



**In the Matter of:**

**HELEN PFEFFER,**

**ARB CASE NO. 06-148**

**COMPLAINANT,**

**ALJ CASE NO. 2006-STA-00043**

**v.**

**DATE: January 31, 2007**

**PALMER BUS SERVICE OF NORTH  
CENTRAL MINNESOTA, INC.,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**FINAL DECISION AND ORDER**

Helen Pfeffer filed a whistleblower complaint with the United States Department of Labor alleging that her employer, Palmer Bus Service of North Central Minnesota, Inc., violated the employee protection provisions of the Surface Transportation Assistance Act (STAA).<sup>1</sup> The STAA prohibits certain employers from retaliating against employees who complain about or report violations of commercial motor vehicle safety requirements.<sup>2</sup> Pfeffer alleged that she was fired shortly after she voiced concerns about the lack of heat and two-way radios in busses that Palmer had assigned to her to drive.

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<sup>1</sup> 49 U.S.C.A. § 31105 (West 1997).

<sup>2</sup> “A person may not discharge an employee, or discipline or discriminate against an employee regarding pay, terms, or privileges of employment, because . . . the employee, or another person at the employee’s request, has filed a complaint or begun a proceeding related to a violation of a commercial motor vehicle safety regulation, standard, or order, or has testified or will testify in such a proceeding . . . .” 49 U.S.C.A. § 31105(a)(1)(A)(West 1997).

After investigating Pfeffer's allegations, the Occupational Safety and Health Administration (OSHA) found that Palmer did not violate the STAA.<sup>3</sup> On July 30, 2006, Pfeffer objected to the OSHA finding and requested a hearing before a Department of Labor Administrative Law Judge (ALJ).<sup>4</sup> On August 29, 2006, Pfeffer, in a letter signed by her counsel, withdrew her request for a hearing.

On September 7, 2006, the ALJ issued a Recommended Order Approving Withdrawal of Objections and Dismissing Claim (R. O.). The ALJ recommended that we approve Pfeffer's withdrawal of her request for a hearing and affirm OSHA's finding that Palmer did not violate the STAA. In so doing, the ALJ relied upon 29 C.F.R. § 1978.111(c), which permits a party to withdraw her objections to the OSHA finding at any time before that finding becomes final.<sup>5</sup>

The Secretary of Labor has delegated to the Administrative Review Board (ARB) the authority to issue final agency decisions under the STAA and the implementing regulations at 29 C.F.R. Part 1978.<sup>6</sup> We automatically review an ALJ's recommended STAA decision.<sup>7</sup> When reviewing STAA cases, the ARB is bound by the ALJ's factual findings if they are supported by substantial evidence on the record considered as a whole.<sup>8</sup> The ARB reviews the ALJ's legal conclusions de novo.<sup>9</sup> The Board is required

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<sup>3</sup> OSHA Letter dated June 15, 2006. OSHA investigates STAA complaints and issues findings as to whether there is reasonable cause to believe that the employer has violated the STAA. If reasonable cause does exist, OSHA accompanies that finding with a preliminary order that provides certain prescribed relief. 29 C.F.R. §§ 1978.103, 1978.104(2006).

<sup>4</sup> See 29 C.F.R. § 1978.105(a). Unless a party files a timely objection to OSHA's findings or preliminary order or both, the findings or preliminary order become final. 29 C.F.R. § 1978.105(b)(2).

<sup>5</sup> This regulation provides in pertinent part:

At any time before the findings or order become final, a party may withdraw his objections to the findings or order by filing a written withdrawal with the administrative law judge . . . . The judge . . . shall affirm any portion of the findings or preliminary order with respect to which the objection was withdrawn.

<sup>6</sup> See Secretary's Order 1-2002, 67 Fed. Reg. 64,272 (Oct. 17, 2002).

<sup>7</sup> 29 C.F.R. § 1978.109(a).

<sup>8</sup> 29 C.F.R. § 1978.109(c)(3); *BSP Trans, Inc. v. United States Dep't of Labor*, 160 F.3d 38, 46 (1st Cir. 1998); *Castle Coal & Oil Co., Inc. v. Reich*, 55 F.3d 41, 44 (2d Cir. 1995).

to issue a final decision and order based on the record and the ALJ's recommended decision and order.<sup>10</sup>

The Board issued a Notice of Review and Briefing Schedule, notifying the parties of their right to file briefs in support of or in opposition to the R. O., within thirty days from the date on which the ALJ issued the R. O.<sup>11</sup> The Respondent filed a statement with the Board indicating that it did not intend to file a brief. Pfeffer did not respond to the Board's order.

Upon consideration of the ALJ's R. O. and the record, we conclude that the ALJ properly applied 29 C.F.R. § 1978.111(c) to the facts of this case in recommending that we approve Pfeffer's withdrawal of objections and dismiss Pfeffer's claim. Accordingly, we **AFFIRM** that decision and the OSHA finding that Palmer did not violate the STAA.

**SO ORDERED.**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**

**M. CYNTHIA DOUGLASS**  
**Chief Administrative Appeals Judge**

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<sup>9</sup> *Roadway Express, Inc. v. Dole*, 929 F.2d 1060, 1066 (5th Cir. 1991); *Monde v. Roadway Express, Inc.*, ARB No. 02-071, ALJ Nos. 01-STA-22, 01-STA-29, slip op. at 2 (ARB Oct. 31, 2003).

<sup>10</sup> 29 C.F.R. § 1978.109(c).

<sup>11</sup> *See* 29 C.F.R. § 1978.109(c)(2).