

UNITED STATES DEPARTMENT OF LABOR  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
BOSTON, MASSACHUSETTS

Issue Date: 21 December 2017

CASE NO.: 2015-NTS-00005

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*In the Matter of:*

HUGH CURRAN,  
*Complainant,*

v.

STATE OF MAINE,  
MAINE DEPARTMENT OF TRANSPORTATION,  
MAINE FERRY SERVICE,  
*Respondent.*

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Before: Timothy J. McGrath, Administrative Law Judge

Appearances:

Matthew S. Keegan, Esq., Johnson Webbert & Young, LLP, Augusta, Maine, for Complainant

Jonathan R. Bolton, AAG, Kelly L. Morrell, AAG, and Valerie A. Wright, AAG, Office of the Attorney General, Augusta, Maine, for Respondent

**DECISION AND ORDER GRANTING  
RESPONDENTS' MOTION TO DISMISS AND DISMISSING COMPLAINT**

**I. STATEMENT OF THE CASE**

This case arises under the employee protection provisions of the National Transit Systems Security Act of 2007, 6 U.S.C. § 1142 (the "NTSSA" or "Act"), with implementing regulations at 29 C.F.R. § 1982.100, *et seq.* The NTSSA prohibits a public transportation agency—or a contractor, subcontractor, officer or employee of such agency—from discriminating or taking unfavorable personnel action against an employee for reporting hazardous safety or security conditions. *See generally* 6 U.S.C. § 1142. On March 27, 2013,

Hugh Curran (“Complainant” or “Curran”) filed a complaint with the Occupational Safety and Health Administration (“OSHA”) under the NTSSA.<sup>1</sup>

The Maine Department of Transportation is a department of the State of Maine and is required by law to operate a set of ferry routes known as the Maine State Ferry Service. 23 M.R.S. §§ 4205, 4401. Complainant alleges the State of Maine, Maine Department of Transportation and the Maine State Ferry Service (collectively “Respondent”) retaliated against him when he was terminated from his job as an engineer for the Maine State Ferry Service after he reported safety concerns to the United States Coast Guard. After filing his complaint with OSHA, an investigation was conducted. The Secretary of Labor, through OSHA, issued a report of findings noting Complainant was terminated for falsifying ship logs, and not in retaliation for reporting safety violations or whistleblowing. Complainant then filed a request for a formal hearing before an Administrative Law Judge. *See* 29 C.F.R. § 1982.106.

On September 3, 2015, Respondent filed a Motion to Dismiss (“Re. MTD 1”), pursuant to 29 C.F.R. § 18.70(c). Complainant filed an opposition (“Co. OPP 1”) on September 24, 2015. On October 14, 2015, Respondent filed a Motion to Stay Discovery (“Re. MTD 2”) pending a ruling on their Motion to Dismiss, pursuant to 29 C.F.R. § 18.52. The Motion to Stay Discovery was not opposed, and on October 16, 2015, an order staying discovery was issued. Subsequently, Complainant responded with a supplemental brief (“Co. OPP 2”) on October 28, 2015. For the reasons set forth below, Respondent’s Motion to Dismiss is granted.

## **II. LEGAL STANDARDS**

### **A. Motion to Dismiss Standard**

NTSSA proceedings are conducted in accordance with the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges (“OALJ”). *See* 29 C.F.R. § 1982.107(a). Under the OALJ regulations, a “party may move to dismiss part or all of the matter for reasons recognized under controlling law, such as lack of subject matter jurisdiction, failure to state a claim upon which relief can be granted, or untimeliness.” 29 C.F.R. §18.70(c). Here, Respondent moves to dismiss the case based upon on a violation of Maine’s sovereign immunity. (Re. MTD 1 at 1).

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<sup>1</sup> Complainant complied with the procedure outlined in the NTSSA and supporting regulations. *See* 6 U.S.C. § 1142(c); 29 CFR 1982.103—1982.106.

## **B. NTSSA Standard**

The employee protection/whistleblower provisions of the NTSSA prohibit public transportation agencies—or a contractor or subcontractor of such an agency—from discharging or otherwise retaliating against an employee because he reported a hazardous safety or security condition. 6 U.S.C. § 1412(b)(1)(A); 29 C.F.R. §1982.102(a)(2)(i)(A). To make a prima facie case to warrant an investigation, the complainant must show: 1) he engaged in protected activity; 2) the employer knew or suspected the employee engaged in protected activity; 3) the employee suffered adverse action; and 4) the circumstances were sufficient to raise the inference that the protected activity was a contributing factor to the adverse action. 29 C.F.R. § 1982.104(e)(2). To prevail at the hearing stage, a complainant must demonstrate by a preponderance of the evidence that his protected activity was a contributing factor to the unfavorable personnel action. 29 C.F.R. § 1982.109(a). However, even if the complainant does so, he cannot prevail if the respondent demonstrates by clear and convincing evidence that it would have taken the same adverse action even absent the protected activity. 29 C.F.R. §1982.109(b).

## **III. DISCUSSION**

Sovereign immunity from private suits is “central to sovereign dignity.” *Sossamon v. Texas*, 563 U.S. 277, 283 (2011) (citing *Alden v. Maine*, 527 U.S. 706, 715 (1999)). This immunity from private suits applies to the states in addition to the federal government. See *Sossamon*, 563 U.S. at 283. Unless there is a waiver or a valid congressional abrogation, federal courts may not entertain a private person’s suit against a state. *Va. Office for Protection and Advocacy v. Steward*, 563 U.S. 247, 254 (2011). In the instant case, sovereign immunity applies because Respondent is a State,<sup>2</sup> there is no valid waiver of sovereign immunity, and no valid congressional abrogation in the statutory language of the NTSSA.

### **A. Administrative Proceedings and Sovereign Immunity**

Complainant contends that an Administrative Law Judge (“ALJ”), as part of the United States Department of Labor (“DOL”), “does not have the authority or subject matter jurisdiction to adjudicate constitutional issues such as sovereign immunity.” (Co. OPP 1 at 1). The case law clearly specifies otherwise. See *Minthorne v. Commonwealth of VA, et al.*, ARB No. 09-098,

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<sup>2</sup> As previously noted, the Maine Department of Transportation and the Maine State Ferry Service are departments within the State of Maine. 23 M.R.S. §§ 4205, 4401; (Re. MTD 1 at 3).

2011 WL 3228319 at \*5 (ARB July 19, 2011) (affirming ALJ dismissal of a whistleblower claim under the Clean Air Act due to state sovereign immunity); *Yagley v. Hawthorn Ctr.*, ARB No. 09-061, 2010 WL 1776981 at \*1-2 (ARB Apr. 30, 2010) (affirming ALJ dismissal of whistleblower claim due to state sovereign immunity).

Complainant further argues that ALJs lack the authority to rule on the constitutionality of the statutes they are required to enforce. (Co. OPP 1 at 3). The constitutionality of the NTSSA is not at issue here, but rather whether state sovereign immunity remains intact under the Act. The Supreme Court has made abundantly clear that sovereign immunity applies in administrative adjudications as well as in Article III adjudications. *Fed. Mar. Comm'n v. South Carolina State Ports Auth.*, 535 U.S. 743, 761 (2002) (“[I]t would be quite strange to prohibit Congress from exercising its Article I powers to abrogate state sovereign immunity in Article III judicial proceedings . . . but permit the use of those same Article I powers to create court-like administrative tribunals where sovereign immunity does not apply”); *United States v. Puerto Rico*, 287 F.3d 212 (1st Cir. 2002) (holding that the United States was entitled to invoke sovereign immunity in proceedings before the administrative agency); *see also Mull v. Salisbury Veterans Admin. Med. Ctr.*, ARB No. 09-107, 2011 WL 3882479 at \*3 (ARB Aug. 31, 2011). Thus, the issue to be decided is whether state sovereign immunity applies to Respondent under the NTSSA.

#### **B. Waiver of Sovereign Immunity**

The test for determining whether a state has waived its sovereign immunity is “a stringent one.” *College Savings Bank v. Florida Prepaid Postsecondary Ed. Expense Bd.*, 527 U.S. 666, 675 (1999) (citing *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 241 (1985)). Only by requiring a “clear declaration” by the State can we be “certain that the State in fact consents to suit.” *College Savings Bank*, 527 U.S. at 680. Waiver may not be implied. *Id.* at 682. As such, a waiver of sovereign immunity “will be strictly construed, in terms of its scope, in favor of the sovereign.” *Lane v. Peña*, 518 U.S. 187, 192 (1996).

Here, the State of Maine has not waived its sovereign immunity, and in fact vigorously defends it. Complainant does not argue in his opposition briefs that Maine has in any way waived its sovereign immunity. *See* (Cl. OPP 1); (Cl. OPP 2). Furthermore, counsel for Respondent explains that the Maine Legislature never expressed intent to waive it “nor has Maine accepted federal funds in the face of a clear statutory provision conditioning such

acceptance on waiver of immunity.” (Re. MTD 1 at 2). Since a waiver may not be implied and as there has been no clear declaration by the State of Maine waiving its sovereign immunity, I find there was no waiver.

### **C. Congressional Abrogation of Sovereign Immunity**

Congress’s ability to abrogate a state’s sovereign immunity is strict. Congress can abrogate state sovereign immunity if it makes its intention to abrogate “unmistakably clear in the language of the statute and acts pursuant to a valid exercise of its power under § 5 of the Fourteenth Amendment.” *Nevada Dep’t of Human Res. v. Hibbs*, 538 U.S. 721, 726 (2003). Thus, “[i]n order to determine whether Congress has abrogated the States’ sovereign immunity, we ask two questions: first, whether Congress has ‘unequivocally expresse[d] its intent to abrogate the immunity;’ and second, whether Congress has acted ‘pursuant to a valid exercise of power.’” *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 55 (1996) (citing *Green v. Mansour*, 474 U.S. 64, 68 (1985)). In the instant case, Complainant is a private citizen attempting to bring suit against a nonconsenting state in a federal administrative tribunal. The Eleventh Amendment bars his suit unless Congress validly abrogated state sovereign immunity when it enacted the NTSSA’s whistleblower protection provisions.

#### 1. Congressional Intent

There is no clear abrogation of state sovereign immunity by Congress in the language of the NTSSA’s whistleblower provisions. *See* 6 U.S.C. § 1142. The case law on the NTSSA is scant and there is none that specifically addresses sovereign immunity. Nevertheless, analogies to case law interpreting sovereign immunity in other whistleblower statutes may help determine if Congress validly abrogated state sovereign immunity under the NTSSA.<sup>3</sup>

As a starting point, the plain language of the statute and subsequent regulations must be examined. The whistleblower provision of the NTSSA initially states:

A public transportation agency, a contractor or a subcontractor of such agency, or an officer or employee of such agency, shall not discharge, demote, suspend, reprimand, or in any other way discriminate against an employee if such discrimination is due, in whole or in part, to the employee’s . . . [whistleblowing activities].

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<sup>3</sup> Parties discuss case law relating to both federal and state sovereign immunity abrogation. The analysis for both is the same: “[t]he requirement that Congress express its intentions unmistakably in the statutory text applies to waivers of federal immunity and to abrogation of state immunity.” *Erickson v. U.S. Environmental Protection Agency*, 2006 WL 1516646 at \*7 (ARB May 31, 2006) (citing *Irwin v. Dep’t of Veteran Affairs*, 498 U.S. 89, 95 (1990)).

6 U.S.C. § 1142(a). The Act and its regulations define “public transportation agency” as “a publicly owned operator of public transportation eligible to receive Federal assistance under chapter 53 of Title 49.”<sup>4</sup> 6 U.S.C. §1131(5); 29 C.F.R. § 1982.101(i).

The Act further states: “[a] person who believes that he or she has been discharged or otherwise discriminated against by any *person* . . . may . . . file a complaint with the Secretary of Labor alleging such discharge or discrimination.” 6 U.S.C. § 1142(c)(1) (emphasis added). This use of “person” is consistent through the Act and its regulations. *See* 6 U.S.C. § 1142(c)(3)(B); 29 C.F.R. 1982.102(c). In fact, the regulations further clarify: “Respondent means the *person* alleged to have violated NTSSA.” 29 C.F.R. 1982.102(c) (emphasis added). Nevertheless, the NTSSA and its regulations fail to provide a definition of “person.” While the word “person” is not defined, the use of the word “person” when discussing the respondent is significant. In other statutory constructions, the Supreme Court has held that “person” does not include the sovereign, and statutes employing the word are ordinarily construed to exclude it. *See Wilson v. Omaha Tribe*, 442 U.S. 653, 667 (1979); *United States v. Mine Workers*, 330 U.S. 258, 275 (1947). Upon viewing the plain language of the NTSSA, Congress did not make “unmistakably clear” its intent to abrogate the States’ sovereign immunity.

Both Complainant and Respondent analogized the NTSSA’s language to other statutes where a determination of congressional abrogation has been made. First, Complainant argues the language of the Fair Labor Standards Act (“FLSA”), which the First Circuit held to validly abrogate state sovereign immunity, is similar to the NTSSA. *See Mills v. Maine*, 118 F.3d 37, 42 (1st Cir. 1997). The FLSA language that many circuit courts found persuasive in making this determination is that “employer” is defined to include a “public agency” and is defined as “the government of a State or political subdivision thereof” and any agency of a State. 29 U.S.C. §§ 203(d), (x); *see Timmer v. Michigan Dept. of Commerce*, 104 F.3d. 833, 838 (6th Cir. 1997); (Co. OPP 1 at 4). Furthermore, “an individual employed by a public agency” is defined to include “any individual employed by a State, political subdivision of a State, or an interstate government agency. . . .” 29 U.S.C. § 203(e)(2)(C); (Co. OPP 1 at 4).

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<sup>4</sup> This chapter is titled “Public Transportation” and is meant “to foster the development and revitalization of public transportation systems with the cooperation of both public transportation companies *and private companies engaged in public transportation.*” 49 U.S.C. 5301(a) (emphasis added).

This FLSA language is not similar to the wording of the NTSSA. The NTSSA does not single out the “state” as an employer. In fact, the statute and regulations do not provide a definition of “employer,” just a definition for “Respondent,” which as previously noted, singles out the requirement of a “person.” *See* 29 C.F.R. §1982.101(l). No language in the NTSSA or its regulations identifies the states or state agencies as a possible employer or respondent.

Respondent cites to a legal opinion letter from the U.S. Department of Justice, Office of Legal Counsel, to the Solicitor of Labor, entitled, “Waiver of Sovereign Immunity With Respect to Whistleblower Provisions of Environmental Statutes”<sup>5</sup> (“OLC letter”). (Re. MTD 2 at 6-7). The OLC letter compares the waiver or abrogation of federal sovereign immunity in whistleblower provisions of three environmental statutes: the Solid Waste Disposal Act (“SWDA”), 42 U.S.C. § 6971 (2000); the Clean Air Act (“CAA”), 42 U.S.C. §7622 (2000); and the Clean Water Act (“CWA”), 33 U.S.C. § 1367 (2000). Although the OLC letter discusses congressional abrogation of federal sovereign immunity, the analysis is the same for State sovereign immunity. *See Minthorne*, 2011 WL 3229319 at \*6. Federal sovereign immunity was abrogated in the SWDA and the CAA, but not in the CWA. In noting that the federal government’s sovereign immunity was not abrogated in the CWA, the Supreme Court explained the statute did not define “person” to include the United States. *U.S. Dep’t of Energy v. Ohio*, 503 U.S. 607, 617-618 (1992). This “omission has to be seen as a pointed one when so many other government entities are specified.” *Id.* The NTSSA, likewise, enumerates many parties who can be held responsible for discriminating against a whistleblower, but fails to single out the states or any state entity, specifically. 6 U.S.C. § 1142(a) (“a public transportation agency, a contractor or a subcontractor of such agency, or an officer or employee of such agency”).

Respondent additionally emphasizes a First Circuit case, where the Court found that Congress did not abrogate state sovereign immunity under the SWDA.<sup>6</sup> *Rhode Island Dept. of Environmental Management v. U.S.*, 304 F.3d 31, 51 (1st Cir. 2002); (Re. MTD 1 at 1, 6-8). Respondent argues the NTSSA and the SWDA are similar because both whistleblower protection schemes involve “an escalating series of adversary proceedings between the complainant and employer,” including the procedural process. (Re. MTD 1 at 6-8). While this may be true, the

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<sup>5</sup> “Waiver of Sovereign Immunity With Respect to Whistleblower Provisions of Environmental Statutes,” Letter Opinion for the Solicitor, Department of Labor, 29 Op. Off. Legal Counsel 171 (Sept. 23, 2005).

<sup>6</sup> It is important to note the OLC letter discusses federal sovereign immunity, which was abrogated under the SWDA.

plain language of the SWDA must be examined and compared to the NTSSA to form a more concrete analogy. The SWDA's whistleblower provision allows claims against any "person," 42 U.S.C. § 6971(b), which is elsewhere defined to include "each department, agency, and instrumentality of the United States." 42 U.S.C. § 6903(15). This express language satisfies the stringent test for waiver of federal immunity, but not for state sovereign immunity, as the term "person" is not defined to include the states. Under the SWDA, citizens may bring civil suits only "to the extent permitted by the eleventh amendment to the Constitution." 42 U.S.C. § 6972(a)(1)(A). The First Circuit noted: "[i]f anything, this section indicates that Congress had no intention to disturb the states' traditional immunity from suit." *RIDEM*, 304 F.3d at 51. As previously noted, the NTSSA also does not contain clear language of congressional intent to subject the states to an abrogation of their sovereign immunity. *See generally* 6 U.S.C. § 1142.

Finally, Respondent discusses the congressional abrogation of federal sovereign immunity under the Environmental Reorganization Act ("ERA"). (Re. MTD 2 at 7-8). The Administrative Review Board held that the ERA did not contain the unequivocal expression of congressional intent necessary to abrogate federal sovereign immunity. *See Mull*, 2011 WL 3882479 at \*4. The Board made this determination after examining the plain language of the statute and concluding: "[c]ertainly, it is self-evident that there is no statement that 'federal sovereign immunity' is waived." *Id.* at \*6. Similarly, the NTSSA does not contain self-evident language to indicate that State sovereign immunity is waived. The Board juxtaposed the ERA, which, like the NTSSA, does not define the "person" whom the complaint can be filed against and compares it to the CAA, where "person" is clearly defined to include certain entities. *See* 42 U.S.C. § 7602(e) (under the CAA "person" is defined to include "any agency, department or instrumentality of the United States"). The Board found that this lack of language including the federal government as an entity which complaints can be filed against "tends to suggest that Congress did not intend the federal government's sovereign immunity to be waived." *Mull*, 2011 WL 3882479 at \*7.

In summation, the NTSSA lacks any language including a State as an entity against which complaints can be filed or otherwise waiving its sovereign immunity. Congress failed to unequivocally express its intention to abrogate state sovereign immunity under the NTSSA.

## 2. Congressional Power to Abrogate

As previously noted, in determining whether Congress properly abrogated a State's sovereign immunity, the second question is whether, Congress, having clearly expressed its intent to abrogate state sovereign immunity, has done so pursuant to a valid exercise of congressional authority. *See Seminole Tribe of Fla.*, 517 U.S. at 55. Although this analysis is unnecessary given that I find Congress did not clearly express its intent to abrogate state sovereign immunity in the NTSSA, I will briefly discuss, for any appellate purposes, Congress's power to abrogate.

Congress may not abrogate the States' sovereign immunity pursuant to its Article I power over commerce. *Hibbs*, 538 U.S. at 727. Nevertheless, Congress may "abrogate States' sovereign immunity through a valid exercise of its § 5 power, for 'the Eleventh Amendment, and the principle of state sovereignty which it embodies, are necessarily limited by the enforcement provisions of § 5 of the Fourteenth Amendment.'" *Id.* (quoting *Fitzpatrick v. Bitzer*, 427 U.S. 445, 456 (1976)). For legislation enacted under § 5 of the Fourteenth Amendment to be valid, it "must exhibit 'congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end.'" *Hibbs*, 538 U.S. at 728 (quoting *City of Boerne v. Flores*, 521 U.S. 507, 520 (1997)). In enacting the NTSSA, Congress acted pursuant to their Article I power to regulate commerce. Thus, even if there was an unmistakable abrogation of state sovereign immunity, it is invalid.

The NTSSA was enacted in 2007 as part of the response to the recommendations of the National Commission on Terrorist Attacks under the United States (the 9/11 Commission). *See* H.R. Conf. R. 110-259 at 1 (2007). Section 1132 of the NTSSA outlines the congressional findings and purpose of the NTSSA. 6 U.S.C. § 1132. The Act's primary purpose is to protect the nation's public transit systems against terrorist attacks. *See* 6 U.S.C. § 1132. This purpose demonstrates that Congress acted pursuant to its power to regulate commerce, under Article I, in aiming to protect the American people from future terrorist attacks on public transportation.

Moreover, the whistleblower provisions of the NTSSA fail the congruence and proportionality test required under the Fourteenth Amendment. The Fourteenth Amendment allows Congress to take "appropriate" action to enforce rights, but the Supreme Court has determined that such action must be "congruent" and "proportional" to the deprivation of the right that Congress is seeking to remedy. *City of Boerne*, 521 U.S. at 530. The NTSSA protects

employees from an adverse employment action for “reporting a hazardous safety or security condition.” 6 U.S.C. § 1142(b)(1)(A). The “Findings” section of the NTSSA does not discuss a response to an actual or perceived problem of unconstitutional state retaliation against whistleblowers. 6 U.S.C. § 1132. Complainant argues that Congress validly abrogated state sovereign immunity under § 5 of the Fourteenth Amendment. (Co. OPP 1 at 6). In arguing for a valid abrogation, Complainant claims the NTSSA was meant to protect against treating “whistleblowers less favorably than non-whistleblowers.” (Co. OPP 1 at 6). Congress’s intent is quite clear that they were aiming to protect passengers of public transportation from terrorist attacks. 6 U.S.C. § 1132. As such, there is no language or congressional intent evident pointing to a response to unconstitutional state retaliation against whistleblowers.

It is evident from the congressional findings in the NTSSA that Congress was acting pursuant to its commerce power under Article I. Thus, even if the NTSSA were to contain clear language of Congress’s abrogation of states’ sovereign immunity, the abrogation is not valid because the NTSSA was enacted pursuant to Congress’s Article I power to regulate commerce.

#### **IV. ORDER**

Based upon the foregoing conclusions of law, it is hereby **ORDERED** that Respondent’s Motion to Dismiss is **GRANTED**. Complainant’s claim is therefore, **DISMISSED**.

**SO ORDERED.**

**TIMOTHY J. McGRATH**  
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 fourteen (14) 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, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: [Boards-EFSR-Help@dol.gov](mailto:Boards-EFSR-Help@dol.gov)

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; 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. § 1982.110(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. § 1982.110(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, in cases in which the Assistant Secretary is a party, on the Associate Solicitor, Division of Fair Labor Standards. See 29 C.F.R. § 1982.110(a).

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points

and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

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. §§ 1982.109(e) and 1982.110(a). 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. §§ 1982.110(a) and (b).