In the Matter of:

ROCCO TESTA, ARB CASE NO. 08-029

COMPLAINANT, ALJ CASE NO. 2007-STA-027

v. DATE: May 12, 2010

CONSOLIDATED EDISON
COMPANY OF NEW YORK, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

For the Respondent:
Paul Limmiatis, Esq., Con Edison, New York, New York

ORDER DENYING MOTION TO VACATE FINAL DECISION AND ORDER
AND TO APPROVE SETTLEMENT AGREEMENT

This case arose when the Complainant, Rocco Testa, filed a complaint under the whistleblower protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), and its implementing regulations, alleging that Consolidated Edison of New York, Inc.


York (Con Ed) violated the STAA when it terminated his employment because he engaged in protected activity.

On December 2007, a Department of Labor Administrative Law Judge (ALJ) issued a Recommended Decision and Order (R. D. & O.) finding in Testa's favor, but awarding no damages. Con Ed appealed the R. D. & O. to the Administrative Review Board (ARB or Board). On March 19, 2010, the ARB issued the Final Decision and Order (F. D. & O), affirming the ALJ's liability finding, but reversing his denial of damages. On March 31, 2010, after the Board reached a decision on the merits, but before the 60-day period for seeking judicial review of the Board's decision had expired, the parties informed the Board that they had reached a settlement and requested the Board to approve the settlement and vacate the March 19 F. D. & O.4

The Secretary of Labor has delegated to the Board her authority to issue final agency decisions under the STAA.5 The Board has authority to approve settlement agreements.6 In this case, however, the settlement agreement is contingent upon the Board vacating the F. D. & O.7 As a matter of public policy, the Board is unwilling to vacate the F. D. & O., and thus we cannot approve the settlement agreement contingent upon that event. Accordingly, we DENY the unopposed motion to approve settlement, vacate final decision and order, and dismiss complaint with prejudice.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

WAYNE C. BEYER
Administrative Appeals Judge

3 29 C.F.R. § 1978.110(a).

4 Con Ed also requested that the ARB not publish the March 19, 2010 decision. But the ARB received its motion after it had forwarded the decision for publication.


7 Settlement Agreement and Release at 2, 3, 7.