



Issue Date: 27 September 2010

CASE NO.: 2009-AIR-00024

In the Matter of

JOHN NAGLE,
Complainant,

v.

UNIFIED TURBINES, INC.,
Respondent.

Appearances:

Lisa Werner (Clark, Werner & Flynn, P.C.)
Burlington, VT, for the Complainant

John Franco, Jr., Burlington, VT,
for the Respondent

Before: Daniel F. Sutton, Administrative Law Judge

DECISION AND ORDER DISMISSING COMPLAINT

I. Statement of the Case

This matter arises under Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (the “Act” or “AIRA”), 49 U.S.C. § 42121, and the implementing regulations at 29 C.F.R. Part 1979. The Complainant, John Nagle, alleges that the Respondent, Unified Turbines, Inc., fired him from his position as a welder on December 24, 2008, in retaliation for his engaging in activities protected under the AIRA and the Occupational Safety and Health Act of 1970 (the “OSH Act”), 29 U.S.C. § 651 *et seq.* Following an investigation, the U.S. Department of Labor, Occupational Safety and Health Administration (“OSHA”), acting for the Secretary of Labor, notified Nagle by a letter dated July 28, 2009, of the Secretary’s finding that there was no reasonable cause to believe that Unified Turbines had violated either the AIRA or the OSH Act. 49 U.S.C. § 42121 or 29 U.S.C. § 660(c). Nagle filed a timely objection to the Secretary’s AIRA determination pursuant to 29 C.F.R. § 1979.106, and he requested a formal hearing before an administrative law judge (“ALJ”) pursuant to 29 C.F.R. § 1979.107.¹

¹Nagle’s claims under the OSH Act are not a part of this proceeding. Jurisdiction over retaliation claims under section 11(c) of the OSH Act lies in the district courts. 29 U.S.C. § 660(c).

The hearing was initially scheduled to convene on October 14, 2009. However, the parties filed a Joint Motion for Extension of Time on October 8, 2009. The motion was granted, and the hearing was conducted over two days, February 17 and 18, 2010, in Burlington, Vermont. Both parties appeared and were represented by counsel. Testimony was heard from John Nagle, [M],² Robert Martin, William Kinsell, Daniel Hubbert, Richard Benoit, Karl Deavitt, and Richard Karnes. Stipulations were admitted as ALJ Exhibit (“ALJX”) 16A, and documentary evidence was admitted as Joint Exhibits (“JX”) 1-5, 7-11, 13, 14, and 16. Hearing Transcript (“HT”) at 390. The Respondent’s objection to JX 15 was taken under advisement, and the parties were directed to address admissibility in their briefs. *Id.* at 380. The Respondent did not address the admissibility of JX 15 in its post-hearing brief. Accordingly, the objection is deemed waived, and JX 15 has been admitted.

After careful consideration of the record and the parties’ respective positions, the ALJ concludes that Nagle has failed to prove that Unified Turbines terminated his employment in violation of AIRA. Accordingly, he is not entitled to relief.

II. Findings of Fact

A. Stipulations

The parties introduced the following stipulations at the hearing:

1. Unified Turbines, Inc., is currently located in Milton, Vermont. However at all times pertinent to this matter it was located in Winooski, Vermont;
2. Unified is privately owned by two partners, Richard Karnes and Karl Deavitt;
3. Unified repairs, overhauls, and modifies components for various airline manufacturers;
4. Unified is a Federal Aviation Administration (“FAA”)-approved repair station under 14 C.F.R. Part 145;
5. Unified is a contractor of an air carrier within the meaning of 49 U.S.C. § 42121;
6. Nagle has been employed by Unified as a welder since October 2007;
7. Nagle is a good welder;
8. On December 16, 2008, Nagle made a complaint to the Winooski, Vermont Police Department;
9. Sometime prior to the complaint to the Winooski Police Department, Nagle had made the same allegations to Karl Deavitt;

²Initials have been used in this decision instead of the names of certain individuals who are not parties in light of the sensitive nature of some of the testimony.

10. During the morning of Christmas Eve, Wednesday, December 24, 2008, Nagle was involved in a minor shoving match with a co-worker [M] that ended without any third party intervention, and was not witnessed by either Rick Karnes or Karl Deavitt;
11. Karl Deavitt learned about the incident from [M];
12. [M] was not sent home for the incident and continued to work for the balance of the work day;
13. The Christmas Eve, 2008 work day at Unified ended at noon;
14. Nagle left a voicemail message on Karl Deavitt's personal cell phone during the Christmas holiday asking for a return call;
15. Karl Deavitt did not return Mr. Nagle's call;
16. Nagle was paid by Unified for all of Christmas Eve, for Thursday Christmas Day, and for Boxing Day, Friday, December 26, 2008;
17. Nagle did not return to work at Unified on December 29, 2008, or any time thereafter; and
18. Unified discontinued paying Mr. Nagle commencing December 29, 2008.

ALJX 16A; HT at 390.

B. Background

Unified Turbines is approved by the FAA as an overhaul and repair facility for aircraft engine components. ALJX-16A, HT at 226. The company was established in 1997 by Rick Karnes. In 2000, Karnes entered into a partnership with Karl Deavitt, and the partners have jointly run the company since that time. HT at 226.

Nagle is a forty-four year old who graduated from high school in 1984. HT at 27. He has been working as a welder in various locations since 1986. *Id.* He has full custody of his minor daughter. *Id.* at 79. Nagle does not receive child support payments from his daughter's mother, although have been court-ordered. *Id.* at 79. His daughter has been diagnosed with Post Traumatic Stress Disorder ("PTSD") for which she receives counseling. *Id.* at 81. Nagle first worked as a welder for Turbine Weld in Winooski, Vermont before relocating with the company to Venice, Florida in 1993. *Id.* at 28. Around 1994, Nagle left Turbine Weld and later started working for Crane Aerospace, a company that the former owner of Turbine Weld started. *Id.*

C. Complainant's Employment with Unified Turbines

In 2007, when he was working in Florida as a welding shop manager, Nagle learned from Dan Hubbert, a friend who worked at Unified Turbines, that Unified Turbines was looking for a new welder. *Id.* at 30-31. He then had several telephone conversations with Rick Karnes and Deavitt which lead to an offer of employment and relocation expenses which Nagle accepted in October of 2007. *Id.* at 31-34. Nagle testified that although it was his understanding that he

would be paid \$20.00 per hour, he discovered when he received his first paycheck at Unified Turbines that he was being paid \$17.50 per hour. *Id.* at 35-36. He discussed his hourly rate with Karnes and Deavitt who indicated that he would receive an increase after a review. *Id.* at 36; 275-76. However, Nagle's pay was not increased because, as Karnes explained, Nagle was chronically tardy and missed a significant amount of time from work. *Id.* at 275-77. Nagle confirmed that he missed a lot of time from work which he attributed to difficulties related to his daughter's transition into the local school system. *Id.* at 110-14. Deavitt testified that Unified Turbines was aware of Nagle's difficulties as a single parent and took no action against him for attendance issues. *Id.* at 181-82. Deavitt explained, "I understand his single dad situation, and we did – we definitely took that into consideration." *Id.* at 181.

Nagle's dissatisfaction with his pay continued over the course of his employment at Unified Turbines. Coworkers testified that Nagle repeatedly told them that he was thinking of quitting and finding another job because he was not making enough money at Unified Turbines. HT at 255; 327. Nagle agreed that he frequently complained to coworkers about his pay, and that he may have told them that he wanted to quit. *Id.* at 106-07, 109.

At Unified Turbines, Nagle performed "purge welding" on aircraft engine turbines. HT at 34-35. He explained that "purge welding" utilizes argon gas to minimize burning and produce a particularly strong weld. *Id.* at 35. As a welder, Nagle worked with bench mechanics who did preparation work on the metal aircraft engine components. *Id.* at 34, 37-38. M was one of the bench mechanics with whom Nagle regularly worked at Unified Turbines. *Id.* at 37-39. Nagle testified that M was relatively new when he came to Unified Turbines, but he thought M was a "pretty good" bench mechanic with a lot of potential. *Id.* at 38.

D. Nagle's Concerns and Complaints about M

Nagle testified that he noticed a change in the quality of M's work beginning in August 2008. HT at 40. At that time, Nagle was aware that M had prescriptions for pain medication. *Id.* at 42-43. According to Nagle, M "seemed lazy at times and then just irritable, up and down," and the quality of his work deteriorated to the point that Nagle had to return parts for further preparation. *Id.* Nagle further testified that he observed physical changes in M during this time frame in that he appeared to be "high" and his eyes were "[j]ust not normal. Sometimes they'd be like small and sometimes wide." *Id.* at 41. Nagle also observed M to have slurred or "sloppy" speech at times, and that the pace of M's work "absolutely slowed down." *Id.* at 42. He stated that he had observed M taking as many as three pills at the same time. *Id.* In Nagle's view, M's apparent abuse of prescription pain medication created a potential "safety issue" in that he was concerned that M could injure himself or a coworker on the job. *Id.* at 43-44. In addition, he said that the deterioration in the quality of M's work potentially compromised the aircraft engine components, explaining that, "[t]his isn't flipping pizzas or stocking cans on the shelves." *Id.* at 44.

M confirmed that he developed an opiate addiction problem during 2008. HT at 133-35. He testified that the problem worsened during the summer and into the fall of 2008, and he agreed that the addiction affected his productivity at work and probably the quality of his work as well. *Id.* at 135-36, 158, 167. However, he denied that his speech was slurred, and he did not notice anything unusual about his eyes. *Id.* at 142. M explained that he was first prescribed

narcotic pain medication, primarily Vicodin, after he suffered multiple injuries in an automobile accident about five years ago. *Id.* at 134, 153-54. He received additional prescriptions after he was involved in an accident in October of 2008 when a portion of his thumb was severed while he was assisting his girlfriend's father split wood with a motorized log splitter. *Id.* at 153-56. M stated that the prescriptions were written by two different doctors, thus providing him with overlapping prescriptions which led to his taking more than was prescribed and developing a dependency. *Id.* at 156-58. He testified that his abuse of narcotics affected his appetite and his thinking and that he became argumentative with his girlfriend. *Id.* at 158. He also acknowledged that the worsening of his opiate addiction during the fall of 2008 coincided with the deterioration of his relationship with Nagle at work. *Id.* at 141-42. By February of 2009, he'd had enough, and he went to Deavitt and Karnes to discuss the problem. *Id.* at 146-49, 163-64. As a result of this discussion, United Turbines loaned M \$1,000.00 so that he could enter a rehabilitation program in March of 2009. *Id.* at 147-48.

Nagle testified that following the accident with the log splitter, M came to work with his thumb "wrapped up in a big old bandage" and told "everybody in the shop" that he'd been involved in an accident with a log splitter. HT at 89. Nagle thought that M's description of the accident was "curious . . . a weird story" because "[a] wood splitter is kind of slow" *Id.* at 90. This incident served to heighten Nagle's concerns about M's ability to do his job safely. *Id.* In Nagle's opinion, a person could hurt himself more easily on one of the pneumatic or hydraulic cutting and grinding tools used at Unified Turbines than he could on a wood splitter. *Id.* Nagle was familiar with safety issues in the workplace because he had received OSHA training in the past and had worked as a manager. *Id.* at 45-46. He was also familiar with Unified Turbines' substance abuse policy which states that "[a]ny involvement with alcohol and drugs which adversely affect the work place will not be tolerated." *Id.* at 46; JX 9 at 1.

1. Nagle's First Complaint Regarding M

Nagle testified that during the time that he was observing escalating problems with M's work that he attributed to abuse of prescription pain medication, he had a conversation with Deavitt that was precipitated by a disagreement with M over the responsibility for some defective work. HT at 47. Nagle stated that he told Deavitt that the quality of M's work was poor, that he had witnessed M taking "three or four pain killers at a time," and that M "seemed high and he was popping the pills." *Id.* at 47-48. According to Nagle, Deavitt responded that there was nothing he could do because the pills were prescribed. *Id.* at 48. Nagle stated that he countered that the "script doesn't say take three or four at a time." *Id.* Deavitt essentially corroborated Nagle's account of this conversation though he recalled that his response was, "John, I'm aware that Eric is on prescription drugs. I'm not aware of him abusing those drugs." *Id.* at 183.

2. Nagle's Second Complaint Regarding M

After his conversation with Deavitt about M, Nagle observed another incident involving M which he perceived as indicative of prescription drug abuse. HT at 49. Nagle testified that the incident occurred in late September or October of 2008 while K, another bench mechanic, was out of work recovering from surgery for carpal tunnel syndrome. *Id.* Nagle explained that he was filling in during K's absence and that he frequently traveled back and forth between K's

bench and his welding booth. *Id.* Nagle knew that K kept a bottle of pills in a tool drawer on his bench, and his suspicions were aroused after he noticed that this drawer had been repeatedly opened and when he saw M open this drawer. *Id.* at 50-51. Although he did not see M remove any of the pills, Nagle decided that it would be best to remove the pills and deliver them to management. *Id.* at 51. Nagle took the bottle of pills and brought them to the front of the shop where he gave them to Karnes or Deavitt, stating that he believed that M had an “interest” in the pills and that he did not want to be implicated in any misappropriation of the pills since he was working at K’s bench. *Id.* at 51, 56-57.

Deavitt testified that Nagle brought a bottle of pills into the office, indicating that they belonged to K and that he did not believe that they should be left in the shop while K was out. HT at 187-88, 238-39. However, he stated that he did not recall Nagle mentioning M in connection with the pills or saying that he was concerned about being accused because the pills were removed from K’s bench. *Id.* at 188. M denied ever going through K’s drawer or taking any pills from the drawer. *Id.* at 162.

3. Nagle’s Third Complaint Regarding M

Nagle testified that he witnessed what he believed to be a drug transaction on December 16, 2008, between M and a young man on a sidewalk outside of the Unified Turbines shop. HT at 58-61. Specifically, Nagle testified that he was sitting in his truck in the parking lot outside of the shop during the lunch break when he saw M stop on his way back into the shop to answer a mobile telephone call or text message. *Id.* at 58. According to Nagle, he next observed the following:

And then he [M] proceeded back down the steps and walked across the whole building to the sidewalk. And this boy came walking across the other side and met with him. And he gave him money and [M] took this pill vial out and gave him pills, and that was the end of it.

Id. at 58-59, 61-62. Nagle testified that he then went into the shop where he recounted the incident to Deavitt, stating, “I’ve seen him selling his pills now. He’s got problems.” *Id.* at 59-60. Nagle stated that Deavitt responded that he would have to see an incident before he could do anything about it. *Id.* at 60. Nagle stated that he then told Deavitt, “Well I will.” While he initially seemed confused about the timing, Deavitt confirmed that Nagle reported seeing M engaging in what appeared to be a drug transaction outside of the shop. *Id.* at 189-93.

4. Nagle’s Report to the Winooski Police

Following his conversation with Deavitt, Nagle went to the Winooski, Vermont police on December 16, 2008 at approximately 5:00 p.m. HT at 60. He testified that he reported to the police that he had seen M “selling his prescription drugs on the sidewalk to another guy, that I witnessed him being high on it a work, I witnessed him taking more, and other – just that.” *Id.* at 62. *See also* JX 5. Records from the Winooski Police Department contain the following narrative account from Officer James Learned of what Nagle reported:

On 12-16-08 at approximately 1700 hours John Nagle (DOB:2-16-66) came into the Winooski Police Department to report some suspicious activity that has been occurring at his place of employment at Unified Turbines in Winooski.

Nagle told me that he has high suspicion that a fellow employee is dealing pills, drugs and possible stolen items while he is at work.

Nagle said the persons name is “[M]” and he drives a white chevy blazer that is usually parked out behind the shop. Nagle said “[M]” is in his mid 20’s. John told me that “[M]” receives a lot of text messages and makes short trips out side where he meets people in “nice looking vehicles”.

Nagle said he believes “[M]” has his own prescriptions for Oxy’s and usually has a lot with him at all times.

Nagle said “[M]” usually leaves at noon for lunch and returns at 12:30 or later. He said they work from 7:30-1600.

Nagle said he would be willing to look into this further.

I advised Nagle I would forward the information listed above to our Detective.

JX 14.³ Richard W. Benoit, the Deputy Chief of Police in Winooski, testified at the hearing that he determined that there was not reasonable cause for further investigation of Nagle’s report as it provided no information that any crime had taken place. HT at 353-55, 360-61, 364-65. In particular, Deputy Chief Benoit testified that there was nothing in the Department’s records that Nagle had claimed that he had actually witnessed M involved in a drug transaction. *Id.* at 356-57. Deputy Chief Benoit also testified that the Winooski Police Department never informed Unified Turbines that Nagle had filed a complaint, and that the Department did not have any contact with Unified Turbines about Nagle’s allegations until sometime after January 9, 2009 when Officer Learned wrote a “To whom it may concern” letter (JX 5) at Nagle’s request, confirming Nagle’s December 16, 2008 visit to the Winooski Police. *Id.* at 362-63.

E. Unified Turbines’ Response to Nagle’s Allegations

³It is noted that the narrative of Nagle’s report from the Winooski Police records varies in several material respects from Nagle’s testimony at the hearing. First, there is no mention in the narrative of any incident on December 16, 2008 or any mention of Nagle reporting that he had witnessed M exchange pills for money on a sidewalk outside of Unified Turbines earlier that same day, although Nagle claimed on rebuttal that he had reported this to the police. HT at 378. Second, the narrative states that Nagle reported that he was suspicious that M was possibly dealing in stolen items, a suspicion that was never addressed in Nagle’s testimony. Third, the narrative states that Nagle reported that M received a lot of text messages at work and made multiple short trips outside to meet with people in “nice cars” which are additional observations not described in Nagle’s hearing testimony. Finally, the narrative refers to “Oxys” which were not mentioned at the hearing. These discrepancies are not insignificant details that a witness could be expected to overlook. Nagle had ample opportunity at the hearing during friendly direct examination to recount the basis for his suspicions about M. In the ALJ’s view, the discrepancies between his report to the police and his testimony at the hearing are too numerous and too significant to warrant any conclusion other than his testimony regarding M’s behavior is not completely reliable.

Deavitt testified that after Nagle raised concerns about M's drug use, he began to monitor M more closely but did not observe any behavior or problem that he felt warranted action. HT at 184-87, 196-97. Deavitt further testified that with the several checkpoints used in the shop, there is no way that an unsafe piece of equipment would leave the shop and go to a customer. *Id.* at 197. He explained that no piece of equipment leaves the Unified Turbines shop without meeting the standards of an overhaul manual and all of the applicable standards established by the FAA. *Id.* at 198. Unified Turbines' inspector, Robert Martin, testified that the quality of M's work declined during 2008 so that he had to send more parts back to him for additional work. *Id.* at 264-66. Deavitt admitted that M could have potentially been hurt or hurt a co-worker if he had been high at work. *Id.* at 198. However, he went on to state that had he noticed any signs that M was high at work he would have intervened. *Id.* Later, when M told Deavitt and Karnes that he had an addiction to opiates, the partners told him that he would not be able to work in the shop while suffering from such an addiction until he successfully completed a rehabilitation program. *Id.* at 199.

Karnes and/or Deavitt also spoke to M after Nagle reported that he had seen M selling pills outside of the shop. M testified that he was confronted by Karnes or Deavitt about Nagle's allegations about pill selling and said that he responded that he had simply been handing keys to his girlfriend or his girlfriend's mother. HT at 147-48. While he was unable to recall the date of this confrontation, he testified that he believed that it was sometime in January or February of 2009 after Nagle had left Unified Turbines. *Id.* at 160. Deavitt expressed confusion about the dates, but eventually agreed that it "[d]oes make sense" that Nagle spoke to him on December 16, 2008, the same day that Nagle went to the Winooski Police. *Id.* at 191. Deavitt also agreed that the nature of Nagle's allegation was such that it would have been addressed promptly, either that day or the next. *Id.* at 191, 224. Deavitt further testified that he and Karnes did speak to M about Nagle's allegation, and he believed that M would have been aware of the fact that Nagle had accused him of selling pills before December 24, 2008. *Id.* at 223-24. Karnes also testified that Deavitt informed him that Nagle had reported seeing M selling pills outside of the shop and that he and Deavitt confronted M about Nagle's allegation, most likely that same day or the next day. *Id.* at 289-90. However, Karnes stated that he did not learn that Nagle had gone to the Winooski Police until after Nagle left Unified Turbines. *Id.* at 279.⁴

Unified Turbines maintains a drug testing protocol for all of their safety sensitive employees. HT at 241. M and Nagle were both considered "safety-sensitive" employees subject to random drug tests. *Id.* at 242, 245. Deavitt testified that there has never been a positive test result from random drug testing at Unified Turbines. *Id.*

F. The December 24, 2008 Altercation

⁴Unified Turbines apparently learned of Nagle's December 16, 2008 report to the Winooski police sometime after January 8, 2009 when Karnes received a facsimile of the January 9, 2009 "To whom it may concern" letter (JX 5) penned by Officer Learned. HT at 279-80; 362-63; JX 8.

During the morning on December 24, 2008, Nagle and M were involved in a verbal and physical altercation in the Unified Turbines shop between 9:00 and 9:30 a.m. HT at 65. Nagle testified that he had walked to the inspection area, which is separated from the shop by a double door, to fill a cup of water when M “started just verbally assaulting me, calling me all kinds of names.” *Id.* at 63. Nagle stated that he tried to walk away, but M followed him back into the shop, kicking the door open and “verbally running his mouth to me.” *Id.* At that point, Nagle stated that he turned around and told M, “Don’t [expletive] talk to me that way!” *Id.* at 62-64. According to Nagle, the following then occurred:

And he came right at me. I was dead still, stopped. And he came and pushed me with two hands. He came back at me again. I pushed him away with my left hand, and then it broke up, and I went back to the weld booth for a brief time.

Id. at 64. M denied pushing Nagle. Instead, he testified that he had an argument with Nagle who then pushed him. *Id.* at 142-43. M said that he could not recall what he and Nagle were arguing about. *Id.* at 166.⁵ However, he insisted that he did not push Nagle, that he would not push Nagle because he is a bigger man, and that M is a gentle person by nature. *Id.* at 144-45.

Dan Hubbert, a current Unified Turbines employee and friend of Nagle’s who was called as a witness by Unified Turbines, testified that the altercation took place approximately five feet in front of where he was working on the morning of December 24, 2008. HT at 323. He provided the following account:

I recall John coming out of the inspection room and [M] following him. Something was said. I’m not sure what [M] said to him. I didn’t catch that part. Then they came over to where my bench was, and John got over in his face and said, “Don’t talk to me that way.” [M] shoved him with two hands. I mean not hard, but he pushed him back. And then John pushed him, pushed [M] back with one hand, his left hand as I remember. And then it kind of broke up, and I think John went down to the welding booth. And I’m not sure if [M] went up front to tell them what happened or where he went.

Id. at 323-24; *see also* JX 3. William Kinsell, a former employee who was also called by Unified Turbines, provided a somewhat different account. Kinsell testified:

I was working at my bench, and I noticed out of the corner of my eye and heard some noise, you know, some arguing. And I happened to turn my head and look over, and they were in each other’s face, you know, kind of yelling back and forth. And I had to take off my headset, and then I saw John push [M]. And then I thought they were playing around at first, but then I noticed the expressions on the face, and it wasn’t playing around.

⁵On rebuttal, Nagle also testified that he had “no idea” as to what he and M may have been arguing about when the altercation occurred on December 24, 2008. HT at 375. It is noted that Nagle’s post-hearing brief states that he testified on rebuttal that “[d]uring [M]’s angry words, before the pushing, [M] told John he hated him. Transcript at 374-375.” Complainant Brief at 15, ¶ 68. The ALJ has carefully reviewed the transcript and finds that Nagle, contrary to the representation in his brief, did not testify that M said that he hated Nagle on December 24, 2008.

Id. at 306. Kinsell further testified that after Nagle pushed him, M put both of his arms up at shoulder height as he was stepping backward, but he did not actually touch Nagle. *Id.* at 307, 311. Kinsell continued that M is smaller than Nagle and “just a scared individual . . . kind of timid,” and he described M’s actions as “more of a defensive” reaction to Nagle. *Id.* Kinsell testified that the incident took place approximately four feet from where he was working, and he was sure that Nagle pushed M first, though he did acknowledge that he was working when he first heard the argument and had to look up and turn to observe what was transpiring between Nagle and M. *Id.* at 306, 310-15. He said that the incident was “pretty much over” by the time he removed his headset. *Id.* at 307. Kinsell stated that Nagle then went back to his work area and that M came over to Kinsell’s work area and said “they were having an argument about some words that were going back and forth.” *Id.* Kinsell testified that M then “went into the front, over by the inspection area.” *Id.*

G. The Aftermath

Following the altercation with Nagle, M told Deavitt about the incident and said that he could not work with Nagle anymore, and that Deavitt had to do something about it. HT at 146; 222. At this point, Nagle had gone out to his truck for his customary fifteen-minute break at 10:00 a.m. to smoke a cigarette. *Id.* at 66. While he was sitting in the truck, Deavitt came outside and told Nagle something along the following lines: “I’ve already punched you out. Put your [expletive] truck in drive and drive your [expletive] out of here. You’ve gone too far.” *Id.* at 66-67; 207-08. Deavitt testified that he also told Nagle to take the long weekend to think about whether he still wanted to work at Unified Turbines and to come in on the following Monday talk about it. *Id.* at 208-09, 229.⁶

Nagle testified that he believed that he had been fired, so he briefly went back into the shop to retrieve his welding helmet and then left at approximately 10:10 a.m. *Id.* at 67-69. He denied having any interaction with anyone during his brief trip back into the shop to retrieve his welding helmet. *Id.* at 68. Deavitt, however, testified that he did not fire Nagle and only wanted to get him out of the shop because he had concluded that Nagle was the instigator, and he wanted to diffuse the situation. *Id.* at 210, 222. Deavitt also recounted that Nagle had been in a bad, “pissed off at the world mood” earlier that morning which played a part in his decision to send Nagle home after the confrontation with M. *Id.* at 231-32. Specifically, Deavitt testified that when he greeted Nagle with a “Good Morning” that day, Nagle responded “What’s so [expletive] good about it.” *Id.* at 231. Deavitt further stated that he had observed Nagle make similar comments to other employees that day. *Id.* at 232.⁷ Deavitt testified that after he left Nagle and returned to the shop, he heard the back door open behind him, and he saw Nagle come back into the building. *Id.* at 210. He further testified, “That’s when I said, ‘John, I thought I

⁶December 24, 2008, was a Wednesday, and December 25th and 26th, Christmas Day and Boxing Day, were paid holidays for Unified Turbines employees. HT at 271-72.

⁷Nagle, who testified on rebuttal after Deavitt, did not specifically contradict Deavitt’s account of his statements on December 24th, but he did deny being “disgruntled” or otherwise in a bad mood. HT at 376.

just told you to get in your truck and get the [expletive] out of here,' probably is what I said, 'And come back on Monday and we'll talk about this.'" *Id.* at 210, 230.⁸

Two witnesses testified regarding Deavitt's statements upon his return to the shop after telling Nagle to leave on December 24, 2008. Robert Martin, the inspector at Unified Turbines, stated that he was in the shop on December 24, 2008 when he observed Nagle walk over to the welding booth and put something, possibly a lunch pail or welding helmet, under his arm. HT at 256. Martin further testified that he heard Deavitt tell Nagle, "I told you to go home and take the weekend, think about if you want your job, and let me know on Monday." *Id.* Martin stated that "[i]t may not be that exact words, but that's what he said." *Id.* Kinsell also testified that he was on the shop floor when Deavitt returned to the shop following his confrontation with Nagle in the parking lot. *Id.* at 307-08. However, he did not recall Deavitt saying anything to Nagle inside the shop:

Q. Did you recall later after the shoving match there to be an exchange, words exchanged between Karl Deavitt and Mr. Nagle out on the shop floor?

A. That was outside. We were kind of standing back off from the dock and kind of peeking out. And I couldn't hear what was being said. And then when Karl came back in, we'd asked what happened, and he made it clear first that there is no touching any other individuals in the shop, no hitting. And then he said that he told John that he had four days, because we had a four-day vacation, to think about if he wanted to still work at Unified Turbines and, if not, he could leave.

Id. Kinsell's account is consistent with Nagle's testimony that there was no interaction with anyone when he briefly reentered the shop to retrieve his welding helmet, while Martin's testimony corroborates Deavitt's version that he again told Nagle inside the shop to leave and let him know on Monday whether he still wanted his job at Unified Turbines. Given the small size of the shop, it is unlikely likely that both accounts are accurate. Noting the particular detail associated with Kinsell's recollection (*i.e.*, that he had been "peeking" out to the parking lot to see what was occurring between Nagle and Deavitt and that he then asked Deavitt upon his return to the shop what had happened), the ALJ credits his testimony and finds that Deavitt did not say anything further to Nagle when the latter returned to the shop to get his helmet.

On December 27, 2008, Nagle called Dan Hubbert to discuss the events of December 24th. HT at 69, 324. According to Hubbert,

He [Nagle] had said Karl had said that -- basically to put his F-ing truck in gear. He had gone over the line and think about -- take the long weekend to think about what he had done, you know, as far as [M], their shoving match and what not, to which I said, "Did he actually tell you?" He thought he was fired, said, "Far as I'm concerned, I'm fired." And I said, "Did Karl actually tell you that you were fired?" and he said, "No, not really."

⁸Deavitt admitted that he did not mention this statement during a telephone hearing in March of 2009 on Nagle's claim for unemployment benefits. HT at 212-14, 216.

Id. at 325; *see also* JX 3. Hubbert suggested that Nagle go into work on the following Monday or at least call Deavitt or Karnes to try and smooth things out. *Id.* at 325, 336-37, 348. Hubbert stated that Nagle responded, “I’m not going in Monday.” *Id.* at 337. He further testified that he told Nagle, “That’s probably not a good idea.” *Id.*

As suggested by Hubbert, Nagle did place a call to Deavitt’s personal mobile phone on December 27th and left a message. HT at 70; 205-06; JX 11. Nagle testified that his message was, “Karl, this is John. I need to talk to you about my job.” *Id.* at 70. Deavitt testified that the message simply said, “Karl, this is John. Call me.” *Id.* at 205.⁹ It is undisputed that Deavitt did not return Nagle’s call and that Nagle did not report to work on the Monday after the Christmas holiday. *Id.* at 70-71, 104-05; 205.

Nagle testified that when Deavitt did not return his call, “I took it as I must be fired, then, that the way I felt on that day must be true.” HT at 70. Nagle stated that although Deavitt never told him that he was “fired,” he concluded from what Deavitt had said on the 24th and the absence of a response to his call on the 27th that he had been fired. *Id.* at 105-06. Nagle agreed that he had frequently complained to coworkers about his pay at Unified Turbines and that he may have told coworkers that he intended to quit. *Id.* at 106-07. However, he denied that he retrieved his personal welding helmet from the shop on December 24th because he intended to quit. *Id.* at 108-09. Nagle further testified that he lost his health insurance after his employment at Unified Turbines ended and that he and his daughter had to endure nine months of financial and emotional stress until September of 2009 when he finally secured another job in which he earns \$13.00 per hour. *Id.* at 74-83. He asserted that because of his daughter’s health care needs, he has never quit a job without first securing other employment. *Id.* at 83.

Deavitt testified that Nagle quit his job at Unified Turbines and was not fired. HT at 200. He stated that he assumed that Nagle wanted to “discuss what happened” when he left the December 27th message on his mobile phone, but he did not return the call because he had instructed Nagle to come in on the following Monday and he did not wish to discuss an employment matter over a holiday weekend on his personal time and phone. *Id.* at 205-07, 220-21.

Nagle was paid for a full eight-hour workday on December 24, 2008, and he received eight hours holiday pay on December 25 and 26, 2008. JX 2, HT at 210; 271-72. Karnes testified that Unified Turbines would not have paid Nagle for December 25 and 26 if he had been fired on December 24, 2008. HT at 273. Karnes stated that if Nagle had showed up at Unified Turbines on Monday, December 29, 2008, he would have still had his job. *Id.* at 278. He also testified that he and Deavitt had never discussed terminating Nagle’s employment and that

⁹No recording of the message was introduced. JX 11, which is a photocopy of page from Nagle’s mobile phone records, contains a handwritten notation that Nagle placed next to the line showing the December 27, 2008 call to Deavitt. HT 103. The note reads, “Call to Karl Deavitt to ask if I could have my job back. He did not answer. I left a message asking him to call me.” JX 11. Based on Nagle’s note on the telephone records, which was written closer in time to the events, the ALJ finds that it is more likely than not that Nagle’s December 27, 2008 message for Deavitt simply asked Deavitt to call him and did not specifically mention his job. This finding is not critical to disposition of the case, however, as Deavitt admitted that he assumed from the message that Nagle wanted to discuss the situation at work. HT at 205-07, 220-21,

neither partner had the authority to hire or fire personnel without the other partner's concurrence. *Id.* At some point during the week of December 29, 2008, Hubbert informed Deavitt of his telephone conversation with Nagle on December 27, 2008. *Id.* at 333-34.

III. Conclusions of Law

A. Analytical Framework

The AIRA 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) 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 AIRA if it intimidates, threatens, restrains, coerces, or blacklists an employee because of protected activity. 29 C.F.R. § 1979.102(b). A complainant has the burden of proving the following facts by a preponderance of the evidence: (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 (ARB June 29, 2007), *available at* 2007 WL 1935557, at *4. Failure to prove any one of these four elements warrants dismissal of an AIRA complaint. *Hindsman v. Delta Air Lines, Inc.*, USDOL/OALJ Reporter, ARB No. 09-023, ALJ No. 2008-AIR-013 at 5 (ARB June 30, 2010), *available at* 2010 WL 2680567, at *2. However, if a complainant carries this burden, he or she is entitled to relief under the AIRA unless the employer demonstrates by clear and convincing evidence that it would have taken the same unfavorable action in the absence of the protected activity. *Brune v. Horizon Air Industries, Inc.*, USDOL/OALJ Reporter, ARB No. 04-037, ALJ No. 2002-AIR-8 at 13 (ARB Jan. 31, 2006), *available at* 2006 WL 282113, at *9.

B. Protected Activity and Employer Knowledge

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). Protected activity under the AIRA has two elements: (1) the information that the complainant provides must involve a purported violation of a regulation, order, or standard relating to air carrier safety, though the complainant need not prove an actual violation; and (2) the complainant's belief that a violation occurred must be objectively reasonable. *Hindsman*, 2010 WL 2680567, at *3. 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 (ARB Mar. 14, 2008), *available at* 2008 WL 921123 (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 AIRA. *Id.* Thus, the reporting of health or safety problems that do not relate to aviation safety are not protected. *Mehen v. Delta Air Lines Inc.*, USDOL/OALJ Reporter, ARB No. 03-070, ALJ No. 2003-AIR-4 at 4 (ARB Feb. 24, 2005), available at 2005 WL 489735, at *3. Moreover, providing “information” is critical to invoking the AIRA’s protection; “[c]ompetently” 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 (ARB Jan. 30, 2008), available at 2008 WL 316012, at *4.

Nagle contends that he engaged in three acts protected by AIRA: (1) informing his employers at Unified Turbine that he believed that M was abusing his prescription medication; (2) informing his employers that M appeared to have an interest in K’s prescription medication; and (3) informing his employers that he had seen M selling narcotics while at work. The parties stipulated that Unified Turbines is an FAA approved repair station under 14 C.F.R. Part 145 which governs the procedure a repair facility must follow to obtain FAA certification to perform maintenance, preventive maintenance, or alterations of an aircraft, airframe, aircraft engine, propeller, appliance, or component parts. 14 C.F.R. § 145.1. Deavitt’s testimony establishes that M performed “safety-sensitive” functions that subjected him to random drug testing. HT 242, 245. The FAA regulations contain extensive drug testing provisions for aviation industry workers who perform safety-sensitive functions for certificate holders. 14 C.F.R. Part 120. As pertinent to the instant matter, those regulations state that:

No certificate holder or operator may knowingly use any individual to perform, nor may any individual perform for a certificate holder or an operator, either directly or by contract, any function listed in subpart E of this part while that individual has a prohibited drug, as defined in that subpart, in his or her system.

14 C.F.R. § 120.33(b). The regulations further state that an employer must perform testing when there is reasonable cause to suspect that a safety-sensitive worker is using prohibited drugs:

Each employer must test each employee who performs a safety-sensitive function and who is reasonably suspected of having used a prohibited drug. The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific contemporaneous physical, behavioral, or performance indicators of probable drug use. At least two of the employee’s supervisors, one of whom is trained in detection of the symptoms of possible drug use, must substantiate and concur in the decision to test an employee who is reasonably suspected of drug use; except that in the case of an employer, other than a part 121 certificate holder, who employs 50 or fewer employees who perform safety-sensitive functions, one supervisor who is trained in detection of symptoms of possible drug use must substantiate the decision to test an employee who is reasonably suspected of drug use.

14 C.F.R. § 120.109(d). A “prohibited drug” is defined by the regulations as “marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, as specified in 49 CFR 40.85.” 14 C.F.R. § 120.7(m).¹⁰

The evidence in this case establishes that M was abusing prescription opiates during the fall of 2008 when Nagle complained to his superiors, and that M’s job performance in this time frame deteriorated. On this record, the ALJ finds that Nagle’s complaints to Unified Turbines that M was abusing prescription opiate pain medication on the job provided information involving a purported violation of the FAA’s regulations governing drug use and testing for safety-sensitive aviation workers. Whether Nagle’s belief was objectively reasonable “depends on the knowledge available to a reasonable person in the circumstances with the employee’s training and experience.” *Malmanger v. AIR EVAC EMS, Inc.*, USDOL/OALJ Reporter, ARB No. 08-071, ALJ No. 2007-AIR-008 at 8 (ARB July 2, 2009), *available at* 2009 WL 2371239, at *5. There is no evidence that Nagle has any detailed knowledge of the FAA’s regulations pertaining to drug use and testing. However, he is a very experienced welder with extensive exposure to aircraft repair, and he was aware that the Unified Turbines substance abuse policy states that “[a]ny involvement with alcohol and drugs which adversely affect the work place will not be tolerated.” HT at 46; JX 9 at 1. He also testified that he personally observed a deterioration in M’s work that coincided with his use of prescription opiates, an observation that was confirmed by M and shop inspector Martin. Additionally, Nagle viewed M’s perceived drug problem as a “safety issue” in that he was concerned that M could injure himself or a coworker on the job, and explained that the deterioration in the quality of M’s work potentially compromised the aircraft engine components. HT at 43-44. On these facts, the ALJ finds that reasonable person with Nagle’s training and experience could believe that M’s ongoing abuse of drugs and deteriorating performance was in violation of FAA regulations. Accordingly, the ALJ concludes that Nagle engaged in activity protected by the AIRA when he provided information to his employers at Unified Turbines that M was abusing his prescription narcotic medication on the job.¹¹ The ALJ further concludes that Nagle has proved the second element of an AIRA claim—employer knowledge of protected activity—as it is undisputed that Unified Turbines was aware of Nagle’s protected reports of suspected drug abuse by M.

¹⁰The regulation at 49 C.F.R. § 40.85, which is part of the Department of Transportation’s (“DOT”) rules for drug and alcohol testing programs in regulated transportation industry workplaces, states that drug testing laboratories are responsible for testing for the following five drugs or classes of drugs in a DOT drug test:

- (a) Marijuana metabolites.
- (b) Cocaine metabolites.
- (c) Amphetamines.
- (d) Opiate metabolites.
- (e) Phencyclidine (PCP).

45 C.F.R. § 40.85.

¹¹The ALJ concludes that Nagle’s report to the Winooski Police on December 16, 2008, was not protected by the AIRA because the report was not made to the federal government or at the direction of a federal entity. *Cf. Svendsen v. Air Methods, Inc.*, ALJ No. 2002-AIR-16, slip op. at 48 (ALJ Mar. 3, 2003) (report to local police protected under the AIRA where complainant first contacted federal agency which instructed him to go to the local police), *available at* http://www.oalj.dol.gov/PUBLIC/WHISTLEBLOWER/DECISIONS/ALJ_DECISIONS/AIR/02AIR16A.HTM, *aff’d*, 2004 WL 1923132 (DOL Adm.Rev.Bd. Aug. 26, 2004).

C. Adverse Personal Action

The Administrative Review Board (“ARB”) has held that “the purpose of the employee protections that the Labor Department administers is to encourage employees to freely report noncompliance with safety, environmental, or securities regulations and thus protect the public.” *Melton v. Yellow Transportation, Inc.*, USDOL/OALJ Reporter, ARB No. 06-052, ALJ No. 2005-STA-2 at 20 (ARB Sept. 30, 2008), *available at* 2008 WL 4462979, at *15. In order to effectuate this purpose, the ARB determines whether an employer’s action is “adverse” by considering “whether it would deter a similarly situated person from reporting a safety or environmental or securities concern.” *Id.* As the ARB summarized,

not every action taken by an employer that renders an employee unhappy constitutes an adverse employment action. The employee protections that the Labor Department administers are not “general civility codes,” nor do they make ordinary tribulations of the workplace actionable. Actions that cause the employee only temporary unhappiness do not have an adverse effect on compensation, terms, conditions, or privileges of employment . . . our task has always been, and will continue to be, to separate harmful employer action from petty, minor workplace tribulations.

Id. at *17 (internal citations and footnotes omitted); *see also Hirst v. Southeast Airlines, Inc.*, USDOL/OALJ Reporter, ARB Nos. 04-116, 04-160, ALJ No. 2003-AIR-47 at (ARB Jan. 31, 2007), *available at* 2007 WL 352447, at *5.

The focal point of the litigation in this case and the most significant area of dispute between the parties is whether Unified Turbines “fired” Nagle on December 24, 2008 or whether he abandoned his employment after being sent home without loss of pay following the altercation with M. If the facts represent the former scenario, there is no question that an involuntary termination is an “adverse” employment action that would dissuade any reasonable employee from engaging in protected activity. On the other hand, angrily sending an employee home accompanied by profanity after an altercation with a coworker without loss of pay or other adverse effect on his conditions of employment can be fairly classified as the type of workplace tribulation that produces no more than temporary unhappiness and is not actionable under the federal employee protection statutes including the AIRA. *Melton*, 2008 WL 4462979, at *15. For the reasons discussed below, the ALJ concludes that Nagle was not subjected to an adverse action for which he can seek redress under the AIRA.

First, it is undisputed that Deavitt never told Nagle that he was fired, that his employment was terminated, or that he should not return to work at Unified Turbines. Second, the ALJ finds that the weight of the evidence establishes that Deavitt did not simply tell Nagle to go home in a profanity-laced tirade in the parking lot outside of Unified Turbines on the morning of December 24, 2008. Dan Hubbert testified that Nagle called him on December 27, 2008. Hubbert testified that Nagle relayed that Deavitt had told him “to put his F-ing truck in gear . . . [and] take the long weekend to think about what he had done” HT at 325. Based on observation of his demeanor and in consideration of his testimony in light of the entire record, the ALJ finds that Hubbert is a particularly credible and neutral witness who showed no tendency to color or shape his testimony despite his long friendship with Nagle and continued employment relationship with

Unified Turbines. Moreover, while the ALJ does not credit Deavitt's testimony that he repeated his directives to Nagle after he had returned to the shop, Hubbert's testimony that Nagle acknowledged being told to take the long weekend to think about what he had done, is consistent with William Kinsell's testimony that Deavitt stated upon reentering the shop from the parking lot "that he told John that he had four days, because we had a four-day vacation, to think about if he wanted to still work at Unified Turbines and, if not, he could leave." HT at 308. Noting that Deavitt made these statements moments after his heated conversation with Nagle in the parking lot, the ALJ finds that it is highly probable that the statements are accurately reflective of what Deavitt said to Nagle. Therefore, the ALJ finds that not only did Deavitt not tell Nagle that he was fired, he told him to think things over during the upcoming holiday weekend. Finally, the fact that Unified Turbines paid the Claimant for the duration of his shift on December 24, 2008, and for both the Christmas and Boxing Day holidays is corroborative of Unified Turbines' claim that Deavitt did not fire Nagle on December 24, 2008. Consequently, the ALJ finds that Nagle was not fired on December 24, 2008, but rather that he was sent home two hours early without loss of pay because he had been involved in a physical altercation in the shop with M.

The ALJ further finds that the evidence related to the events following December 24, 2008, establish that Nagle abandoned his job and was not subjected to any adverse personnel action. When Nagle called Deavitt on December 27, 2008, and expressed a belief that he'd been fired, Hubbert got Nagle to recognize that Deavitt had not said that he was fired. Hubbert also tried to persuade Nagle to return to Unified Turbines on Monday after the holiday weekend to discuss his status. Nagle declined to return to work on Monday and he instead called Deavitt over the weekend and left a message that was not returned. Nagle's claim that these facts—essentially an unreturned telephone call—removed any ambiguity lingering from December 24th and confirmed that he'd been fired is simply untenable. Under Vermont law, an employer's statement that an employee has the option of either "shaping up or shipping out" does not equate to an involuntary or coerced termination. *Lane v. Department of Employment Sec.*, 134 Vt. 9, 11, 347 A.2d 454, 456 (1975); *see also Hamilton v. Department of Employment Sec.*, 139 Vt. 326, 328-29, 428 A.2d 1108, 1109 (1981) (resignation after warning of termination if performance did not improve was not involuntary or coerced).¹² Nagle was told to go home and think things over which at most is tantamount to a "shape up or ship out" directive. However, the more appropriate reading is that Deavitt simply told Nagle to think about what he had done and if he wanted to stay at Unified Turbines—a decision to be made on Nagle's own accord—as Deavitt never expressly mentioned the possibility of Nagle being fired.

There is ample evidence in the record that Nagle was dissatisfied with his job and planned to quit. There also is uncontradicted evidence that Unified Turbines accommodated Nagle's family situation and tolerated his chronic tardiness. In these circumstances, the ALJ finds that Nagle's professed assumption that he'd been terminated and his decision not to report to work on Monday, December 29, 2008, were objectively unreasonable and can only be characterized as a voluntary resignation.

Having determined that Nagle was not subjected to an adverse personnel action, a necessary element of an AIRA claim, the ALJ must conclude that his complaint is without merit.

¹²Nagle makes no claim that he was constructively terminated or coerced into involuntarily resigning.

IV. Order

The complaint filed by John Nagle 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).