



**In the Matter of:**

**CEDRIC WINTERS,**

**ARB CASE NO. 12-091**

**COMPLAINANT,**

**ALJ CASE NO. 2010-NTS-001**

**v.**

**DATE: August 27, 2013**

**SAN FRANCISCO BAY AREA RAPID  
TRANSIT DISTRICT,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

***For the Complainant:***

**Cedric Winters, *pro se*, San Leandro, California**

***For the Respondent:***

**Joseph A. Hearst, Esq.; Berkeley, California**

**BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Joanne Royce, *Administrative Appeals Judge*; and Luis A. Corchado, *Administrative***

### **FINAL ORDER APPROVING SETTLEMENT AND RELEASE**

This case arises under the whistleblower protection provisions of the National Transit Systems Security Act (NTSSA).<sup>1</sup> The Complainant, Cedric Winters, petitioned the Administrative Review Board to review the Decision and Order of a Department of Labor Administrative Law Judge issued on July 16, 2012.<sup>2</sup> Both parties submitted briefs in response to the Board's Notice of Appeal and Order Establishing Briefing Schedule.

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<sup>1</sup> 6 U.S.C.A. § 1142 (Thomson/West Supp. 2012).

<sup>2</sup> *Winters v. San Francisco Bay Area Rapid Transit Dist.*, ALJ No. 2010 NTS-001 (July 16, 2012). See Secretary's Order No. 2-2012 (Delegation of Authority and Assignment

On July 10, 2013, the Board received a letter from the parties requesting the Board to suspend its proceedings in this matter because the parties had reached a Conditional Settlement of their dispute. The parties enclosed a copy of the Conditional Settlement and Release and requested the Board to approve the Conditional Settlement. The parties stated that “if the ARB and the Board of Directors of BART approve the Conditional Settlement, they will execute an Unconditional Settlement which incorporates the covenants and promises set forth in the attached Conditional Settlement.” On July 30, 2013, the Board entered an Order Approving Conditional Settlement and Release that notified the parties that it would hold its consideration of the appeal in abeyance for twenty days pending receipt of the Final Settlement and Release. On August 13, 2013, the parties submitted a Final Settlement and Release for the Board’s approval, which they have averred is identical to the Conditional Settlement previously submitted and approved.

The NTSSA’s implementing regulations provide that at any time after a party has filed objections to the Assistant Secretary’s findings or order, the case may be settled if the participating parties agree to a settlement and, if the Board has accepted the case for review, the Board approves the settlement agreement.<sup>3</sup> An approved settlement “will constitute the final order of the Secretary and may be enforced pursuant to § 1982.113.”<sup>4</sup> Review of the Final Settlement and Release reveals that it may encompass the settlement of matters under laws other than the NTSSA.<sup>5</sup> The Board’s authority over settlement agreements is limited to the statutes that are within the Board’s jurisdiction as defined by the applicable delegation of authority. Therefore, we have restricted our review of the Settlement Agreement to ascertaining whether its terms fairly, adequately, and reasonably settle this NTSSA case over which we have jurisdiction.<sup>6</sup>

Paragraph 21 of the Settlement Agreement provides that the Agreement shall be construed and interpreted in accordance with the laws of the State of California. We interpret this “choice of law” provision as not limiting the authority of the Secretary of Labor and any Federal courts, which shall be governed in all respects by the laws and regulations of the United States.<sup>7</sup>

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of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69378 (Nov. 16, 2012); 29 C.F.R. § 1982.110(a).

<sup>3</sup> 29 C.F.R. § 1982.111(d)(2)(emphasis added).

<sup>4</sup> 29 C.F.R. § 1982.111(e).

<sup>5</sup> Settlement Agreement at para. 8.

<sup>6</sup> *Accord Thompson v. Norfolk Southern Railway, Co.*, ARB No. 13-032, ALJ No. 2011-FRS-015, slip op. at 2 (ARB Feb. 28, 2013); *Bhat v. District of Columbia Water & Sewer Auth.*, ARB No. 06-014, ALJ No. 2003-CAA-017, slip op. at 2 (ARB May 30, 2006).

<sup>7</sup> *See Hildebrand v. H. H. Williams Trucking, LLC*, ARB No. 11-030, ALJ No. 2010-STA-056, slip op. at 3 (ARB Sept. 26, 2011).

The parties have certified that the Settlement Agreement constitutes the entire settlement with respect to Winters's NTSSA claim.<sup>8</sup> Accordingly, finding that the settlement is fair, adequate, and reasonable, we **APPROVE** the Settlement and Release and **DISMISS** Winters's appeal.

**SO ORDERED.**

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

**JOANNE ROYCE**  
**Administrative Appeals Judge**

**LUIS A. CORCHADO**  
**Administrative Appeals Judge**

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<sup>8</sup> *See* para. 15.