06-065, ALJ Case No. 2005-AIR-031 at 5, 2008 WL 921123 (ARB Mar. 14, 2008) (citing *Clean Harbors Env’tl. Servs. v. Herman*, 146 F.3d 12, 19-21 (1st Cir. 1998)). While a complainant need not cite a specific violation, the information “must at least relate to violations of FAA orders, regulations, or standards (or any other violations of federal law relating to aviation safety)” in order to be afforded protection under the Act. *Id.* Thus, the reporting of health or safety problems that do not relate to aviation safety are not protected. *Mehen v. Delta Air Lines (Mehen)*, USDOL/OALJ Reporter ARB No. 03-070. ALJ No. 2003-AIR-4 at 4, 2005 WL 489735*3 (ARB Feb. 24, 2005). Moreover, providing “information” is critical to invoking the Act’s protection: “Competently” and “aggressively” carrying out duties to ensure safety, though laudable, does not by itself constitute protected activity.” *Sievers v. Alaska Airlines, Inc. (Sievers)*, USDOL/OALJ Reporter ARB No. 05-109, ALJ No. 2004-AIR-28 at 5, 2008 WL 316012*4 (ARB Jan. 30, 2008).

The Complainant’s asserted protected activity involved two conditions at his workplace: (1) the lack of a fire alarm and sprinkler inspection at the Respondent’s Coventry Sort Center as required under Rhode Island law; and (2) the inaccurate scale readings. After reviewing the entire record with particular attention to the Complainant’s response to the motion for summary decision in a light most favorable to the Complainant, I conclude that he has not shown that he engaged in any activity protected by section 42121 of the Act.

First, he has not shown that any information that he provided about the lack of a required fire alarm and sprinkler inspection, while possibly a serious matter under Rhode Island law, was in any way related to violation of an FAA order, regulation or standard, or any other provision of Federal law relating to air carrier safety. In the absence of any nexus to Federal aviation safety regulation, no reasonable factfinder could determine that the Complainant’s activities related to fire alarm and sprinkler inspections required under state law were protected under section 42121. *Mehen*, 2005 WL 489735*3.

Second, the Complainant has not shown that provided any “information” to the Respondent or the Federal government concerning any violation of Federal aviation safety laws, regulations or standards related to the incorrect weights recorded by the sort center’s scales. Rather, the undisputed facts, including the Complainant’s deposition testimony and response to the motion for summary decision, demonstrate that the matter of the scales malfunctioning and recording inaccurate weights was discovered and reported by others and that the Complainant’s actions were limited to proposing corrective measures and defending himself against what he perceived as an attempt by the Respondent and / or others to blame the scale problems on him. As discussed above, providing information related to an alleged violation is a critical element of protected activity. Simply doing one’s job as a mechanic, as the Complainant did in this case by offering remedial suggestions regarding scale maintenance, does not invoke the Act’s protection despite the obvious relationship between proper scale maintenance and aviation safety. *Seivers*, 2008 WL 316012*4. In the absence of any evidence that the Complainant provided “information” related to a violation of FAA regulations or other Federal laws related to aviation safety, no reasonable factfinder could determine that the Complainant’s activities in connection with the malfunctioning of cargo scales were protected under section 42121.⁵

D. Adverse Employment Action

“Not every action taken by an employer that renders an employee unhappy constitutes an adverse employment action.” *Hirst v. Southeast Airlines, Inc.*, USDOL/OALJ Reporter ARB Nos. 04-116, 04-160, ALJ No. 2003-AIR-47 at 9, 2007 WL 352447*5 (ARB Jan. 31, 2007). In *Hirst*, the ARB held that a section 42121 complainant must show that a reasonable employee or job applicant would find the employer's action “materially adverse,” *i.e.*, “the employer's actions must be harmful to the point that they could well dissuade a reasonable worker from making or supporting a charge of discrimination.” 2007 WL 352447*5 (quoting *Burlington Northern & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 126 S.Ct. 2405, 2409). Here, the Complainant alleges that the Respondent saddled him with impossible work requirements and demands which forced him to resign to avoid being terminated. In my view, imposition of onerous, unreasonable or impossible work demands amounts to a materially adverse action and could dissuade a reasonable employee from engaging in protected activity. Therefore, viewing the record in a light most favorable to the Complainant, I conclude that the Complainant has made a sufficient showing that there are material questions of fact (*i.e.*, whether the Respondent’s work demands were in fact unreasonable) that would preclude entry of summary decision on whether he suffered an adverse employment action.

⁵ Since the Complainant cannot prove that he engaged in protected activity, he obviously cannot prove the second element that the Respondent knew of such activity. On the other hand, if it is assumed that the Complainant’s actions in suggesting remedial measures for the cargo scales were protected, there is no dispute that the Respondent had knowledge of his suggestions.

E. Protected Activity as a Contributing Factor

The undisputed facts show that the Complainant and his managers were involved in an ongoing and escalating dispute over the scope of his duties, hours and logistical support which predated his involvement in the matter involving the cargo scales. The Complainant threatened to pursue other employment opportunities if the Respondent did not modify its demands and provide him with additional help, and he made good on his threat by resigning when he reached an impasse with his managers over the workload and support issues in January of 2007. He acknowledged that the Respondent never threatened him for any activity which he alleges to be protected, and there is no evidence, aside from timing, that his suggestions regarding the cargo scales played any role in the Respondent's efforts to change his duties and hours. On the other hand, there is substantial uncontradicted evidence that the Respondent's actions which led to the Complainant's resignation (*i.e.*, the demands that he service the annex and cooperate by changing his hours) clearly predated and were unrelated to his involvement with the cargo scales. While temporal proximity between an employee's protected activity and an adverse employment action may support an inference of a causal relationship, an inference alone is not enough to meet an employee's burden of proving that protected activity was a contributing cause where, as here, the undisputed facts establish that there were independent reasons for the termination that had no relationship to any protected activity. *See Barker v. Ameristar Airways, Inc.*, USDOL/OALJ Reporter ARB No. 05-058, ALJ No. 2004-AIR-12 at 7, 2007 WL 4623496*5 (ARB Dec. 31, 2007). On these undisputed facts, I conclude that even viewing the evidence in a light most charitable to the Complainant, he cannot prove that any allegedly protected activity contributed to the termination of his employment.

F. Conclusion

The Complainant has failed to show that there are genuine issues of material fact warranting an evidentiary hearing as I conclude, after considering the entire record in a light most favorable to him and drawing all reasonable inferences in his favor, that the Complainant cannot meet his burden of proving that he engaged in activity protected by the Act or that any allegedly protected activities were a contributing cause leading to his resignation. Accordingly, the Respondent is entitled to summary decision.

VI. Order

The Respondent's motion for summary decision is **ALLOWED**, and the complaint filed by Richard Lanigan is **DISMISSED**.

SO ORDERED.

A

DANIEL F. SUTTON
Administrative Law Judge

Boston, Massachusetts

NOTICE OF APPEAL RIGHTS

To appeal, you must file a Petition for Review (“Petition”) with the Administrative Review Board (“Board”) within ten (10) business days of the date of issuance of the administrative law judge’s decision. The Board’s address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210. Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. See 29 C.F.R. § 1979.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. See 29 C.F.R. § 1979.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. See 29 C.F.R. § 1979.110(a).

If no Petition is timely filed, the administrative law judge’s decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1979.110. Even if a Petition is timely filed, the administrative law judge’s decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. See 29 C.F.R. §§ 1979.109(c) and 1979.110(a) and (b).