LANDMARK CERTIFICATIONS, DETERMINATIONS, AND POLICY LETTERS BY STATE

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FILE COPY

JL 23 1985

Mr. Joseph LaSala
Chief Counsel
Urban Mass Transportation Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

Fred Cavanah
Transit Manager
City of Modesto
801 11th Street
Modesto, CA 95353

Gentlemen:

This is in reference to a June 23, 1986 letter (copy enclosed) from Mr. Ralph L. Stanley, Administrator of the Urban Mass Transportation Administration (UMTA) to the Honorable Tony Coelho, U.S. House of Representatives concerning contracting out for bus service by the City of Modesto, California. UMTA has provided my staff with a copy of the above letter and requested our assistance in addressing the issue of whether detailed language in the City's bid specifications, which provides for protection of existing employees, need be continued in future contract solicitations by the City of Modesto. We have indicated that this question was, in fact, raised by the City in a letter to the Department of Labor and we responded in a telephone conversation on March 13, 1986.

The Department believes that when a contract for a fixed term between a contractor and an UMTA grantee has been properly terminated according to its terms, impacts which occur solely as a result of the expiration of a bid contract are not considered to be "as a result of the Federal Grant" and, therefore, would not trigger benefits to affected employees. However, this would not apply to employees of contractors under a "Memphis" plan, nor would it apply to those employees who are otherwise covered by Section 13(c) of the Act as a result of arrangements which provided for continued employment to minimize 13(c) liabilities following an acquisition. It is not clear, however, whether the displacement of all current transit employees in Modesto, should that occur following selection of a new contractor, would result solely from the expiration of the old contract or, in part, as a result of the acquisition of the system.

We have indicated to the City that the detailed protective language in existing contracts is not required by Section 13(c), although it appears that the language was developed on a voluntary basis at an earlier point in time, in part to reduce the City's exposure to liabilities under 13(c). The City of Modesto is subject to the terms and conditions of an employee protective arrangement which has been incorporated into the operating assistance grants received from UMTA. This protective arrangement provides, in paragraph 7, that "any controversy respecting the project's effects upon employees ... may be submitted by any party... for determination by the Secretary of Labor." The Department has not rendered a determination on a situation similar to this during the history of the program, and, therefore, we are unable to rely on precedential case decisions to answer questions regarding potential liability. While liability appears remote, particularly for employees hired by contractors after the initial acquisition, under the circumstances we cannot provide a waiver which would release the City from any and all liabilities under 13(c) should they arise. In any claims proceeding which could arise following termination of an existing contract, the Department would have to examine the relationship of the acquisition to the adverse effect as well as the terms of the contract, along with other facts and circumstances relating to the claim. This opinion is advisory only and it may not be dispositive of any parties' rights or duties under a Section 13(c) claim. Elimination of the detailed labor protection language in the City's bid specifications, however, would be permissible since it is not specifically required by 13(c).

I hope this will be of some assistance in resolving this problem. If you have additional questions on this matter, please contact Ms. MaryAnn Mullen or James L. Perlmutter of my staff on (202) 357-0473.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: The Honorable Tony Coelho

CONDITIONAL CERTIFICATION

SEP 30 1985

Ms. Charlotte Adams
Acting Regional Administrator
Urban Mass Transportation Administration
Region IV
1720 Peachtree Road, N.W., Suite 400
Atlanta, Georgia 30309

Re: UMTA Applications
Chattanooga Area Regional
Transportation Authority
(CARTA)
Operating Assistance;
Purchase 7 Buses, 1
Service Vehicle, etc.
(TN-90-X034)
(TN-90-X035)

Dear Ms. Adams:

This is in reply to the request from your office that we review the above captioned applications for grants under the Urban Mass Transportation Act of 1964, as amended.

With respect to operating assistance, the Chattanooga Area Regional Transportation Authority and the Amalgamated Transit Union have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. The terms and conditions of the July 23, 1975 agreement provide protections to employees represented by the union satisfying the requirements of Section 13(c) of the Act.

The parties have been in disagreement since 1979 over the force and effect of paragraph (9) of the May 30, 1975 agreement, included as an addendum to the July 23, 1975 agreement pursuant to paragraph (4) thereof in connection with several previous projects. The Department of Labor does not require that the addendum be included in 13(c) certification for the instant project.

Paragraph (4) of the National Agreement provides in part as follows:

> The Recipient agrees that it will bargain collectively with the union or otherwise arrange for the continuation of collective bargaining, and that it will enter into agreement with the union or arrange such

agreements to be entered into relative to all subjects which are or may be proper subjects of collective bargaining.

Our certification is therefore conditioned upon the willingness of the Authority to honor and abide by paragraph (4) of the National Agreement.

With respect to capital assistance projects, and in connection with a previous grant application, the Chattanooga Area Regional Transportation Authority (CARTA) and Amalgamated Transit Union (ATU) Local 1212, executed an agreement dated May 30, 1975, which provided to the members of the union protections satisfying the requirements of Section 13(c) of the Act.

The parties have been in disagreement since 1979 over the force and effect of paragraph (9) of the May 30, 1975 agreement. Up until that time, the parties agreed voluntarily to the use of paragraph (9) in connection with six projects.

Since September 15, 1982, the Department of Labor has certified CARTA projects on the basis of the May 30, 1975 agreement without the interest arbitration provisions of paragraph (9), with additional language stating that certification was without prejudice to the positions of the parties in any pending or future litigation over the force and effect of paragraph (9).

Section 13(c) requires that protective arrangements provide for "the continuation of collective bargaining rights." The Department of Labor does not require that Section 13(c) arrangements provide for conventional interest arbitration of new contract terms. However, in those instances where employees lose the right to strike, the parties should agree upon a procedure for the resolution of interest disputes.

By letter dated September 25, 1985 CARTA has requested certification of the instant projects on the basis of their Section 13(c) agreement dated May 30, 1975 exclusive of paragraph (9) of that agreement. The ATU, by letter of September 27, 1985, has taken the position that "in light of the failure of CARTA to fulfill conditions satisfying Section 13(c) requirements, the Secretary must halt the flow of funds by revoking or denying this certification." The Department of Labor, however, has determined that the appropriate action in this instance is to certify the instant projects with the deletion of paragraph (9) of the May 30, 1975 agreement.

Paragraph (3) of the May 30, 1975 agreement provides in part that CARTA "will bargain collectively with the union or otherwise arrange for the continuation of collective bargaining and . . . will enter into agreements with the union or arrange for such agreements to be entered into relative to all subjects which are or may be proper subjects of collective bargaining." Our certification for the capital portions of the instant project, therefore,

is conditioned upon the willingness of the Authority to honor and abide by paragraph (3) of the May 30, 1975 arrangement and provides that the parties negotiate in good faith over an alternative method for the resolution of labor disputes.

This certification is issued without prejudice to the positions of the parties in any pending or future litigation over the force and effect of paragraph (9) of the May 30, 1975 agreement as it relates to previously certified projects. The Department expresses no opinion on whether the parties, by conduct or otherwise, are bound by paragraph (9) of the May 30, 1975 agreement as part of their contractual relationship, as a result of previous certifications by the Department of Labor. It is recognized that, depending upon the resolution of the existing dispute between the parties, it may be necessary for the Department of Labor and/or the parties to take further appropriate action.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. The terms and conditions of the agreement dated July 23, 1975, shall be made applicable to the operating assistance portions of the instant projects and made part of the contract of assistance, by reference;

2. The terms and conditions of the agreement dated May 30, 1975, with the deletion from paragraph (9) of the words "the making or maintaining of collective bargaining agreements, the terms to be included in such agreements and the interpretation or application of such collective bargaining agreements, any grievances that may arise," shall be made part of the contract of assistance, by reference;

3. The term "project" as used in the agreements of July 23, 1975 and May 30, 1975, shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant project; and

4. The parties shall negotiate in good faith over an alternative method for the resolution of disputes. Negotiations will commence within 15 days of the date of this certification. If the parties reach agreement on an alternative they will submit it to the Department of Labor for review to insure that it meets the statutory requirements of the Urban Mass Transportation Act. If the parties have not reached agreement on an alternative method for the resolution of labor disputes they will report the current status of their negotiations within 90 days of the date of this certification.

5. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to union members under the July 23, 1975 and May 30, 1975 agreements, with the above deletions from paragraph (9), and this certification.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
George Derryberry/Miller & Martin
Maury Miles/CARTA

Mr. Joel Ettinger
Regional Administrator
Urban Mass Transportation Administration
Region V
300 South Wacker Drive, Suite 1740
Chicago, Illinois 60606

JAN 31 1986

UMTA Application
City of Cincinnati
Bus & Related Equipment, etc.
(OH-90-X044)-F
(OH-90-X045)-F

DEAR MR. ETTINGER:

This is in reference to the above captioned application which we are processing for a grant under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the Southwest Ohio Regional Transit Authority (SORTA) of Cincinnati, Ohio and the Amalgamated Transit Union (ATU) executed an agreement dated August 29, 1975 which provided to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

The Department of Labor (DOL) has been aware that SORTA and the ATU have for some time disagreed over the inclusion of the current interest arbitration provision in their 13(c) agreement. In these cases, SORTA's applications have been certified by DOL on condition that the parties negotiate in good faith over alternative dispute resolution procedures. By letter dated September 12, 1985 DOL again encouraged the parties to arrive at a mutually agreeable solution. However, if the parties had not reached an agreeable alternative method within 30 days of the September 12th letter they were to submit their individual proposals to DOL to determine appropriate action. Unable to reach agreement on an alternative dispute procedure, the ATU requested a meeting with DOL before issuance of a final determination.

Pursuant to the meeting at DOL on December 12, 1985, the parties submitted position statements regarding dispute resolution mechanisms to be included in the 13(c) agreement for certification of the projects.

The ATU argued that inadequate justification was given by SORTA when it requested revocation of Section 17 and 18 of the August 29, 1975 agreement and replacement with Section 4117.14 of the Ohio Revised Code. The ATU further stated that SORTA's preference to give its employees the right to strike rather than interest arbitration is not adequate justification for departure from the existing arrangement.

SORTA argued that Section 4117.14 of the Ohio Revised Code provides for the continuation of collective bargaining rights of the transit employees as required by Section 13(c) of the Act and the existing interest arbitration provision is not required.

The inclusion of interest arbitration in SORTA Section 13(c) agreements evolved as a result of the loss of the transit employees private sector status when the authority acquired Cincinnati Transit Inc. It became the mutually acceptable quid pro quo for the employees' loss of the right to strike.

DOL has never issued a determination or taken a policy position which mandates interest arbitration in lieu of the right to strike. Also, several court decisions have held that Section 13(c) does not provide transit workers with a guarantee of interest arbitration as the quid pro quo for their loss of the right to strike. On the other hand, the parties remain free to mutually agree to changes in agreements, including dispute resolution procedures, to apply to pending projects.

n 1983 with the passage of the Ohio Public Employee Collective Bargaining Act, public employees regained the right to organize and strike as a means of resolving labor disputes. A review of Section 4117.14 of the Ohio Revised Code discloses that the standards of Section 13(c)2 have been met. The Code provides that the parties may use any dispute settlement procedure mutually agreed to by the parties or a formal procedure which includes mediation, fact-finding, conciliation and the right to strike. With its passage, the means for assuring the continuation of collective bargaining rights appear to have been restored to the conditions existing before the public acquisition of Cincinnati Transit, Inc.

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BLMRCP/Room N-5416
357-0473

Therefore, upon careful consideration of all of the circumstances, including consideration of the provisions satisfying each of the five matters specified in Section 13(c) 1 through 5 of the Act, DOL has determined that the Ohio Revised Code provides an acceptable procedure which meets the requirements of the Act and makes the certification with respect to the instant project on condition that:

1. The terms and conditions of the agreement dated August 29, 1975, with the exclusion of Section (17) and (18) and supplemented by Section 4117.14 of the Ohio Revised Code, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement of August 29, 1975, with the exclusion of Section (17) and (18) and supplemented by Section 4117.14 of the Ohio Revised Code, shall be deemed to cover and refer to the instant project; and

3. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to employees represented by the union under the August 29, 1975 agreement with the exclusion of Section (17) and (18) and this certification.

4. This certification replaces and voids the previous interim certifications (OH-90-X044-I and OH-90-X045-I) dated November 12, 1985. The terms and conditions of this certification shall be made retroactive to November 12, 1985.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Anthony M. Kouneski/SORTA

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

MAR 7 1986

Ms. Charlotte Adams
Acting Regional Administrator
Urban Mass Transportation Administration
Region IV
1720 Peachtree Road, N.W., Suite 400
Atlanta, Georgia 30309

Re: UMTA Applications
Chattanooga Area Regional
Transportation Authority
(CARTA)

Dear Ms. Adams:

On September 30, 1985, the Department of Labor issued a certification letter for projects (TN-90-X035) and (TN-90-X034) for operating and capital assistance grants under the Urban Mass Transportation Act of 1964, as amended. As with previous certifications, we noted that the Chattanooga Area Regional Transportation Authority (CARTA) and the Amalgamated Transit Union (ATU) have been in disagreement since 1979 over the force and effect of paragraph (9) of their May 30, 1975 Section 13(c) agreement. This paragraph contains an interest arbitration provision which the parties had originally agreed to in 1972 and which had been included in protective arrangements for all UMTA applications prior to August 19, 1981.

Beginning in 1981, certification letters for CARTA projects stated that the "Department of Labor does not require that Section 13(c) arrangements provide for conventional interest arbitration of new contract terms. However, in those instances where employees lost the right to strike, the parties should agree upon a procedure for the resolution of labor disputes." Our certification, therefore, was based upon the parties' agreement to continue bargaining in good faith over an alternative dispute resolution mechanism.

The Department's most recent certifications for CARTA established a deadline for the parties to report on the status of their negotiations and put them on notice that the Secretary was considering additional steps to assure that a procedure would be put in place. By letter dated January 17, 1986, the parties were requested, should negotiations prove unsuccessful, to "submit to the Department ... a written report covering their final

positions on the issue of a dispute procedure ...". In response to this letter, the parties undertook negotiations and were able to agree upon a mediation and fact-finding procedure which, the ATU asserts, "is an appropriate prelude to an interest arbitration requirement" and which, CARTA suggests, "meet(s) the statutory requirements," and is an appropriate basis for continued certification of UMTA projects.

The Department has reviewed the materials submitted by the parties in making its analysis of their respective positions. We have analyzed the requirements of the Federal law, the framework of applicable state law, the bargaining history of the parties and other pertinent factors specific to this situation. The ATU has argued that the transit laws of Tennessee specifically allow for interest arbitration and that CARTA has "advanced no argument that interest arbitration is detrimental to its operations." CARTA, however, is opposed "in principle to any procedure which would delegate control over labor costs ... to an outside party ...". While it is clear that the Tennessee statute does not prohibit interest arbitration, neither does it mandate such a procedure. The parties most recent collective bargaining agreement was successfully negotiated despite the parties disagreement over the availability of interest arbitration. In the absence of the parties' mutual agreement to continue to utilize interest arbitration, the Department will not here require that the interest arbitration provision previously certified be continued. The parties, of course, may agree to the use of interest arbitration as an alternative dispute resolution procedure if they so desire.

Although 13(c) does require some dispute resolution process that assures avoidance of unilateral control by the transit authorities, it is clear from the legislative history and case law that interest arbitration is not specifically required by the Act. In rejecting interest arbitration in this instance, the Secretary has taken into account the fact that 1) Tennessee law permits but does not compel such a procedure; 2) the parties have not mutually agreed upon the procedure; 3) the parties' history of collective bargaining indicates a good labor-management relationship and the ability to reach agreements without relying on a procedure which binds them to decision-making by a third party; and 4) an acceptable alternative procedure is available that will provide for the continuation of collective bargaining rights requirement under Section 13(c)(2) of the UMTA.

The Secretary has determined that the mediation and fact-finding procedure submitted by the parties fully satisfies the requirements of Section 13(c) for the continuation of collective bargaining rights. This procedure, which is attached as an Appendix to this letter, provides for 1) the appointment of a neutral mediator at the request of either party after bargaining to impasse or prior to the expiration of the existing collective

bargaining agreement, and 2) mandatory fact-finding if deemed useful by the mediator or not later than (5) days prior to expiration of the agreement with each party to be represented on the tripartite fact-finding panel. In accordance with the rules and regulations of the mediation services, the fact-finding panel shall have the power to make inquiries and investigations, hold hearings, or take such other steps as are deemed appropriate in order to discharge the panel's function. The fact-finding panel, by majority vote, shall then make non-binding findings and recommendations. If either party rejects the findings and recommendations, it must state with particularity its reason for rejection in writing. In such event, the panel must have published in the local media its recommendations for settlement of the labor dispute together with the statement provided by the rejecting party.

This procedure ensures a full and fair airing of the parties' issues, permits either party to invoke the services of a neutral mediator, and ensures fully informed and fair recommendations for settlement by an impartial fact-finding panel. In addition, it ensures that the parties will give serious consideration to the fact-finders' recommendations by requiring publication of any disagreements that remain at the end of this process. In short, the procedure is a fair and equitable one that gives equal consideration to the positions of both sides in a bargaining dispute and thereby prevents unilateral employer control over mandatory subjects of collective bargaining.

The Department has, therefore, determined that the appropriate dispute resolution procedure for application to CARTA grants will be the mediation and fact-finding agreement negotiated by the ATU and CARTA in connection with projects (TN-90-X035) and (TN-90-X034). This procedure will be made applicable to the above projects and to all previous CARTA grants which have been certified on the condition that the parties continue to negotiate a dispute resolution procedure. These projects include (TN-90-X020), (TN-90-X012), (TN-90-0009), (TN-90-0006), (TN-90-0001 #1), (TN-90-0001), (TN-05-4054), (TN-05-4041), (TN-05-4036), (TN-05-4028), (TN-05-0017), (TN-05-0013), (TN-05-0009), (TN-03-0023) and (TN-03-0022). This certification letter is not intended to affect certifications made prior to August 19, 1981.

Accordingly, the Department of Labor modifies its certification for the CARTA projects previously indicated by incorporating into each certification the language in Appendix A. All other terms and conditions in our previous certifications remain in effect.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
George Derryberry/CARTA

Enclosure

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

APR 15 1986

Ms. Charlotte Adams
Acting Regional Administrator
Urban Mass Transportation Administration
Region IV
1720 Peachtree Road, N.W.
Suite 400
Atlanta, GA 30309

Re: UMTA Applications
Metropolitan Transit
Authority
Nashville, TN
Operating Assistance
(TN-90-X037)

Dear Ms. Adams:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

The Metropolitan Transit Authority (MTA) and the Amalgamated Transit Union (ATU) have previously agreed to become party to the agreement executed on July 23, 1975 by the American Public Transit Association and transit employee labor organizations. Prior to 1979 the parties had also agreed that paragraph (9) of their June 26, 1975 Section 13(c) agreement, executed in connection with an earlier grant application, would be included as the addendum to the July 23, 1975 agreement pursuant to paragraph (4) thereof. The terms and conditions of the July 23, 1975 agreement provide protections to employees represented by the union satisfying the requirements of Section 13(c) of the Act.

On September 30, 1985, the Department of Labor issued its most recent certification letter for the Metropolitan Transit Authority (MTA) for projects (TN-90-X033) and (TN-05-0023) for capital assistance grants. As with previous certifications, we noted that MTA and the Amalgamated Transit Union (ATU) have been in disagreement since 1979 as to the force and effect of paragraph (9) of their June 26, 1975 Section 13(c) agreement. This paragraph contains an interest arbitration provision which the parties had originally agreed to in 1973 and which had been included in protective arrangements for UMTA applications prior to February 9, 1983.

Beginning in 1983, certification letters for MTA projects stated that "Section 13(c) does not require conventional interest arbitration over the terms of a collective bargaining agreement. However, in lieu of the procedure for resolving 'labor disputes' as defined in Paragraph (9) of the June 26, 1975 Section 13(c) agreement, the parties should agree upon an alternative procedure for the final resolution of 'labor disputes' as defined in the June 26, 1975 agreement, unless it is established that under Tennessee law MTA's employees entitled to 13(c) protections can strike if dissatisfied with MTA's bargaining proposals."

The Department's September 30, 1985 certification for MTA established a deadline for the parties to report on the status of their negotiations and put them on notice that the Secretary was considering additional steps to assure that a procedure would be put in place. Representatives of MTA's management company, Transit Management of Tennessee, Inc., (TMT) have informed the Department that transit employees in Nashville are employed by a private sector company which is subject to the National Labor Relations Act (NLRA) and that these transit workers, therefore, have NLRA rights and protections, including the right to strike. The Department has solicited submissions from TMT and the ATU on this matter.

The ATU argues that "an arbitration arrangement put in place at the time of the public takeover and the initiation of Federal funding is entitled to be preserved and continued in the absence of changed circumstances providing adequate policy justification for the proposed change." However, specific provisions of 13(c) arrangements were not intended to be preserved in perpetuity simply because they were in a collective bargaining agreement or a 13(c) agreement in existence at the time of a takeover or acquisition. Rather, it is the process of collective bargaining and the ability to negotiate over certain subjects that is to be preserved by Section 13(c) of the UMT Act.

The parties are currently awaiting final action of the National Labor Relations Board in acting upon current unfair labor practice charges filed with the Board. In November 1985, the President of ATU Local 1235 filed a ULP with the NLRB as a result of a dispute between the union and TMT over dues checkoff procedures (Case No. 26-CA-11419). The local union has also maintained that they have a right to strike on a number of occasions and had, in fact, even negotiated a clause in their collective bargaining agreement which recognized the employees' right to strike over interest disputes.

Based on our review of the documentation provided to the Department, we believe that TMT retains sufficient control over its employees' terms and conditions of employment so as to be capable of effective bargaining with the representative of those employees. We have provisionally concluded from the documentation that MTA does not exercise control over TMT hourly employees with respect to hiring, firing, promotions, transfers,

discipline or training. Accordingly, we believe TMT to be an employer subject to the NLRA and its employees' right to bargain collectively would be protected under the Act.

On the basis of the above-cited information presented to us by the parties, it appears that Transit Management of Tennessee, Inc., employees are, indeed, private sector employees with a right to strike. Consequently, we have concluded that the parties need not negotiate an alternative dispute resolution procedure. The right to strike in and of itself is a sufficient dispute resolution procedure to ensure fulfillment of the Section 13(c)(2) requirement for continuation of collective bargaining rights. It is our intention to certify the instant MTA grant application on the basis of existing Section 13(c) arrangement except insofar as we omit interest arbitration.

Upon careful consideration of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Section 13(c)(1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirements of Section 13(c) of the Act. With respect to Section 13(c)(2), this conclusion is based on our understanding that the employees of TMT "are private sector employees subject to the NLRA and entitled to the collective bargaining rights and remedies ordinarily available to employees covered by the Act.

We are, therefore, modifying Paragraph (9) of the parties June 26, 1975 agreement to eliminate interest arbitration by deleting the words "the making or maintaining of collective bargaining agreements, the terms to be included in such agreements and the interpretation or application of such collective bargaining agreements, any grievances that may arise" from the definition of "labor disputes" in Paragraph (9) thereof.

Should the NLRB rule that TMT employees are not private employees in the pending action, the Department will reconsider the basis for its certification and will take additional steps as necessary to ensure that the requirements of Section 13(c)(2) are met for this and other grants certified on the basis of a right to strike. The Department has decided to issue this certification prior to final action by the NLRB because of the uncertain date of such action and because of UMTA's concern that the instant operating assistance be approved without jeopardizing continued operation of the transit system.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. The terms and conditions of the agreement dated July 23, 1975, without an addendum, shall be made applicable to

the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement of July 23, 1975, shall be deemed to cover and refer to the instant project; and

3. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to employees represented by the union under the July 23, 1975 agreement and this certification.

The Department's determination that the continuation of collective bargaining rights requirement for employees is satisfied by the existence of the right to strike will also be applicable to all previous MTA projects that have been certified on the condition that the parties continue to negotiate a dispute resolution procedure. These projects include (TN-90-X033), (TN-90-X024), (TN-90-X018), (TN-90-0007), (TN-90-0004), (TN-90-0004 #1), (TN-05-4040), (TN-05-0023), (TN-05-0021), (TN-05-0008 #3), (TN-03-0025), and (TN-03-0015 #3). This certification letter is not intended to affect certifications made prior to February 9, 1983.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Jo D. Federspiel/TMT
Thomas Hock/ATE

APR 15 1986

Mr. Richard H. Doyle
Regional Administrator
Urban Mass Transportation
Administration
Region I
Kendall Square
55 Broadway
Cambridge, MA 02412

Re: UMTA Application
Greater Portland Transit
District
Operating Assistance
(ME-90-X022)

Dear Mr. Doyle:

This is in reply to the request from your office that we review the above captioned grant application for operating assistance under the Urban Mass Transportation Act of 1964, as amended.

The Greater Portland Transit District (GPTD) and the Amalgamated Transit Union (ATU) have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. Prior to Janauary 1, 1985, the parties had agreed that paragraph (9) of their February 28, 1975 Section 13(c) agreement, executed in connection with an earlier grant application, would be included as an addendum to the July 23, 1975 agreement pursuant to paragraph (4) thereof. The terms and conditions of the July 23, 1975 agreement provide protections to employees represented by the union satisfying the requirements of Section 13(c) of the Act.

The Department of Labor issued certifications on January 1, 1985 and April 11, 1985 for assistance for the Greater Portland Transit District. In making these certifications, we noted that the GPTD and ATU have been in disagreement over the force and affect of paragraph (9) of their February 28, 1975 Section 13(c) agreement. This paragraph contains an interest arbitration provision which the parties had originally agreed to in 1972 and which had been included in protective arrangements for all UMTA applications prior to January 1, 1985.

Beginning in January 1985, certification letters for GPTD projects stated that the "Department of Labor does not require that Section 13(c) arrangements provide for conventional interest

arbitration of new contract terms. However, in those instances where employees have lost their right to strike, the parties should agree upon a procedure for the resolution of labor disputes." Our certification, therefore, was based upon the parties agreement to continue bargaining in good faith over an alternative dispute resolution mechanism.

The Department's letter of January 17, 1986, regarding the instant project (ME-90-X022) for operating assistance, established a deadline for the parties to negotiate a mutually satisfactory dispute procedure. In addition, the parties were requested, should negotiations prove unsuccessful, to "submit to the Department of Labor . . . a written report covering their final positions on the issue of a dispute resolution procedure including their specific proposals for dispute resolution language . . .". In response to this letter, the parties undertook discussion, but were unable to agree upon an alternative dispute procedure and, therefore, submitted their final positions to the Department for review.

The GPTD believes that the dispute resolution procedures set forth in the Municipal Public Employees Labor Relations Law (MPELRL) adequately meet the requirements of Section 13(c). In summary, GPTD indicates that the "statute provides for a three-step impass(e) resolution process, including mediation, fact-finding and arbitration, which may be invoked by either party to the dispute. Arbitration is binding, and the parties are required to enter into an agreement or take whatever action is appropriate to carry out and effectuate the binding determinations of the arbitrators on all issues except controversies over salaries, pensions and insurance". In disputes over salaries, pensions or insurance, the arbitrators are required to recommend terms of settlement and may make findings of fact, for which their recommendations and findings are advisory. The arbitrators have the discretion to make these recommendations and findings public if the parties fail to reach agreement within 10 days of the receipt of the arbitrator's recommendations.

The ATU argues that the Public Employees Labor Relations Law, containing the procedures proposed by GPTD, was enacted subsequent to a 1966 law creating municipal transportation districts, which at Chapter 240, Section 4979, states that the directors of the transportation district have full power to bargain collectively and enter into written contracts which include arbitration. The ATU states that there is no language in the Municipal Public Employees Labor Relations Law which specifically diminishes the language in the transportation enabling statute. The ATU, therefore, believes that there is no reasonable basis for the elimination of interest arbitration from the parties' Section 13(c) arrangement which was agreed to in 1972.

The Department of Labor has reviewed the materials submitted by the parties in making its analysis of their respective positions. Although 13(c) does require some dispute resolution process that assures avoidance of unilateral control by the transit authorities, it is clear from the legislative history and case law that interest arbitration is not specifically required by the Act. In addition, even though the Maine Act of 1966 permits interest arbitration it does not compel the use of interest arbitration for the resolution of labor disputes. There is no state case law which clarifies which law is controlling for employees of the GPTD. However, GPTD has indicated that the ATU and GPTD have successfully relied on the MPELRL for the resolution of interest disputes on several occasions, most recently in 1985. Therefore, in the absence of the parties' mutual agreement to continue to utilize interest arbitration, the Department will not, in this instance, require that the interest arbitration provision previously certified be applied to future grants.

In view of the above, the Department of Labor has determined that an appropriate dispute resolution procedure for application to GPTD projects is that contained in Section 965 of the Municipal Public Employee Labor Relations Law, with some minor modifications to the procedures set forth in Part 4 of that Section to meet the requirements of Section 13(c)(2) of the UMT Act for continuation of collective bargaining rights. Specifically, the Department requires that, in those instances where procedures are optional under the MPELRL, they must be considered mandatory to meet the requirements of 13(c). For instance, where Section 965(4) of the MPELRL reads "may make findings of fact", the Department's dispute resolution procedure, contained in Appendix A, reads "will make findings of fact." The Department further requires the parties to provide the arbitrators with a statement of their reasons should they reject the panel's recommendations, and these, too, must be made public.

The Secretary has determined that this mediation, fact-finding, and arbitration procedure with the modifications mentioned above fully satisfies the requirements of Section 13(c) for the continuation of collective bargaining rights. This procedure provides for (1) the appointment of a neutral mediator at the request of either party, (2) mandatory factfinding with recommendations, and (3) final and binding arbitration of all issues except salaries, pensions and insurance. With respect to salaries, pensions and insurance, recommendations and findings of fact are advisory only. If either party rejects the arbitrators' recommendations on issues of salaries, pensions and insurance, such recommendations will be made public along with the reasons for their rejection.

This procedure ensures a full and fair airing of the parties' issues, permits either party to invoke the services of a neutral mediator, and ensures fully informed and fair recommendations for

settlement. In addition, it ensures that the parties will give serious consideration to the arbitrator's recommendations by requiring publication of any disagreements that remain at the end of this process. The procedure is a fair and equitable one that gives equal consideration to the positions of both sides in a bargaining dispute and thereby prevents unilateral employer control over mandatory subjects of collective bargaining.

In addition to impasse resolution procedures, Departmental policy has been to require the parties to a Section 13(c) Agreement to provide for a neutral, final and binding grievance resolution procedure to resolve any controversy which may arise with respect to the interpretation, application, or enforcement of the terms of the 13(c) agreement itself. Such procedures for resolution of grievance disputes under the 13(c) agreement are a necessary requirement to ensure that employee protective arrangements are enforceable by the parties.

We are, therefore, modifying Paragraph (9) of the parties' February 28, 1975 agreement to eliminate interest arbitration by deleting the word "labor" from line 1 of this section and substituting the word "grievance", and deleting the words:

> . . . "labor dispute" shall be broadly construed and shall include, but not be limited to, any controversy concerning wages, salaries, hours, working conditions or benefits, including health and welfare, sick leave, insurance, or pension and retirement provisions, the making or maintaining of collective bargaining agreements, any grievances that may arise, and any controversy arising out of or by virtue of any provisions of this agreement.

and substituting "'grievance dispute' shall be construed to mean any controversy regarding the application, interpretation or enforcement of any of the provisions of this agreement."

Procedures to resolve grievance disputes over the interpretation, application and enforcement of the July 23, 1975 "Model" agreement are included in Paragraph (15) of that agreement and will be applicable for the instant operating assistance project. The above grievance dispute procedures will be applicable to future capital projects should the parties elect to use their February 28, 1975 agreement.

Upon careful consideration of all of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Sections 13(c)(1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. The terms and conditions of the agreement dated July 23, 1975 and Appendix A as the addendum pursuant to paragraph (4) thereof, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement of July 23, 1975, shall be deemed to cover and refer to the instant project; and

3. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to employees represented by the union under the July 23, 1975 agreement and this certification.

4. This dispute resolution procedure will be made applicable to the previous GPTD grants which were certified on the condition that the parties continue to negotiate a dispute resolution procedure, including (ME-90-X006 A and B) dated January 31, 1985 and (ME-03-0015) dated April 11, 1985. All other terms and conditions in our previous certifications remain in effect.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Pamela Plumb/GPTD

Enclosures

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

APR-15 1986

Mr. Joel Ettinger
Acting Regional Administrator
Urban Mass Transportation Administration
Region V
300 South Wacker Drive, Suite 1740
Chicago, Illinois 60606

Re: UMTA Applications
Transit Authority of
Northern Kentucky
Operating Assistance
(KY-90-X018)

Dear Mr. Ettinger:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the Transit Authority of Northern Kentucky and Amalgamated Transit Union Local 628 have previously agreed to become party to the agreement executed on July 23, 1975, by the American Transit Association and transit employee labor organizations. In addition, the parties had agreed that paragraph (9) of their September 20, 1973 Section 13(c) agreement, executed in connection with an earlier grant application, would be included as the addendum to the July 23, 1975 agreement pursuant to paragraph (4) thereof. The terms and conditions of the July 23, 1975 agreement provide protections to employees represented by the union which satisfy the requirements of Section 13(c) of the Act in general purpose operating assistance project situations.

On September 5, 1985, however, the Kentucky Supreme Court in Transit Authority of Lexington-Fayette Urban County Government v. Amalgamated Transit Union, Local 639, 698 S.W. 2d 520 (Ky. 1985) held that the transit authority was a political subdivision of the State and could not delegate its exercise of discretion in policy matters and management decisions to an arbitrator. Rehearing of the case was subsequently denied by the Court, effectively nullifying interest arbitration procedures in existing agreements. Although 13(c) does require some dispute resolution process that assures avoidance of unilateral control by the transit authorities, it is clear from the legislative history and case law that interest arbitration is not specifically required by the Act. The Department of Labor, therefore, directed TANK and the ATU to negotiate an alternative

to the interest arbitration procedure in Paragraph (9) of their September 20, 1973 agreement in order to meet the 13(c)(2) requirement for continuation of collective bargaining rights.

On February 21, 1986, the parties met at the Department of Labor (along with representatives of TARC and LEXTRAN) and exchanged proposals for alternative dispute resolution procedures. (There is no right to strike for public employees in Kentucky.) The parties discussed their positions and agreed to submit to the Department, within one week, either an agreed-upon procedure or their separate proposals for a mediation and factfinding procedure. The parties were unable to agree upon all the specifics of such a procedure. However, the Department has reviewed their proposals and determined that the attached Appendix A, which is a compromise drafted by the Department, will fully satisfy the requirements of Section 13(c)(2) for the continuation of collective bargaining rights.

This procedure provides for the utilization of a neutral mediator at the request of either party after bargaining to impasse, and for mandatory factfinding at the request of either party within thirty days of contract expiration. In accordance with the rules and regulations of the mediation services, the factfinder shall have the power to make inquiries and investigations, hold hearings, or take such other appropriate steps to carry out his or her function. Should either party reject the factfinder's recommendations, this arrangement provides for their publication in the local media along with the parties' statements supporting or rejecting those recommendations, thus ensuring that the parties will give serious consideration to the factfinder's recommendations. This procedure is fair and equitable and, it gives equal consideration to the positions of both sides in a bargaining dispute, thereby preventing unilateral control over mandatory subjects of collective bargaining.

The Department, therefore, has determined that the dispute resolution procedure in Appendix A will be made applicable to the above projects and that the interest dispute provisions in Paragraph (9) of the parties September 20, 1973 Section 13(c) Agreement will be excised from that agreement.

In addition, Departmental policy has been to require the parties to a Section 13(c) Agreement to provide for a neutral, final and binding dispute resolution procedure to resolve any controversy which may arise with respect to the interpretation, application, or enforcement of the terms of the 13(c) agreement itself. Such procedures for resolution of grievance disputes under the 13(c) agreement are a necessary requirement to ensure that employee protective arrangements are enforceable by the parties. Although the transit authority cannot delegate its statutory responsibility to fix wages, determine policy, or make decisions which are management prerogatives, grievance arbitration of disputes arising under the 13(c) agreement would not fall within the purview of this restriction.

We are, therefore, modifying Paragraph (9) of the parties' September 20, 1973 agreement to eliminate interest arbitration by deleting the word "labor" from line 1 of this section and substituting the word "grievance", and deleting the words:

> . . . "labor dispute" shall be broadly construed and shall include, but not be limited to, any controversy concerning wages, salaries, hours, working conditions or benefits, including health and welfare, sick leave, insurance, or pension and retirement provisions, the making or maintaining of collective bargaining agreements, the terms to be included in such agreements and the interpretation or application of such collective bargaining agreements, any grievances that may arise, and any controversy arising out of or by virtue of any provisions of this agreement.

and substituting "'grievance dispute' shall be construed to mean any controversy regarding the application, interpretation or enforcement of any of the provisions of this agreement."

Procedures to resolve disputes over the interpretation, application and enforcement of the July 23, 1975 "Model" agreement are included in Paragraph (15) of that agreement and will be applicable for the instant operating assistance project. The above grievance dispute procedures will be applicable to future capital projects should the parties elect to use their September 20, 1973 agreement.

Upon careful consideration of all of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Sections 13(c)(1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. The terms and conditions of the agreement dated July 23, 1975 and Appendix A as the addendum pursuant to paragraph (4) thereof, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement of July 23, 1975, shall be deemed to cover and refer to the instant project; and

3. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to employees represented by the union under the July 23, 1975 agreement and this certification.

Discussion of Impasse Resolution Procedure

As previously indicated, the three transit authorities and the ATU met at the Department of Labor on February 21, 1986 to discuss proposed dispute resolution procedures and, one week later, they submitted their separate proposals to the Department. In making its determination of an appropriate dispute resolution procedure, the Department relied upon the parties' discussions in the February 21st meeting and upon general principles of conflict resolution in the public sector.

A number of items remained in dispute in the parties' final proposals. Principal among these were a) the time limits controlling when factfinding would begin and be completed, and b) the range of factors to be taken into consideration by the factfinder in making his or her recommendations. The transit authorities' proposal was structured such that factfinding would only occur following the expiration of the parties' collective bargaining agreement, while the ATU's proposal provided for factfinding to occur only prior to expiration of the agreement. Both parties presented strong arguments in support of their positions at the DOL meeting. The authorities believe that, during the period of preparation for factfinding, any bargaining that may have occurred will cease and, therefore, scheduling factfinding immediately prior to contract expiration would chill bargaining while almost guaranteeing that factfinding would be invoked at the end of each contract cycle. The ATU, on the other hand, has a genuine concern that contract terms be implemented prior to expiration of their existing agreement. Any pressure resulting from the factfinder's report would have its impact at the height of the parties' negotiations rather than three weeks after discussions have ceased.

After much consideration, we have modified the submitted proposals to permit the parties to request factfinding "at any time within thirty-days prior to expiration of the collective bargaining agreement." Under the authorities' proposal only a mediator would have been empowered to invoke factfinding during this time period, while the ATU's proposal would have permitted the parties to invoke factfinding only between thirty and twenty-four days prior to expiration. The parties are encouraged to continue actively negotiating as long as possible with the knowledge that factfinding will provide a measure of finality to the negotiating process which the contract expiration date alone cannot achieve given the legal prohibition against the strike.

The Department's language provides a broader range of time during which factfinding may occur, and does not consistently mandate its occurrence either before or after contract expiration.

In making this determination, the Department was influenced by arguments that the factfinding procedure should be one which avoids unilateral control by an employer over mandatory subjects of collective bargaining. The transit authorities' proposal has the effect of allowing them to unilaterally control the terms and conditions of employment following expiration of the agreement. Dispute procedures will not yet have been implemented and there is no requirement that the terms of the existing contract between the parties be continued until the factfinding process is completed. While we are concerned about a chill on bargaining that may occur while the parties prepare for factfinding, we also recognize that the parties will have additional opportunities to negotiate both while the factfinder's report is being prepared and for a period of time after it is issued.

The parties also submitted differing proposals with respect to the criteria which would be considered by a factfinder in making his or her recommendations. The authorities' proposal was more restrictive in providing five factors for consideration and limiting consideration to "only" those five factors. The ATU's proposal added:

> Such other factors not confined to those noted above which are normally and traditionally taken into consideration in determination of issues submitted to mutually agreed upon dispute settlement procedures in public service or in private employment.

This language is commonly included in both state statutes and negotiated agreements among the criteria to be considered by a neutral in deciding a case. More importantly, it helps to ensure a full and fair airing of the parties' issues and to ensure fully informed and fair recommendations for settlement. The final factor proposed by the ATU has, therefore, been included among the criteria which a factfinder should consider.

A number of other variations will be apparent to the parties. The enclosed impasse procedure, for instance, provides for factfinding "in accordance with the rules and procedures established by the mediation services". Therefore, some of the parties' proposed language indicating specific procedures and participants has been eliminated. We have also elected to provide for a single factfinder rather than use of a tripartite panel except when "the parties agree to a different procedure". In making this determination, we were strongly influenced by concerns expressed by all the parties regarding the costs of such

a procedure. For much the same reason, the attached dispute procedure limits the number of days for hearings to five rather than seven. As proposed by both parties, however, we have included language which permits them, by mutual agreement, to "alter any time limits set forth herein".

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Steve Morris/TANK
J. Cummins/ATU L.U. 628
Tom Hock/ATE Mgmt.

Enclosure

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

APR 15 1986

Ms. Charlotte Adams
Acting Regional Administrator
Urban Mass Transportation Administration
Region IV
1720 Peachtree Road, N.W., Suite 400
Atlanta, Georgia 30309

Re: UMTA Applications
Transit Authority of
River City
Operating Assistance
(KY-90-X019)
Architectural/Engineering
Services, Facility
Rehabilitation, etc.
(KY-05-0027)

Dear Ms. Adams:

This is in reply to the request from your office that we review the above captioned applications for grants under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the Transit Authority of River City and Amalgamated Transit Union Local 1447 executed an agreement dated February 26, 1974, which provided to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

In addition, the parties had previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. The parties had agreed that paragraph (11) of their February 26, 1974 Section 13(c) agreement, executed in connection with an earlier grant application, would be included as the addendum to the July 23, 1975 agreement pursuant to paragraph (4) thereof. The terms and conditions of the July 23, 1975 agreement provide protections to employees represented by the union which satisfy the requirements of Section 13(c) of the Act in general purpose operating assistance project situations.

On September 5, 1985, however, the Kentucky Supreme Court in Transit Authority of Lexington-Fayette Urban County Government v. Amalgamated Transit Union, Local 639, 698 S.W. 2d 520 (Ky. 1985) held that the transit authority was a political subdivision of the State and could not delegate its exercise of discretion in policy matters and management decisions to an arbitrator.

Rehearing of the case was subsequently denied by the Court, effectively nullifying interest arbitration procedures in existing agreements. Although 13(c) does require some dispute resolution process that assures avoidance of unilateral control by the transit authorities, it is clear from the legislative history and case law that interest arbitration is not specifically required by the Act. The Department of Labor, therefore, directed TARC and the ATU to negotiate an alternative to the interest arbitration procedure in Paragraph (11) of their February 26, 1974 agreement in order to meet the 13(c)(2) requirement for continuation of collective bargaining rights.

On February 21, 1986, the parties met at the Department of Labor (along with representatives of TANK and LEXTRAN) and exchanged proposals for alternative dispute resolution procedures. (There is no right to strike for public employees in Kentucky.) The parties discussed their positions and agreed to submit to the Department, within one week, either an agreed-upon procedure or their separate proposals for a mediation and factfinding procedure. The parties were unable to agree upon all the specifics of such a procedure. However, the Department has reviewed their proposals and determined that the attached Appendix A, which is a compromise drafted by the Department, will fully satisfy the requirements of Section 13(c)(2) for the continuation of collective bargaining rights.

This procedure provides for the utilization of a neutral mediator at the request of either party after bargaining to impasse, and for mandatory factfinding at the request of either party within thirty days of contract expiration. In accordance with the rules and regulations of the mediation services, the factfinder's shall have the power to make inquiries and investigations, hold hearings, or take such other appropriate steps to carry out his or her function. Should either party reject the factfinder's recommendations, this arrangement provides for their publication in the local media along with the parties' statements supporting or rejecting those recommendations, thus ensuring that the parties will give serious consideration to the factfinder's recommendations. This procedure is fair and equitable and, it gives equal consideration to the positions of both sides in a bargaining dispute, thereby preventing unilateral control over mandatory subjects of collective bargaining.

The Department, therefore, has determined that the dispute resolution procedure in Appendix A will be made applicable to the above projects and that the interest dispute provisions in Paragraph (11) of the parties February 26, 1974 Section 13(c) Agreement will be excised from that agreement.

In addition, Departmental policy has been to require the parties to a Section 13(c) Agreement to provide for a neutral, final and binding dispute resolution procedure to resolve any controversy which may arise with respect to the interpretation, application, or enforcement of the terms of the 13(c) agreement itself. Such

procedures for resolution of grievance disputes under the 13(c) agreement are a necessary requirement to ensure that employee protective arrangements are enforceable by the parties. Although the transit authority cannot delegate its statutory responsibility to fix wages, determine policy, or make decisions which are management prerogatives, grievance arbitration of disputes arising under the 13(c) agreement would not fall within the purview of this restriction.

We are, therefore, modifying Paragraph (11) of the parties' February 26, 1974 agreement to eliminate interest arbitration by deleting the word "labor" from line 1 of this section and substituting the word "grievance", and deleting the words:

> . . . "labor dispute" shall be broadly construed and shall include, but not be limited to, any controversy concerning wages, salaries, hours, working conditions or benefits, including health and welfare, sick leave, insurance, or pension and retirement provisions, the making or maintaining of collective bargaining agreements, any grievances that may arise, and any controversy arising out of or by virtue of any provisions of this agreement.

and substituting "'grievance dispute' shall be construed to mean any controversy regarding the application, interpretation or enforcement of any of the provisions of this agreement".

Upon careful consideration of all of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Sections 13(c)(1) through (5) of the Act, we have concluded that the protective arrangement described below are fair and equitable and in accordance with all requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. The terms and conditions of the agreement dated July 23, 1975 and Appendix A as the addendum pursuant to paragraph (4) thereof, shall be made applicable to the operating assistance portion of the instant projects and made part of the contract of assistance, by reference;

2. The terms and conditions of the agreement dated February 26, 1974, with the above modifications to Paragraph (11) and the addition of Appendix A, shall be made applicable to the capital portion of the instant projects and made part of the contract of assistance, by reference;

3. The term "project" as used in the agreements of July 23, 1975 and February 26, 1974, shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant projects; and

4. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to employees represented by the union under the July 23, 1975 and February 26, 1974 agreements and this certification.

Discussion of Impasse Resolution Procedure

As previously indicated, the three transit authorities and the ATU met at the Department of Labor on February 21, 1986 to discuss proposed dispute resolution procedures and, one week later they submitted their separate proposals to the Department. In making its determination of an appropriate dispute resolution procedure, the Department relied upon the parties' discussions in the February 21st meeting and upon general principles of conflict resolution in the public sector.

A number of items remained in dispute in the parties' final proposals. Principal among these were a) the time limits controlling when factfinding would begin and be completed, and b) the range of factors to be taken into consideration by the factfinder in making his or her recommendations. The transit authorities' proposal was structured such that factfinding would only occur following the expiration of the parties' collective bargaining agreement, while the ATU's proposal provided for factfinding to occur only prior to expiration of the agreement. Both parties presented strong arguments in support of their positions at the DOL meeting. The authorities believe that, during the period of preparation for factfinding, any bargaining that may have occurred will cease and, therefore, scheduling factfinding immediately prior to contract expiration would chill bargaining while almost guaranteeing that factfinding would be invoked at the end of each contract cycle. The ATU, on the other hand, has a genuine concern that contract terms be implemented prior to expiration of their existing agreement. Any pressure resulting from the factfinder's report would have its impact at the height of the parties' negotiations rather than three weeks after discussions have ceased.

After much consideration, we have modified the submitted proposals to permit the parties to request factfinding "at any time within thirty-days prior to expiration of the collective bargaining agreement." Under the authorities' proposal only a mediator would have been empowered to invoke factfinding during this time period, while the ATU's proposal would have permitted

the parties to invoke factfinding only between thirty and twenty-four days prior to expiration. The parties are encouraged to continue actively negotiating as long as possible with the knowledge that factfinding will provide a measure of finality to the negotiating process which the contract expiration date alone cannot achieve given the legal prohibition against the strike. The Department's language provides a broader range of time during which factfinding may occur, and does not consistently mandate its occurrence either before or after contract expiration.

In making this determination, the Department was influenced by arguments that the factfinding procedure should be one which avoids unilateral control by an employer over mandatory subjects of collective bargaining. The transit authorities' proposal has the effect of allowing them to unilaterally control the terms and conditions of employment following expiration of the agreement. Dispute procedures will not yet have been implemented and there is no requirement that the terms of the existing contract between the parties be continued until the factfinding process is completed. While we are concerned about a chill on bargaining that may occur while the parties prepare for factfinding, we also recognize that the parties will have additional opportunities to negotiate both while the factfinder's report is being prepared and for a period of time after it is issued.

The parties also submitted differing proposals with respect to the criteria which would be considered by a factfinder in making his or her recommendations. The authorities' proposal was more restrictive in providing five factors for consideration and limiting consideration to "only" those five factors. The ATU's proposal added:

> Such other factors not confined to those noted above which are normally and traditionally taken into consideration in determination of issues submitted to mutually agreed upon dispute settlement procedures in public service or in private employment.

This language is commonly included in both state statutes and negotiated agreements among the criteria to be considered by a neutral in deciding a case. More importantly, it helps to ensure a full and fair airing of the parties' issues and to ensure fully informed and fair recommendations for settlement. The final factor proposed by the ATU has, therefore, been included among the criteria which a factfinder should consider.

A number of other variations will be apparent to the parties. The enclosed impasse procedure, for instance, provides for factfinding "in accordance with the rules and procedures established by the mediation services". Therefore, some of the parties' proposed language indicating specific procedures and participants has been eliminated. We have also elected to provide for a single factfinder rather than use of a tripartite

panel except when "the parties agree to a different procedure". In making this determination, we were strongly influenced by concerns expressed by all the parties regarding the costs of such a procedure. For much the same reason, the attached dispute procedure limits the number of days for hearings to five rather than seven. As proposed by both parties, however, we have included language which permits them, by mutual agreement, to "alter any time limits set forth herein".

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Dave Arnett/TARC
J. Perry/ATU L.U. 1447
Tom Hock/ATE Mgmt.

Enclosure

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

APR 15 1986

Ms. Charlotte Adams
Acting Regional Administrator
Urban Mass Transportation Administration
Region IV
1720 Peachtree Road, N.W., Suite 400
Atlanta, Georgia 30309

Re: UMTA Applications
Transit Authority of
Lexington-Fayette
County
(KY-90-X015)
(KY-90-X016)
(KY-90-0017)
(KY-05-0026)
(KY-05-4053)

Dear Ms. Adams:

This letter is in reference to the above captioned projects for assistance under the Urban Mass Transportation Act of 1964, as amended. By letters dated August 14, 1985 and October 29, 1985, the Department of Labor issued certifications for the above projects. Those certifications indicated that the parties were in disagreement "concerning the issue of constitutionality and legality of the Transit Authority participating in binding interest arbitration . . .". The Department reserved the right to modify the basis of our certifications if the parties had to seek other means to resolve transit disputes because they were precluded by the Courts from relying on interest arbitration. On September 5, 1985 the Kentucky Supreme Court ruled that the Lexington Transit Authority was a political subdivision of the State and could not delegate its exercise of discretion in policy matters and management decisions to an arbitrator. Rehearing of the case was subsequently denied by the Court effectively nullifying interest arbitration procedures in existing agreements. Although 13(c) does require some dispute resolution process that assures avoidance of unilateral control by the transit authorities, it is clear from the legislative history and case law that interest arbitration is not specifically required by the Act.

On February 21, 1986, the parties met at the Department of Labor (along with representatives of TANK and TARC) and exchanged proposals for alternative dispute resolution procedures. (There is no right to strike for public employees in Kentucky.) The parties discussed their positions and agreed to submit to the

Department, within one week, an agreed-upon procedure or their proposals for a mediation and factfinding procedure. The parties were unable to agree upon all the specifics of such a procedure. However, the Department has reviewed their proposals and determined that the attached Appendix A, which is a compromise drafted by the Department, will fully satisfy the requirements of Section 13(c)(2) for the continuation of collective bargaining rights.

This procedure provides for the utilization of a neutral mediator at the request of either party after bargaining to impasse, and for mandatory factfinding at the request of either party within thirty days of contract expiration. In accordance with the rules and regulations of the mediation services, the factfinder shall have the power to make inquiries and investigations, hold hearings, or take such other appropriate steps to carry out his or her function. Should either party reject the factfinder's recommendations, this arrangement provides for their publication in the local media along with the parties' statements supporting or rejecting those recommendations, thus ensuring that the parties will give serious consideration to the factfinder's recommendations. This procedure is fair and equitable and, it gives equal consideration to the positions of both sides in a bargaining dispute, thereby preventing unilateral control over mandatory subjects of collective bargaining.

The Department, therefore, has determined that the dispute resolution procedure in Appendix A will be made applicable to the above projects and that the labor dispute provisions in Paragraph 8 of the parties March 19, 1973 Section 13(c) Agreement will be excised from that agreement as it relates to the above projects. In addition, Departmental policy has been to require the parties to a Section 13(c) Agreement to provide for a neutral, final and binding dispute resolution procedure to resolve any controversy which may arise with respect to the interpretation, application, or enforcement of the terms of the 13(c) agreement itself. Such procedures for resolution of grievance disputes under the 13(c) agreement are a necessary requirement to ensure that employee protective arrangements are enforceable by the parties. Although the transit authority cannot delegate its statutory responsibility to fix wages, determine policy, or make decisions which are management prerogatives, grievance arbitration of disputes arising under the 13(c) agreement would not fall within the purview of this restriction.

We are, therefore, modifying Paragraph 8 of the parties' March 19, 1973 agreement to eliminate interest arbitration by deleting the words "labor dispute or" from line 1 of this section, and the entire final paragraph of the section beginning with "The term 'labor dispute', as herein used . . ." and ending with ". . . by the Project."

Accordingly, the Department of Labor modifies its certification for the Lexington-Fayette County projects previously indicated by

modifying Paragraph 8 of the March 19, 1973 arrangement, as indicated above, and incorporating into each certification the language in Appendix A. All other terms and conditions in our certification letters of August 14, 1985 and October 29, 1985 remain in effect.

Discussion of Impasse Resolution Procedure

As previously indicated, the three transit authorities and the ATU met at the Department of Labor on February 21, 1986 to discuss proposed dispute resolution procedures and, one week later, they submitted their separate proposals to the Department. In making its determination of an appropriate dispute resolution procedure, the Department relied upon the parties' discussions in the February 21st meeting and upon general principles of conflict resolution in the public sector.

A number of items remained in dispute in the parties' final proposals. Principal among these were a) the time limits controlling when factfinding would begin and be completed, and b) the range of factors to be taken into consideration by the factfinder in making his or her recommendations. The transit authorities' proposal was structured such that factfinding would only occur following the expiration of the parties' collective bargaining agreement, while the ATU's proposal provided for factfinding to occur only prior to expiration of the agreement. Both parties presented strong arguments in support of their positions at the DOL meeting. The authorities believe that, during the period of preparation for factfinding, any bargaining that may have occurred will cease and, therefore, scheduling factfinding immediately prior to contract expiration would chill bargaining while almost guaranteeing that factfinding would be invoked at the end of each contract cycle. The ATU, on the other hand, has a genuine concern that contract terms be implemented prior to expiration of their existing agreement. Any pressure resulting from the factfinder's report would have its impact at the height of the parties' negotiations rather than three weeks after discussions have ceased.

After much consideration, we have modified the submitted proposals to permit the parties to request factfinding "at any time within thirty-days prior to expiration of the collective bargaining agreement." Under the authorities' proposal only a mediator would have been empowered to invoke factfinding during this time period, while the ATU's proposal would have permitted the parties to invoke factfinding only between thirty and twenty-four days prior to expiration. The parties are encouraged to continue actively negotiating as long as possible with the knowledge that factfinding will provide a measure of finality to the negotiating process which the contract expiration date alone cannot achieve given the legal prohibition against the strike. The Departments language provides a broader range of time during

which factfinding may occur, and does not consistently mandate its occurrence either before or after contract expiration.

In making this determination, the Department was influenced by arguments that the factfinding procedure should be one which avoids unilateral control by an employer over mandatory subjects of collective bargaining. The transit authorities' proposal has the effect of allowing them to unilaterally control the terms and conditions of the employment following expiration of agreement. Dispute procedures will not yet have been implemented and there is no requirement that the terms of the existing contract between the parties be continued until the factfinding process is completed. While we are concerned about a chill on bargaining that may occur while the parties prepare for factfinding, we also recognize that the parties will have additional opportunities to negotiate both while the factfinder's report is being prepared and for a period of time after it is issued.

The parties also submitted differing proposals with respect to the criteria which would be considered by a factfinder in making his or her recommendations. The authorities' proposal was more restrictive in providing five factors for consideration and limiting consideration to "only" those five factors. The ATU's proposal added:

> Such other factors not confined to those noted above which are normally and traditionally taken into consideration in determination of issues submitted to mutually agreed upon dispute settlement procedures in public service or in private employment.

This language is commonly included in both state statutes and negotiated agreements among the criteria to be considered by a neutral in deciding a case. More importantly, it helps to ensure a full and fair airing of the parties' issues and to ensure fully informed and fair recommendations for settlement. The final factor proposed by the ATU has, therefore, been included among the criteria which a factfinder should consider.

A number of other variations will be apparent to the parties. The enclosed impasse procedure, for instance, provides for factfinding "in accordance with the rules and procedures established by the mediation services". Therefore, some of the parties' proposed language indicating specific procedures and participants has been eliminated. We have also elected to provide for a single factfinder rather than use of a tripartite panel except when "the parties agree to a different procedure". In making this determination, we were strongly influenced by concerns expressed by all the parties regarding the costs of such a procedure. For much the same reason, the attached dispute procedure limits the number of days for hearings to five rather than seven. As proposed by both parties, however, we have

included language which permits them, by mutual agreement, to "alter any time limits set forth herein".

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Neill Day/LEXTRAN
K. Dickerson/ATU L.U. 639
Patrick Hamric/LEXTRAN
Tom Hock/ATE Mgmt.

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

APR 24 1986

Mr. Richard H. Doyle
Regional Administrator
Urban Mass Transportation
Administration
Region I
Kendall Square
55 Broadway
Cambridge, Massachusetts 02142

Re: UMTA Applications
Pioneer Valley
Transit Authority
Operating
Assistance;
Purchase of Buses,
Vans, etc.
(MA-05-4130)
(MA-90-X050)

Dear Mr. Doyle:

This is in reply to the request from your office that we review the above captioned applications for grants under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the Pioneer Valley Transit Authority (PVTA) and Amalgamated Transit Union (ATU) Locals 448, 537 and 1512 executed an agreement dated November 5, 1979. In addition, the PVTA executed a side letter of assurance to the Department of Labor, also dated November 5, 1979. The above referenced protective arrangements provided to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

In recent certification letters for the Pioneer Valley Transit Authority (PVTA), the Department has noted that PVTA and the ATU have been in disagreement since 1983 as to the force and effect of paragraph (15) of their November 5, 1979 Section 13(c) agreement. This paragraph contains an interest arbitration provision which the parties had originally agreed to in 1979 and which had been included in protective arrangements for UMTA applications prior to April 21, 1983. In addition, the PVTA has also requested that its November 5, 1979 side letter of assurance to the Department of Labor, in which its administrator stated that the PVTA "will direct the management company it selects to operate the publicly owned system to execute said 13(c) agreement and become a full party thereto," not be made part of our certification.

Beginning in 1983, certification letters for PVTA projects stated that the "Department of Labor does not require that Section 13(c) arrangements provide for conventional interest arbitration of new contract terms. It is our understanding that employees of Springfield Transit Management (STM) have the right to strike. On the basis of the information presented by the parties, including the agreement between PVTA and STM, it continues to appear that the employees of Springfield Transit Management, the management company which contracts with PVTA to provide transit service, have the right to strike under the National Labor Relations Act.

Consequently, we have concluded that the parties need not negotiate an alternative dispute resolution procedure. The right to strike, in and of itself, is a sufficient dispute resolution procedure to ensure fulfillment of the Section 13(c)(2) requirement of continuation of collective bargaining rights. It is our intention to certify the instant PVTA grant applications on the basis of the existing Section 13(c) arrangement except insofar as we omit interest arbitration. In addition, the PVTA will be required to direct STM, or its successors, to execute the terms and conditions of the November 5, 1979 agreement, as modified herein.

In making our determination in this matter, we have relied in part upon two decisions issued by National Labor Relations Board Administrative Law Judges (ALJ) that addressed the NLRB's jurisdiction over Springfield Transit Management, Inc. Both decisions arose from unfair labor practice charges filed by Local 448, Amalgamated Transit Union, AFL-CIO, one of the three ATU local representing STM employees. In the first case, Springfield Transit Management, Inc. and Local 448, Amalgamated Transit Union, Case No. 1-CA-19226, March 10, 1983 (appeal pending), STM initially contested the Board's jurisdiction. The ALJ in that case concluded that STM was a private employer, subject to the jurisdiction of the Board. In the second case, Springfield Transit Management, Inc. and Local 448, Amalgamated Transit Union, Case No. 1-CA-22718, September 25, 1985 (appeal pending), STM stipulated to the NLRB's jurisdiction. We note that both ALJ decisions are now pending before the Board. However, we have reviewed the factual findings and the analysis in Case No. 1-CA-19226, and the stipulation in Case No. 1-CA-22718, and find that they support our view that STM employees are private employees subject to the NLRA, in the absence of any other definitive precedent. Furthermore, in the materials submitted to us by the parties, there is nothing to suggest that ATU Locals 448, 537 or 1512, STM or PVTA have changed their positions since these ALJ decisions were issued. It appears that STM retains sufficient control over its employees' terms and conditions of employment to be capable of effective bargaining with the representatives of those employees. Accordingly, STM appears to be an employer subject to the NLRA and its employees' right to bargain collectively would be protected under that Act.

Upon careful consideration of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Section 13(c)(1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirements of Section 13(c) of the Act. With respect to the Section 13(c)(2), this conclusion is based on our understanding that the employees of STM are private sector employees subject to the National Labor Relations Act and entitled to the collective bargaining rights and remedies ordinarily available to employees covered by that Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. The terms and conditions of the agreement dated November 5, 1979, with the deletion of the words "the making or maintaining of collective bargaining agreements, the terms to be included in such agreements and the interpretation or application of such collective bargaining agreements" from paragraph 15(a) thereof shall be made applicable to the instant projects and made part of the contracts of assistance, by reference;

2. The term project, as used in the agreement of November 5, 1979, shall be deemed to cover and refer to the instant projects;

3. The PVTA shall direct the management company operating the publicly owned system to execute the terms and conditions of the November 5, 1979, agreement, as modified herein; and

4. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to union members under the November 5, 1979 agreement, as modified, and this certification.

The Department's determination that the continuation of collective bargaining rights requirement for PVTA employees is satisfied by the existence of the right to strike, will also be applicable to all previous PVTA projects that have been certified on the condition that the parties continue to negotiate a dispute resolution procedure. These projects include (MA-05-4101),

(MA-05-0040), (MA-90-X035), (MA-03-0119), and (MA-90-X017). This certification is not intended to affect certifications made prior to April 21, 1983.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Robert Manz/PVTA

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

MAY 27 1986

Mr. Lou Mraz
Regional Administrator
Urban Mass Transportation
Administration
Region VIII
Department of Transportation
Prudential Plaza, Suite 1822
1050 17th Street
Denver, Colorado 80265

Re: UMTA Application
Regional Transportation
District
Denver, Colorado
Purchase (1) Double-
Decker Bus
(CO-03-3001) #3
Purchase (10) Small
Transit Buses
(CO-05-0024) #1
Purchase (8) Standard
Transit Buses
(CO-90-X010) #2
Purchase (3) Standard,
(7) Small Transit
Buses and (1)
Double-Decker Bus
(CO-90-X005) #4
Purchase (8) Small
Transit Buses
(CO-90-0002) #4
Purchase (94) Standard
Buses and Operating
Assistance
(CO-90-X018)

Dear Mr. Mraz:

This is in reply to the request from your office that we review the above captioned applications for grants under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the Regional Transportation District (RTD) and Amalgamated Transit Union (ATU) Local 1001, executed an agreement dated April 7, 1976, which provided to the members of the union protections satisfying the requirements of Section 13(c) of the Act.

The Department of Labor has been aware that the Regional Transportation Authority and the Amalgamated Transit Union are in disagreement over the use of paragraph (15) of their April 7, 1976 Section 13(c) agreement. Prior to the dispute, the parties agreed to the use of paragraph (15) as originally constituted, either as contained in the April 7, 1976 agreement or as the addendum to the National Agreement for operating assistance, in connection with several projects. Beginning in 1983 the Department's certifications for RTD noted that "Section 13(c) requires that protective arrangements provide for 'the continuation of collective bargaining rights.' Section 13(c) does not require conventional interest arbitration over the terms of a collective bargaining agreement. However, in lieu of the procedure for resolving 'labor disputes' as defined in paragraph (15) of the April 7, 1976 Section 13(c) agreement, the parties should agree upon an alternative procedure for the final resolution of 'labor disputes' as defined in the April 7, 1976 agreement." By letter dated September 26, 1985 DOL issued its most recent certifications for RTD in which we directed the parties to negotiate in good faith over an alternate method for the resolution of disputes. However, if the parties were unable to reach an agreeable alternate method then they were to report to DOL on the status of their negotiations within 90 days of the date of the certification.

In connection with the instant projects the RTD has proposed that the certification be made on the basis of the April 7, 1976 agreement, exclusive of paragraph (15). The RTD asserts that their employees can exercise the right to strike by filing a notice of intent as outlined in the Colorado Labor Peace Act (CLPA). RTD feels that the CLPA provides a sufficient dispute resolution procedure to satisfy the continuation of collective bargaining rights requirement of Section 13(c)(2) of the Act.

The ATU urges the continuation of the 1976 13(c) agreement, including paragraph 15. The ATU asserts that the RTD offered no reasoned basis for departure from the current arrangements in paragraph 15 of the April 7, 1976 13(c) agreement. The union argues that the right to strike contained in the CLPA is limited and enjoinable, and further, that the CLPA merely encourages rather than mandates interest arbitration.

On the basis of the information presented to us by the parties, it appears that Regional Transportation District employees have a right to strike under Colorado law (C.R.S. (1973) 8-3-101). Although it appears that transit employees can be denied the right to strike under the state statute, this right has never been denied since the inception of the RTD. Furthermore, were the ATU to be denied the right to strike by order of the Director, he is required pursuant to Section 8-3-112(2) of the CLPA to order the parties to arbitration, the results of which would be binding. Consequently, we have concluded that the parties need not negotiate an alternative dispute resolution procedure. The right to strike in and of itself is a sufficient

dispute resolution procedure to ensure fulfillment of the Section 13(c)(2) requirement for continuation of collective bargaining rights. It is our intention to certify the instant RTD grant application on the basis of the existing Section 13(c) arrangement except insofar as we omit interest arbitration.

Upon careful consideration of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Section 13(c)(1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirements of Section 13(c) of the Act. With respect to Section 13(c)(2), this conclusion is based on our understanding that the employees of RTD are subject to Colorado state law which provides for a dispute resolution procedure which is sufficient to meet the requirements of the Act.

We are, therefore, modifying Paragraph (15) of the parties' April 7, 1976 agreement to eliminate interest arbitration by deleting the words "shall be broadly construed and shall include, but not be limited to, any controversy concerning wages, salaries, hours, working conditions or benefits, including health and welfare, sick leave, insurance, or pension and retirement provisions, the making or maintaining of collective bargaining agreements, the terms to be included in such agreements and the interpretation or application of such collective bargaining agreements, any grievances that may arise" from the definition of "labor disputes" in Paragraph (15) thereof.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. The terms and conditions of the agreement dated April 7, 1976, with the above indicated deletions from paragraph (15) and as supplemented by Section C.R.S. 8-3-113 of the Colorado Labor Peace Act, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement of April 7, 1976, with the above deletions from paragraph (15) and as supplemented by Section C.R.S. 8-3-113 of the Colorado Labor Peace Act, shall be deemed to cover and refer to the instant project; and

3. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to union members under the April 7, 1976 agreement, with the above deletions from paragraph (15) and this certification.

The Department's determination that the continuation of collective bargaining rights requirement for employees is satisfied by the existence of the right to strike will also be applicable to all previous RTD projects that have been certified on the condition that the parties continue to negotiate a dispute resolution procedure. Those projects include (CO-03-0032+), (CO-03-0033+), (CO-03-0034+), (CO-05-4028), (CO-90-0002), (CO-05-0023), (CO-05-0024), (CO-03-3002), (CO-03-0036), (CO-03-0015 #5), (CO-03-0020 #1), (CO-03-0037), (CO-03-0022 #3), (CO-05-0026), (CO-90-X002), (CO-90-X005 #1), (CO-90-0002 #1), (CO-90-X005 #2), (CO-90-X010), (CO-90-X010 #1), (CO-90-X005 #3), (CO-90-0002 #2), (CO-05-0021 #2), and (CO-03-0010 #5). This certification letter is not intended to affect certifications made prior to July 11, 1983.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Andrea Brett/RTD

LRP:LNewton:do:5-20-86
Rm. N5416:357-0473

MAY 27 1986

Mr. Aubrey Davis
Regional Administrator
Urban Mass Transportation
Administration
Region X
Department of Transportation
Federal Building, 915 Second Avenue
Suite 3106
Seattle, Washington 98174

Re: UMTA Applications
Tri-County Metropolitan
Transportation District
of Oregon
Purchase Bus Overhead
Destination Signs, Delete
Park and Ride Lot
Improvements
(OR-90-X007)#3
Construction of Three
Additional Transit
Transfer Projects
(OR-03-0027)#4 Revised

Dear Mr. Davis:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the Tri-County Metropolitan Transportation District of Oregon (TRI-MET) and Amalgamated Transit Union (ATU) Local 757 executed an agreement dated June 25, 1980, as supplemented by a June 24, 1980 side letter for project (OR-90-X007#3) which provided to the members of the union protections satisfying the requirements of Section 13(c) of the Act.

The Department of Labor (DOL) is aware that TRI-MET and the Amalgamated Transit Union (ATU) are in disagreement over the inclusion of an interest arbitration provision in their 13(c) agreement. Prior to the dispute, the parties agreed to the use of paragraph (17) of their June 25, 1980 agreement, as originally constituted, either as contained in the June 25, 1980 agreement for capital projects or as the addendum to the National Agreement for operating assistance in connection with several projects.

Initials							
Date							
Last Name	NEWTON		PERLMUTTER		RICCO. STEPP		
Office Symbol	LRP		LRP		LR	BLMR	CP/S2203

CONCURRED

OFFICIAL FILE COPY

Although Section 13(c) requires that protective arrangements provide for "the continuation of collective bargaining rights "it does not require conventional interest arbitration over the terms of a collective bargaining agreements.

By letter dated March 10, 1986, TRI-MET informed the Department that it objects to the use of Paragraph (17) of the labor protective arrangements contained in the Section 13(c) agreement of June 25, 1980 between TRI-MET and the Amalgamated Transit Union Local 757 to its pending UMTA projects (OR-03-0027#4 Rev) and (OR-90-X007)#3 and any future projects. TRI-MET asserts that a decision of the Circuit Court of Oregon on August 8, 1985, held interest arbitration to be an unlawful delegation of legislative authority in violation of the Oregon Constitution. In connection with the instant projects, TRI-MET further asserts that transit employees have a right to strike in the state of Oregon in the event of an impasse in negotiations. TRI-MET has proposed that the certification be made on the basis of the June 25, 1980 agreement, exclusive of paragraph (17). The ATU has requested certification on the basis of the June 25, 1980 agreement without modification, and has additionally argued that the TRI-MET has failed to clearly substantiate the fact that TRI-MET employees have a right to strike.

On the basis of the information presented to us by the parties, it appears that TRI-MET employees have a right to strike under Oregon Law. (ORS 243.726 (2)). Consequently, we have concluded that the parties need not negotiate an alternative dispute resolution procedure. The right to strike in and of itself is a sufficient dispute resolution procedure to ensure the fulfillment of the Section 13(c)(2) requirement for continuation of collective bargaining rights. It is our intention to certify the instant TRI-MET grant applications on the basis of the existing Section 13(c) arrangement except insofar as we omit interest arbitration.

Although 13(c) does require some dispute resolution process that assures avoidance of unilateral control by the transit authorities, it is clear from the legislative history and case law that interest arbitration is not specifically required by the Act. In rejecting interest arbitration in this instance, the Secretary has taken into account the fact that (1) the interest arbitration provision in the Oregon law applies only to police, fire, corrections and telephone dispatchers; and 2) an acceptable alternative procedure is available under ORS 243.726(2) that will provide for the continuation of collective bargaining rights requirement under Section 13(c) of the Act.

Upon careful consideration of all the circumstance, including consideration of the arrangements satisfying each of the five matters specified in Section 13(c) (1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirement of

Section 13(c) of the Act. With respect to Section 13(c)(2), this conclusion is based on our understanding that the employees of TRI-MET are subject to Oregon state law which provides for a dispute resolution procedure which is sufficient to meet the requirements of the Act.

We are, therefore, modifying Paragraph (17) of the parties June, 25, 1980 agreement to eliminate interest arbitration by deleting the words: "shall be broadly construed and shall include, but not be limited to, any controversy concerning wages, salaries, hours, working conditions or benefits, including health and welfare, sick leave, insurance, or pension and retirement provisions" the making or maintaining of collective bargaining agreements, the terms to be included in such agreements and the interpretation or application of such collective bargaining agreements, any grievance that may arise" from the definition of "labor disputes" in Paragraph (17) thereof.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. The terms and conditions of the agreement dated June 25, 1980, as supplemented by the letter of June 24, 1980, and with the deletion from paragraph (17) of the words "shall be broadly construed and shall include, but not be limited to, any controversy concerning wages, salaries, hours, working conditions or benefits, including health and welfare, sick leave, insurance, or pension and retirement provisions,"the making or maintaining of collective bargaining agreements and the interpretation or application of such collective bargaining agreements, any grievances that may arise," shall be made applicable to the instant projects and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement of June 25, 1980, as supplemented, shall be deemed to cover and refer to the instant projects;

3. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to union members under the June 25, 1980 agreement, as supplemented, with the above deletion from paragraph (17), and this certification.

The Department's determination that the continuation of collective bargaining rights requirement for employees is satisfied by the existence of the right to strike is not applicable to previous certified TRI-MET projects. The Department of Labor cannot retroactively excise provisions which were agreed to for prior certifications at the unilateral request of one of the parties to an agreement. This certification letter therefore is not intended to affect prior certifications by the Department.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
John R. Post/TRI-MET

MAY 27 1986

Mr. Aubrey Davis
Regional Administrator
Urban Mass Transportation Administration
Region X
Department of Transportation
Federal Building, 915 Second Avenue
Suite 3106
Seattle, Washington 98174

Re: UMTA Applications
Lane Transit District
Eugene, Oregon
Purchase Coaches,
Equipment, etc.
(OR-90-X016)

Dear Mr. Davis:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the Lane Transit District (LTD) and Amalgamated Transit Union (ATU) Local 757 executed an agreement dated June 19, 1975, which provided to the members of the union protections satisfying the requirements of Section 13(c) of the Act.

The Department of Labor (DOL) has been aware that Lane Transit District (LTD) and the Amalgamated Transit Union (ATU) have for some time disagreed over the inclusion of an interest arbitration provision in their 13(c) agreement. Prior to the dispute, the parties agreed to the use of paragraph (9) of their June 19, 1975 agreement, as originally constituted, either as contained in the June 19, 1975 agreement for capital projects or as the addendum to the National Agreement for operating assistance, in connection with several projects. Although Section 13(c) requires that protective arrangements provide for "the continuation of collective bargaining rights," it does not require conventional interest arbitration over the terms of a collective bargaining agreement. In lieu of the procedure for resolving "labor disputes" as defined in paragraph (9) of the June 19, 1975 Section 13(c) agreement, the parties have been directed in previous certifications to negotiate an alternative procedure for the final resolution of "labor disputes".

By letter dated September 26, 1985 DOL issued its most recent certifications for LTD in which we encouraged the parties to arrive at a mutually agreeable method for the resolution of interest disputes. The parties were informed that, if they had not reached agreement on an alternative method for the resolution of labor disputes, they were to report on the status of their negotiations within 90 days of the September 26th letter.

In connection with the instant projects, the LTD has proposed that the certification be made on the basis of the June 19, 1975 agreement, exclusive of paragraph (9). Mr. Joseph Kaufman, attorney for the Lane Transit District, asserts in his letter dated March 10, 1986 that Transit District employees have a right to strike in the State of Oregon. The ATU has requested certification on the basis of the June 19, 1975 agreement without modification, and has additionally argued that the LTD has failed to clearly substantiate the fact that LTD employees have a right to strike.

On the basis of the information presented to us by the parties, it appears that Lane Transit District employees have a right to strike under Oregon Law. (ORS 243.726 (2)). Consequently, we have concluded that the parties need not negotiate an alternative dispute resolution procedure. The right to strike in and of itself is a sufficient dispute resolution procedure to ensure the fulfillment of the Section 13(c)(2) requirement for continuation of collective bargaining rights. It is our intention to certify the instant LTD grant application on the basis of the existing Section 13(c) arrangement except insofar as we omit interest arbitration.

Although 13(c) does require some dispute resolution process that assures avoidance of unilateral control by the transit authorities, it is clear from the legislative history and case law that interest arbitration is not specifically required by the Act. In rejecting interest arbitration in this instance, the Secretary has taken into account the fact that (1) the interest arbitration provision in the Oregon law applies only to police, fire, corrections and telephone dispatchers; and 2) an acceptable alternative procedure is available under ORS 243.726(2) that will provide for the continuation of collective bargaining rights requirement under Section 13(c) of the Act.

Upon careful consideration of all the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Section 13(c) (1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirements of Section 13(c) of the Act. With respect to Section 13(c)(2), this conclusion is based on our understanding that the employees of LTD are subject to Oregon state law which provides for a dispute resolution procedure which is sufficient to meet the requirements of the Act.

We are, therefore, modifying Paragraph (9) of the parties June 19, 1975 agreement to eliminate interest arbitration as set forth in condition number one, below.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. The terms and conditions of the agreement dated June 19, 1975, with the deletion from paragraph (9) of the words " shall be broadly construed and shall include, but not be limited to, any controversy concerning wages, salaries, hours, working conditions or benefits, including health and welfare, sick leave, insurance, or pension and retirement provisions, the making or maintaining of collective bargaining agreements, the terms to be included in such agreements and the interpretation or application of such collective bargaining agreements, any grievances that may arise," shall be made applicable to the instant projects and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement of June 19, 1975 shall be deemed to cover and refer to the instant projects;

3. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to union members under the June 19, 1975 agreement, with the above deletions from paragraph (9), and this certification.

The Department's determination that the continuation of collective bargaining rights requirement for employees is satisfied by the existence of the right to strike will also be applicable to all previous LTD projects that have been certified on the condition that the parties continue to negotiate a dispute resolution procedure. These projects

include (OR-03-0033), (OR-05-0010+), (OR-05-4025), (OR-05-4025#1), (OR-90-0001#1), (OR-90-X006#1), (OR-90-X006), (OR-90-X012) and (OR-90-X012#1), (OR-05-0010#1). This certification letter is not intended to affect certifications made prior to August 15, 1983.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Mark Pangborn/Lane County Transit

LRP:JFLANAGAN:do;5-27-86
Rm. N5416:357-0473

MAY 27 1986

Mr. Lee Waddleton
Regional Administrator
Urban Mass Transportation Administration
Region VII
6301 Rock Hill Road, Suite 303
Kansas City, Missouri 64131

Re: UMTA Applications
Bi-State Development Agency
St. Louis, Missouri
Operating Assistance;
Purchase of Computer, etc.
(MO-90-X029)
(MO-90-X030)

Dear Mr. Waddleton:

This is in reply to the requests from your office that we review the above captioned applications for grants which include both operating and capital assistance under the Urban Mass Transportation Act of 1964, as amended.

In recent certification letters, the Department noted that the Bi-State Development Agency (Bi-State) and the Amalgamated Transit Union (ATU) have been in disagreement since 1982 over the force and effect of paragraph (9) of their April 9, 1974 Section 13(c) agreement. This paragraph contains an interest arbitration provision which the parties had originally agreed to in 1974 and which had been included in protective arrangements for all UMTA applications prior to a certification letter dated August 26, 1982, as modified by a letter of clarification from the Department of Labor dated September 8, 1982.

Beginning in 1982, certification letters for Bi-State projects stated that "Section 13(c) does not require conventional interest arbitration over the terms of a collective bargaining agreement. However, in lieu of the procedure for resolving 'labor disputes' as defined in paragraph (9) of the April 9, 1974 Section 13(c) agreement, the parties should agree upon an alternative procedure for the final resolution of 'labor disputes' as defined in the agreement." Our certification, therefore, was based upon the parties' agreement to continue bargaining in good faith over an alternative dispute resolution mechanism.

By letter dated January 17, 1985, the Department of Labor informed the parties that they were to negotiate an alternative dispute resolution procedure or renegotiate the existing interest arbitration provision and that, should negotiations prove unsuccessful, they were to submit "a written report covering their final position on the issue of a dispute procedure, including their specific proposals for dispute resolution language." In response to this letter, the parties undertook negotiations, but were unable to agree upon any dispute resolution procedure.

The Department has reviewed the materials submitted by the parties in making its analysis of their respective positions. We have analyzed the requirements of the Federal law, the framework of the compact between the States of Missouri and Illinois which created the agency, the bargaining history of the parties and other pertinent factors specific to the situation. The ATU has argued that the compact creating Bi-State contains "no provision establishing the authority of the Agency to engage in collective bargaining and arbitration. Yet, the Agency signed and sought federal funding under a Section 13(c) Agreement requiring collective bargaining and arbitration of unresolved disputes beginning in 1974." They conclude that Bi-State's "asserted justification for the removal of the interest arbitration provision is without merit." The ATU proposal primarily consisted of arguments that traditional interest arbitration should not be replaced, but that the existing procedure should be continued.

Bi-State, however, believes that "under the terms of the Compact... Bi-State has the power to make and enter into contracts and establish wages and other office expenses... Indeed, to argue otherwise would be to contend that the current and past collective bargaining agreements are a nullity." Bi-State has submitted a detailed proposal for a mediation and factfinding procedure as an alternative to the interest arbitration provision in paragraph (9) of their April 9, 1974 agreement.

While it is clear that the Compact establishing Bi-State does not prohibit interest arbitration, neither does it mandate such a procedure. The parties most recent collective bargaining agreements, completed on April 22, 1985, and October 23, 1985, were successfully negotiated despite the parties' disagreement over the availability of interest arbitration. In the absence of the parties' mutual agreement to continue to utilize interest arbitration, the Department will not here require that the interest arbitration provision previously certified be continued. The parties, of course, may agree to the use of interest arbitration as an alternative dispute resolution procedure if they so desire.

In view of the above, the Department of Labor has determined that an appropriate dispute resolution procedure for application to Bi-State projects is that contained in the final proposal by

Bi-State with some modifications to meet the requirements of Section 13(c)(2) of the UMT Act for continuation of collective bargaining rights. This procedure, which is attached as an Appendix to this letter, provides for 1) the appointment of a neutral mediator at the request of either party, and 2) mandatory factfinding if deemed useful by the mediator or at the request of either party, with each party to be represented on a tripartite factfinding panel. In accordance with the procedures established in the Appendix, the factfinding panel shall have the power to make inquiries and investigations, hold hearings, or take such other steps as are deemed appropriate in order to discharge the panel's function. The fact-finding panel, by majority vote, shall then make non-binding findings and recommendations. If either party rejects the findings and recommendations, it must state with particularity its reason for rejection in writing. In such event, the panel must have published in the local media its recommendations for settlement of the labor dispute together with the statement provided by the rejecting party. The Secretary has determined that this mediation and fact-finding procedure fully satisfies the requirements of Section 13(c) for the continuation of collective bargaining rights. Specifically, where Bi-State's proposal provides that only certain factors can be considered by the factfinding panel in reaching its report and recommendations, the Department requires that the panel be free to consider all criteria when arriving at a recommendation. In this modification the Department has adopted the language of the proposal mentioned by the ATU in their letter of March 17, 1986. This modification will ensure full and fair airing of all the parties' issues thus ensuring fully informed recommendations. In addition, the terms and conditions of the expiring collective bargaining agreement shall remain in place until the fact finding panel has issued a press release. The effect of this requirement will be to ensure that the process avoids unilateral control by the employer over mandatory subjects of collective bargaining while impasse resolution procedures are being completed.

This procedure ensures a full and fair airing of the parties' issues, permits either party to invoke the services of a neutral mediator, and ensures fully informed and fair recommendations for settlement by an impartial fact-finding panel. In addition, it ensures that the parties will give serious consideration to the fact-finders' recommendations by requiring publication of any disagreements that remain at the end of this process. In short, the procedure is a fair and equitable one that gives equal consideration to the positions of both sides in a bargaining dispute and thereby prevents unilateral employer control over mandatory subjects of collective bargaining.

The Department has, therefore, determined that the appropriate dispute resolution procedure for application to Bi-State grants will be the mediation and fact-finding procedures contained in Appendix A as a substitute for the interest arbitration

procedures contained in paragraph (9) of their April 9, 1974 agreement for capital grants or as the addendum to the Model Agreement of July 23, 1975 for operating grants.

Upon careful consideration of all of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Section 13(c)(1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirements of Section 13(c) of the Act.

Accordingly, subject to the procedures contained in the Appendix, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. The terms and conditions of the agreement dated July 23, 1975, shall be made applicable to the operating assistance portion of the instant projects and made part of the contract of assistance, by reference;

2. The terms and conditions of the agreement dated April 9, 1974, as modified by this letter, shall be made applicable to the capital portion of the instant project and made part of the contract of assistance, by reference;

3. The term "project" as used in the agreements of July 23, 1975 and April 19, 1974, shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant projects; and

4. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to employees represented by the union under the July 23, 1975 and April 9, 1974 agreements, as modified, and this certification.

This procedure will be made applicable to all previous Bi-State grants which have been certified on the condition that the parties continue to negotiate a dispute resolution procedure.

These projects include (MO-03-0021), (MO-03-0024), (MO-03-4002), (MO-03-4005), (MO-90-0002), (MO-90-X013), (MO-90-X019), (MO-90-X021), and (MO-90-0022). This certification letter is not intended to affect certifications made prior to August 26, 1982.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Gene Leung/Bi-State

Enclosure

DEP:BAndres:njr:5-19-86
BLMRCP:Room N5416:202-357-0473

MAY 30 1986

Mr. Joel Ettinger
Regional Administrator
Urban Mass Transportation Administration
Region V
300 South Wacker Drive, Suite 1740
Chicago, Illinois 60606

Re: UMTA Application
City of LaCrosse, Wisconsin
Operating Assistance
(WI-90-X053)

Dear Mr. Ettinger:

This is in reply to the request from your office that we review the above captioned grant application for operating assistance under the Urban Mass Transportation Act of 1964, as amended.

The LaCrosse Municipal Transit Utility and Amalgamated Transit Union have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. The terms and conditions of the July 23, 1975 agreement provide protections to employees represented by the union satisfying the requirements of Section 13(c) of the Act.

The Department of Labor is aware that the parties are in disagreement as to the force and effect of paragrpph (11) of the April 5, 1974 agreement as an addendum to the National Agreement.

Section 13(c) requires that protective arrangements provide for "the continuation of collective bargaining rights." The Department of Labor does not require that Section 13(c) arrangements provide for conventional interest arbitration of new contract terms. However, the Wisconsin Municipal Employment Relations Act (Wisconsin Statute, sec. 111.70, 111.71 and 1983 Wisconsin Act 27, sec. 1410n.) provides for a neutral dispute resolution procedure consisting of mediations, fact finding, and mediation-arbitration which is sufficient to provide for "the continuation of collective bargaining rights."

CONCURRENCE

Initials		5/22/87					
Date	5-19-86						
Last Name	Andres	Perlm.					
Office Symbol	DEP	DEP					

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OFFICIAL FILE COPY Return to: Room Bldg.

This certification is issued without prejudice to the positions of the parties in any pending or future litigation over the force and effect of paragraph (11) of the April 5, 1974 agreement as it relates to previously certified projects.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. The terms and conditions of the agreement dated July 23, 1975, with the dispute resolution procedures contained in the Wisconsin Municipal Employment Relations Act included as the addendum, shall be made applicable to the instant project and made part of the contracttof assistance, by reference;

2. The term "project" as used in the agreement of July 23, 1975 shall be deemed to cover and refer to the instant project; and

3. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to employees represented by the union under the July 23, 1975 agreement, with the above referenced substitution, and this certification.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Ronald Bracegirdle/City
Jerry Rusch/City

The ATU has responded to the Departments' inquiries regarding this project by letters dated May 8 and June 3 and June 11, 1986. In their letters, the union indicates that they "oppose certification of the instant grant application without a dispute resolution provision." The union's letters do not propose an alternative to the interest arbitration provision previously included in paragraph (6) of the parties July 26, 1966 agreement. Rather, they request "that the Department revoke all prior (JTA) certifications and deny all future funding for any project applications, including the instant application unless and until JTA indicates its willingness to fully restore the Section 13(c) arrangements, as previously certified." The union further discusses, in its June 3rd letter, two proposed alternatives to interest arbitration and the problems presented by those proposals which were applied in other grant situations.

The JTA, by letter dated May 13, 1986, informed the Department that "Jackson has consistently maintained that it is not required to accede to interest arbitration and has sought to negotiate an alternative method for resolution of labor disputes." They further indicate that "Jackson has reviewed its options and has concluded that it can accept the conditions set forth in the certification dated March 7, 1986 for Chattanooga." JTA's letter further noted that, although the ATU continued to insist upon interest arbitration as the appropriate dispute resolution procedure, ATU has indicated its opinion that the Department's certification in Louisville, Kentucky was somewhat "better than the Chattanooga decision."

In making our determination on this matter, the Department has reviewed the current situation in Jackson, Tennessee and the positions of the parties submitted for this and previous UMTA projects. Although Section 13(c) does require some dispute resolution process that assures avoidance of unilateral control by the transit authorities, it is clear from the legislative history and case law that interest arbitration is not specifically required by the Act. The Secretary must reject interest arbitration in this instance where 1) state law permits but does not compel such a procedure; 2) the parties do not mutually agree upon the use of an interest arbitration procedure; and 3) an acceptable alternative procedure is available which will provide for the continuation of collective bargaining rights requirement under Section 13(c)(2) of the UMT Act.

The Department has reviewed the two alternatives discussed by the parties and determined that the attached Appendix A will fully satisfy the requirement of section 13(c)(2) for the continuation of collective bargaining rights. The procedure in Appendix A, which is modeled on the "Louisville" ("Lexington" is used interchangeably as the two procedures are identical.) dispute resolution procedure, was determined by the Secretary to be a more appropriate procedure than the "Chattanooga" alternative principally because it provides for factfinding sufficiently in advance of contract expiration to avoid unilateral control over

mandatory subjects of bargaining by the authority following expiration of the parties' agreement. The Department has also modified the timetables in the "Louisville" procedure to ensure that the entire procedure, through publication of the factfinder's report, can be completed prior to contract expiration.

DOL has made this modification because we believe that a procedure which clearly can be completed, through publication of the factfinding report, prior to contract expiration will adequately serve to avoid unilateral control by the employer of mandatory subjects of collective bargaining. The union suggests that the terms and conditions of any expiring collective bargaining agreement must necessarily remain in place to avoid such unilateral control. It is DOL's position that either approach will have the desired effect, and, in this instance where the partie's have not mutually agreed to continuation of the terms of the existing agreement and the process can be completed prior to expiration of that agreement, we do not require that the terms of the contract remain in effect.

The union also points out in its June 3, 1986 letter that the "Lexington" procedures do not specifically state that the parties provide the factfinder and each other with their respective positions on outstanding issues. It was intended that the parties provide the factfinder and each other with these materials, and we have clarified the Appendix to reflect this requirement. Finally, the union notes that the "parties may select the neutral factfinder without any involvement of the Federal Mediation and Conciliation Service" (FMCS). While this is certainly true where the parties mutually agree upon a neutral factfinder, paragraph 2 of Appendix A clearly provides for FMCS involvement under other circumstances. Moreover, it is apparent that the "rules and procedures" of the mediation services which will be applicable will depend upon the source from which the neutral factfinder is obtained. Absent other guidance the neutral factfinder may make this determination.

The procedure in Appendix A provides for the utilization of a neutral mediator at the request of either party after bargaining to impasse, and for mandatory factfinding at the request of either party beginning forty-five days prior to contract expiration. The language in Appendix A does not preclude the parties from requesting factfinding following contract expiration. In accordance with the rules and regulations of the mediation service, the factfinder shall have the power to make inquiries and investigations, hold hearings, or take such other appropriate steps to carry out his or her function. Should either party reject the factfinder's recommendations this arrangement provides for their publication in the local media along with the parties' statements supporting or rejecting those recommendations,thus ensuring that the parties will give serious consideration to the factfinder's recommendations. This procedure is fair and equitable and, it gives equal consideration

to the positions of both sides in a bargaining dispute, thereby preventing unilateral control over mandatory subjects of collective bargaining.

The Department, therefore, has determined that the dispute resolution procedure in Appendix A will be made applicable to the above projects and that the interest dispute language in Paragraph (6) of the parties July 26, 1966 Section 13(c) agreement will be excised from that agreement.

In addition, Departmental policy has been to require the parties to a Section 13(c) Agreement to provide for a neutral, final and binding dispute resolution procedure to resolve any controversy which may arise with respect to the interpretation, application, or enforcement of the terms of the 13(c) agreement itself. Such procedures for resolution of grievance disputes under the 13(c) agreement are a necessary requirement to ensure that employee protective arrangements are enforceable by the parties.

We are, therefore, modifying Paragraph (6) of the parties' July 26, 1966 agreement to eliminate interest arbitration by deleting the word "labor" from line 1 of this section and substituting the word "grievance", and deleting the words:

> . . . "labor dispute" shall be broadly construed and shall include any controversy concerning wages, salaries, hours, working conditions or benefits, including health and welfare, sick leave, insurance or pension or retirement provisions, the making or maintaining of collective bargaining agreements, the terms to be included in such agreements, the interpretation or application of such agreements, the adjustment of grievances, . . .

and substituting "grievance dispute shall be construed to mean . . ."

Upon careful consideration of all of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Sections 13(c)(1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. The terms and conditions of the agreement dated July 23, 1975 and Appendix A as the addendum pursuant to paragraph (4) thereof, shall be made applicable to the operating assistance portion of the instant project and made part of the contract of assistance, by reference;

2. The terms and conditions of the agreement dated July 26, 1966 with the above modifications to Paragraph (6) and the addition of Appendix A, shall be made applicable to the capital portion of the instant project and made part of the contract of assistance, by reference;

3. The term "project" as used in the agreements of July 23, 1975 and July 26, 1966, as modified herein, shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant project; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to employees represented by the union under the July 23, 1975 and July 26, 1966 agreement, as modified and this certification.

5. The Department's determination that the continuation of collective bargaining rights requirement for employees is satisfied by the procedures in Appendix A will also be applicable to all previous JTA projects that have been certified on the condition that the parties continue to negotiate a dispute resolution procedure. These projects include (TN-05-0022), (TN-90-0027), (TN-05-4055) and (TN-90-0003).

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Jim Burchfield/JTA
Joe Kaufman/JTA

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

Mr. Joel Ettinger
Regional Administrator
Urban Mass Transportation Administration
Region V
300 South Wacker Drive, Suite 1740
Chicago, Illinois 60606

JUL 1 1986

Re: UMTA Applications
Greater Peoria Mass
Transit District
Operating Assistance; Office
Equipment, etc.
(IL-90-X073)
(IL-05-0052)
(IL-90-X078)

Dear Mr. Ettinger:

This is in reply to the request from your office that we review the above captioned applications for grants which include both operating and capital assistance under Section 13(c) of the Urban Mass Transportation Act of 1964, as amended.

The Greater Peoria Mass Transit District and the Amalgamated Transit Union have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. In the past, the parties have also agreed that paragraph (9) of their October 8, 1973 Section 13(c) agreement, executed in connection with an earlier grant application, be included as an addendum to the July 23, 1975 agreement pursuant to paragraph (4) thereof. These mutually agreed to terms and conditions satisfied the requirement for Section 13(c) certification for general purpose operating assistance project situations.

In addition, the parties previously agreed and applied the terms and conditions of their Section 13(c) agreement dated October 8, 1973 for general capital assistance projects.

The Department of Labor is aware that the Greater Peoria Mass Transit District and the ATU are in disagreement over the inclusion of paragraph (9) of the parties' October 8, 1973 13(c) agreement for purposes of certification of the above referenced projects, either as contained in that agreement for capital assistance projects or as the addendum to the July 23, 1975 agreement for operating assistance projects.

The ATU argued that the terms and conditions of their 13(c) agreement dated October 8, 1973 have been used for over a decade and are an integral and essential part of fair and equitable arrangements and that the agreement remains a continuing requirement of the Secretary's certification. In addition, the ATU asserts there is no legal justification for eliminating paragraph (9) from the October 8, 1973 agreement for application to these pending projects.

The District's position is Section 13(c) does not require the inclusion of mandatory interest arbitration and that the Illinois Public Labor Relations Act (Ch. 48; Paragraph 1601) adequately protects the interests of the District's mass transit employees as required by Section 13(c) of the Urban Mass Transportation Act.

DOL has reviewed the parties' positions and the history of their negotiations; we have reviewed the alternative dispute procedures proposed by the District for inclusion in their existing 13(c) agreement; and we have reviewed related court decisions. It has become apparent to DOL that it is highly unlikely that the parties will agree to an alternative method for dispute resolution for inclusion in the Department's certification. Therefore, the DOL makes this determination.

The Illinois Public Labor Relations Act of 1984 (PLRA) provides public employees with the right to collectively bargain and provides a means of resolving interest disputes. The PLRA provides public employees with a formal procedure which includes mediation, fact-finding, and the right to strike. The Department has determined that the right to strike in and of itself is sufficient to meet the requirement for a dispute resolution procedure in fulfillment of the Section 13(c)(2) requirement for continuation of collective bargaining rights.

Prior to the enactment of the PLRA of 1984, interest arbitration was the dispute resolution mechanism agreed to by the parties with respect to projects certified under Section 13(c) of the Act. That mechanism met the requirements of Section 13(c)(2). Although 13(c) does require some dispute resolution process, it is clear from the legislative history and case law that interest arbitration is not specifically required by the Act. Interest arbitration remains an acceptable means of meeting the Section 13(c)(2) requirement for continuation of collective bargaining rights, as is the right to strike and fact-finding.

Although it appears that under Section 18(a) of the PLRA (Ch. 48; Paragraph 1618 Ill. Rev. Statutes, July 1, 1984) the transit employees can be enjoined from striking for "health and safety" reasons, the statute provides that an injunction can be secured only after petitioning the labor relations board and upon the board's investigation and finding of a clear and present danger to the "health and safety of the public"; the employer shall then petition the appropriate circuit court. No injunction shall be granted except where the courts have found there is a "clear and present danger." The statute further provides that, if the court determines there is a "clear and present danger" and orders striking employees back to work, the employer is required to participate in the impasse arbitration procedures set forth in Section 14 of the PLRA. This statute clearly provides for mandatory impasse procedures which adequately protect the rights of transit employees.

In addition, Departmental policy has been to require the parties to execute a Section 13(c) Agreement which, in part, provides for a neutral, final and binding dispute resolution procedure to resolve any controversy which may arise with respect to the interpretation, application, or enforcement or the terms of the 13(c) agreement itself. Such procedures for resolution of grievance dispute under the 13(c) agreement are necessary to ensure that employee protective arrangements are enforceable by the parties.

We are therfore, modifying Paragraph (9) of the parties' October 8, 1973 agreement to eliminate interest arbitration by deleting the words:

> "The term 'labor dispute' shall be broadly construed and shall include, but not be limited to, any controversy concerning wages, salaries, hours, working conditions, or benefits, including health and welfare, sick leave, insurance, or pension and retirement provisions, the making or maintaining of collective bargaining agreements, the terms to be included in such agreements and the interpretation or application of such collective bargaining agreements, any grievances that may arise,"

and substituting:

> "The term 'grievance dispute' shall be construed to mean any controversy arising out of or by virtue of any provisions of this agreement."

Therefore, upon careful consideration of all the circumstances, including consideration of the provisions satisfying each of the five matters specified in Sections 13(c)(1) through (5) of the Act, DOL has determined that the protective arrangements described below are fair and equitable and meet the requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. The terms and conditions of the agreement dated July 23, 1975, as supplemented by Illinois Public Labor Relations Act (Ch. 48; Paragraph 1601) pursuant to paragraph (4) thereof, shall be made applicable to the operating assistance portions of the instant projects and made part of the contracts of assistance, by reference;

2. The terms and conditions of the agreement dated October 8, 1973, with the above modifications to Paragraph (9), and supplemented by the Illinois Public Labor Relations Act (Ch. 48; Paragraph 1601), shall be made applicable to the capital assistance portions of the instant projects and made part of the contracts of assistance, by reference;

3. The term "project" as used in the agreements of July 23, 1975 and October 8, 1973, as modified herein, and supplemented by the Illinois Public Labor Relations Act (Ch. 48; Paragraph 1601), shall be deemed to cover and refer to the operating and capital portions respectively, of the instant projects; and

4. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to employees represented by the union under the July 23, 1975 and October 8, 1973 agreements, as modified, and this certification.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Jay Banasiak/GPMTD

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

Mr. Joel Ettinger
Regional Administrator
Urban Mass Transportation Administration
Region V
300 South Wacker Drive, Suite 1740
Chicago, Illinois 60606

JUL 15 1986

UMTA Applications
Rockford Mass Transit District
Replacement Buses, Operating
Assistance; Fareboxes, etc.
(IL-90-0067)
(IL-90-X066)
(IL-05-0051)

Dear Mr. Ettinger:

This is in reply to the request from your office that we review the above captioned applications for grants which include both operating and capital assistance under Section 13(c) of the Urban Mass Transportation Act of 1964, as amended.

The Rockford Mass Transit District (RMTD) and the Amalgamated Transit Union have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. In the past, the parties have also agreed that paragraph (9) of their June 27, 1975 Section 13(c) agreement, executed in connection with an earlier grant application, be included as an addendum to the July 23, 1975 agreement pursuant to paragraph (4) thereof. These mutually agreed to terms and conditions satisfied the requirement for Section 13(c) certification for general purpose operating assistance project situations.

In addition, the parties previously agreed and applied the terms and condition of their Section 13(c) agreement dated June 27, 1975 for general capital assistance projects.

The Department of Labor is aware that the Rockford Mass Transit District and the ATU are in disagreement over the inclusion of paragraph (9) of the parties' June 27, 1975 agreement, either as contained in that agreement for capital assistance projects, or as the addendum to the July 23, 1975 agreement for operating assistance projects.

The ATU argued that the Illinois Public Labor Relations Act of 1984 (PLRA) mandates the use of interest arbitration in the present circumstances where, as provided in Section 17

of the PLRA, "Public employees who are permitted to strike may strike only if: ***(3) the public employer and labor organization have not mutually agreed to submit the disputed issues to final and binding arbitration..."

The ATU stated that the parties executed a Section 13(c) agreement dated June 27, 1975 in paragraph (9) of which the parties agreed to resolve labor contract disputes through final and binding arbitration. The union concluded that because the parties have agreed to interest arbitration, the public employees have no right to strike.

The District's position is that mass transit employees are afforded a dispute resolution mechanism by the Illinois Public Labor Relations Act (Ch. 48; Paragraph 1601 et seq.), which fully satisfies the requirements of Section 13(c).

DOL reviewed the parties' positions and the history of their negotiations; we have reviewed the alternative dispute procedures proposed by the District; and we have reviewed related court decisions. It has become apparent to DOL that it is highly unlikely that the parties will agree to an alternative method for dispute resolution for inclusion in this Department's certification. Therefore, the DOL makes this determination.

The PLRA provides public employees with the right to collectively bargain and a means for resolving interest disputes. Paragraph 1617 of the PLRA provides public employees with the right to strike provided, in pertinent part, "(3) the public employer and the labor organization have not mutually agreed to submit the disputed issues to final and binding arbitration."

It is clear that the parties have not mutually agreed to submit disputes to binding arbitration or abide by the terms of paragraph (9) of the June 27, 1975 13(c) agreement for purposes of the pending projects. It is DOL's position that an interest arbitration provision in a Section 13(c) agreement is not automatically perpetuated in a succeeding agreement unless it is mutually agreed to by the parties. In this instance, where there is no mutual agreement " to submit the disputed issues to final and binding arbitration", we believe that the PLRA provides District employees with the right to strike. The Department has determined that the right to strike as provided in the PLRA in and of itself is sufficient to meet the requirements for a dispute resolution procedure in fulfillment of the Section 13(c)(2) requirement for continuation of collective bargaining rights.

Prior to the enactment of the PLRA of 1984, interest arbitration was the dispute resolution mechanism agreed to by the parties with respect to projects certified under Section 13(c) of the Act. That mechanism met the requirements of Section 13(c)(2). Although 13(c) does require some dispute resolution process, it is clear from the legislative history and case law that interest arbitration is not specifically required by the Act. Interest arbitration remains an acceptable means of meeting the Section 13(c)(2) requirement for continuation of collective bargaining rights, as is the right to strike and fact-finding.

Although it appears that under Section 18(a) of the PLRA (Ch. 48; Paragraph 1618 Ill. Rev. Statutes, July 1, 1984) the transit employees can be enjoined from striking for "health and safety" reasons, the statute provides that an injunction can be secured only after petitioning the labor relations board and upon the board's investigation and finding of a clear and present danger to the "health and safety of the public"; the employer shall then petition the appropriate circuit court. No injunction shall be granted except where the courts have found there is a "clear and present danger." The statute further provides that, if the court determines there is a "clear and present danger" and orders striking employees back to work, the employer is required to participate in the impasse arbitration procedures set forth in Section 14 of the PLRA. In part the procedures provides that (1) the panel at the conclusion of the hearing shall make written findings of fact and promulgate a written opinion and deliver it to the parties and the Board; (2) if the governing body rejects any term of the panels decision, it must provide reasons for such rejection and the parties shall return to the arbitration panel for further proceedings and issuance of a supplemental decision. This clearly ensure a full and fair airing of the parties issues and prevents unilateral control by the employer thereby protecting the rights of the mass transit employees.

In addition, Departmental policy has been to require the parties to execute a Section 13(c) Agreement which, in part, provides for a neutral, final and binding dispute resolution procedure to resolve any controversy which may arise with respect to the interpretation, application, or enforcement or the terms of the 13(c) agreement itself. Such procedures for resolution of grievance disputes under the 13(c) agreement are necessary to ensure that employee protective arrangements are enforceable by the parties.

We are, therefore, modifying Paragraph (9) of the parties' June 27, 1975 agreement to eliminate interest arbitration by deleting the words:

> "The term 'labor dispute' shall be broadly construed and shall include, but not be limited to, any controversy concerning wages, salaries, hours, working conditions, or benefits, including health and welfare, sick leave, insurance, or pension and retirement provisions, the making or maintaining of collective bargaining agreements, the terms to be included in such agreements and the interpretation or application of such collective bargaining agreements, any grievances that may arise,"

and substituting:

> "The term 'grievance dispute' shall be construed to mean any controversy arising out of or by virtue of any provisions of this agreement."

Therefore, upon careful consideration of all the circumstances, including consideration of the provisions satisfying each of the five matters specified in Sections 13(c)(1) through (5) of the Act, DOL has determined that the protective arrangements describe below are fair and equitable and meet the requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. The terms and conditions of the agreement dated July 23, 1975, as supplemented by Illinois Public Labor Relations Act (Ch. 48; Paragraph 1601 et seg.), pursuant to paragraph (4) thereof, shall be made applicable to the operating assistance portions of the instant projects and made part of the contracts of assistance, by reference;

2. The terms and conditions of the agreement dated June 27, 1975, with the above modifications to Paragraph (9), and supplemented by the Illinois Public Labor Relations Act (Ch. 48; Paragraph 1601 et seq.), shall be made applicable to the capital assistance portions of the instant projects and made part of the contracts of assistance, by reference;

3. The term "project" as used in the agreement of July 23, 1975 and June 27, 1975, as modified herein, and supplemented by the Illinois Public Labor Relations Act (Ch. 48; Paragraph 1601 et seg.), shall be deemed to cover and refer to the operating and capital portions respectively, of the instant projects; and

4. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to employees represented by the union under the July 23, 1975 and June 27, 1975 agreements, as modified herein, and this certification.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
J.C. Pippin/RMTD
J. Baker/Labor Service

LRP:BAndres:ilm:9-17-86
Rm:N5416:357-0473

SEP 18 1986

Mr. Joel Ettinger
Regional Administrator
Urban Mass Transportation Administration
Region V
300 Wacker Drive
Suite 1740
Chicago, IL 60606

Re: UMTA Application
Gary Public
Transportation
Corporation
Operating Assistance
(IN-90-X076)

Dear Mr. Ettinger:

This is in reference to the above captioned application which we are processing for a grant under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the Gary Public Transportation Corporation (Gary PTC) and the Amalgamated Transit Union (ATU) have agreed to become party to the Model Agreement executed on July 23, 1975. In addition, from March 1976 until May 1981 Gary PTC and ATU agreed to include as an addendum paragraph (11) from their 13(c) agreements dated October 30, 1973 and December 30, 1975.

In May 1981 the Gary PTC gave notice that it would consider itself bound to the Model Agreement only and all future certifications should not reference as an addendum paragraph (11) of the 13(c) agreement.

The DOL subsequently certified future UMTA projects on the basis of the July 23, 1975 agreement stating that:

> "Section 13(c) requires that protective arrangements provide for 'the continuation of collective bargaining rights.' The Department of Labor does not require, as a basis for this certification, the addendum which has been mentioned in prior correspondence. The Department expresses no opinion as to whether the parties by conduct or otherwise are bound by the addendum as part of their contractual relationship."

ANDRES	PERLM.	STEPP	DEPENDBROCK
LRP	LRP	A/DUS	SOL

For this pending project, by letter dated August 13, 1986, the Department has requested that the parties submit to DOL by September 3, 1986 a written report covering the parties final positions on the issue of an alternative dispute procedure including their specific proposals for dispute resolution language for inclusion in the 13(c) agreement.

By letter dated August 14, 1986 the Gary PTC requested that the pending operating assistance grant application be certified on the basis of the July 23, 1975 Model 13(c) Agreement only.

By letter dated September 3, 1986 the ATU stated that in no certification did the "Department direct, instruct, nor even suggest, that the parties negotiate over a dispute resolution procedure alternative to that contained in paragraph (11) of the parties' 1973 Agreement". Furthermore, the ATU asserted that it was never suggested that paragraph (11) be "excised" from the 13(c) agreement or that an alternative dispute procedure be agreed upon.

The ATU further states that the only suggested dispute resolution procedure before the Department is that contained in paragraph (11) of the 1973 Agreement and the Secretary is without authority to impose upon the parties a dispute system which neither has asserted before the DOL.

As the Department has stated in previous certifications, Section 13(c) requires that protective arrangements provide for "the continuation of collective bargaining rights." In this case the parties are in disagreement over the dispute resolution procedures to be applied to their 13(c) agreement for certification of the pending project. Although the parties have agreed to use interest arbitration as a dispute resolution procedure for past certifications the DOL does not require that Section 13(c) agreements provide for interest arbitration as the only dispute resolution procedure.

The inclusion of interest arbitration generally evolved as a result of the loss of transit employees' private sector status and was considered by employees to be the quid pro quo for the loss of the right to strike. In most cases, only where employees lost the right to strike was it necessary to negotiate over an alternative dispute resolution procedure. The Gary PTC asserts that employees have retained the right to strike and, therefore, an alternative dispute procedure is not necessary.

In Gary Intercity Lines, Inc. v. Local Division 517, Amalgamated Transit Union, No. H 84-168 (N.D. Ind. January 14, 1985), Gary Intercity Lines, Inc. contended that it was not an employer within the meaning of the Labor-Management Relations Act (LMRA) and is therefore not subject to the LMRA. The court ruled, however, that the plaintiff is not exempt from the provisions of the LMRA under either test set forth by the court in NLRB v. Natural Gas Utility District, 402 U.S. 598 (1971),

and must be considered an "employer" within the meaning of Section 2(2) and is subject to the LMRA. Although the decision by the Court is persuasive, the NLRB is not obligated to follow suit. Without knowing whether the NLRB would assert jurisdiction, the full protection of the employees by virtue of the NLRA is in question.

Therefore, short of knowing the exact status the employees enjoy, but given the necessity to extend full protections to transit employees under Section 13(c), the DOL makes this certification based on the assumption that the employees are covered under, the NLRA and have the right to strike. The Department of Labors certification will include a provision amending the 13(c) agreement, stating that the employees have the right to strike in the event of a collective bargaining impasse, and the employer shall not interfere with, restrain, coerce or discriminate against any employee in the exercise of that right. This provision will be made part of the contract of assistance. It will insure employees the right to strike, ensure the continuation of their collective bargaining rights, and preclude the need to negotiate an alternative dispute resolution procedure.

Therefore, upon careful consideration of all the circumstances, including consideration of the provisions satisfying each of the five matters specified in Sections 13(c) (1) through (5) of the Act, DOL has determined that the protective arrangements described below are fair and equitable and meet the requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. The terms and conditions of the agreement dated July 23, 1975, as supplemented by item three below, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement of July 23, 1975, shall be deemed to cover and refer to the instant project;

3. The contract of assistance shall include the following language:

> "The employer agrees that the employees have the right to strike in the event of a collective bargaining impasse and the employer shall not interfere with, restrain, coerce or discriminate against any employee in the exercise of that right. The term employer for the purpose of this project includes both

the transit authority and any private management company with which the transit authority contracts to provide services", and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to employees represented by the union under the July 23, 1975 agreement and this certification.

5. The Department's determination that the requirement for the continuation of collective bargaining rights is satisfied by the existence of the right to strike discussed above will also be applicable to all previous Gary PTC projects that have been certified based on the Model Agreement without specific reference to an addendum. These projects include (IN-05-4104), (IN-05-4125), and (IN-90-X026).

This certification is not intended to affect certifications made prior to February 10, 1982.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Hunter/UMTA
Earle Putnam/ATU
Alfred Winder/GPTC
Robert F. Peters/Esq.

LRP:BAndres:ilm:9-17-86
Rm:N5416:357-0473

SEP 18 1986

Mr. Joel Ettinger
Regional Administrator
Urban Mass Transportation Administration
Region V
300 South Wacker Drive
Suite 1740
Chicago, IL 60606

Re: UMTA Application
City of Decatur
Operating Assistance;
Construction of Transit
Facility, etc.
(IL-90-X081)
(IL-05-4111)

Dear Mr. Ettinger:

This is in reply to the request from your office that we review the above captioned applications for grants which include both operating and capital assistance under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application the City of Decatur, the American Transit Corporation and the Amalgamated Transit Union agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. In addition, the parties agreed that paragraph (8) of their May 5, 1972 Section 13(c) agreement, executed in connection with an earlier grant application, would be included as the addendum to the July 23, 1975 agreement pursuant to paragraph (4) thereof.

The parties, furthermore, previously executed an agreement dated May 12, 1977, which was made applicable to capital assistance projects. The Department is aware that the parties are in disagreement over the force and effect of paragraph (8) of the May 5, 1972 agreement. In the past, the parties had agreed voluntarily to the use of paragraph (8), as the addendum to the National 13(c) agreement for operating assistance projects. The Department is also aware that the parties are in disagreement over the force and effect of paragraph (9) of the May 12, 1977 agreement for capital assistance projects.

CONCURRE...								
Initials ➤								
Date ➤								
Last Name ➤	ANDRES	PERLM	STEPP	DEPENDBROCK				
Office Symbol ➤	LRP	LRP	A/DUS	SOL				

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In recent years DOL has instructed the parties to negotiate in good faith over an alternative method for resolving labor disputes and has certified projects on the basis of the above agreements without the interest arbitration provision or the addendum.

On September 17, 1985, in its certification letter for projects (IL-90-0057) and (IL-90-X058) the Department of Labor informed the parties it was necessary to negotiate over an alternative method for the resolution of labor disputes and fixed a 90-day time period for negotiations. Little progress was made toward reaching a resolution. By letter dated August 13, 1986, the Department of Labor acknowledged receipt of the City of Decatur and the Amalgamated Transit Union's submissions addressing their respective positions on the issue of a dispute resolution procedure, and informed them that the Department would complete its review and issue its determination on the appropriate protective arrangement for certification of the pending projects.

The Union's position is that there is no reason for departure from the standard "piggyback" certification and that the interest arbitration provisions of these 13(c) agreements are an integral and central part of the requirements of the Department's certification. In addition, the Union stated that the NLRB's refusal to exert jurisdiction in 1972 leaves the private sector transit employees without the protected right to strike.

The City asserts that the transit employees are private sector employees and that they have the right to strike upon expiration of their contract; they have not maintained that this right is derived from the NLRA. They have noted, moreover, that the local union continues to maintain that the employees have a right to strike and, in fact, took a strike vote in February 1978. The City contends that nothing has transpired during public ownership of the transit system to change the employee's right to strike. In addition, the City contends that regardless of whether the employees were public or private sector employees, they would have the right to strike.

As the Department has stated in previous certifications, Section 13(c) requires that protective arrangements provide for "the continuation of collective bargaining rights." The parties are in disagreement over the dispute resolution procedures to be applied to their 13(c) agreement for certification of the pending project. Although the parties have agreed to use interest arbitration as a dispute resolution procedure for past certifications, DOL does not require that Section 13(c) agreements provide for interest arbitration as the only dispute resolution procedure.

The inclusion of interest arbitration generally evolved as a result of the loss of transit employees' private sector status

and has generally been regarded by the employees as a quid pro quo for the loss of the right to strike. In most cases, only where employees lost the right to strike was it necessary to negotiate an alternative dispute resolution procedure. The City asserts that employees have retained the right to strike and, therefore, an alternative dispute procedure is not necessary. In reviewing the parties positions and correspondence we find that there is one point upon which both parties have agreed. Both parties have stated that the National Transit Services, Inc. (NTS) transit employees are not public employees.

However, the question of whether or not the NLRB would assert jurisdiction at this time over the NTS employees is questionable. Therefore, short of knowing the exact status the employees would enjoy, and given the necessity to extend full protections transit employees under Section 13(c), the Department will supplement the agreements which serve as a basis for this certification to ensure that the rights of the transit employees under Section 13(c)(2) are protected. The Department of Labor's certification will include a provision stating that the employer agrees that the employees have the right to strike in the event of a collective bargaining impasse, as has been implied in the past, and the employer shall not interfere with, restrain, coerce or discriminate against any employee in the exercise of that right. This provision will be made part of the contract of assistance and will assure employees of the right to strike.

The right to strike is a sufficient dispute resolution procedure to ensure the continuation of collective bargaining rights and therefore it is unnecessary to negotiate an alternative dispute resolution procedure.

We are therefore, modifying Paragraphs (9) and (8) of the parties May 12, 1977 and May 5, 1972 13(c) agreements respectively to eliminate the interest arbitration provisions. This is achieved by deleting words "the making or maintaining of collective bargaining agreements, the terms to be included in such agreements and the interpretation or application of such collective bargaining agreements, and grievances that may arise" from the definition of "labor disputes" in Paragraphs (8) and (9) thereof.

Upon careful consideration of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Section 13(c) (1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. The terms and conditions of the agreement dated July 23, 1975, as supplemented by item 3 below, shall be made applicable to the operating assistance portions of the instant projects and made part of the contracts of assistance, by reference;

2. The terms and conditions of the agreement dated May 12, 1977, with the deletion from paragraph (9) of the words "the making or maintaining of collective bargaining agreements, the terms to be included in such agreements and the interpretation or application of such collective bargaining agreements, any grievances that may arise," shall be made applicable to the capital portions of the instant projects and made part of the contracts of assistance, by reference;

3. The contract of assistance shall include the following language:

> "The employer agrees that "the employees have the right to strike in the event of a collective bargaining impasse and the employer shall not interfere with, restrain, coerce or discriminate against any employee in the exercise of that right. The term employer for the purpose of these projects includes both the City and any private management company with which it contracts to provide services";

4. The term "project" as used in the agreements of July 23, 1975 and May, 12, 1977, shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant projects;

5. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to employees represented by the union under the July 23, 1975 and May 12, 1977 agreements, with the above deletions from paragraph (9), and this certification; and

6. The Department's determination that the requirement for the continuation of collective bargaining rights is satisfied by the existence of the right to strike discussed above will also be applicable to all previous Decatur projects that have been certified on the condition that the parties continue to negotiate a dispute resolution procedure. These projects include IL-90-0057, IL-90-X058, IL-90-0015, IL-90-0038, IL-90-X037, IL-05-0046, IL-05-0048, and IL-05-4094.

This certification is not intended to affect certifications made prior to July 11, 1983.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Robert Reed/DPTS

Re MI 90-X079

LRP:BAndres:ilm:9-17-86
Rm:N5416:357-0473

SEP 18 1986

Mr. Joel Ettinger
Regional Administrator
Urban Mass Transportation Administration
Region V
300 South Wacker Drive
Suite 1740
Chicago, IL 60606

Re: UMTA Application
Capital Area
Transportation
Authority
Operating Assistance;
East Lansing Staging
Area, etc.
(MI-05-0064)
(MI-90-X063)

Dear Mr. Ettinger:

This is in reply to the request from your office that we review the above captioned applications for grants which include both operating and capital assistance under the Urban Mass Transportation Act of 1964, as amended.

The Capital Area Transportation Authority (CATA) and the Amalgamated Transportation Union (ATU) Local 1039 have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. The terms and conditions of the July 23, 1975 agreement provided protections to employees represented by the union which satisfied the requirements of Section 13(c) of the Act for general purpose operating assistance projects.

The parties also previously agreed that the terms and conditions of their agreement dated May 8, 1975, shall be made applicable for capital assistance projects. This agreement, executed in connection with a previous grant application, provided to employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

The Department is aware that the parties are in disagreement over the force and effect of paragraph (9) of the May 8, 1975 agreement. In the past, the parties had agreed voluntarily to the use of paragraph (9), as the addendum to the National 13(c)

CONCURRENCEs								
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agreement for operating assistance projects or as contained in the May 8, 1975 agreement for capital assistance projects.

By letter dated June 7, 1983, CATA proposed that modifications be made in paragraph (9) of the May 8, 1975 13(c) agreement for the certification of project (MI-90-0004). The proposed modifications deleted the language that broadly defined "labor dispute" to include interest arbitration under the agreement.

The DOL certified the project over the union's objection on condition that the parties make a good faith effort to negotiate over an alternative method for the resolution of labor disputes. All of the subsequent certification were made with this additional condition included until September 19, 1985. On this date certification of the pending project was conditioned on the parties making a good faith effort to negotiate an alternative method for resolution of labor disputes with a 90-day fixed time limit to complete discussions. This requirement did not produce any resolution to the issue, thus prompting our most recent letter to the parties.

By letter dated August 13, 1986, the DOL requested the parties' final position on "the issue" which the Department would review in order to make a decision for certification of the pending and conditional projects.

CATA proposed using the dispute resolution procedure provided in their letter of August 28, 1986 as a substitute for Paragraph (9) of the May 8, 1975 13(c) agreement. This proposed arrangement was requested by CATA to apply to all conditional and pending projects.

The Union's position is that it objects to the certification of the pending projects on any basis other than the entire May 8, 1975 Section 13(c) agreement which includes interest arbitration, or the July 23, 1975 agreement with the addendum for operating assistance. However, the ATU did offer for consideration, without altering its objection to or waiving it's right to challenge the certification, some language modifying the Michigan fact finding procedure in the event the Department did certify on the basis of the Michigan statute.

DOL has reviewed the parties' positions and the history of their negotiations; we have reviewed the dispute procedures proposed by the parties for inclusion in their existing 13(c) agreement; and we have reviewed related court decisions. It has become apparent to DOL that it is highly unlikely that the parties will agree to an alternative method for dispute resolution for inclusion in the Department's certification. Therefore, the DOL makes this determination.

As the Department has stated in previous certifications, Section 13(c) requires that protective arrangements provide for "the continuation of collective bargaining rights." The parties are

in disagreement over the dispute resolution procedures to be applied to their 13(c) agreement for certification of the pending project. Although the parties have agreed to use interest arbitration as a dispute resolution procedure for past certification the DOL does not require that Section 13(c) agreements provide for interest arbitration as the only dispute resolution procedure. In the absence of the parties' mutual agreement to continue to utilize interest arbitration, the Department will not, in this instance, require that the interest arbitration provision previously certified be applied to the pending grants.//

The Department has reviewed CATA's proposed Dispute Resolution Procedure attached to it's letter dated August 28, 1986 which incorporates and expands upon the procedures established for mediation and fact finding under Michigan Statute (423.25) and has determined that it is an appropriate dispute resolution procedure with some modifications to meet the requirements of Section 13(c)(2) of the UMT Act for continuation of collective bargaining rights (See Appendix A). The Department requires that, in the absence of written mutual agreement by the parties to the contrary, the terms and conditions of the expiring collective bargaining agreement shall remain in place until the effective date of the successor agreement between the parties, or the completion of the impasse procedures provided for in Appendix A whichever is earliest. In addition, the Department has included appropriate criteria for consideration by the fact finding panel.

The DOL has determined that the dispute resolution procedure attached as Appendix A, ensures a full and fair airing of the parties' issues, permits either party to invoke the services of a mediator and ensures fully informed and fair recommendations for settlement. The procedure is fair and equitable and gives equal consideration to the positions of both sides in the collective bargaining dispute and thereby prevents unilateral employer control over mandatory subjects of collective bargaining.

In addition to the above impasse resolution procedures, Departmental policy has been to require the parties to a Section 13(c) Agreement to provide for a neutral, final and binding grievance resolution procedure to resolve any controversy which may arise with respect to the interpretation, application, or enforcement of the terms of the 13(c) agreement itself. Such procedures for resolution of grievance disputes under the 13(c) agreement are a necessary requirement to ensure that employee protective agreements are enforceable by the parties.

We are, therefore, modifying Paragraph (9) of the parties' May 8, 1975 agreement to eliminate interest arbitration by deleting the word "labor" from line 1 of this section and substituting the word "grievance", and deleting the words:

> . . . "labor dispute" shall be broadly construed and shall include, but not be limited to, any controversy concerning

wages, salaries, hours, working conditions or benefits, including health and welfare, sick leave, insurance, or pension and retirement provision, the making or maintaining of collective bargaining agreements, any grievances that may arise, and any controversy arising out of or any provisions of this agreement.

and substituting "'grievance dispute' shall be construed to mean any controversy regarding the application, interpretation or enforcement of any of the provisions of this agreement."

Procedures to resolve grievance disputes over the interpretation, application and enforcement of the July 23, 1975 "Model" agreement are included in Paragraph (15) of that agreement.

Upon careful consideration of all of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Section 13(c)(1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. The terms and conditions of the agreement dated July 23, 1975, and Appendix A as the addendum pursuant to paragraph (4) thereof, shall be made applicable to the operating assistance portions of the instant projects and made part of the contract of assistance, by reference;

2. The terms and conditions of the agreement dated May 8, 1975, with the above modifications to Paragraph (9) and the addition of Appendix A, shall be made applicable to the capital portions of the instant project and made part of the contracts of assistance, by reference;

3. The term "project" as used in the agreements of July 23, 1975, and May 8, 1975, as modified herein, shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant projects;

4. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to employees represented by the union under the July 23, 1975, and May 8, 1975 agreements, as modified herein, and this certification; and

5. The dispute resolution procedure herein will be made applicable to the previous CATA grants which were certified on the condition that the parties continue to negotiate a dispute resolution procedure, including (MI-05-0053), (MI-90-0004), (MI-90-0004)Revised, (MI-90-0018)B, (MI-90-X045), and (MI-05-0056). All other terms and conditions in our previous certifications remain in effect. This certification is not intended to affect certifications made prior to August 5, 1983.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Dan Chandler/Esq.
Mark Fedorowicz/CATA

LRP:LNewton:ilm:9-15-86
Rm:N5416:357-0473

SEP 19 1986

Mr. Aubrey Davis
Regional Administrator
Urban Mass Transportation Administration
Region X
Federal Building
915 Second Avenue
Suite 3106
Seattle, WA 98174

Re: UMTA Application
City of Everett
Purchase Vans, Shelters,
etc.
(WA-05-0033)(1

Dear Mr. Davis:

This is in reply to the request from your office that we review the above captioned application for grant under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the City of Everett and the Amalgamated Transit Union executed an agreement dated August 26, 1981, as supplemented by a side letter dated August 19, 1981, which provided to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

The union has requested that the following language be included the contract of assistance: "All special transportation services and any other operational services to the project will be contracted for and operated in such a way that these services will not compete with, replace, or displace conventional transit routes and services now or hereafter provided by the recipient."

The parties have agreed that the terms and conditions of the agreement dated August 26, 1981 as supplemented, shall be made applicable to the instant project.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

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1. The terms and conditions of the agreements dated August 26, 1981, as supplemented shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreements of August 26, 1981, as supplemented, shall be deemed to cover and refer to the instant project; and

3. The contract of assistance shall include the following language:

> "All special transportation services and any other operational services to the project will be contracted for and operated in such a way that these services will not compete with, replace, or displace conventional transit routes and services now or hereafter provided by the recipient."

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the August 26, 1981, agreements as supplemented and this certification.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Hunter/UMTA
Earle Putnam/ATU
Mary Riordan/City of Everett

SEP 25 1986

Mr. John T. Schneider
Attorney at Law
815 Third Avenue South
Fargo, North Dakota 58103

Dear Mr. Schneider:

This is in response to your letter of July 21, 1986 regarding a possible breach of contract between the City of Fargo and Doyle Transportation, Inc. You have inquired as to whether there is a factual or legal basis for UMTA to require that the City take such actions as it has which have resulted in the loss of Doyle Transportations' contract to provide transit service for the City. You have also requested that we advise you concerning the protective arrangements that have been made for displaced transit employees.

The Department of Labor does not have the authority to investigate whether there is a legal basis for UMTA "to require the City of Fargo to breach its contract with Doyle." We leave that determination to the agency in question and to the courts should the issue be raised in that forum. You may however, wish to pursue this matter with UMTA directly.

Protective arrangements for employees represented by the IBT are already in place for UMTA grant application (ND-90-X009) which was an operating assistance grant for the period January 1, 1985 to December 31, 1986. The Department of Labor's certification letter for that project referenced a February 14, 1980 agreement between Doyle Transportation, Inc. and the International Brotherhood of Teamsters. Paragraph (1) of that agreement provides for an appropriate dispute resolution mechanism for the resolution of disputes which arise under the agreement. More specifically, paragraph (1) states that:

> "The collective bargaining agreement by and between Doyle and the Union effective August 1, 1979, to July 31, 1981, or as subsequently extended or superseded by any other agreement of the parties is deemed by the parties adequate to preserve all rights, privileges and benefits of the employees who are represented by the union within the meaning of this Agreement."

Therefore, the grievance dispute resolution procedures provided for in the parties' current collective bargaining agreement would

be the appropriate procedures for resolution of disputes over the interpretation, application and enforcement of the applicable Section 13(c) agreement.

The Department believes that when a contract for a fixed term between a contractor and an UMTA grantee has been properly terminated according to its terms, impacts which occur solely as a result of the expiration of a bid contract are not considered to be "as a result of the Federal Grant" and, therefore, would not trigger benefits to affected employees. However, this would not apply to employees of contractors under a "Memphis" plan, nor would it apply to those employees who are otherwise covered by Section 13(c) of the Act as a result of arrangements which provided for continued employment to minimize 13(c) liabilities following an acquisition. It is not clear, however, whether the displacement of all current transit employees in Fargo, should that occur following selection of a new contractor, would result from the proper termination of the old contract or, in part, as a result of the other factors which may be related to Federal funding of the transit system.

If we can be of any further assistance please contact Ms. Ann Gailliot or Mary Ann Mullen of my staff at (202) 357-0473.

Sincerely,

James L. Perlmutter
Chief, Division of Employee
Protections

cc: Theodore Munter/UMTA
Louis Mraz/Reg. VIII
Craig Cole/CITV
Douglas Herman/Doyle

LRP:MMullen:ilm:9-30-86
Rm:N5416:357-0473

SEP 29 1986

Mr. Peter N. Stowell
Regional Administrator
Urban Mass Transportation Administration
Region IV
1720 Peachtree Road, N.W.
Suite 400
Atlanta, Georgia 30309

Re: UMTA Application
Metropolitan Dade County
Transportation
Administration
Operating Assistance;
Purchase Buses and
Office Equipment, etc.
(FL-90-X062) Interim

Dear Mr. Stowell:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the Metropolitan Dade County Transportation Administration and the Government Supervisor's Association executed an agreement dated August 20, 1985, which provided to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

The parties have agreed that the terms and conditions of the agreement dated August 20, 1985, shall be made applicable to the instant project.

In addition, the Metropolitan Dade County Transportation Authority (MDC) and Local 291 of the Transport Workers Union (TWU) have previously executed an agreement dated August 31, 1978. This agreement has provided to the employees represented by the TWU protections satisfying the requirements of Section 13(c) of the Act.

The transit authority and the TWU are in disagreement over the continued inclusion of four (4) specific provisions in the August 31, 1978 Section 13(c) agreement for application to the above project. On February 14, 1986, negotiations concerning a

MULLEN LRP | PERLM. LRP | RICCO LR | STEPP A/DUS

new 13(c) agreement commenced. A series of negotiating sessions were conducted, including one meeting between the parties at the Department of Labor on May 23, 1986. The issues upon which the parties remain in disagreement have narrowed to four provisions, contained in Paragraphs (7), (8), (10) and (12) of the August 31, 1978 Section 13(c) agreement.

The parties have been unable to reach an agreement on the above provisions. Therefore, in accordance with Section 215.3(f) of the Department's March 31, 1978 Guidelines (Published in Vol.43, No. 63 of the Federal Register), we have reviewed the positions of the parties, both written and as presented in the May 23, 1986 meeting, and decided that the Secretary of Labor will make a determination of the terms and conditions upon which to base this certification.

DISCUSSION

Paragraphs (7) and (8) of the August 31, 1978 Agreement:

The transit authority has proposed that paragraph (7), addressing the "opportunity for employment in any new jobs," be deleted in its entirety from the August 31, 1978 agreement. The authority's principal argument is that "Section 13(c) does not require employees of the County to be given first opportunity for employment in any new jobs". They further indicated that, "(I)n the event of a layoff, bargaining unit employees will have the protection of the Countywide layoff and recall procedure which provides permanent status employees in the classified service retention preference and recall rights."

The union has objected to the deletion of Paragraph (7), indicating that the "County is merely trying to renege from the commitments it made in this very important area" of preferential hiring. Section 13(c)(4) specifically provides for "assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off". In Paragraph (6) of the August 31, 1978 agreement, the parties have addressed the priority of reemployment requirement in their agreement that "(A)ny employee of the County in the bargaining unit represented by the Union who has been terminated or laid off for lack of work as a result of the Project, shall be immediately transferred to fill any vacant position on the County for which he is, or by training or re-training can become, qualified".

This language appears to cover all vacant positions, whether these are "old" or "new" jobs. The transit authority, moreover, has clearly indicated that their concern is not with reemployment but with employees who have existing jobs applying to fill newly created positions. The transit authority argues that the provisions in paragraphs (7) and (8) were intended to give TWU bargaining unit employees an additional benefit for start-up of

the Metrorail System which was not intended to continue after the system was in revenue service. These types of provisions, however, have been included in agreements for Metro Dade projects since, at least, April 23, 1975. The parties have indicated that they intended, and continue to agree that all vacant positions should be made available to displaced or dismissed employees as required by Paragraph (6) of the August 31, 1978 agreement.

In this instance, the Department believes that the parties should have an additional opportunity to continue to bargain over adverse impacts which may occur as a result of the UMTA grant. The Department will not include Paragraphs (7) and (8) of the August 31, 1978 agreement as a condition for certification of the instant project at this time. However, this certification will be issued on an interim basis and the parties will have an additional 120 days to negotiate arrangements on this one issue which will be included retroactively by the Department in it certification. The parties shall commence negotiations within 15 days on this issue; if an agreement is reached the parties shall submit the agreed-upon language to the Department of Labor for inclusion in the final certification for the instant project. If the parties have not reached an agreement within 120 days, they will submit specific proposed language and the reasons for those proposals to the Department of Labor, within 10 days, for final-offer selection by the Department.

Paragraph (10) of the August 31, 1978 Agreement:

The transit authority has proposed that Paragraph (10), which provides for interest arbitration, be modified in accordance with impasse procedures governed by Florida Statute 447. The union has objected to this modification, which they feel allows the County "unilaterally, to make the final decision, thereby rendering the process meaningless."

The Department of Labor does not require that Section 13(c) arrangements provide for conventional interest arbitration of new contract terms. However, in those instances where employees have lost the right to strike, such as in Dade County, the parties should agree upon a procedure for the resolution of labor disputes to be included in their Section 13(c) arrangements. In this instance, the parties have been unable to negotiate a mutally satisfactory dispute procedure. Although the union was requested to submit its final position on such a procedure to the Department, they have not done so; they have, however, indicated that their position remains unchanged and that the existing procedure should remain intact in the parties Section 13(c) agreement. The County believes that the dispute resolution procedures set forth in Florida Statute 447 adequately meet the requirements of Section 13(c). They further indicate that the parties have "followed the state procedure since 1974, before the County first began receiving funds for the project."

The Department of Labor has reviewed the arguments of the parties and the materials they have submitted in making its analysis of their respective positions. Although 13(c) does require some dispute resolution process that assures avoidance of unilateral control by the transit authorities, it is clear from the legislative history and case law that interest arbitration is not specifically required by the Act. Therefore, in the absence of the parties' mutual agreement to continue to utilize interest arbitration, the Department will not, in this instance require that the interest arbitration provision previously certified be applied to future grants.

In view of the above, the Department of Labor has determined that, with some modifications, an appropriate dispute resolution procedure for application to Metropolitan Dade County projects is that contained in Sections 447.403 - 447.409 of the Florida Statute. The modifications would impose additional requirements upon the parties, beyond those in the Florida statute, which necessarily would be included to meet Section 13(c)(2) requirements.

The Florida Statute provides for mediation, if requested by either party, and submission of all unresolved issues to a neutral mandatory fact-finding procedure utilizing a "special master" appointed by the Public Employees Relations Commission. While the state procedure requires a public hearing if the recommendations of the special master are rejected, this public hearing is conducted by the "governing body of an instrumentality or unit of government having authority to appropriate funds and establish policy governing the terms and conditions of employment" for these employees (e.g. the applicant).

Therefore, to ensure a full and fair airing of the parties' issues, and to ensure that the parties will give serious consideration to the special master's fact-finding recommendations, the Department is supplementing Section 407.403(3) of the Florida statute by requiring that:

> If either party rejects all or part of the special master's fact-finding recommendations, they shall give written notice to the special master and the other party of such rejection and state with particularity in such notice the reason or reasons for rejection. The special master promptly shall have published in the local media his or her findings of fact and recommendations for settlement and the statements of position provided to the special master by the authority and the union together with their decisions accepting or rejecting the recommendations.

In addition, the dispute resolution procedure utilized by the parties must avoid unilateral control by the employer over mandatory subjects of collective bargaining. Under the Florida statute, Section 447.403(1), impasse procedures may be implemented "after a reasonable period of negotiation".

Procedures could, conceivably, be implemented following the expiration of the parties collective bargaining agreement. To prevent unilateral employer control over terms and conditions of employment pending completion of the fact-finding process Florida Statute 447 is supplemented by the following language:

> In the absence of written mutual agreement by the parties to the contrary, the terms and conditions of any expiring collective bargaining agreement shall remain in place following the expiration of such agreement until the effective date of a successor agreement between the parties, or the completion of the impasse procedures provided for under Florida Statute 447 and herein, whichever is earlier.

With the above modifications Florida Statute 447 is sufficient to meet the requirements of Section 13(c)(2). In addition, however, Departmental policy has been to require the parties to a Section 13(c) Agreement to provide for a neutral, final and binding grievance resolution procedure to resolve any controversy which may arise with respect to the interpretation, application, or enforcement of the terms of the 13(c) agreement itself. Such procedures for resolution of grievance disputes under the 13(c) agreement are a necessary requirement to ensure that employee protective arrangements are enforceable by the parties.

We are, therefore, modifying Paragraph (10) of the parties August 31, 1978 agreement to eliminate interest arbitration by deleting the word "labor" from line 1 of this section and substituting the word "grievance", and deleting the words:

> "The term 'labor dispute', as used herein, shall be broadly construed and shall include, but not limited to any controversy concerning wages, salaries, hours, working conditions, or benefits, including health and welfare, sick leave, insurance, or pension or retirement provisions, any differences or questions that may arise between the parties."

The parties will, therefore, continue to be bound by the language previously negotiated and contained in Paragraph (10) of their August 31, 1978 agreement for the resolution of disputes over the interpretation, application and enforcement of the Section 13(c) agreement itself.

Paragraph (12) of the August 31, 1978 Agreement:

The transit authority has proposed substitution of language from Paragraphs (1) and (24) of the Model Agreement for the negotiated language contained in Paragraph (12) of the parties' August 31, 1978 agreement. The County specifically states that "If a bargaining unit employee is not adversely affected as a result of the Project, then Dade County should not have the obligation to provide 13(c) protections". The existing language in the parties agreement defines "Project" to include "any changes ... which are

traceable to the assistance provided ...". The proposed substitution is language which was specifically negotiated by APTA and a number of transit labor organization specifically for application in operating assistance projects, while the instant project application and Section 13(c) agreement are for capital assistance.

In view of the above, the Department will not revise Paragraph (12) of the parties' August 31, 1978 agreement at the unilateral request of one party. The parties may continue to negotiate this and other provisions for purpose of reaching an agreement or revising their Section 13(c) agreement for future project applications.

For purposes of this application and upon careful consideration of all of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Sections 13(c)(1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on an interim basis on condition that:

1. The terms and conditions of the agreements dated August 20, 1985 and August 31, 1978, as modified herein, shall be made applicable to the instant project and made part of the contract of assistance, by reference. These modifications to the August 31, 1978 agreement include:

   a. The deletion, on an interim basis, of Paragraphs (7) and (8);

   b. The deletion from Paragraph (10) of the word "labor" from line 1 and substitution of the word "grievance", and deletion of the words " The term 'labor dispute', as used herein, shall be broadly construed and shall include, but not be limited to any controversy concerning wages, salaries, hours, working conditions, or benefits, including health and welfare, sick leave, insurance, or pension or retirement provisions, any differences or questions that may arise between the parties."; and

   c. Supplementing the August 31, 1978 arrangement by Florida Statute 447 which is further supplemented by the following provisions which the Department has determined are necessary to meet the requirements of Section 13(c)(2) of the Act:

1. If either party rejects all or part of the special master's fact-finding recommendations, they shall give written notice to the special master and the other party of such rejection and state with particularity in such notice the reason or reasons for rejection. The special master promptly shall have published in the local media his or her findings of fact and recommendations for settlement and the statements of position provided to the special master by the authority and the union together with their decisions accepting or rejecting the recommendations, and

2. In the absence of written mutual agreement by the parties to the contrary, the terms and conditions of any expiring collective bargaining agreement shall remain in place following the expiration of such agreement until the effective date of a successor agreement between the parties, or the completion of the impasse procedures provided for under Florida Statute 447 and herein, whichever is earlier;

2. The term "project" as used in the agreements of August 20, 1985 and August 31, 1978, as modified herein, shall be deemed to cover and refer to the instant project; and

3. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the unions, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the unions under the August 20, 1985 and August 31, 1978 agreement, as modified herein, and this certification.

4. This certification is issued on an interim basis. The County and the TWU will have an additional 120 days to negotiate on the issue of "opportunity for employment". If an agreement is reached the parties' shall submit the agreed upon language to the Department of Labor for inclusion in the final certification for the instant project. If the parties have not reached an agreement within 120 days, they will submit specific proposed language and the reasons for those proposals to the Department of Labor, within 10 days, for final-offer selection by the Department. The Department will then

review the information submitted to ensure that the parties' final offers would be fair and equitable and will proceed as necessary to issue a final certification for this project.

Sincerely,

John R. Stepp
Associate Deputy Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
William G. Stieren/MDCTA
Carmen Davis/MDCTA
Ken McKay/TWU
Malcolm Goldstein/TWU
Ed Darcy/GSA

U.S. Department
of Transportation

**Urban Mass
Transportation
Administration**

The Administrator

400 Seventh St., S.W.
Washington, D.C. 20590

OCT 16 1986

Mr. Stephen I. Schlossberg
Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs
United States Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Mr. Schlossberg:

In recent correspondence you asked me to inform you of any problems UMTA has encountered with the Department of Labor's procedures implementing Section 13c. One notable example follows. On September 19, 1986, DOL sent a 13(c) certification to UMTA's regional office in Seattle for project WA-05-0033, Amendment 1. The application was for funds to purchase, among other things, two vans for service to elderly and handicapped persons.

Before DOL made the certification, it contacted by telephone the applicant, the city of Everett, Washington, to learn if it agreed to the language which the Amalgamated Transit Union (ATU) stated must be included in the 13(c) certification. The effect of the language is to impair the city's ability to contract with private operators to provide service. The ATU represented to DOL that the parties had mutually agreed to the language.

Although the city responded that it had not agreed to the language, it did not object to including it. Shortly thereafter, the city's Transit Manager, Mary A. Riordan, sent the enclosed letter to inform DOL that the city wished to rescind its verbal statement of no objection. The letter indicates that this action is necessary because including the ATU's language would prevent the city from complying with the assurances it had made to UMTA earlier in 1986 with regard to the participation of private enterprise in its program.

DOL steadfastly refused to withdraw the certification stating that it cannot take such action if it is requested by only one party. DOL maintained this posture in spite of the misrepresentation made by the ATU that the language had been previously agreed to. We strongly believe that the city should have been permitted to withdraw its verbal statement of no objection, and that DOL should have rescinded and reissued the 13(c) certification. Since the

parties had never agreed to the provision in question, a verbal statement of no objection to a third party (DOL) could not have the effect of creating such an agreement. Therefore, DOL should not have refused to take the action requested.

The consequence of including this language is that UMTA could not approve the grant. The grant funds which the city applied for have now lapsed and the service for the city's elderly and handicapped persons will be delayed.

I bring this matter to your attention to show once again that 13(c) is an impediment to the UMTA program since its real purpose and function have long since been accomplished. Had the disputed provision not been included in your 13(c) certification, as the city clearly desires, none of the mandatory protections that this statutory requirement provides would have been denied to union employees.

The protections that Section 13(c) provides were needed when the UMTA program was first created to ensure that the employees of private transit companies bought with UMTA funds would not be harmed. The program has changed in the intervening 22 years and instead of providing benefits, the 13(c) requirements serve only to impair, and in this case, cripple the delivery of UMTA's program.

While our two departments continue to work closely together, it is my hope that DOL will be more sensitive in the future to situations like the city of Everett's. The loss of needed grant funds due to union misrepresentations is hardly what Congress intended when it enacted Section 13(c).

Sincerely,

Ralph L. Stanley

Enclosure

NOV 10 1986

Mr. Ralph Stanley, Administrator
U.S. Department of Transportation
400 Seventh Street
Washington, D.C. 20590

Dear Mr. Stanley:

This is in response to your letter dated October 16, 1986 in which you suggest that the Department's failure to reconsider its decision to deny re-certification for UMTA project (WA-05-0033)#1, filed by the City of Everett, Washington, resulted in UMTA's decision not to fund the project, thereby causing the funds to lapse.

Mr. Larry Newton, the project representative, contacted the transit authority on September 5, 1986 for approval of the special language contained in the ATU's letter dated September 2, 1986. Ms. Mary Riordan, Transit Manager for the City of Everett, voiced her approval of the special language which the union had requested to be included in the 13(c) certification. Thereafter, the project was certified on September 19, 1986, well in advance of UMTA's deadline to fund the project. Generally, after the parties have agreed to appropriate arrangements for inclusion in the Secretary's 13(c) certification, that certification is made part of the contract of assistance with UMTA. It would not be appropriate for the Secretary of Labor to subsequently change the protective arrangements agreed to by the parties at the unilateral request of one party.

UMTA has frequently criticized the Department's processing of certifications as an untimely impediment to the routine processing of grants. We have streamlined our processing considerably, however, and currently, as a general rule, require only a simple phone call instead of a written confirmation where the parties concur on special language. As a result, we have been able to speed up the certification process and ensure a 30 day turnaround for most UMTA projects. We intend, therefore, to continue to take the parties at their word rather than overburden the system with unnecessary paperwork.

Section 13(c) does not preclude applicants from contracting for services with private operators or otherwise arranging for private sector participation in service provision,

provided that assurances are developed to protect all affected employees in the service area of the project which address the five statutory provisions set forth in the Act. The Department does not believe that the language contained in the ATU's letter prevents the applicant from contracting with private operators for the provision of special transportation services or from compliance with its privatization policy. It merely provides assurances that affected employees are afforded protections against the impact of subcontracting these special transportation services and compensated for any adverse effects they may suffer as a result of private sector operations.

The Department of Labor is sensitive to the needs of both the transit authorities seeking Federal assistance and the employees who potentially may be affected by such assistance. The purpose of Section 13(c) is to provide assurances that such employees will not be harmed by Federal actions through funding of transportation services. While the focus of UMTA's funding activities may have changed in recent years, the need for labor protections has not diminished as innovative methods of providing service have been introduced throughout the industry.

We continue to believe that interagency discussions to address the mutual concerns raised by privatization and similiar issues would be beneficial to both our agencies, as indicated in previous correspondence from Secretary Brock to Secretary Dole. We reaffirm our desire to engage in such discussions and hope that you would call me to let me know who you have chosen to represent your agency in addressing this important matter.

I must emphasize, however, that DOL does not feel that the union involved misrepresented its position in this situation. The City clearly was provided ample opportunity to review the language in question before we received their concurrence and during the intervening period before the certification letter itself was issued. It was not until UMTA reviewed the certification and directed the City to retract its approval of the agreed upon language, that the City indicated its agreement would not be in their best interest. It is unfortunate that UMTA decided not to approve this project after the City had met its requirements under the Act.

Sincerely,

Stephen I. Schlossberg

LRP:DHODGE:do:12-16-86
Rm. N5416:357-0473

DEC 19 1986

Mr. Peter Stowell
Regional Administrator
Urban Mass Transportation
Administration
Region III
841 Chestnut Street, Suite 714
Philadelphia, Pennsylvania 19107

Re: UMTA Application
Memphis Area Transit
Authority
Operating Assistance
(TN-90-X045)

Dear Mr. Stowell:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transit Act of 1964, as amended.

The Memphis Area Transit Authority and the Amalgamated Transit Union Local 713 have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. By certification letter dated April 11, 1986, for project (TN-90-X036), the Department of Labor deleted interest arbitration from paragraph (15) of the parties November 28, 1975 Section 13(c) agreement, having determined that employees of MTM have a right to strike under the NLRA.

While the Department acknowledges the NLRB's exclusive jurisdiction to determine NLRA coverage, we are nevertheless, compelled to reach an educated conclusion regarding such coverage for purposes of fulfillment of 13(c)(2) requirements. In the absence of a recent definitive ruling under current NLRB standards, we believe that the Advice Memorandum of November 29, 1983 reflects the position that the General Counsel can be expected to take with respect to future cases in which the NLRB may be requested to assert jurisdiction.

CONCUR.									
Initials									
Date	12/16/86								
Last Name	HODGE		PERLM.		RICCO.		STEPP		
Office Symbol	LRP		LRP		LRP		BLMRCP		

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In addition, we feel it is necessary to address the concerns of the transit union regarding the possibility that MATA and MTM could later reverse their current postion and assert before the NLRB that the workers involved are not private employees. To ensure that Section 13(c)(2) requirements will continue to be met should there by a future change in the status of MTM employees, the Department has included a procedure for the prompt resolution of the question of an appropriate dispute resolution procedure. If agreement on an alternative dispute resolution procedure cannot be reached, either party may invoke the jurisdiction of the Secretary of Labor for his determination of appropriate action. Any such determination will be made in an expeditious manner to ensure employee rights are adequately protected. The language contained in item 3 below, will, therefore, be included in the contract of assistance. These arrangements provide to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

The Department of Labor has determined that the terms and conditions of the agreement dated July 23, 1975, without an addendum to paragraph (4) as indicated in our letter of certification dated April 11, 1986, and with certain language to be included in the contract of assistance, shall be made applicable to the instant project.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. The terms and conditions of the agreement dated July 23, 1975 shall be made applicable to the instant project, and shall be made part of the contract of assistance by reference;

2. The term "project" as used in the agreement of July 23, 1975 shall be deemed to cover and refer to the instant project;

3. The contract of assistance shall include the following language:

   Nothing in this certification shall be construed to enlarge or limit the right of the employees covered by this agreement or their employer, to utilize upon expiration of any collective bargaining agreement or otherwise

any economic measures that are not inconsistent or in conflict with the collective bargaining agreement or applicable law; provided, however, that in the event said right to take economic measure is lost by operation of law, the parties will renegotiate the applicability of paragraph (15) of their November 28, 1975 agreement or an alternative procedure to resolve disputes other than those arising out of the 13(c) agreement. If no agreement is reached, either party may invoke the jurisdiction of the Secretary of Labor for a determination of the the issue and any appropriate action remedy or relief, including the amendment of previously certified projects which would otherwise no longer have a dispute resolution procedure in place."; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded substantially the same level of protection as are afforded to employees represented by the union under the July 23, 1975 agreement and this certification.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Frank T. Tobey, III/City

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

DEC 29 1986

Mr. Lee Waddleton
Regional Administrator
Urban Mass Transportation Administration
Region VII
6301 Rock Hill Road
Suite 303
Kansas City, Missouri 64131

Re: UMTA Application
Kansas City Area
Transportation
Authority
Downtown Improvements,
Passenger Shelters,
etc.
(MO-90-X033)

Dear Mr. Waddleton:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the Kansas City Area Transportation Authority (KCATA) and the Amalgamated Transit Union (ATU) executed an agreement dated April 24, 1973, which provided to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

In recent letters to the ATU and the Department of Labor the KCATA has expressed a desire to replace the interest arbitration provisions contained in paragraph (17) of their April 24, 1973 13(c) agreement with a fact-finding procedure and to include additional language addressing the issue of subcontracting as an addendum to that agreement. The subsequent exchange of letters and the meeting held at the Department have made it clear that the parties are unable to agree on either of these issues.

In connection with the instant project, the KCATA in its last letter dated November 6, 1986, proposed that a fact-finding procedure contained in Appendix A to that letter be substituted for the dispute resolutions procedures in paragraph (17) of the April 24, 1973 agreement for the purpose of resolving interest disputes. The transit authority contends that the current

procedures are "cumbersome, time consuming and expensive." The ATU has taken the position that there is "no reasoned justification for departure from the standard 'piggyback' certification" on the existing agreement.

The Department has reviewed the materials submitted by the parties in making its analysis of their respective positions. We have analyzed the requirements of the Federal law, the collective bargaining agreement, the bargaining history of the parties and other pertinent factors specific to the situation.

Section 13(c) does not specifically require conventional interest arbitration over the terms of a collective bargaining agreement. However, in those instances where employees have lost the right to strike, some dispute resolution procedures whether it be interest arbitration, fact-finding, final-offer selection, or a combination thereof, must be included in the protective arrangements of the Department's certification to satisfy the Section 13(c)(2) requirements for continuation of collective bargaining rights. In the absence of the parties' mutual agreement to continue to utilize interest arbitration, the Department will not here require that the interest arbitration provision previously certified be continued. The parties, of course, may agree to the use of interest arbitration as an alternative dispute resolution procedure at any time if they so desire.

In view of the above, the Department of Labor has determined that an appropriate dispute resolution procedure for application to the instant project is that contained in the final proposal by KCATA. This procedure, which is attached as Appendix A to this letter, provides for (1) the appointment of a neutral mediator at the request of either party, and (2) mandatory factfinding if deemed useful by the mediator or at the request of either party. In accordance with the procedures established in the Appendix, the factfinder shall have the power to make inquires and investigations, hold hearings, or take such other steps as are deemed appropriate in order to discharge the factfinder's function. The factfinder shall then make non-binding findings and recommendations. If either party rejects the findings and recommendations, it shall state with particularity the reason or reasons for rejection. In such event, the factfinder must have published in the local media the recommendations for settlement of the labor dispute together with the statement provided by the rejecting party.

The Department has, therefore, determined that for interest disputes the mediation and fact-finding procedures contained in Appendix A shall substitute for the interest arbitration procedures contained in Paragraph (17) of their April 24, 1973 13(c) agreement. We are therefore, modifying Paragraph (17) of the parties' April 24, 1973 agreement to eliminate interest arbitration by

deleting the word "labor" from line 1 of this section and substituting the word "grievance", and deleting the words

> ..."labor dispute" shall be broadly construed and shall include any controversy concerning wages, salaries, working conditions or benefits, including health and welfare, sick leave, insurance or pension or retirement provisions, the making or maintenance of collective bargaining agreements, the terms to be included in such agreements, the interpretation or application of such agreements, the adjustments of grievances, any claim, difference, or controversy arising out of or by virtue of any of the provisions of this agreement...

and substituting "'grievance dispute' shall be construed to mean any controversy regarding the application, interpretation or enforcement of any of the provisions of this agreement."

With respect to the issue of subcontracting raised by KCATA's proposal of an addendum to the April 24, 1973 13(c) agreement, to the extent that subcontracting language exists in a collective bargaining agreement that language would be protected and continued under Section 13(c). While the Department of Labor has taken the position that the parties may voluntarily agree to include subcontracting language in a 13(c) agreement, in the instant project it is not mandatory that this issue be addressed. Absent the parties' mutual agreement to include such language for the instant project, the Department will not require it for the purpose of this certification.

Upon careful consideration of all of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Sections 13(c)(1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all the requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. The terms and conditions of the agreement dated April 24, 1973, with the above modification to paragraph (17) and the addition of Appendix A, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement of April 24, 1973, shall be deemed to cover and refer to the instant project; and

3. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the April 24, 1973 agreement, as modified, and this certification.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Richard Davis/KCATA

Attachment

LRP:DHodge:ilm:2-17-87
Rm:N5416:357-0473

JAN 23 1987

Mr. Peter N. Stowell
Regional Administrator
Urban Mass Transportation Administration
Region III
841 Chestnut Street
Suite 714
Philadelphia, Pennsylvania 19107

Re: UMTA Applications
Lexington Transit Authority
Transit Transfer Facility
KY-90-X027
KY-90-0028
KY-05-0029
Conversion of 4 Trolley Buses From Gasoline to Diesel
(KY-90-X016) #1

Dear Mr. Stowell:

This is in reply to the request from your office that we review the above captioned applications for grants under the Urban Mass Transportation Act of 1964, as amended.

In connection with previous grant applications, the Lexington Transit Authority and the Amalgamated Transit Union agreed to certification based on the terms and conditions set forth in an agreement dated March 19, 1973. The Department of Labor in its certification letter of April 15, 1986, has modified this agreement to exclude interest arbitration provisions which the parties were unable to agree upon, and has included a fact-finding procedure.

The Department referred project numbers KY-90-X027, KY-90-0028 and KY-05-0029 on September 18, 1986 and project number KY-90-X016#1 on September 22, 1986, to the parties, requesting their views concerning fair and equitable protections satisfying the requirements of Section 13(c) of the Act. Our referals

CONCURRENCES									
Initials		1/23/87							
Date									
Last Name		HODGE	PERLM	STEPP					
Office Symbol		LRP	LRP	ADM					

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indicated that certification of the pending projects would be based on our certification letter of April 15, 1986 unless one or both of the parties objected to those terms. Should objections arise, the parties would be given the opportunity to discuss alternative arrangements.

On October 17, 1986, the Amalgamated Transit Union responded to the Department's referrals objecting to certification of the instant projects based on our April 15, 1986 certification for reasons set forth in their Memorandum of Final Position dated February 28, 1986. The ATU has also indicated that without waiving their fundamental objections to the earlier certification, they would further urge modifications to procedures in our certification of April 15, 1986, should the Department certify the instant projects on that basis. The ATU has proposed these modifications to ensure that the factfinding procedures herein conform with 13(c)(2) requirements that an appropriate dispute resolution mechanism be in place prior to the Department's certification.

On January 5, 1987, the Lexington Transit Authority responded to the ATU's request for modifications in our April 15, 1986 certification agreeing to those modifications outlined below:

1. The terms and conditions of the expiring collective bargaining agreement, absent written mutual agreement by the parties to the contrary, shall remain in place following the expiration of such agreement until the effective date of a successor agreement between the parties or until the factfinding procedure is completed, whichever is earlier.

2. The parties have agreed to submit their positions on all outstanding issues to the other party and have agreed that the listing of unresolved issues and the parties' positions thereon shall be submitted to the factfinder.

3. In order to clarify that factfinding may occur following contract expiration the word "beginning" shall be substituted for the word "within" in the first line of the fourth paragraph on page one of Appendix A.

4. The parties have agreed that the factfinder will apprise them of the rules and procedures which will be applicable in advance of the factfinding hearing should the factfinder be obligated to follow rules other than those of the Federal Mediation and Conciliation Service.

For reasons set forth in the Department's certification letter of April 15, 1986, we have determined that the terms and conditions of the Department's letter of April 15, 1986, as modified above, shall be made applicable to the instant projects.

Therefore, upon careful consideration of all the circumstances, including consideration of the provisions satisfying each of the five matters specified in Sections 13(c)(1) through (5) of the Act, DOL has determined that the protective arrangements described below are fair and equitable and meet the requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. The terms and conditions of the Department of Labor's certification letter of April 15, 1986, as modified in items 3 through 6 below, shall be made applicable to the instant projects and made part of the contracts of assistance, by reference;

2. The term "project" as referred to in the certification of April 15, 1986, shall be deemed to cover and refer to the instant projects;

3. The terms and conditions of the expiring collective bargaining agreement, absent written mutual agreement by the parties to the contrary, shall remain in place following the expiration of such agreement until the effective date of a successor agreement between the parties or until the factfinding procedure is completed, whichever is earlier;

4. The parties have agreed to submit their positions on all outstanding issues to the other party and have agreed that the listing of unresolved issues and the parties' positions thereon shall be submitted to the factfinder;

5. In order to clarify that factfinding may occur following contract expiration the word "beginning" shall be substituted for the word "within" in the first line of the fourth paragraph on page one of Appendix A;

6. The parties have agreed that the factfinder will apprise them of the rules and procedures which will be applicable in advance of the factfinding hearing should

[redacted] finder be obligated to follow rules other than [redacted] the Federal Mediation and Conciliation Service;

[redacted] of urban mass transportation carriers in the service area of the projects, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the April 15, 1986 certification, as modified by items 3 through 6 herein, and this certification.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Patrick Hamric/LEXTRAN

RP:BANDRES:do:02-19-87
P:Rm. N5416:357-0473

FEB 13 1987

Mr. Joel Ettinger
Regional Administrator
Urban Mass Transportation
Administration
Region V
300 South Wacker Drive, Suite 1740
Chicago, Illinois 60606

RE: UMTA Applications
SORTA
Operating Assistance
Purchase Maintenance Equipment,
etc.
(OH-90-X072)
(OH-90-X059)-02

Dear Mr. Ettinger

This is in reference to the above captioned applications which we are processing for grants under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the Southwest Ohio Regional Transit Authority (SORTA) and the Amalgamated Transit Union (ATU) executed an agreement dated August 29, 1975 which provided to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

The Department of Labor (DOL) is aware that SORTA and the ATU disagree over the inclusion of the interest arbitration provision in their 13(c) agreement. The ATU has a standing objection to the certification of UMTA projects based on arrangements in which the interest arbitration provision has been deleted and the certification is issue on the basis of terms imposed by DOL for projects OH-90-X044-F and OH-90-X045-F.

We have reviewed the ATU's letter dated November 21, 1986, to Mr. Schlossberg regarding the certification of the pending projects. We have reviewed the parties positions and with the exception of the additional language in item 3 below, the terms and conditions of the previous certification will remain unchanged for purposes of this certification.

CONCURRENCE								
Initials ►	3/2/87							
Date ►								
Last Name ►	ANDRES		PERLM.		RICCO.		STEPP	
Office Symbol ►	LRP		LRP		LR		BLMRCP	

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The additional language will ensure a full and fair airing of the parties' issues and will also ensure that the parties will give serious consideration to the fact-finding recommendations. The language will also guard against the unilateral control by the employer over mandatory subjects of collective bargaining in their dispute resolution procedure.

Therefore, for reasons stated in DOL's determination letter dated January 31, 1986 for the City of Cincinnati for projects (OH-90-X044-F) and (OH-90-X045-F), DOL makes the certification with respect to the instant projects on condition that:

1. The terms and conditions of the agreement dated August 29, 1975, with the exclusion of Sections (17) and (18) and supplemented by Section 4117.14 of the Ohio Revised Code, and item three below, shall be made applicable to the instant projects and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement of August 29, 1975, with the exclusion of Sections (17) and (18) and supplemented by Section 4117.14 of the Ohio Revised Code, shall be deemed to cover and refer to the instant projects;

3. The contracts of assistance shall include the following language:

   "In the absence of written mutual agreement by the parties to the contrary, the terms and conditions of any expiring collective bargaining agreement shall remain in place following the expiration of such agreement until the effective date of a successor agreement between the parties, or seven days after the fact-finders report and recommendation is sent to the employer, employee organization and the State Relations Board, whichever is earlier. If needed the parties may further follow the procedures established in Section 4117.14 of the Ohio Revised Code."

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

FEB 27 1987

Mr. Peter Stowell
Regional Administrator
Urban Mass Transportation Administration
Region III
Philadelphia, Pennsylvania 19106

Re: UMTA Application
Chattanooga Area
Regional Trans-
portation
Authority (CARTA)
Operating Assistance;
Purchase Seven
35-foot Replace-
ment Buses, etc.
(TN-90-X046)

Dear Mr. Stowell:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended. In connection with previous certifications, the Department of Labor has noted that the Chattanooga Area Regional Transportation Authority (CARTA) and the Amalgamated Transit Union (ATU) have been in disagreement since 1979 over the force and effect of paragraph (9) of their May 30, 1975 Section 13(c) agreement. This paragraph contains an interest arbitration provision which the parties had originally agreed to in 1972 and which had been included in protective arrangements for all UMTA applications prior to August 19, 1981.

Beginning in 1981, certification letters for CARTA projects stated that the "Department of Labor does not require that Section 13(c) arrangements provide for conventional interest arbitration of new contract terms. However, in those instances where employees lost the right to strike, the parties should agree upon a procedure for the resolution of labor disputes." Our certification, therefore, was based upon the parties' agreement to continue bargaining in good faith over an alternative dispute resolution mechanism.

Since September 15, 1982, the Department of Labor has certified CARTA projects on the basis of the May 30, 1975 agreement without the interest arbitration provisions of paragraph (9), with additional language stating that certification was without prejudice to the positions of the parties in any pending or future litigation over the force and effect of paragraph (9).

In January 1986 the parties undertook negotiations over an alternative dispute procedure at the direction of the Department and were able to agree upon a mediation and fact-finding procedure which, the ATU asserted, "is an appropriate prelude to an interest arbitration requirement" and which, CARTA suggested, "meet(s) the statutory requirements," and is an appropriate basis for continued certification of UMTA projects. The Department determined, in its certification of March 7, 1986, that this procedure would be substituted for the interest dispute precedures in paragraph (9) of the May 30, 1975 agreement.

On October 30, 1986, the Department referred project number TN-90-X046 to the parties, and requested their views on fair and equitable protections satisfying the requirements of Section 13(c) of the Act. Our referral indicated that certification of the pending project would be based on their May 30, 1975, 13(c) agreement, as modified by the Department's letter of March 7, 1986, and the Model Agreement with Appendix A to the March 7, 1986 certification as the addendum pursuant to paragraph (4).

On November 14, 1986, in response to the Department's referral of the pending project, legal counsel for CARTA informed us that CARTA had been obligated to adopt a privatization policy pursuant to Section 8(e) of the Urban Mass Transportation Act and that CARTA is, therefore, "obligated to seek certain changes in its protective arrangements." They indicated that they would furnish a list of proposed changes to the ATU. The Department received CARTA's proposal incorporating those changes by letter dated December 15, 1986.

By letter dated December 16, 1986, the ATU wrote the Department, indicating that they had not received a 13(c) proprosal from CARTA (the proposal was received shortly thereafter) and outlining their objections to certification of the pending CARTA project based on our March 7, 1986 letter. The ATU argues that the Department's March 7, 1986 letter, excising interest arbitration from the parties' Section 13(c) Agreement and substituting in lieu thereof a mediation and fact-finding procedure without agreement by and between the parties, exceeded the Secretary's authority. The ATU further states that CARTA has presented no argument that interest arbitration is detrimental to its operations and has not demonstrated that the provisions of paragraph (9) of the May 30, 1975 Section 13(c) agreement are unlawful under state law. The ATU further indicated its belief that the factfinding procedures in the March 7, 1986 letter are "flawed" and detailed numerous criticisms of those procedures.

By letter dated January 30, 1987, CARTA submitted modifications to the fact-finding procedure included in our March 7, 1986 letter. This modified procedure, which was developed by CARTA in response to the ATU's criticisms, was not agreed to by the parties. The Department finds, however, that it ensures a full

and fair airing of the parties' issues, permits either party to invoke the services of a neutral, and ensures fully informed and fair recommendations for settlement by an impartial fact-finder. The procedure provides for significant consideration of the positions of both sides in a bargaining dispute, thereby preventing unilateral employer control over mandatory subjects of collective bargaining. In addition, it ensures that the parties will give serious consideration to the fact-finders' recommendations by requiring publication of any disagreements that remain at the end of this process.

This Department has examined the ATU's arguments concerning the degree of public pressure which would be exerted under the earlier fact-finding procedure and has concluded that both procedure and the modification prepared by CARTA sufficiently avoid unilateral employer control over the terms of the collective bargaining agreement and ensure a full airing of all issues before the factfinder.

The Department of Labor, for the reasons set forth in our certification of March 7, 1986 and above, will substitute the proposed fact-finding procedures attached to CARTA's January 30, 1987 letter to the Department for the interest arbitration procedures in paragraph (9) of the May 30, 1975 agreement. Procedures in paragraph (9), however, will continue to apply for the resolution of disputes over the interpretation, application, and enforcement of the terms and conditions of the 13(c) arrangements.

In addition, in the context of discussions regarding proposed modifications to existing arrangements which address CARTA's "privatization" concerns, the transit authority proposed that paragraph (23) of the Model Agreement be excised from that agreement. The parties were unable to agree on this proposal in their 13(c) negotiations, which included a meeting on February 27, 1986 at the Department of Labor. However, the parties have stipulated that it is agreed that there is an arbitrator's award on the subject which states:

> " Section 23 of that agreement provides that the designated Recipient shall be the sole provider of mass transportation services to the Project and such services shall be provided exclusively by its employees; but it also indicates that this is to be in accordance with any applicable collective bargaining agreement."

Upon careful consideration of all of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Section 13(c) (1) through (5) of the Act, we have concluded that the protective arrangements describe below are fair and equitable and in accordance with all requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. The terms and conditions of the agreement dated July 23, 1975, with Appendix A, hereto attached as the addendum pursuant to paragraph (4) thereof, shall be made applicable to the operating assistance portion of the instant project and made part of the contract of assistance, by reference;

2. The terms and conditions of the agreement dated May 30, 1975, as modified through the substitution of Appendix A, hereto attached, for the interest arbitration provisions in paragraph (9), shall be applicable to the capital portion of the instant project and made part of the contract of assistance, by reference;

3. The term "project" as used in the agreements of July 23, 1975 and May 30, 1975, as modified, shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant project;

4. The contract of assistance shall include the following language:

> "With respect to the Model Agreement, the parties stipulate that there is an arbitrator's award which states `Section 23 of that agreement provides that the designated Recipient shall be the sole provider of mass transportation services to the Project and such services shall be provided exclusively by its employees; but it also indicates that this is to be in accordance with any applicable collective bargaining agreement.';" and

5. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded substantially the same levels of protection

as are afforded to employees represented by the union under the July 23, 1975 and May 30, 1975 agreements, as modified, and this certification.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
George Derryberry/Miller & Martin
Maury Miles/CARTA

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

MAR 19 1987

Mr. Peter N. Stowell
Regional Administrator
Urban Mass Transportation Administration
Region IV
1720 Peachtree Road, N.W., Suite 400
Atlanta, Georgia 30309

Re: UMTA Application
Metropolitan Dade County
Operating Assistance;
Purchase Buses and
Office Equipment, etc.
(FL-90-X062) FINAL

Dear Mr. Stowell:

This is in reference to the above captioned project referred to the Department of Labor for certification under the Urban Mass Transportation Act of 1964, as amended. By letter dated September 29, 1986, the Department issued an interim certification for the above project, resolving all but one issue upon which the parties were in disagreement.

The Department requested that the Metro Data Transit Agency (MDTA) and Transport Workers Union Local 291 (TWU) continue to negotiate on the issue of opportunity for employment in new jobs with the transit authority, as provided for in paragraphs (7) and (8) of their August 31, 1978 agreement. We did not include these paragraphs in our interim certification of the above project. The parties submitted their positions to the Department on February 6 and February 9, 1987 after they failed to reach an agreement on what language, if any, should be included in the Department's final certification.

The TWU has proposed that the Department continue to utilize the same language which has been used in all 13(c) agreements since 1978, indicating that "the County is attempting to renege from commitments it made in this very important area." MDTA has, alternatively, proposed the following language:

> "Employees covered by this agreement will have the opportunity to apply for County job openings, created as a result of the project, along with other qualified applicants, in accordance with Dade County employment procedures".

The County argues that the first opportunity for employment in any new rail job was an additional benefit given to employees in the TWU bargaining unit for startup of the rail project which occurred in May 1984. They believe that new jobs should not be reserved solely for TWU bargaining unit employees.

The Department has reviewed the positions most recently submitted by the parties and the information received prior to our September 29, 1986 certification. In the absence of the parties' mutual agreement to continue to utilize paragraphs (7) and (8) of the August 31, 1978 agreement, the Department has determined that these paragraphs should not be required for certification of this project. We believe that the interests of employees are protected and the Section 13(c)(4) requirement for "priority of reemployment of employees terminated or laid off" is met by the inclusion of the language proposed by the MDTA and paragraph (6) of the existing agreement. The additional language proposed by MDTA will, together with the arrangements included in our certification of September 29, 1986 provide fair and equitable arrangements satisfying the requirements of sections 13(c)(1) through (5) of the Act.

Accordingly, the Department of Labor supplements its certification of September 29, 1987 with the following language which will be made a condition of that certification retroactively:

> "Employees covered by this agreement will have the opportunity to apply for County job openings, created as a result of the project, along with other qualified applicants, in accordance with Dade County employment procedures".

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Willaim G. Stieren/MDTA
Carmen Davis/MDTA
Ken McKay/TWU
Malcolm Goldstien/TWU

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

MAR 19 1987

Mr. Lou Mraz
Regional Administrator
Urban Mass Transportation Administration
Region VIII
Department of Transportation
Prudential Plaza
Suite 1822
Denver, Colorado 80265

Re: UMTA Applications
Regional Transportation
District
Operating Assistance
(CO-90-X026)
Rehabilitate 32 Buses,
Purchase Engines and
Transmissions, etc.
(CO-90-X028)

Dear Mr. Mraz:

This is in reply to the request from your office that we review the above captioned applications for grants under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the Regional Transportation District (RTD) and Amalgamated Transit Union (ATU) Local 1001, executed an agreement dated April 7, 1976, which provided to the employees represented by the union protections satisfying the requirements of section 13(c) of the Act.

Positions of Parties:

The Department of Labor has been aware that the Regional Transportation District (RTD) and the Amalgamated Transit Union (ATU) have been in disagreement over the use of interest arbitration provisions contained in paragraph (15), of their April 7, 1976 section 13(c) agreement since 1983. The RTD has argued that the employees of the RTD have the right to strike under the Colorado Labor Peace Act (CLPA). The RTD states that the CLPA provides a sufficient dispute resolution procedure to satisfy the continuation of collective bargaining rights requirement of section 13(c) of the Act. The RTD further asserts that binding interest arbitration for transit employees is unconstitutional as a result of the Colorado Supreme Courts' decision in Greeley Police Union v. City Council of Greeley, 191 Colo. 419, 553 p2d. 790(1976). They believe this position is

further substantiated by the state district court decision in RTD v. Division 1001, ATU which relied on Greeley in finding the interest arbitration provision in the parties 13(c) agreement was similarly unconstitutional. The ATU by letter dated December 2, 1986, referencing letters of February 22, 1983 and December 27, 1985 continues to argue that the right to strike contained in the CLPA is limited and enjoinable, and further, that the CLPA merely encourages rather than mandates interest arbitration should the right to strike be enjoined. The ATU also indicates that Greeley is not applicable to the employees of RTD. The ATU urged the continuation of the 1976 13(c) agreement, including paragraph (15), as the basis for certification for the instant projects. In its recent letter regarding RTD projects, the ATU also indicated to DOL that the parties' existing collective bargaining agreement contained a specific provision addressing the appropriate basis for agreements required under 13(c).

On the basis of the information presented to us by the parties, the Department of Labor certified several grant applications for the RTD on May 27, 1986 on the basis of the April 7, 1976 agreement, deleting paragraph (15) and indicating that there was a right to strike, provided for under Colorado state law (C.R.S. (1973) 8-3-101).

The Department of Labor determined that the employees of the RTD do have the right to strike and that this, in and of itself, is a sufficient dispute resolution procedure to ensure fulfillment of the section 13(c)(2) requirement for continuation of collective bargaining rights. Although it appears that transit employees can de denied the right to strike under the state statute, this right has never been denied since the inception of the RTD. Furthermore, were the ATU to be denied the right to strike by order of the Director, he is required pursuant to Section 8-3-112-(2) of the CLPA to order the parties to arbitration, the results of which would be binding.

The RTD has taken the position that certification of the instant projects should be on the same basis as contained in our letter of May 27, 1986. The ATU, however, still believes that the Departments' decision to delete interest arbitration was arbitrary and capricious. The union insists that their right to invoke interest arbitration is protected under Section 7 of the current collective bargaining agreement between the RTD and the ATU. Section 7 of the parties current collective bargaining agreement reads:

> " The parties agree that the basic protective terms and conditions promulgated by the U.S. Secretary of Labor pursuant to Section 13(c) of the Urban Mass Transportation Act of 1964, as amended, and agreed to and executed by the parties on April 7, 1976, shall form the basis for all agreements between the Employer and the Union required under 13(c), or any successor legislation."

The ATU asserts that, under C.R.S. 8-3-108(1)(f) it is an unfair labor practice for an employer to "[V]iolate the terms of a collective bargaining agreement, including an agreement to accept an arbitration award." The ATU also states that "deletion of the interest arbitration provision . . . violated the mandatory requirement of section 13(c)(1) of the Act that rights, privileges and benefits under existing collective bargaining agreements be preserved."

Finally, the ATU, adds that, without waiving their "foundational and fundamental objections" to certification on the basis of our May 27, 1986 certification, the dispute resolution procedure of the CLPA is insufficient to meet the requirements of the Act. In order to avoid unilateral control over conditions of employment after the expiration of their collective bargaining agreement the union suggests that supplemental language should be included in the contract of assistance to the affect that, "absent written mutual agreement by the parties to the contrary, the terms and conditions of any expiring collective bargaining agreement must remain in place during any period following contract expiration and pending the right of Local Union 1001 to engage in a strike pursuant to C.R.S. 8-3-113-(3) or, if that right is denied by the Division of Labor, pending arbitration pursuant to C.R.S. 8-3-112(2)."

The ATU indicates that, without such language, the transit authority would be free to unilaterally alter the terms and conditions of employment and that this would be inconsistent with the mandate of Section 13(c) as indicated in Amalgamated Transit Union v. Donovan, 767 F. 2d 939, 956 D.C, Cir. 1985).

Framework of State Law and Court Decisions

It is clear that the RTD employees have the right to strike under the Colorado Labor Peace Act as discussed in our certification letter of May 27, 1986. DOL acknowledges that the right to strike is a qualified right in that representatives of RTD employees must notify the Division of Labor in the State Department of Labor and Employment in writing forty days before they intend to strike (C.R.S. 8-3-113-(1)). The Director may deny the right to strike, (although, in practice, this has not happened) and he would then, presumably, be required to provide for a process of binding arbitration. In concluding that binding arbitration would probably be required under the CLPA should the right to strike be denied, the Department has examined two court cases cited by the parties. DOL believes that the Colorado Supreme Court's decision in Greeley Police Union v. City Council of Greeley, 191 Colo. 419, 553 P.2d 790 (1976) is inapplicable to the instant situation involving employees of a mass transportation authority. The court specifically noted that in the state of Colorado there is no state legislation concerning the rights of public employees to engage in collective bargaining, other than the one exception provided by the CLPA, which did not apply in the case before them. Id. at 791.

The exception noted by the Greeley Court does, however, apply to mass transit employees and is contained in Section 8-3-104(12) of the CLPA, which defines the term " employer". Section 8-3-104(12) states that the term does not include the state or any political subdivision thereof, "except where the state or any political subdivision thereof acquires or operates a mass transportation system. . ." The Greeley decision thus appears to be inapplicable to the transit system operated by the RTD inasmuch as the Court was not passing on labor practices governed by the CLPA.

The Department has also reviewed the 1984 district court decision in RTD v. Division 1001, ATU which applied the Greeley rationale in finding interest arbitration unconstitutional. The ATU did not appeal this district court decision. Having noted that the Greeley decision indicated that it was not addressing labor practices under the CLPA, we conclude that the issue before the state district court was distinguishable from Greeley and that interest arbitration between the RTD and ATU is not necessarily unconstitutional. The Department, therefore, believes that the parties would probably be required to participate in mandatory binding interest arbitration as required under the CLPA, should the ATU be denied the right to strike by the Director of the Colorado Division of Labor.

It appears that the RTD also believes that, under some circumstances, interest arbitration may not be prohibited. In their January 14, 1987 letter to the Department, RTD states:

> "Conceivably, any attempt to unilaterally change terms and conditions of an employment would violate the Director's order to arbitrate which, pursuant to Colo. Rev. State. §8-3-114, can be enforced in state court (emphasis added).

The RTD elsewhere indicates that, in view of the Greeley and Division 1001 decisions "even if the Department were to certify the RTD's grants with the prior interest arbitration provision, as now requested by the Union, the provision would not be legally enforceable by either party." However, because the Division 1001 decision was not appealed, it is not clear whether the Colorado Supreme Court would extend its Greeley rationale to interest arbitration between the RTD and its transit workers. If the Colorado Supreme Court decides that arbitration as it applies to employees of a mass transit authority is unconstitutional, such provisions would cease to be enforceable under Jackson Transit Authority v. Local Division 1285, Amalgamated Transit Union, 457 15(1982). Should that occur, the CLPA will, if necessity require a supplementary procedure to resolve interest disputes if the right to strike is denied. DOL would at that time, take appropriate steps to ensure that the parties expeditiously negotiate such procedures.

Preservation of Collective Bargaining Rights Under 13(c)(1)

The Department of Labor, has just been provided with a copy of the parties' March 1, 1985 agreement which continues in effect at this time. As indicated by the ATU, there is a specific provision in that agreement which provides for the continued utilization of the parties' April 7, 1976 section 13(c) agreement for 13(c) certification purposes. The RTD does not in their January 14, 1987 letter to DOL, dispute that they agreed to this provision, nor do they address its applicability other than to indicate that paragraph (15) of the April 7, 1976 agreement would no longer be enforceable as a result of the aforementioned Greeley and Division 1001 decisions.

Given that interest arbitration may not be unconstitutional, the Department must examine its actions in previously deleting this provision from the parties' agreement in light of the requirements of the Act under section 13(c)(1). This section requires that, in order to be eligible for funds under the Act, "fair and equitable arrangements" must be made which include, among other things, "the preservation of rights, privileges and benefits . . . under existing collective bargaining agreements or otherwise." 49 U.S.C. §1609(c). (Emphasis added.)

Protective arrangements under section 13(c)(1) are expected to preserve and continue rights, privileges and benefits in existing collective bargaining agreements. However, upon expiration of a collective bargaining agreement specific provisions in collective bargaining agreements which are not foreclosed from further bargaining under applicable law or contract may be modified by negotiations and voluntary agreement by the parties.

In this particular situation, by deleting the interest arbitration provision contained in the 1976 13(c) agreement and incorporated in Section 7 of the collective bargaining agreement, the Department in effect, would allow the RTD at its unilateral request to change the terms of its contract without resorting to the collective bargaining process. This would be contrary to the intent of the Act that any changes in such agreements be negotiated by the parties. While the parties are not required under the Act to have an interest arbitration procedure, if such a procedure is in place in the collective bargaining agreement , it cannot be changed without further bargaining and regotiation between the parties over new contract terms. Therefore, it appears that the interest arbitration provision cannot be deleted except through the collective bargaining process.

The Department was not aware of the existence of the specific provision in Section 7 of the parties' current collective bargaining agreement and, therefore, erred in our earlier certifications which excised interest arbitration from the April 7, 1976 agreement. It is clear, however, that, during the term of the parties collective bargaining agreement DOL cannot delete paragraph (15) from the agreement at the unilateral request of one of the parties. If the parties continue to dispute the enforceability of this provision under Colorado state

law, the appropriate forum for resolution of their dispute lies in the state court. Section 13(c) would not require the continuation of a specific collective bargaining provision which is clearly unconstitutional.

Avoiding Unilateral Control Over Employment Conditions

The CLPA requires that, where exercise of the right to strike is desired written notice must be filed not less than forty calendar days prior to the date contemplated for such strike (C.R.S. 8-3-113(3)). Elsewhere in the Colorado law, it provides that "employers and employees shall give the Director and the one to the other at least thirty days' prior written notice of an intended change affecting conditions of employment or with respect to wages or hours." C.R.S. 8-1-125(2). Therefore, under Colorado law, the ATU must give forty days written notice before it strikes while the RTD is only required to give thirty days notice before it changes terms or conditions of employment. Conceivably, the RTD could declare its intent under C.R.S. 8-1-125(2) to change the terms of the collective bargaining agreement before or immediately after the ATU had declared its intent to strike under C.R.S. 8-3-113(3). This would leave a window period during which the RTD could unilaterally change the contract.

The RTD has indicated that the language suggested by the ATU is not necessary because

> "Under the National Labor Relations Act, and hence under the Colorado Labor Peace Act, it is well settled that an employer cannot unilaterally change the terms and conditions following the expiration of a collective bargaining agreement until it has satisfied its duty to bargain in good faith and until the parties have reached impasse. Then and only then can the employer unilaterally implement its last offer."

Similarly, with respect to an order to arbitrate the RTD indicates that such unilateral changes could be remedied by an arbitrator or through the state courts. It is clear, nevertheless, that a situation exists under the CLPA where an employer could unilaterally change the collective bargaining agreement before dispute resolution procedures are fully utilized.

The ATU, as noted earlier, asserts that the statutory procedure under the CLPA must be supplemented by a provision requiring that the "terms and conditions of any expiring collective bargaining agreement must remain in place during any period following contract expiration and pending the right of Local Union 1001 to engage in a strike pursuant to C.R.S. 8-3-113(3) . . .". The union concludes that "such a provision is an absolute requirement in any dispute resolution procedure satisfying the dictates of 13(c)" in accordance with ATU v. Donovan.

The ATU is correct in its assertion that the courts have refused to allow the Secretary to certify agreements which allow employers unilateral control over mandatory subjects of collective bargaining. ATU v. Donovan, 767 F.2d 939, 954 (D.C. Cir. 1985). The Donovan court stated:

> While it is true that congress neither protected the right to strike nor required interest arbitration as a condition of federal transit aid, it is inconceivable that a system that allows an employer to set wages unilaterally is consistent with the continuation of collective bargaining rights required by section 13(c). We hold that while section 13(c) does not entitle transit workers to any particular form of binding arbitration, it does require some process that avoids unilateral control by an employer over mandatory subjects of collective bargaining.

The Department has consistently complied with the Courts' guidance in all situations where employees have lost a private sector right to strike. The Department, therefore, has included language similar to that suggested by the ATU in section 3 below.

With respect to project (CO-90-X028), the ATU has requested that the following language regarding the "purchase and installation of new engines and transmissions on 87 articulated buses" (emphasis in original letter of March 10, 1987) be included in the Departments' certification:

> "It is understood that ATU Local 1001 has reserved its right to grieve the contracting out of any and all Project work which it believes to be in violation of past practice and/or applicable collective bargaining agreements."

While the RTD has not responded to this proposed language, the Department believes, nevertheless, that this certification in no way diminishes or expands the right of the union to bring grievances under their collective bargaining agreement or applicable law.

Upon careful consideration of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in section 13(c)(1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirements of section 13(c) of the Act. With respect to section 13(c)(2), this conclusion is based on our understanding that the employees of RTD are subject to Colorado state law which, as supplemented, provides for a dispute resolution procedure which is sufficient to meet the requirements of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. The terms and conditions of the agreement dated April 7, 1976, as supplemented by the Colorado Labor Peace Act, C.R.S. 8-3-101 et seq., shall be made applicable to the instant projects and made part of the contracts of assistance, by reference;

2. The term "project" as used in the agreement of April 7, 1976 shall be deemed to cover and refer to the instant projects;

3. The contract of assistance shall include the following language:

   "In the absence of written mutual agreement by the parties to the contrary, such agreement not prejudicing either party's rights or positions under the impasse procedures herein, the terms and conditions of any expiring collective bargaining agreement shall remain in place following the expiration of such agreement until the effective date of a successor agreement between the parties, or the completion of the impasse procedures provided for herein, whichever is earlier." and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the April 7, 1976 agreement, as supplemented, and this certification.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Stephen Foreman/RTD
John R. Kennedy/RTD

Chron

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington D C 20210

MAR 19 1987

Mr. Aubrey Davis
Regional Administrator
Urban Mass Transportation Administration
Region X
Department of Transportation
Federal Building, 915 Second Avenue
Suite 3106
Seattle, Washington 98174

Re: UMTA Application
Lane Transit District
Operating Assistance;
Purchase Bus and Bus
Related Facilities
(OR-90-X021)

Dear Mr. Davis:

This is in reply to the request from your office that we review the above captioned application for a grant which includes both operating and capital assistance under the Urban Mass Transportation Act of 1964, as amended.

The Lane County Mass Transit District (LTD) and the Amalgamated Transit Union have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. The terms and conditions of the July 23, 1975 agreement provide protections to employees represented by the union which satisfy the requirements of Section 13(c) of the Act in general purpose operating assistance project situations.

In connection with previous capital assistance applications, the Lane Transit District (LTD) and the Amalgamated Transit Union (ATU) Local 757, executed an agreement dated June 19, 1975, which provided to the employees represented by union protections satisfying the requirements of Section 13(c) of the Act.

The Department of Labor (DOL) has been aware that Lane Transit District (LTD) and the Amalgamated Transit Union (ATU) have for some time disagreed over the inclusion of an interest arbitration provision in their 13(c) agreement.

The ATU objects to certifications of the operating assistance portion of UMTA projects which fail to include paragraph (9) of the parties' 1975 Section 13(c) agreement as an addendum to the National Agreement, as well as any arrangements other than the entire June 19, 1975, Section 13(c) agreement for capital assistance, including its provision for interest arbitration. The LTD has proposed that the certification be made on the basis of the June 19, 1975 agreement, exclusive of paragraph (9).

On the basis of information previously presented to us by the parties, the Department of Labor certified a grant application for LTD on May 27, 1986 on the basis of the June 19, 1975 agreement, deleting paragraph (9). The Department determined that the employees of the Lane Transit District have the right to strike under Oregon Law. (ORS 243.726 (2)). Consequently, we have concluded that the parties need not negotiate an alternative dispute resolution procedure. The right to strike in and of itself can be a sufficient dispute resolution procedure to ensure the fulfillment of the Section 13(c) (2) requirement for continuation of collective bargaining rights.

The ATU's recent response to our referral of the instant project further argues against deletion of the interest arbitration provision. We have reviewed the ATU's letters dated February 2, 1987 and February 25, 1987 to the Department regarding the certification of this instant project. The Department, however, continues to believe that the previous interest arbitration provisions should not be made applicable to LTD projects for the reasons set forth in our May 27, 1986 letter.

Finally, the ATU adds that, without waiving their "foundational and fundamental objections" to certification on the basis of our May 27, 1986 certification, the dispute resolution procedure of the Oregon Law is insufficient to meet the requirements of the Act. In order to avoid unilateral control over conditions of employment after the expiration of their collective bargaining agreement the union asserts that supplemented language should be included in the contract of assistance to the affect that the terms and conditions of any expiring collective bargaining agreement must remain in place during any period following contract expiration and pending the completion of factfinding procedures pursuant to Oregon State Law.

The LTD has indicated that the language suggested by the ATU for the pending project is not necessary because the current collective bargaining agreement expires by its terms on June 30, 1987. Further, paragraph (9) of the 13(c) agreement explicitly provides that "Nothing in this... agreement shall be construed to... limit the right of the ... employer, to utilize upon expiration of any collective bargaining agreement... any economic measures that are not inconsistent or in conflict with the collective bargaining agreement or applicable law." Thus, LTD suggests that expiration of collective bargaining agreements, and the subsequent implementation of "economic measures" is expressly envisioned by the 1975 13(c) agreement. LTD further asserts that nothing in the 13(c) agreement makes any collective bargaining agreement perpetual, or even extant beyond the term which is provided in the collective bargaining agreement itself. It is not clear, however, that the instant situation was comtemplated when the above language was developed, as this is the same paragraph from which LTD desires to delete interest arbitration.

The ATU, however, is correct in its assertion that the Oregon statute would permit a public employer to exercise unilateral control over the terms and conditions of the collective bargaining agreement prior to the issuance and publication of the factfinder's report. The union concludes that it is an absolute requirement in any dispute resolution procedure satisfying the dictates of 13(c) in accordance with ATU v. Donovan, that a provision be included which prevents unilateral control over employment terms and conditions.

The courts have refused to allow the Secretary to certify agreements which allow employers unilateral control over mandatory subjects of collective bargaining. ATU v. Donovan, 767 F.2d 939, 954 (D.C. Cir. 1985). The Donovan court stated:

> While it is true that Congress neither protected the right to strike nor required interest arbitration as a condition of federal transit aid, it is inconceivable that a system that allows an employer to set wages unilaterally is consistent with the continuation of collective bargaining rights required by section 13(c). We hold that while section 13(c) does not entitle transit workers to any particular form of binding arbitration, it does require some process that avoids unilateral control by an employer over mandatory subjects of collective bargaining.

The Department has consistently complied with the courts' guidance in all situations where employees have lost a private sector right to strike. The Department, therefore, has included language similar to that suggested by the ATU in section 3 below.

Upon careful consideration of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Section 13(c) (1) through (5) of the Act, we have concluded that the protective arrangements describe below are fair and equitable and in accordance with all requirements of Section 13(c) of the Act. With respect to Section 13(c) (2), this conclusion is based on our understanding that employees of LTD are subject to Oregon state law which, as supplemented, provides for a dispute resolution procedure which is sufficient to meet the requirements of the Act.

Therefore, for reasons set forth above and in our certification letter dated May 27, 1986, DOL makes this certification with respect to the instant project OR-90-X021 on condition that:

1. The terms and conditions of the agreement dated June 19,1975, as supplemented by O.R.S. 243.650 et seq., and with the deletion from paragraph (9) of the words "shall be broadly construed and shall include, but not be limited to, any controversy concerning wages, salaries, hours, working conditions or benefits, including health and welfare, sick leave, insurance, or pension and retirement provisions, the making or maintaining of collective bargaining agreements, the terms to be included in such agreements and the interpretation or application of such collective bargaining agreements, any grievances that may arise," shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement of June 19,1975 shall be deemed to cover and refer to the instant project;

3. The contract of assistence shall included the following language:

   "Absent written mutual agreement by the parties to the contrary (such agreement not prejudicing either party's rights or position), the terms and conditions of any expiring collective bargaining agreement shall remain in place following the expiration of such agreement until the effective date of any successor agreement executed by the parties or the publication of the fact-finder's findings of fact and recommendations as provided for under O.R.S. 243.650 to 243.782, whichever is earlier."

4. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to employees represented by union under the June 19, 1975 agreement, with the above deletion from paragraph (9), and this certification.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Mark Pangborn/LTD
Joseph S. Kaufman/Esq.

DEP:JFLANAGAN:5/20/87:ka
Room N-5416 357-0473

ARR 24 1987

Mr. Richard Doyle
Regional Administrator
Urban Mass Transportation Administration
Region I
Kendall Square
55 Broadway
Cambridge, Massachusetts 02142

Re: UMTA Application
Pioneer Valley Transit
Authority
Operating Assistance;
Urban Mass Transit
Facility, Purchase
Vehicles, etc.
(MA-90-X065) Revised

Dear Mr. Doyle:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the Pioneer Valley Transit Authority (PVTA) and Amalgamated Transit Union (ATU) Locals 448, 537 and 1512 executed an agreement dated November 5, 1979. By certification letter dated April 24, 1986 for projects (MA-05-4130) and (MA-90-X050) the Department of Labor deleted interest arbitration from paragraph (15) of the parties agreement, having determined that employees of Springfield Transit Management (STM) have a right to strike under the NLRA. These arrangements provide to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

The Department of Labor has reviewed the letters forwarded to us with reference to the pending project. The Department remains convinced, however, that employees of SMT are covered under the NLRA and that no alternative dispute resolution procedure is required to ensure fulfillment of Section 13(c)(2) requirements. While the Department acknowledges the NLRB's exclusive jurisdiction to determine NLRA coverage, we are nevertheless, compelled to reach an educated conclusion regarding such coverage for purposes of fulfillment of 13(c)(2) requirements in the absence of a recent definitive ruling under current NLRB standards.

CONCURRENCES								
Initials ►								
Date ►	5/20/87							
Last Name ►	FLANAGAN		PERLMT	RICCO	STEPP			
Office Symbol ►	DEP		DEP	BLMRCP	ODUS			

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U.S. GPO: 1986-491-

In addition, we feel it is necessary to address the concerns of the ATU, should STM employees be denied the protections of the NLRA, including the full right to strike. To ensure that the Section 13(c)(2) requirements will continue to be met should there be a future change in the status of SMT's employees, the Department has supplemented the language in its April 24, 1986 certification to provide for prompt resolution of the question of an appropriate dispute resolution procedure. This language is contained in item 3 below and will be included in the contract of assistance.

The Department of Labor has determined that the terms and conditions of the agreement dated November 5, 1979, as modified by our letter of April 24, 1986, and certain language to be included in the contract of assistance, shall be made applicable to the instant project.

Upon careful consideration of all of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Sections 13(c)(1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. The terms and conditions of the agreement dates November 5, 1979, as modified by our letter of April 24, 1986, as supplemented by item three below, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement of November 5, 1979, as modified by our letter of April 24, 1986, shall de deemed to cover and refer to the instant project;

3. The contract of assistance shall include the following language:

   "Nothing in this certification shall be construed to enlarge or limit the right of the employees

covered by this agreement or their employer, to utilize upon expiration of any collective bargaining agreement or otherwise any economic measures that are not inconsistent or in conflict with the collective bargaining agreement or applicable law; provided, however, that in the event said right to take economic measures is lost by operation of law, the parties will renegotiate the applicability of paragraph (15) of their November 5, 1979 agreement or an alternative procedure to resolve disputes other than those arising out of the 13(c) agreement. If no agreement is reached either party may invoke the jurisdiction of the Secretary of Labor for a determination of the issue and any appropriate action, remedy or relief, including the amendment of previously certified projects which would otherwise no longer have a dispute resolution procedure in place."; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to employees represented by the union under the November 5, 1979 agreement, as modified by our letter of April 24, 1986, and this certification.

Sincerely,

John R. Stepp
Associate Deptuy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Robert Manz/PVTA

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

MAY 1 - 1987

Mr. Aubrey Davis
Regional Administrator
Urban Mass Transportation Administration
Region X
Federal Building
915 Second Avenue
Suite 3106
Seattle, Washington 98174

Re: UMTA Application
Snohomish County
Public Transportation Benefit
Area Corporation
Capital Cost of
Contracting for
Transit Services;
Buy-out of Coaches
at End of Contract
etc.
(WA-03-0062)

Dear Mr. Davis:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

The Snohomish County Public Transportation Benefit Area Corporation (Community Transit) and the International Association of Machinists and Aerospace Workers (IAM) have executed a letter agreement, dated April 22, 1987 which adopts the terms and conditions contained in the agreement of April 16, 1984 between Community Transit and Amalgamated Transit Union (ATU) Local 1576. These terms and conditions provide the employees represented by the IAM protections satisfying the requirements of section 13(c) of the Act.

Community Transit and the IAM have agreed that the terms and conditions of the letter agreement of April 22, 1987, shall be made applicable to the instant project.

In addition, in connection with a previous grant application, Community Transit and ATU Local 1576 executed an agreement dated April 16, 1984, which provided to the employees represented by the ATU protections satisfying the requirements of section 13(c) of the Act for previous projects.

During discussions between Community Transit and the ATU regarding appropriate protections for application to the instant project, two issues were raised concerning utilization of the parties' April 16, 1984 agreement to cover employees of ATE Management and Services Company, Inc. (ATE). ATU Local 1576 represents the employees of ATE which provides commuter service between Snohomish County and downtown Seattle under contract with Community Transit.

Following discussions over the areas of disagreement, Community Transit and the ATU requested that the Department assist them in their negotiations. A March 2, 1987 meeting was held in Washington for this purpose. Because the parties were unable to reach an agreement on all outstanding issues, we requested that they submit their positions to us for our determination of the appropriate arrangements for the instant project.

The parties initially agreed in principle that the April 16, 1984 agreement should be extended to cover employees of ATE and that Community Transit will be the party which is financially responsible for the protections provided in that agreement. The parties have not signed an agreement to this effect. However, the Department believes that, had the second issue, characterized by Community Transit as a limitation on the duration of protections for employees of ATE, not been raised, the parties would have agreed to modify the April 16, 1984 agreement to include ATE employees. The Department, therefore, has determined that appropriate protections will be provided for these employees by amending the April 16, 1984 agreement to substitute the words "employees covered by this agreement" for the phrase "employees of the Recipient" appearing in the agreement's third "Whereas" clause.

During the March 2nd meeting at the Department, Community Transit presented the following language to the union and requested that, should the parties fail to reach agreement on this language, the Department include it in its 13(c) certification:

> That the protections of the April 16, 1984, Section 13(c) Agreement afforded to any employee of a contractor for a fixed term expires at the time that such contractor's contract is terminated pursuant to its terms.

Community Transit has taken the position that the protections afforded employees of ATE should expire with the termination of their employer's contract. They suggest that extension of the 13(c) protections beyond ATE's contract term is outside the scope of the statute and that this would provide additional illegal employee rights and benefits. Community Transit further suggests that protections which extend beyond the term of the contractor's service contract would usurp local decision-making authority. Finally, it is indicated that delaying a decision over whether an employee has been adversely impacted as a result of Federal assistance until that decision can be made by an arbitrator is an illegal delegation of authority in the state of Washington.

The ATU, alternatively, suggests that this proposed language is Community Transit's "understanding of the Department of Labor's 'Modesto' determination letter". The union believes that Community Transit has concluded that, in light of the Department's position in Modesto, protections afforded ATE employees would expire along with ATE's service contract. The ATU notes that "the proposed provision would impermissibly extinguish the Applicant's obligation, once the ATE contract expired, to address adverse impacts on ATE employees occurring even during the term of that contract."

The Department has examined the positions which the parties have submitted to us for review. We do not concur in Community Transit's belief that extension of the 13(c) protections beyond the terms of ATE's contract is outside the scope of the statute. On the contrary, it is clear that protections were intended to cover adverse effects related to events which occur "in anticipation of, during, and subsequent to" receipt of Federal assistance. These protections include, but are not limited to, employee rights, anticipated by the Act, and enumerated under section 13(c) (1) through (5), such as continuation of existing rights, privileges, and benefits and the continuation of collective bargaining rights. Subsequent to the Secretary's certification for a project, transit employees may have certain vested rights under section 13(c), and such protections cannot be automatically terminated upon the expiration of a contract to provide services. The interpretation of the continued viability of protections under the 13(c) agreement will be subject to interpretation of the terms of the 13(c) arrangement in accordance with applicable law. The Secretary is not a party to the 13(c) agreement and it would be inappropriate for the Secretary to unilaterally limit the duration of the rights under such arrangements.

However, this does not mean that the employees of ATE cannot be displaced under any circumstances without triggering liabilities under their agreement. This point is made in a recent Court decision which states:

> Section 13(c) requires that the Secretary must certify that "fair and equitable arrangements are made . . . to protect the interests of employees affected by such assistance" and that the protective arrangements must include "provisions as may be necessary for . . . the continuation of collective bargaining rights." The plain import of the first quoted phrase is that the only interests protected by section 13(c) are those affected by the financial assistance sought. (See United Transportation Union v. Brock, No. 86-5439 (D.C. Cir. Apr. 10, 1987).)

It is clear that the Secretary cannot make advance determinations concerning the circumstances surrounding future events except to indicate that, to the extent that any adverse effects which may occur are solely the result of the expiration of a bid contract, such effects would not be considered to be "as a result of the Federal Grant" and, therefore, would not trigger benefits to affected employees. However, this would not apply to employees of contractors under a "Memphis" plan, nor would it apply to employees who are employed by the applicant or a contractor as a result of protective arrangements which provided for continued employment to minimize 13(c) liabilities.

The language proposed by Community Transit would serve as a waiver of all liabilities under 13(c) which are not remedied during the term of ATE's contract. The Department has no authority to provide a waiver which would release Community Transit from any and all liabilities under 13(c) should they arise. In any claims proceeding which would arise, should employees allege adverse effects as a result of a Federal project, an arbitrator would have to examine the relationship of the Federal assistance and the Project to the adverse affect as well as the terms of the contract, and other facts and circumstances relating to the claim. Also, the Department is not convinced that relinquishing the authority to make decisions regarding claims arising under 13(c) to an arbitrator is an illegal delegation of authority in Washington state. Section 5(2)f requires a procedure for resolving disputes over the interpretation, application, or enforcement of the protective conditions. We would be forced to deny certification if the framework of state law did not permit the transit authority to meet the requirements of section 13(c).

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. The terms and conditions of the agreements of April 22, 1987, and April 16, 1984, as modified in item 3 below, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreements of April 22, 1987, and April 16, 1984, shall be deemed to cover and refer to the instant project;

3. The agreement of April 16, 1984, shall be modified to substitute the words "employees covered by this agreement" for the phrase "employees of the Recipient" appearing in the agreement's third "Whereas" clause; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded the same levels of protection as are afforded to the employees represented by the unions under the April 22, 1987, and April 16, 1984 agreements and this certification. Should such a dispute arise, it may be referred by any such employee to any final and binding dispute procedure acceptable to the parties, or in the event they cannot agree upon such procedure, to the Department of Labor or an impartial third party designated by the Department of Labor for final and binding determination.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Sharon Helppie/Community Transit
Al Hendricks/Community Transit
Earle Putnam/ATU

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

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MAY 18 1987

Mr. Aubrey Davis
Regional Administrator
Urban Mass Transportation Administration
Region X
Department of Transportation
Federal Building, 915 Second Avenue
Suite 3106
Seattle, Washington 98174

Re: UMTA Application
Lane Transit District
Operating Assistance;
Purchase Bus and Bus
Related Facilities
(OR-90-X021) Corrected

Dear Mr. Davis:

This is in reference to the above captioned application for assistance under the Urban Mass Transportation Act of 1964, as amended. The Department of Labor (DOL) is responsible for ensuring that "fair and equitable" arrangements are made under Section 13(c) of the Act to protect the interests of employees who may be affected by such grants of Federal assistance. By letter dated March 19, 1987, DOL certified to the Department of Transportation that such arrangements had been completed for this project.

In connection with the instant application, the Department of Labor's referral letter to the parties indicated that certification would be based on the terms and conditions contained in our certification letter of May 27, 1986 for project, OR-90-X016. However, our certification letter of March 19, 1987 for the instant project, although based on the terms and conditions of the May 27, 1986 letter, was further supplemented by language which cited ORS. 243.726 (2) of the Oregon Statute as providing transit employees with the right to strike and provided for continuation of the terms of the parties collective bargaining agreement pending completion of factfinding procedures as required therein.

The Department of Labor erred in its March 19, 1987 certification of project OR-90-X021, in indicating that transit employees were covered under the Oregon public employee statute and therefore, have a right to strike based on Section ORS 243.726 (2) of that statute. This error was brought to our attention by representatives of LTD. Upon re-examination of the facts, it became clear that the basis for the transit employees' right to

5/18/87

strike was the decision by Judge Clifford Olson for the Fourth District Circuit Court of Multnomah County, Oregon. In Division 757 of the Amalgamated Transit Union of Portland, Oregon, AFL-CIO v. Tri-County Metropolitan Transportation District of Oregon, case no. A-85-07-04670 (Oregon Fourth Circuit, 8-8-85), the court ruled that transit employees have a right to strike in the State of Oregon. This decision was affirmed by the Oregon Supreme Court on August 15, 1985.

As a result of our assumption that LTD employees were covered by the Oregon public employee statute, we required a provision to prevent unilateral control over employment terms and conditions to comply with the court's guidance in ATU v. Donovan, 767 F. 2d. 939, 954 (D.C. Cir. 1985). This provision is not required where the employees' right to strike is not significantly impaired or delayed as it would be pending factfinding procedures under the Oregon public employee statute.

We, therefore, have concluded that our certification letter of May 27, 1986, provides the appropriate basis for certification of the instant project, OR-90-X021.

For the reasons set forth herein, the Department of Labor hereby revises its March 19, 1987 certification letter for project OR-90-X021 to apply the terms and conditions of our certification letter of May 27, 1986, for project OR-90-X016 and applies those terms retroactively to the instant project. For the purposes of your records, you should continue to use the March 19, 1987 certification date as the official certification date for project OR-90-X021.

Specifically, the Department of Labor makes the certification for the instant project on the condition that:

1. The terms and conditions of the agreement dated June 19, 1975, with the deletion from paragraph (9) of the words "shall be broadly construed and shall include, but not be limited to, any controversy concerning wages, salaries, hours, working conditions or benefits, including health and welfare, sick leave, insurance, or pension and retirement provisions, the making or maintaining of collective bargaining agreements, the terms to be included in such agreements and the interpretation or application of such collective bargaining agreements, any grievances that may arise," shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement of June 19, 1975 shall be deemed to cover and refer to the instant project;

3. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to employees represented by the union under the June 19, 1975 agreement, with the above deletion from paragraph (9), and this certification.

We apologize for any inconvenience which may have resulted from our earlier letter.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Mark Pangborn/LTD

Yellow

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

JUN - 4 1987

Mr. Richard Nasti
Regional Administrator
Urban Mass Transportation
Administration
Region II
26 Federal Plaza, Suite 1811
New York, New York 10007

Re: UMTA Application
Central New York Regional
Transportation Authority
Operating Assistance; The
Purchase of Buses and
Bus Related Facilities.
(NY-90-X109)

Dear Mr. Nasti:

This is in reply to the request from your office that we review the above captioned application for a grant which includes both operating and capital assistance under the Urban Mass Transportation Act of 1964, as amended.

The Central New York Regional Transportation Authority (CNYRTA) and the Amalgamated Transit Union (ATU) have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. In addition, the parties had previously agreed to include paragraph (9) of their March 11, 1975 Section 13(c) agreement, executed in connection with an earlier grant application, as the addendum to the July 23, 1975 agreement pursuant to paragraph (4) thereof. The terms and conditions of the July 23, 1975 agreement provide protections to employees represented by the union which satisfy the requirements of Section 13(c) of the Act in general purpose operating assistance project situations.

The parties, furthermore, had agreed to utilize the terms and conditions of their agreement dated March 11, 1975, for previous capital assistance projects. This agreement executed in connection with a previous grant application, provides to employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

The Department of Labor (DOL) is aware that for approximately two decades, the CNYRTA and the ATU have been is disagreement over the interpretation and application of paragraph (4) of their earlier

October 13, 1971 Section 13(c) agreement and currently paragraph (9) of their March 11, 1975 Section 13(c) agreement. It is DOL's understanding that there has been litigation on the part of both parties addressing these interest arbitration provisions. As a result of this litigation, re-negotiation of the parties' labor contract has generally been concluded though mediation and fact-finding procedures under the framework of the New York State Taylor Law.

The Department of Labor has certified several grant applications for the CNYRTA on the basis of the Model agreement with paragraph (9) of the March 11, 1975 agreement as an addendum for operating assistance and on the basis of the March 11, 1975 agreement for capital assistance. However, during 1977 and 1978, the parties continuing disagreement over this issue was reflected in Departmental certifications which specified that the certifications were made without prejudice to the parties' positions on the matters in dispute.

The CNYRTA has requested that certification of that portion of the instant grant application for operating assistance be made based on the July 25, 1975 agreement, without paragraph (9) of the March 11, 1975 agreement as an addendum. Additionally, the CNYRTA proposes that the certification for capital assistance be based on the March 11, 1975 Section 13(c) agreement, exclusive of paragraph (9). The CNYRTA believes that impasse resolution should be governed solely by the mediation and fact-finding procedures in the New York State Taylor Law.

The CNYRTA suggests that these procedures will meet the requirement of 13(c)(2) by providing a satisfactory dispute resolution procedure as a substitute for the interest arbitration procedures in paragraph (9) of the parties March 11, 1975 section 13(c) agreement. The transportation authority does not wish to continue to agree, for this and future UMTA grants, to the provisions in paragraph (9) which would require arbitration of interest disputes.

The ATU urges that certification of the operating assistance portion of the instant project be based on the Model Agreement, with paragraph (9) of the parties' March 11, 1975, section 13(c) agreement included as an addendum, and that the captial portion be certified on the basis of the entire March 11, 1975 section 13(c) agreement.

The ATU asserts that the CNYRTA offered no reasoned or justifiable basis for departure from the current arrangements. The Taylor Law has always governed the relationship between Centro and ATU Local 580. The union states that the statute provides "that an agreement between a public employee and the certified representative of its employees to submit interest disputes to arbitration is permissive and that the Law's alternative procedures are applicable only in the absence or upon the failure of such procedures...."N.Y. Civ. Serv. Law Section 209.2."

We have reviewed the ATU's letter dated April 17, 1987 regarding certification of the instant project, and we have reviewed the CNYRTA letters dated September 10, 1986, March 19, 1987 and April 22, 1987. On the basis of the information presented to us by the parties, it appears that the dispute resolution procedures of the New York State Taylor Law are fair and equitable to both parties in resolving collective bargaining issues. This Law which includes both mediation and factfinding contains a sufficient dispute resolution procedure to ensure fulfillment of the Section 13(c) (2) requirement for the continuation of collective bargaining rights. Unless otherwise agreed upon by the parties at the time of Section 13(c) certification, the DOL will not here require that an interest arbitration provision previously certified be continued. Therefore, it is the DOL's intention to certify the instant CNYRTA grant application on the basis of the existing Section 13(c) arrangement except insofar as we will omit the provision on interest arbitration.

Upon careful consideration of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Section 13(c) (1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirements of Section 13(c) of the Act. Therefore, DOL makes this certification with respect to this instant project on the condition that:

1. The terms and conditions of the agreement dated July 23, 1975, shall be made applicable to the operating assistance portion of the instant project and made part of the contract of assistant, by reference;

2. The terms and conditions of the agreement dated March 11, 1975, with the deletion from paragraph (9) of the words " 'labor disputes' shall be broadly construed and shall include but not be limited to, any controversy concerning wages, salaries, hours, working conditions or benefits, including health and welfare, sick leave, insurance, or pension and retirement provisions, the making or maintaining of collective bargaining agreements, the terms to be included in such agreements," and the insertion of the words "grievance disputes shall be construed to mean ..." shall be made applicable to the capital portion of the instant project and made part of the contract of assistant, by reference;

3. The term "project" as used in the agreements of July 23, 1975 and March 11, 1975, with the above deletion from paragraph (9), shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant project; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to employees represented by union under the July 23, 1975 and March 11, 1975 agreements with the above deletion from paragraph (9), and this certification.

5. The Department of Labor's determination that the continuation of collective bargaining rights requirement for employees is satisfied by the dispute resolution procedures of the Taylor Law is not applicable to previous certified CNYRTA projects. The DOL cannot retroactively excise provisions which were agreed to for prior certifications at the request of one of the parties to an agreement. Therefore, this certification letter is not intended to affect prior certifications by the DOL.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Stephen G. Bland/CNYRTA
Barry M. Shulman/Esquire

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

JUN 19 1987

Mr. Joel Ettinger
Regional Administrator
Urban Mass Transportation Administration
Region V
300 South Wacker Drive, Suite 1740
Chicago, Illinois 60606

UMTA Application
Rockford Mass Transit District
Operating Assistance; Construction
of New Facility
IL-90-X092

Dear Mr. Ettinger:

This is in reply to the request from your office that we review the above captioned application for a grant which includes both operating and capital assistance under Section 13(c) of the Urban Mass Transportation Act of 1964, as amended.

The Rockford Mass Transit District (RMTD) and the Amalgamated Transit Union have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. In the past, the parties have also agreed that paragraph (9) of their June 27, 1975 Section 13(c) agreement, be included as an addendum to the July 23, 1975 agreement pursuant to paragraph (4) thereof. These mutually agreed to terms and conditions satisfied the requirement for Section 13(c) certification for general purpose operating assistance project situations.

In addition, the parties previously agreed and applied the terms and conditions of the Section 13(c) agreement dated June 27, 1975 for capital assistance projects.

The Department is aware that the RMTD and the ATU disagree over the inclusion of paragraph (9) for the parties' June 27, 1975 Section 13(c) agreement. In previous applications the parties submitted position statements to the Department of Labor for final determination regarding the dispute resolution mechanisms to be included in the 13(c) agreement for certification of the then pending project. On July 15, 1986, the Department determined that the agreements dated July 23, 1975 and June 27, 1975, as modified and supplemented by the Department met the requirements for certification of the project.

In regard to this pending project, the parties remain in disagreement over the terms and conditions for certification. In a letter dated December 10, 1986, the ATU set forth what it characterized as "blatant deficiencies of the state law procedure" in objection to the certification of the pending project.

It remains the RMTD's position that in view of the Illinois State statute which provides employees the right to strike there is no need for any supplemental language for certification of the pending project. RMTD however, has agreed to include language in the certification which assures public notice of reasons for rejection of the fact-finders recommendation by the rejecting party.

The Department has reviewed all the material forwarded by the parties in its analysis of the parties' respective positions. The Department has monitored the parties' progress and has concluded that it is unlikely that the parties will reach agreement on the terms and conditions for certification for this pending project.

It is the Department's determination that, for reasons stated in previously certifications, (IL-90-0067)(IL-90-X066)(IL-05-0051), the Illinois Public Labor Relations Act provides for mandatory impasse procedures which adequately protects the rights of the transit employees. Additional language concerning "public notice for rejecting the fact-finders recommendation", will be included under the conditions for certification below and shall be included in the contract of assistance.

Therefore, upon careful consideration of all the circumstances, including consideration of the provisions satisfying each of the five matters specified in Sections 13(c) (1) through (5) of the Act, DOL has determined that the protective arrangements described below are fair and equitable and meet the requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. The terms and conditions of the agreement dated July 23, 1975, as supplemented by Illinois Public Labor Relations Act (Ch. 48; Paragraph 1601) and by item four below shall be made applicable to the operating assistance portions of the instant project and made part of the contract of assistance, by reference;

2. The terms and conditions of the agreement dated June 27, 1975, with the modifications as provided in previous certification (IL-90-0067,IL-90-X066, and IL-05-0051) and supplemented by the Illinois Public Labor Relations Act (Ch. 48; Paragraph 1601), and by item four below shall be made applicable to the capital assistance portion of the instant project and made part of the contract of assistance, by reference;

3. The term "project" as used in the agreement of July 23, 1975 and June 23, 1975, as modified by previous certification (IL-90-0067, IL-90-X066 and IL-05-0051) and supplemented by the Illinois Public Labor Relations Act (Ch. 48; Paragraph 1601), shall be deemed to cover and refer to the operating and capital portions respectively, of the instant project;

4. The contract of assistance shall include the following language:

   "If either of the parties were to reject the recommendations of the fact-finding panel, the rejecting party shall state its reasons for such rejection and such statement shall be published in the local media along with the finding of facts and recommendations of the panel. The other party has the opportunity to make its position statement public at its own expense."

5. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded substancially the same levels of protections as are afforded to employees represented by the union under the July 23, 1975 and June 27, 1975 agreements, as modified, and this certification.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Mary L. Belk/RMTD
Joan Baker/Labor Service

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

Mr. Joel Ettinger
Regional Administrator
Urban Mass Transportation
Administration
Region V
300 South Wacker Drive
Suite 1740
Chicago, Illinois 60606

JUN 19 1987

Re: UMTA Application
Miami Valley Regional
Transit Authority
Operating Assistance;
Bus Related Facilities,
etc.
(OH-90-X075)

Dear Mr. Ettinger:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

The Miami Valley Regional Transit Authority (RTA) and the Amalgamated Transit Union (ATU) executed an agreement dated October 22, 1975, in connection with a previous grant application, which provided to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act for capital projects.

In addition, the parties had previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. The parties had agreed that paragraph (15) of their October 22, 1975 Section 13(c) agreement would be included as the addendum to the July 23, 1975 agreement pursuant to paragraph (4) thereof for previous operating grants.

The Department is aware that the RTA and the ATU disagree over the inclusion of paragraph (15) of the parties' October 22, 1975 Section 13(c) agreement. In a previous application (OH-90-X056), the parties submitted position statements to the Department of Labor for final determination regarding the dispute resolution mechanisms to be included in the 13(c) agreement for certification of the then pending project. On July 29, 1986, the

Department determined that the agreement dated October 22, 1975 with modifications and supplements met the requirements for the certification of the project.

In light of Amalgamated Transit Union v. Donovan, 767 F.2nd 939, 956 (D.C. Cir. 1985), and upon review of the previous terms and conditions for certification, the Department determined that there were two additional conditions which must be met before certification could be made. These provisions will assure that the terms and conditions of an expiring collective bargaining agreement will remain in place until a successor agreement has been executed or the fact-finders report has been made public, and that if the fact-finders recommendation is rejected then the rejecting party will be required to make their reasons for rejection public.

By letter dated April 14, 1987, Mr. Lombard, attorney for the RTA, proposed certain language to be added to the UMTA certification. The parties have had subsequent discussions with each other and with the Department regarding the proposed language for inclusion in the pending certification. The parties are in disagreement over conditioning the continuation of the expiring collective agreement on the employees not engaging in any slowdown, work stoppage, or strikes. The parties have not arrived at any mutually acceptable arrangement. It is the policy of the Department that where the parties have not been able to reach agreement on the language for inclusion in the certification and that language is not required to meet the minimum requirement for certification it would not be included.

The Department has reviewed the proposed language concerning extending the expired collective bargaining agreement on the condition that "...employees continue to abide by those terms and do not engage in any slowdown, work stoppage, or strike" and has determined that this qualifying language is not necessary to meet the minimum requirements of the Act.

In addition, it has been Departmental policy to require the parties to a Section 13(c) Agreement to provide for a neutral final and binding dispute resolution procedure to resolve any controversy which may arise with respect to the interpretation, application or enforcement of the terms of the 13(c) agreement itself. Such procedures for resolution of grievance disputes under the 13(c) agreement are a necessary requirement to ensure that employee protective arrangements are enforceable by the parties. In making our July 29, 1986 certification for project (OH-90-X056) the Department inadvertently deleted such procedures by excising paragraph (15), containing interest arbitration procedures, in its entirety. Procedures to resolve grievance/ rights disputes over the interpretation, application and enforcement of this agreement have been re-established in item four below.

The Department has determined that the additional language in item four below will ensure a full and fair airing of the parties' issues and will ensure that the parties will give serious consideration to the fact-finding recommendations. The language will also guard against unilateral control by the employer over mandatory subjects of collective bargaining while issues are being resolved under the dispute resolution procedure.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. The terms and conditions of the agreement dated October 22, 1975, as modified by the July 29, 1986 certification, and supplemented by Section 4117 of the Ohio Revised Code, pursuant to paragraph (4) thereof, and supplemented by item four below, shall be made applicable to the capital assistance portion of the instant project and made part of the contract of assistance, by reference;

2. The terms and conditions of the agreement dated July 23, 1975, as modified by the July 29, 1986 certification, and supplemented by Section 4117 of the Ohio Revised Code and item four below included as the addendum pursuant to paragraph (4), shall be made applicable to the operating assistance portion of the instant project and made part of the contract of assistance, by reference;

3. The term "project" as used in the agreements of July 23, 1975 and October 22, 1975, as modified by the July 29, 1986 certification, and supplemented by Section 4117 of the Ohio Revised Code, shall be deemed to cover and refer to the instant project; and

4. The contract of assistance shall include the following language:

   "Absent written mutual agreement by the parties to the contrary, the terms and conditions of any expiring collective bargaining agreement shall remain in place following the expiration of such agreement until the effective date of a successor agreement between the parties, or the publication of the fact-finding report and recommendations as provided for herein, whichever is earlier."

In addition:

> "If either of the parties were to reject the recommendations of the fact-finding panel, the rejecting party shall state its reasons for such rejection and such statement shall be published in the local media along with the finding of facts and recommendations of the panel. The other party has the opportunity to make its position statement public at its own expense."

Furthermore:

> "In the event of any grievance dispute involving the Public Body and the employees covered by this agreement which cannot be settled within thirty (30) days after such dispute first arises, such dispute may be submitted at the written request of either the Union or the Public Body to a board of arbitration selected in accordance with the existing collective bargaining agreement, if any, or if none, as hereinafter provided. The Public Body and the Union shall each, within ten (10) days, select one member of the arbitration board and the two members thus chosen shall select a third member who shall serve as a chairman. Should the two members be unable to agree upon the appointment of the neutral member within ten (10) days, either party may request the American Arbitration Association to furnish a list of five (5) persons from which the neutral member shall be selected.
>
> The parties shall, within five (5) days after the receipt of such list determine by lot the order of elimination, and thereafter each shall, in that order, alternately eliminate one name until only one name remains. The remaining person on the list shall be the neutral member. The decision by majority vote of the arbitration board shall be final, binding and conclusive and shall be rendered within forty-five (45) days from the date the neutral member is appointed. Awards made pursuant to said arbitration may include full back pay and allowances to employee-claimants. The salaries and expenses of the neutral member shall be borne equally by the parties to the proceedings, and all other expenses shall be paid by the party incurring them.

The term "grievance dispute" shall be construed to mean any controversy regarding the interpretation, application, or enforcement of any of the provisions of this agreement, any grievance that may arise, and any controversy arising out of any provisions of this agreement. Nothing in this paragraph, or agreement, shall be construed to enlarge or limit the right of the employees covered by this agreement."; and

5. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to employees represented by the union under the July 23, 1975 and October 22, 1975 agreements, as modified by the July 29, 1986 certification and as supplemented by Section 4117 of the Ohio Revised Code and this certification.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
John Lombard/ATTY
Tom Alderson/MVRTA

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

JUN 23 1987

yellow copy
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Mr. Peter N. Stowell
Regional Administrator
Urban Mass Transportation Administration
Region III
841 Chestnut Street, Suite 714
Philadelphia, Pennsylvania 19107

Re: UMTA Application
Port Authority of
Alleghany County
Purchase Additional
Capital Equipment
(PA-90-X068) #2
Operating Assistance
(PA-90-X114)
Rail Rehab., Trolley
Rehab, Brake Retarder
Modernization, etc.
(PA-90-X114) #1
Institute Suburban and
Low Density Service
(PA-06-0103)
Computerized Interlocking
System
(PA-03-3004)

Dear Mr. Stowell:

This is in reply to the request from your office that we review the above captioned applications for grants under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the Port Authority of Alleghany County (PAT) and the Amalgamated Transit Union (ATU) executed an agreement dated March 5, 1979. This agreement has provided to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act for certification of all capital grants since the execution date of that agreement. Operating assistance grants have been approved under the terms of the National (Model) Agreement with the arbitration provisions in paragraph (15) of the applicable 13(c) agreement included as an Addendum thereto pursuant to paragraph (4) of the National Agreement.

Ad 6-30 JLP 6-30 JS 6-30-87
GAILLIOT / PEARL / STEPP

KALLEN: 6-30-87

Background

Over a year ago, due to changes which were being sought in state law, the Port Authority requested that the Department of Labor (DOL) not certify any pending grants until such changes were made and a new 13(c) agreement had been negotiated between the parties. In July 1986, Pennsylvania House Bill 1876 became law and in August 1986, the Port Authority forwarded to the ATU a revised 13(c) document which they believed brought them "into compliance" with the then recently passed House Bill 1876. After some additional exchange of letters the parties met on December 3, 1986 at ATU's International Headquarters, where the Authority's proposed changes were discussed.

The Port Authority had originally submitted a document to the Amalgamated Transit Union which was based on the March 5, 1979 Section 13(c) agreement with the exception of proposed changes in 9 paragraphs -- these were paragraphs (1), (3), (4), (5), (10), (15), (16), (18) and (22). As a result of numerous discussions and meetings it appears that the parties agreed in principle that: paragraph (1) of the March 5, 1979 agreement would remain unchanged; paragraph (3) of the March 5, 1979 agreement would be replaced by the language of paragraph (3) of the July 23, 1975 Model agreement; paragraph (10) of the March 5, 1979 agreement would be modified to replace the words "himself and his family" with "the employee"; and, paragraphs (16) and (18) would remain unchanged.

The above modifications to paragraphs (3) and (10), requested by PAT and agreed to by the ATU in earlier discussions, are determined by the Department to be appropriate modifications to the parties' March 5, 1979 agreement. This modification is included under item 3 of our certification below. The parties remain in disagreement, however, over proposed changes to paragraphs (4),(5),(15) and (22) of the March 5, 1979 Agreement. At the close of their December 3 meeting, the parties agreed that they would seek the assistance of the Department of Labor (DOL) in resolving the remaining differences over these proposals.

On February 5, 1987 the parties met at the Department of Labor. The Department at this time believed that the above paragraphs were the only issues still in dispute. However, during negotiations over these issues the ATU stated that, due to the recent amendments in House Bill 1876, the Second Class County Port Authority Act does not obligate, and even precludes, the Port Authority from bargaining in good faith to the point of impasse over mandatory subjects of bargaining. The ATU asserts,

therefore, that the framework of the state law prevents the Secretary from certifying PAT's pending applications. In addition to this issue, the parties reached impasse over the previously enumerated paragraphs upon which they were in disagreement. The parties did agree that additional discussions over projects (PA-90-X068-2) and (PA-06-0103) would be conducted at the local level, and the Department requested that the parties submit their positions on all relevant issues by March 6, 1987 and reply thereto within 10 days.

THE FRAMEWORK FOR COLLECTIVE BARGAINING UNDER HOUSE BILL 1876

The ATU, as stated earlier, believes that House Bill 1876 precludes the Port Authority from bargaining over mandatory subjects of collective bargaining. This raises the threshold issue of whether the Transit Authority is able to satisfy the requirements of 13(c) under the framework of state law created by House Bill 1876. In Amalgamated Transit Union v. Donovan, 767 F. 2d 939 (9th Cir 1985) the court indicated that state and local governments are free to chose any collective bargaining policy they wish but may only recieve federal assistance if the requirements of 13(c) can be accommodated under that policy. The Port Authority, however, believes that the provisions of the amendment to the Port Authority Act provide for meaningful, good faith bargaining over wages, hours and terms and conditions of employment and that the statute provides for a fair, balanced collective bargaining system, equivalent to those in both the public and private sectors.

After undertaking an extensive review of the positions submitted by the parties, and of the Statute and relevant case law, the Department of Labor has determined that the amended Second Class County Port Authority Act does not substantially limit the collective bargaining rights of employees represented by the ATU. In making our determination, the Department has examined House Bill 1876 in relation to those collective bargaining rights which were enjoyed by the union, under Section 563.2 of the Second Class County Port Authority Act, as amended (1956, April 6, P.L. 1414, Section 13.2, added 1959, October 7, P.L. 1266, Section 13) at the time of the initial award of federal funds. We find that the ATU's assertion is correct that "the collective bargaining rights of the transit workers involved were coextensive with those of federal labor policy" at the time of the first federal grant. Much of our analysis, therefore, is based in federal labor policy. The Department has focused on each of the issues raised by the parties in our brief discussion below.

Mandatory Subjects of Collective Bargaining

The Department of Labor must ensure that 13(c) protective arrangements provide for the continuation of collective bargaining rights in order to certify such arrangements. In circumstances such as these the effect of the new legislation on the bargaining rights which employees enjoyed at the time of the initial influx of federal funds is the starting point for analysis of what provisions must be made to assure the continuation of collective bargaining rights. In performing our analysis, we have looked to the standard articulated in ATU v. Donovan when it outlined the test which the Georgia statute had to meet:

> Section 13(c)'s requirement, therefore, that labor protective agreements provide for "the continuation of collective bargaining rights" means, at a minimum, that where employees enjoyed collective bargaining rights prior to public acquisition of the transit system, they are entitled to be represented in meaningful, "good faith" negotiations with their employer over wages, hours and other terms and conditions of employment. Collective bargaining does not exist if an employer retains the power to establish wages, hours and other conditions of employment without the consent of the union or without at least first bargaining in good faith to impasse over disputed mandatory subjects. ATU v. Donovan at 951.

It is clear from the legislative history of the UMT Act that this standard is equally applicable in both acquisition and non-acquisition situations.

Employees covered by the Second Class County Port Authority Act, as amended by House Bill 1876, and public employees covered under the Pennsylvania Public Employees Relations Act 43. P.S. 1101.701 (PERA) are covered by nearly identical provisions addressing matters on which collective bargaining is not required. An examination of Pennsylvania case law indicates that the Courts have relied substantially on the National Labor Relations Act for guidance concerning mandatory subjects of collective bargaining for employees under the PERA. Specifically, the Courts have indicated that the proper interpretation of PERA Section 701, 43 P.S. Section 1101.701 which specifies the matters required to be submitted to bargaining as "wages, hours and other terms and conditions of employment," was set forth in Pennsylvania Labor Relations Board v. State College Area School District, 461 Pa. 494, 507, 337 A.2d 262, 266 (1975):

> Thus we hold that where an item of dispute is a matter of fundamental concern to the employees' interest in wages, hours and other terms and conditions of employment, it is not removed as a matter subject to good faith bargaining under section 701 simply because it may touch upon basic policy. It is the duty of the Board in the first instance and the courts thereafter to determine whether the impact of the issue on the interest of the employee in wages, hours and terms and conditions of employment outweighs its probable effect on the basic policy of the system as a whole. If it is determined that the matter is one of inherent managerial policy but does affect wages, hours and terms and conditions of employment, the public employer shall be required to meet and discuss such subjects upon request by the public employee's representative pursuant to section 702.

The problem, then, in every case presenting the issue of the proper scope of collective bargaining is to weigh the employees' interest in the terms and conditions of their employment against the public employer's legitimate interest in directing the overall scope and direction of the enterprise. In making these determinations, the Pennsylvania state courts have looked to NLRB case law for guidance. It is clear that the public employer is not precluded from bargaining to impasse under Pennsylvania case law which has developed under the PERA. Neither is the transit authority so precluded under House Bill 1876 which specifies that the authority must "meet and discuss on policy matters affecting wages, hours and terms and conditions of employment"; they are not required under the statute to bargain to impasse "over matters of inherent managerial policy." We believe that PAT is not prohibited from bargaining over such areas and must agree, as a condition of this certification, to bargain in good faith to impasse over those policy matters affecting wages, hours and conditions of employment which are determined to be mandatory subjects of collective bargaining as measured against the requirements articulated in ATU v. Donovan. In those instances where the parties are unable to agree on whether a specific issue is a mandatory subject of negotiations, such disputes will be resolved by an arbitrator in accordance with the terms of this certification. This stipulation is included under item 3 of our certification below.

Collective Bargaining Rights of First Level Supervisors

The ATU argues that the provision of House Bill 1876 excluding first line supervisors from the same bargaining unit as other employees of the authority impermissibly alters its collective bargaining rights. The Port Authority, however, argues that,

under the NLRA, first line supervisors are prohibited from being included in the same bargaining unit, and indicates that, if they were included, this would exceed the rights enjoyed by private sector employees.

Incumbent first line supervisors are, in fact, afforded bargaining rights under the new law and have been "grandfathered" to permit their continuation in existing units. In addition, the ATU's right to represent first line supervisors was accrued subsequent to the initial award of federal funds and only as a result of an arbitration award. Moreover, these rights are in excess of those embodied in federal labor policy and need not be extended by 13(c). Therefore, the Department has determined that excluding first line supervisors from the bargaining unit with other employees does not substantially diminish collective bargaining rights.

Under the provisions of the Second Class County Port Authority Act, if "a 'first level supervisor' is removed from his or her position due to a layoff or other reduction in force, such employee may elect to return to the position he or she held immediately prior to becoming a 'first level supervisor'. In all cases, such job placement will be made in accordance with full seniority." The ATU argues that this retreat right impinges upon the collective bargaining rights of ATU Local 85. The ATU argues that, when a first level supervisor elects to return to the bargaining unit, under state law the seniority rights of individuals in the bargaining unit at the time of such job placement will be affected. Since seniority systems normally apply only to members of the bargaining unit, it is common where provisions are negotiated to stipulate seniority loss for persons transferring to positions outside the bargaining unit. We recognize that the provision under House Bill 1876 precludes the union from negotiating such a provision. However, it is common practice, where two bargaining units are merged, to merge seniority rosters as well. Finally, we note that the legislative history of House Bill 1876 indicates that the ATU agreed to this provision prior to its passage. (See Commonwealth of Pennsylvania Legislative Journal, Session of 1986 No. 23 (April 8, 1986) at 609.) We, therefore, conclude that this is not a substantial reduction in collective bargaining rights.

Grievance Arbitration

Section 13.2(O) of the amended Second Class County Port Authority Act provides that "(i)n any grievance arbitration, the arbitrator must base the award upon the express terms and conditions of a labor agreement between the authority and the

authorized representative." The ATU asserts that "a grievance procedure which permits the arbitrator to base his decision, even in part, upon any foundation other than express provisions of the collective bargaining agreement -- including by way of example only, custom and past practice between the parties or in the industry -- has thus been rendered a prohibited subject of bargaining." However, the Port Authority asserts that the language of Section 13.2(O) of House Bill 1876 "merely addresses the actions of the arbitrator in interpreting the terms negotiated by the parties in context of a dispute over the meaning of those terms."

The Department of Labor, in reviewing the Legislative Journal, (170th of the General Assembly of the Commonwealth of Pennsylvania) has found no indication in the legislative history that it was the intent of the legislature to require an arbitrator to rely solely and exclusively on express contract language in making his/her decisions. The accepted definition of the verb "base" as found in Webster's New Collegiate Dictionary (G.& C. Merriam Co., 1979) is "to make, form, or serve as a base for" or "to find a base or basis for". Base means "a main ingredient" or "the fundamental part of something." In each case, the definition makes it clear that the parties' agreement is a point of departure and not the sum total to be examined. It appears that the parties' collective bargaining agreement is intended to provide a foundation to support the arbitrator's decisions and not an exclusive document which will be examined in a vacuum. The arbitrator does not appear to be bound solely by the parties' agreement.

While we conclude that an arbitrator's decision in a grievance does not appear to be unduly restricted to the specific terms of the parties' collective bargaining agreement, it does appear that the scope of grievable areas may have been somewhat limited. It is not uncommon for negotiated provisions to narrowly define grievances as disputes relating in some manner to the "proper interpretation or application of the collective bargaining agreement." However, such a definition is commonly understood to encompass unwritten past practices and informal understandings. Most collective bargaining agreements make express provision for resolution of contract and labor disputes through machinery which is internal to the organization. The parties may find that the provisions of Section 13.2(O) will limit the scope of disputes which may be resolved through grievance machinery as their relationship evolves and adapts to new and changing circumstances. We have, nevertheless, concluded that grievance arbitration procedures in the Second Class County Port Authority Act do not substantially restrict the scope of bargaining over a grievance arbitration provision

as measured against the requirements articulated in ATU v. Donovan.

We have, as indicated earlier, concluded that the framework of Pennsylvania state law provides a basis for the Department's certification should the Port Authority agree to bargain in good faith to impasse over disputed mandatory subjects. The Department is, therefore, called upon to make a number of determinations with respect to specific provisions which have been proposed by the Port Authority and have been the subject of negotiations with the ATU.

DISPUTES OVER THE MARCH 5, 1979 SECTION 13(c) AGREEMENT

The legislative history of 13(c) of the UMT Act makes it clear that protections are expected to be developed through local bargaining and negotiation where affected employees are represented by a labor organization. For this reason, the Department considers the negotiated March 5, 1979 Section 13(c) Agreement to be the basic document with which we are working. The Department's determinations of necessary amendments to this document are discussed below.

Interest Arbitration

The Port Authority has proposed that a new paragraph be substituted for the dispute resolution procedures contained in paragraph (15)(a) of the March 5, 1979 Section 13(c) agreement. PAT has proposed these changes in order to utilize the procedures in the amended Second Class County Port Authority Act. The ATU believes that there is no reasoned basis for elimination of interest arbitration from the parties' Section 13(c) agreement as previously agreed. The ATU further asserts that House Bill 1876 does not preclude the Authority from agreeing to submit interest disputes to binding arbitration and specifically reserves the right of the parties to so agree. The union, therefore, believes that the amended state law actually preserves the parties' agreement to engage in interest arbitration. However, the ATU further suggests that, even if this were not the case, "the dispute resolution procedure which PAT proposes to be applied does not meet the requirements of Section 13(c) and therefore could never form the basis for a lawful certification of the Projects at issue."

In summary, the Second Class County Port Authority Act includes dispute resolution procedures which provide for fact-finding within 45 days of the termination of a collective bargaining agreement at the request of either party. The state labor

relations board will appoint a neutral fact-finder, who may hold hearings, take oral or written testimony, and has subpoena power. The fact-finder makes findings of fact and recommendations which are published if they are not accepted by the parties. If the parties do not accept the recommendations of the fact-finder, and refuse to mutually agree to final and binding interest arbitration, the employees have the right to strike.

The Department has reviewed the materials submitted by the parties in making its analysis of their respective positions on this issue. Although 13(c) does require some dispute resolution process that assures avoidance of unilaterial control by the transit authority, it is clear from the legislative history and case law that interest arbitration is not specifically required by the Act. In the absence of the parties' mutual agreement to continue to utilize the interest arbitration provision previously certified we will not here require that such provision be continued. The procedures required under state law provide a sufficient dispute resolution procedure to meet the requirements of 13(c)(2) for resolution of interest disputes.

The union suggests that the procedures in House Bill 1876 are inadequate because they fail to require the maintenance of the status quo in the period between expiration of the collective bargaining agreement and vesting of the right to strike. The Port Authority, however, points out that Section 13.2(L) of the statute requires a thirty day "cooling-off" period following termination of the labor agreement and states that "the essence of such a 'cooling off period' is the maintenance of the status quo with contract provisions remaining in effect and strikes and lockouts prohibited."

We concur with PAT that this is the commonly accepted labor definition of the term. (See Labor Relations Expediter, LRX 187 (BNA, 1985) Cooling-off period is defined as a "Period of time during which a union is forbidden, by law or contract to call a strike and the employer is forbidden to lock out employees or change conditions of employment.") Furthermore, we have concluded that the timetables for implementing fact-finding under the statute do permit the parties to complete the fact-finding procedures while the terms of their collective bargaining agreement remain in place, thus assuring that the process may avoid unilateral control by the employer of the terms of the agreement. Indeed, as PAT suggests, "assuring that contract provisions remain in effect during fact-finding is within the control of the ATU." In view of the above, the Department of Labor has determined that an appropriate dispute resolution procedure for application to Port Authority projects

is contained in Section 13.2 of the amended Second Class County Port Authority Act. Therefore, we are replacing the interest arbitration provision contained in paragraph (15)(a) of the parties' March 5, 1979 agreement with the dispute resolution procedures contained in Section 13.2 of the amended Second Class County Port Authority Act.

We are deleting the words "labor dispute" in line 1 of paragraph (15)(a) and substituting the words "grievance dispute". We are also deleting the words:

> The term "labor dispute" shall be broadly construed and shall include, but not be limited to, any controversy concerning wages, salaries, hours, working conditions or benefits, including health and welfare, sick leave, insurance, or pension and retirement provisions, the making or maintaining of collective bargaining agreements, the terms to be included in such agreements and the interpretation or application of such collective bargaining agreements, any grievances that may arise, and any controversy arising out of or by virture of any provisions of this agreement.

and substituting therefore the phrase "The term grievance dispute' shall be construed to mean any controversy concerning the protection afforded by this agreement or the interpretation, application or enforcement of these arrangements."

Departmental policy requires that all 13(c) arrangements contain a neutral, final and binding dispute resolution procedure to resolve all controversies over the 13(c) arrangement itself. We have elected to include the procedures from the March 5, 1979 agreement for this purpose, as there is no guarantee that the procedures negotiated by the parties in their collective bargaining agreement will meet the necessary requirements of the Act. Paragraph (15)(a), as modified, contains only these procedures. We are also supplementing the modified paragraph (15)(a) of the March 5, 1979 agreement with language contained in item 3 below. This language was proposed by the Port Authority (See page 9 of the draft Port Authority proposal dated February 4, 1987) and incorporates the proposed paragraph (15) through (15)(c). The modifications to paragraph (15)(c) exclude controversies over the Section 13(c) arrangements from procedures therein.

The Port Authority has also proposed changes to paragraph (5) of the March 5, 1979 Agreement. This agreement will now be considered to make reference to paragraph (15) as it has been changed to reflect the modified dispute resolution procedures contained herein. Although the parties have provided us with limited written discussion on this disputed provision, it is

clear that the provision addresses impacts which may occur "as a result of the project." Therefore, procedures which have their basis in the 13(c) arrangements are more appropriate than those which apply to the parties' collective bargaining agreement. Paragraph (5) will, therefore, remain unchanged.

Continuation of Bargaining Rights Under Paragraph (4) of the March 5, 1979 Section 13(c) Agreement

The Port Authority has proposed that a new paragraph (4) be substituted for the previously negotiated provision in the March 5, 1979 agreement. The ATU has indicated that they are concerned with the proposed language presented by the Authority "because PAT has expressed its view that the language requires bargaining only over subjects deemed proper under state law which may not be coextensive with that of federal labor policy ...".

The Department has made it clear in our earlier discussion concerning the framework of state law that the transit authority, if it desires to avail itself of federal assistance, must agree to bargain in good faith over all subjects which are deemed "mandatory" under the standards developed in the ATU v. Donovan decision. We, therefore, believe that the union's principle concern with the modification of this paragraph is unfounded. Moreover, the union acknowledges that, "at least in the instant case, it may not be a statutory requirement that PAT bargain with the Union relative to all subjects which may be proper subjects of bargaining 'with a private employer'." The Department, therefore, has determined that the proposal made by the Port Authority is an appropriate substitute for paragraph (4) of the March 5, 1979 agreement and has indicated such by including the language in item 3 below.

First Opportunity for New Jobs

Paragraph (22) of the parties' March 5, 1979 Section 13(c) Agreement gives employees represented by the union the first opportunity for employment in any new jobs which are created "as a result of the Project". The ATU argues that by removing paragraph (22) from the parties' Section 13(c) agreement, the Secretary would remove a very significant assurance of employment which helps to prevent employees from being worsened in their positions within the meaning of Section 13(c)(3). The Port Authority, however, cites their current collective bargaining agreement which does not contain any comparable provision with respect to new work. Neither does the collective bargaining agreement contain any restriction on the Authority's right to hire employees or contract out work.

Upon review of the positions submitted by the parties, we have concluded that the parties have bargained to impasse over this issue and, in the absence of the parties' mutual agreement to continue to utilize paragraph (22) of the March 5, 1979 Agreement for future projects, the Department has determined that this paragraph should not be required for certification of these projects. We believe that the interests of employees in this area are protected under Section 13(c)(3) and Section 13(c)(4) by a requirement for "priority of reemployment of employees terminated or laid off" which is included in paragraph (18) of the parties' March 5, 1979 Section 13(c) Agreement. The assurances in paragraph (18) provide preferential opportunities for employment in both new and existing positions within the control of the Recipient rather than just monetary allowances for dismissed employees. The Department, therefore, is deleting paragraph (22) of the March 5, 1979 Agreement as indicated in item 3 below.

Bus Brake Retarders

At issue in the pending certification is the utilization of maintenance staff represented by the ATU to undertake bus brake retarder modernization under projects (PA-90-X068) Amendment 2 and (PA-90-X114) Amendment 1. The Port Authority has convincingly argued that the work contemplated under these projects has never been the subject of an Authority maintenance program, and has previously been performed by the manufacturer. There is no restriction in the collective bargaining agreement which prohibits the contracting out of such work and it would appear that performance of this work by the union would require deferral of routine bus maintenance and/or an increase in the size of the work force. There is no indication that the contracting out of this work will result in the dismissal or displacement of any Port Authority employee. We must conclude, therefore, that additional provisions to address the performance of this work are not necessary to provide fair and equitable arrangements under 13(c) of the Act.

Low Density Service Demonstration Project

A demonstration project is contemplated under project (PA-06-0103) to provide both a primary service and a feeder service to regular line haul services. The Authority asserts that regular service may well increase as a result of the feeder service and that "no Authority employees will be terminated as a result of this grant or the project which implements it." The Department is concerned that Port Authority management suggests that they lack sufficient information for discussions with the union concerning the demonstration project. Specific

commitments were made in the project's Work Program to discuss the project with the union before requests for proposals were solicited from private operators. Nevertheless, the Department believes that the arrangements set forth herein will provide adequate protections for the employees represented by the union. No additional protections will be required for this project. However, we are confident that the Authority will comply with its committment to further discuss the implementation of this project with the union at the appropriate time.

Upon careful consideration of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Section 13(c)(1) through (5) of the Act, we have concluded that the protective arrangements described herein are fair and equitable and in accordance with all requirements of Section 13(c) of the Urban Mass Transportation Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. The terms and conditions of the agreement dated July 23, 1975, (with the provisions of Section 13.2 of the Second Class County Port Authority Act and the modified paragraph (15) of the March 5, 1979 Agreement as the Addendum pursuant to paragraph (4) of the July 23, 1975 agreement) shall be made applicable to the operating assistance portion of the instant project and made part of the contract of assistance by reference;

2. The terms and conditions of the agreement dated March 5, 1979, with the modifications to paragraph (15) indicated in item 3 below, as supplemented by the provisions of Section 13.2 of the amended Second Class County Port Authority Act, shall be made applicable to the capital portion of the instant projects and made part of the contract of assistance, by reference;

3. The contract of assistance shall include the following language for application to the instant projects:

(a) As a condition of this certification, the Port Authority agrees that it will bargain in good faith to impasse over those "policy matters affecting wages, hours and conditions of employment" which are determined to be mandatory subjects of collective bargaining as measured against the requirements articulated in ATU v. Donovan;

(b) Paragraph (3) of the parties' March 5, 1979 Section 13(c) Agreement shall be replaced by paragraph (3) of the July 23, 1975 Model agreement;

(c) Paragraph (10) of the parties' March 5, 1979 Section 13(c) Agreement shall be modified to replace the words "himself and his family" with "the employee";

(d) Paragraph (15) of the parties' March 5, 1979 Agreement shall be modified by deleting the words "labor dispute" in the first line and substituting the words "grievance dispute". Also deleted from paragraph (15) are the words:

> The term "labor dispute" shall be broadly construed and shall include but not be limited to, any controversy concerning wages, salaries, hours, working conditions or benefits, including health and welfare, sick leave, insurance, or pension and retirement provisions, the making or maintainig of collective bargaining agreements, the terms to be included in such agreements and the interpretation or application of such collective bargaining agreements, any grievance that may arise, and any provisions of this agreement.
>
> Substituted therefore are the words "The term 'grievance dispute' shall be construed to mean any controversy concerning the protection afforded by this agreement or the interpretation, application or enforcement of these arrangements."

The following language shall also be added to paragraph (15), as modified:

> For the purposes of this Agreement, dispute resolution procedures pertain to resolving an impasse when collective bargaining over the terms and conditions of employment does not result in an agreement, and resolving individual grievances that allege violations of specific written provisions of a Union

contract or the imposition of discipline without just cause.

(1) Interest Arbitration - In the case of any labor dispute where collective bargaining does not result in an agreement, the dispute, with the written consent of both parties, shall be submitted to final and binding interest arbitration. No such submissions shall occur before the completion of any fact finding required by law. The term, "Interest Arbitration" shall mean formulation by a neutral arbitrator of provisions governing wages, hours of work and other terms and conditions of employment after consideration of proposals relating to wages, hours of work and other terms and conditions of employment advanced by the recipient and the Union representing the employees of the receipient. The arbitration provided for hereunder shall be conducted under Section 13.2 of the Second Class County Port Authority Act, Act of the General Assembly of the Commonwealth of Pennsylvania, 55 P.S. 551 et seq.

(2) Grievance Arbitration - In the case of an individual grievance where utilization of the grievance procedure does not settle the grievance, the grievance, based upon the demand of the Union may be submitted to final and binding arbitration. The term "labor dispute", as it pertains to grievances, includes any controversy regarding a written provision of a collective bargaining agreement between the parties concerning wages, salaries, hours, terms and conditions of employment or benefits, including health and welfare, sick leave, insurance for pension or retirement provisions.

(3) In the event there arises a dispute with respect to the Labor Management Relations Act, as amended, or the Railway Labor Act, as amended, which cannot be settled within thirty (30) days after the dispute arises, it shall be submitted to arbitration in accordance with the provisions of the collective bargaining agreement then in effect between the Recipient and the Union. All the conditions of this Agreement shall continue to be effective during the arbitration proceedings.

(e) Paragraph (4) of the parties' March 5, 1979 Section 13(c) Agreement shall be replaced with the following language:

(4) The collective bargaining rights of employees covered by this agreement, including the right to arbitrate labor disputes and to maintain union security and checkoff arrangements, as provided by applicable laws, policies and/or existing collective bargaining agreements, shall be preserved and continued. Provided, however, that this provision shall not be interpreted so as to require the Recipient to retain any such rights which exist by virtue of a collective bargaining agreement after such agreement is no longer in effect. The Recipient agrees that it will bargain with the union or otherwise arrange for the continuation of collective bargaining, and that it will enter into agreement with the union or arrange for such agreements to be entered into, relative to all subjects which are or may be proper subjects of collective bargaining. If, at any time, applicable law or contracts permit or grant to employees covered by this agreement the right to utilize anye economic measures, nothing in this agreement shall be deemed to foreclose the exercise of such right; and

(f) Paragraph (22) of the parties March 5, 1979 Section 3(c) agreement shall be deleted from that agreement.

4. The term "project" as used in the agreements of July 23, 1975 and March 5, 1979, as modified above, shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant projects; and

5. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the union, shall be afforded substantially the same level of protections as

are afforded to employees represented by the union under the July 23, 1975 and March 5, 1979 agreements, as modified, and this certification.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
William W. Millar/PAT
Earle Putnam/ATU

LRP:DHodge:wpu:6-30-87
Rm:N5416:357-0473

JUN 29 1987

Mr. Joel P. Ettinger
Regional Administrator
Urban Mass Transportation Administration
Region V
300 South Wacker Drive, Suite 1740
Chicago, Illinois 60606

Re: UMTA Application
Transit Authority of
Northern Kentucky
(TANK)
Operating Assistance;
Purchase
up to 28 35-foot
Buses, etc.
(KY-90-X031)

Dear Mr. Ettinger:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

The Transit Authority of Northern Kentucky (TANK) and the Amalgamated Transit Union have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. The terms and conditions of the July 23, 1975 agreement provide protections to employees represented by the union which satisfy the requirements of Section 13(c) of the Act in general purpose operating assistance project situations.

Also, in connection with previous grant applications, the Transit Authority of Northern Kentucky (TANK) and the Amalgamated Transit Union (ATU) agreed to certification based on the terms and conditious set forth in an agreement dated September 20, 1973. The Department of Labor in its certification letter of April 15, 1986, has modified this agreement to exclude interest arbitration provisions which the parties were unable to agree upon, and has included a factfinding procedure.

The Department referred project number KY-90-X031, on April 10, 1987, to the parties, requesting their views concerning fair and equitable protections satisfying the requirements of Section 13(c) of the Act. Our referral indicated that certification of the pending project would be based on our certification letter of April 15, 1986, for project KY-90-X018, unless one or both parties objected to those terms. Should objections arise, the parties would be given the opportunity to discuss alternative arrangements.

HODGE MULLEN
LRP LRP

On May 15, 1987, the Amalgamated Transit Union responded to the Department's referrals objecting to certification of the instant project based on our April 15, 1986 certification for reasons set forth in their Memorandum of Final Position dated February 28, 1986. The ATU has also indicated that without waiving their fundamental objections to the earlier certification, they would further urge modifications to procedures in our certification of April 15, 1986, should the Department certify the instant project on that the factfinding procedures herein conform with 13(c) (2) requirements that an appropriate dispute resolution mechanism be in place prior to the Department's certification.

On June 3, 1987, the Transit Authority of Northern Kentucky responded to the ATU's request for modifications in the Department's April 15, 1986 certification offering no objections to those modifications outlined in item 3 below.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. The terms and conditions of the agreement dated July 23, 1975, as modified by our certification of April 15, 1986 and by item 3 below, shall be made applicable to the operating assistance portion of the instant project and made part of the contract of assistance, by reference;

2. The terms and conditions of the agreement dated September 20, 1973, as modified by our certification of April 15, 1986 and by item 3 below, shall be made applicable to the capital portion of the instant project and made part of the contract of assistance, by reference;

3. The procedures in the Department's certification of April 15, 1986 shall be modified as follows:

   (a) Absent written mutual agreement by the parties to the contrary (such agreement not prejudicing either party's rights or position under this procedure), the terms and conditions of any expiring collective bargaining agreement between the parties shall remain in place following expiration of such agreement until the effective date of any successor agreement executed by the parties or the publication of the fact-finding report and recommendations as provided for herein, whichever is earlier.

(b) The parties shall submit their positions on all outstanding issues to the other party and the listing of unresolved issues and the parties' positions thereon shall be submitted to the factfinder;

(c) In order to clarify that factfinding may occur following contract expiration the word "beginning" shall be substituted for the word "within" in the first line of the fourth paragraph on page one of Appendix A;

(d) The factfinder will apprise the parties, in advance of the proceedings, of the rules and procedures which will be applicable and whether the factfinder is obligated to follow rules other than those of the Federal Mediation and Conciliation Service; and

4. The term "project" as used in the agreements of July 23, 1975 and September 20, 1973, as modified, shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant project; and

5. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to employees represented by the union under the July 23, 1975 and September 20, 1973 agreements, as modified, and this certification.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Laverne M. Pabst/Authority

t of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

SEP 29 1987

Mr. Lou Mraz
Regional Administrator
Urban Mass Transportation
Administration
Region VIII
Department of Transportation
Prudential Plaza
Suite 1822
Denver, Colorado 80265

Re: UMTA Application
Regional Transportation District
Operating Assistance
(CO-90-X026)
Rehabilitate 32
Buses, Purchase
Engines and
Transmissions,
etc.
(CO-90-X028)

Dear Mr. Mraz:

This supplements our certification letter to you dated March 19, 1987, concerning the applications indicated above for Federal assistance by the Regional Transportation District (RTD) of Denver. After careful reconsideration of that letter, and upon further review and advice by the Solicitor of Labor, we believe that it is necessary to modify two conclusions expressed in that letter.

In our letter dated March 19, 1987, we stated:

> The Department [of Labor] has also reviewed the 1984 district court decision in RTD v. Division 1001, ATU which applied the Greeley rationale in finding interest arbitration unconstitutional. The ATU did not appeal this district court decision. Having noted that the Greeley decision indicated that it was not addressing labor practices under the

> CLPA, we conclude that the issue before the state district court was distinguishable from Greeley and that interest arbitration between the RTD and ATU is not necessarily unconstitutional. The Department therefore believes that the parties would probably be required to participate in mandatory binding interest arbitration as required under the CLPA, should the ATU be denied the right to strike by the Director of the Colorado Division of Labor.

Page 4, paragraph 2, of our letter of March 19, 1987.

In Greeley Police Union v. City Council of Greeley, 191 Colo. 419, 553 P.2d 790 (1976), one of the cases referred to in the foregoing quotation from our earlier letter, the Colorado Supreme Court held that public sector binding interest arbitration is unconstitutional in Colorado. In that case the court held unconstitutional a city charter amendment permitting the City to engage in binding interest arbitration with a union of local police officers. The court appeared to reserve judgment as to whether the same result would apply to a public employer covered by the Colorado Labor Peace Act (CLPA), such as the Regional Transportation District. See Greeley, 553 P.2d at 791.

However, the Colorado District Court applied the principles of the Greeley decision to agreements entered into between RTD and Division 1001 of the Amalgamated Transit Union (ATU). In Regional Transportation District v. Division 1001, Amalgamated Transit Union, Civil Action No. 83-CV-2493 (Colorado District Court 1984), RTD challenged the constitutionality of interest arbitration provisions of a 13(c) agreement between RTD and ATU, which appear to be incorporated by reference in the current collective bargaining agreement between RTD and ATU. In granting RTD's motion for summary judgment, the Colorado court ruled that, pursuant to the Greeley decision, agreements to engage in interest arbitration between a governmental entity such as RTD and a union such as ATU representing employees of the governmental entity are contrary to the Constitution of Colorado. The ATU appealed to the Court of Appeals of the State of Colorado but thereafter stipulated for dismissal of the case, and the decision became final on April 24, 1985.

In our letter of March 19, 1987, We referred to the current collective bargaining agreement, dated March 1, 1985, between RTD and ATU, which incorporates by reference "the basic protective terms and conditions" of the parties' 13(c) agreement dated April 7, 1976 which in turn contained an interest arbitration

provision. Though not free from doubt, it appeared, therefore, that the 1985 collective bargaining agreement contained a right to binding interest arbitration. In our letter of March 19, 1987, we concluded that Section 13(c)(1) of the Urban Mass Transportation Act appeared to require the inclusion of a requirement for interest arbitration, inasmuch as that subsection expressly requires "the preservation of rights, privileges, and benefits. . . Under existing collective bargaining agreements or otherwise." (Emphasis in March 19, 1987 letter, page 5.)

However, upon further consideration of the principles of the Greeley and Division 1001 decisions and what appear to be the res judicata implications of the Division 1001 case on any enforcement of the interest arbitration provisions of the collective bargaining agreement between RTD and ATU, the Department of Labor now has serious reservations about the letter of March 19, 1987. Although the collective bargaining agreement between RTD and ATU does contain language that on its face arguably requires binding interest arbitration, upon further consideration it now appears that that language has been unenforceable and of no legal effect since at least April 24, 1985, when the decision of the court in the Division 1001 case became final. Since, as a result of the court's decision in Division 1001, the collective bargaining agreement between RTD and ATU existing at the time of my certification letter of March 19 did not contain a valid, enforceable interest arbitration provision, it seems clear that binding interest arbitration cannot be considered one of the "rights, privileges, and benefits . . . under existing collective bargaining agreements" within the meaning of section 13(c)(1) of the Urban Mass Transportation Act.

Moreover, interest arbitration does not appear to be required in this instance to ensure that "fair and equitable arrangements" within the meaning of section 13(c) requires binding interest arbitration. See Amalgamated Transit Union v. Donovan, 767 F.2d 939, 954 (D.C. Cir. 1985) (citing with approval First and Sixth Circuit cases holding that section 13(c) does not require interest arbitration). As a result, the Department of Labor is now of the opinion that with respect to this very difficult issue the Department should not have conditioned its certification on the retention of paragraph 15 of the parties' prior 13(c) agreement, which requires binding interest arbitration.

This conclusion also appears to be more in accord with the decision of the United States Supreme Court in Jackson Transit Authority v. Local Division 1285, Amalgamated Transit Union, 457 U.S. 15 (1982). In that case, the Supreme Court emphasized that the legislative history of the Act shows that Congress intended 13(c) agreements and collective bargaining agreements between aid recipients and their transit unions "to be governed by state law applied in State courts." 457 U.S. at 29. Although agreements are to be governed and enforced by State law and section 13(c) does not supersede State labor law, States must meet the requirements of section 13(c) in order to qualify for Federal assistance under the Urban Mass Transportation Act. See Amalgamated Transit Union v. Donovan, 767 F. 2d at 947. In this instance, however, it is now evident that section 13(c) did not require RTD to reinstate a provision of the collective bargaining agreement which previously had been excised as unconstitutional by Colorado courts. For these reasons, interest arbitration should not have been a condition of the certification in my letter of March 19 and is hereby deleted. The provisions of the CLPA are "fair and equitable" and sufficient under Section 13(c) of the Urban Mass Transportation Act.

The Letter of March 19, 1987, also stated:

> The CLPA requires that, where exercise of the right to strike is desired written notice must be filed not less than forty calendar days prior to the date contemplated for such strike (C.R.S. 8-3-113(3)). Elsewhere in the Colorado law, it provides that "employers and employees shall give the Director and the one to the other at least thirty days prior to witten notice of an intended change affecting conditions of employment or with respect to wages or hours." C.R.S. 8-1-125(2). Therefore, under Colorado Law the ATU must give forty days written notice before it strikes while the RTD is only required to give thirty days notice before it changes terms or conditions of employment. Conceivably, the RTD could declare its intent under C.R.S. 8-1-125(2) to change the terms of the collective bargaining agreement before or immediately after the ATU had declare its intent to strike under C.R.S. 8-3-113(3). This would leave a window period during which the RTD could unilaterally change the contract.

Page 6, complete paragraph of my letter of March 19, 1987.

After further reflection the Department has concluded that concern about the "window period" is overstated and that the third condition contained on page 8 of the March 19, 1987 letter is unnecessary. That condition is hereby deleted. It is considered that ATU has it within its power to preserve its right to strike by giving the Director of Labor Relations written notice at least 40 days before expiration of a collective bargaining agreement. The provisions of the CLPA are "fair and equitable" and sufficient under section 13(c) of the Urban Mass Transportation Act.

Sincerely,

John R. Stepp
Acting Deputy Under Secretary

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Steve Forman/RTD

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington D C 20210

SEP 30 1987

Mr. Joel Ettinger
Regional Administrator
Urban Mass Transportation Administration
Region V
300 South Wacker Drive, Suite 1740
Chicago, Illinois 60606

Re: UMTA Applications
Greater Peoria Mass Transit
District
Operating Assistance; Purchase
Bus Washer, Headsigns, Two
Supervisory Vans
(IL-90-X095)
Purchase and Install Farebox
System and Bus Stop Signs
and Poles
(IL-90-X098)

Dear Mr. Ettinger:

This is in reply to the request from your office that we review the above captioned applications for grants under the Urban Mass Transportation Act of 1964, as amended.

The Greater Peoria Mass Transit District and the Amalgamated Transit Union have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. The terms and conditions of the July 23, 1975 agreement provide protections to employees represented by the union satisfying the requirements of Section 13(c) of the Act.

By letters dated May 8, 1987, and May 11, 1987, the Amalgamated Transit Union responded to the Department of Labor's referral of the instant projects in which we proposed that certification be made on the same basis as our certification letter of July 1, 1986. In their response the ATU continued to object to the Department's previous determination which eliminated the interest arbitration provision by modifying paragraph (9) of the parties' October 8, 1973 Section 13(c) Agreement, which was previously included as the addendum to the July 23, 1975 agreement or in the agreement itself for application to capital projects.

The ATU believes that "Illinois law affirmatively mandates interest arbitration in the present circumstances " where it is included in the parties' current collective bargaining agreement, and that continuation of this provision is required under 13(c)(1) of the UMT Act. The ATU further stated that the Department had inappropriately deleted independent rights of the parties to arbitrate over "rights" disputes procedures in its determination which "deleted" interest arbitration.

Greater Peoria MTD's position is that the Illinois Public Labor Relations Act (PLRA) provides protections which exceed the requirements of Section 13(c). The Department has concluded that there is no need to impose additional conditions on the District for certification of the pending projects.

With respect to continuation of the existing interest arbitration provision in the parties' 13(c) agreement, it is clear that interest arbitration is not required under Section 13(c)(2) of the Act and that appropriate alternative procedures are available under the PLRA in the absence of the parties' agreement to continue to untilize paragraph (9) of their October 8, 1973 agreement. In fact, the "Union and the District disagree as to whether the collective bargaining agreement provides an interest arbitration provision and the extent of such a provision". As the parties are no doubt aware, the terms and conditions in their current collective bargaining agreement are protected under 13(c)(1) as stated in paragraph (3) of the Model Agreement and paragraph (2) of their October 8, 1973 agreement. The ATU, however, must resort to the State courts or the Illinois Labor Relations Board or to grievance procedures contained in their collective bargaining agreement for interpretation and enforcement of Article 43, Section 6 of the collective bargaining agreement during the term of that agreement.

The union's contention that the Department "deleted" more than interest arbitration, however, appears to be correct. When the Department modified paragraph (9) of the October 8, 1973 agreement our intent was to excise only language which was specifically related to interest arbitration. It was never the intent of the Department to delete independent rights of the parties to arbitrate over "rights" disputes, as provided for under the Section 13(c) agreement. It is the Department's determination that paragraph (9) shall remain in full force and effect as provided in the October 8, 1973 agreement except as the paragraph is applicable to interest disputes. The terms and conditions of the certification dated July 1, 1986 will in all other respects remain unchanged.

In addition, the ATU has requested that the following language be included in the Department's certification:

> "It is understood that ATU Local 416 has reserved the right to grieve the contracting out of any project work which it believes to be in violation of applicable labor contracts and/or past practice."

While the parties are in disagreement over the inclusion of the above proposed language, the Department believes, nevertheless, that this certification in no way diminishes or expands the rights of the union to bring grievances under their collective bargaining agreement and/or applicable law.

Therefore, the Department makes the certification with respect to the instant projects on condition that:

1. By reference, the terms and conditions for the Department's certification dated July 1, 1986, shall be made applicable to the instant projects and made part of the contracts of assistance except that the October 8,1973 agreement will remain in full force and effect with the exception of paragraph (9) as it applies to interest arbitration;

2. The term "project" as used in the agreement dated October 8, 1973 as referenced in the Department's certification dated July 1, 1986, shall be deemed to cover and refer to the instant projects;

3. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the union, shall be afforded substantially the same levels of protection as are herein afforded to employees represented by the union.

Sincerely,

John R. Stepp
Acting Deputy Under Secretary

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Michael Brown/Peoria MTD

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

SEP 30 1987

Mr. Joel P. Ettinger
Regional Administrator
Urban Mass Transportation Administration
Region V
300 South Wacker Drive, Suite 1740
Chicago, Illinois 60606

Re: UMTA Application
Rockford Mass Transit
District
Purchase Equipment, etc.
(IL-90-X104)

Dear Mr. Ettinger:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

By letter dated June 29, 1987 the Amalgamated Transit Union responded to the Department of Labor's referral letter for the instant project dated June 8, 1987 in which we proposed that certification be made on the same basis as our certification letter dated July 15, 1986. The ATU objects to the Department's previous determination in which it modified paragraph (9) of the parties June 27, 1973 13(c) agreement for grant assistance to eliminate the interest arbitration provision. The ATU further stated that the Department had inappropriately deleted independent rights of the parties to arbitrate over "rights" disputes procedures over matters such as the interpretation, application and enforcement of the 13(c) agreement which are necessary to attain acceptable levels for certification of the project.

It is the Authority's position that the language as outlined in the Department's July 15, 1986 certification letter adequately protects the enforceability rights of the employees under Section 13(c).

When the Department modified paragraph (9) of the June 27, 1973 13(c) agreement our intention was to excise language which was specifically related to interest arbitration. It was never the intent of the Department to delete independent rights of the parties to arbitrate over "rights disputes, as provided for under the Section 13(c) agreements. To the Department's knowledge these independent rights were never an issue expressed by the parties. It is the Department's determination

that paragraph (9) shall remain in full force and effect as provided in the June 27, 1973 agreement except as the paragraph is applicable to interest disputes. The terms and conditions of the certification dated July 15, 1986 will in all other respects remain unchanged.

Therefore, the Department makes the certification with respect to the instant project on condition that:

1. By reference, the terms and conditions in the Department's certification dated July 15, 1986, shall be made applicable to the instant project and made part of the contract of assistance except that the June 27, 1973 agreement will remain in full force and effect with the exception of Paragraph (9) as is applies to interest arbitration;

2. The term "project" as used in the June 27, 1973 Agreement as referenced in the Department's certification dated July 15, 1986, shall be deemed to cover and refer to the instant project; and

3. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded substantial the same levels of protection as are herein afforded to employees represented by the union.

Sincerely,

John R. Stepp
Acting Deputy Under Secretary

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Mary Lynn Belk/MTD

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

SEP 30 1987

Mr. Lou Mraz
Regional Administrator
Urban Mass Transportation Administration
Region VIII
Department of Transportation
Prudential Plaza, Suite 1822
Denver, Colorado 80265

Re: UMTA Applications
Regional Transportation
District (RTD)
Purchase (5) Methanol
Buses; Demo Project
(CO-03-3003)
Purchase ADB Equipment
(CO-90-X005) #5
Bus Inspection Project
(CO-90-X005) #5 Revised

Dear Mr. Mraz:

This is in reply to the request from your office that we review the above captioned applications for grants under the Urban Mass Transportation Act of 1964, as amended.

By letters dated May 27, 1987 and August 7, 1987, the Amalgamated Transit Union responded to the Department of Labor's referral of the instant projects in which we proposed that certification be made on the same basis as our certification letter of March 19, 1987. In their response, the ATU agreed to certification on the basis of the Department's March 19, 1987 certification.

The Regional Transportation District by letter dated April 28, 1987 maintains their position that interest arbitration is unconstitutional in Colorado and the right to strike contained in the Colorado Labor Peace Act is a sufficient dispute resolution procedure to ensure fulfillment of the requirements of Section 13(c) of the Act. The RTD further argued that the Department's conclusion that Article I, Section 7 of the parties' current collective bargaining agreement mandates the continuation of interest arbitration as part of our certification is without merit.

After reconsideration of our March 19, 1987 certification the Department of Labor concluded that we should not have conditioned our certification on the retention of interest arbitration in the parties' April 7, 1976 Section 13(c) agreement. The reasons for this decision are discussed in the Department's letter to you dated September 29, 1987 concerning projects (CO-90-X026) and (CO-90-X028). Interest arbitration is not a requirement for certification of RTD project applications.

The Department, therefore, has determined that paragraph (15) of the April 7, 1976 13(c) agreement between RTD and the ATU shall remain in full force and effect except as it applies to interest disputes. In deleting specific language from a previous certification for RTD (see our letter dated May 27, 1986) it appears that the Department deleted more than just interest arbitration. Our intent was to excise only language which was specifically related to interest arbitration. It is not the intent of the Department to delete independent rights of the parties to arbitrate over "rights" disputes, as was provided for under the Section 13(c) agreement. Futhermore, our records do not indicate that the parties ever intended to take issue with these independent rights in as much as, to the Department's knowledge, the subject was never raised.

The terms and conditions of the certification of May 27, 1986 shall be the basis for this certification except that paragraph (15) shall remain in full force and effect except as this paragraph is applicable to interest disputes.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects oh condition that:

1. By reference, the terms and conditions in the Department's certification dated May 27, 1986 shall be made applicable to the instant projects and made part of the contract of assistance, except that the agreement of April 7, 1976 will remain in full force and effect with the exception of paragraph (15) as it applies to interest disputes;

2. The term project as used in the agreement dated April 7, 1976, as referenced in the Department's certification dated May 27, 1986, shall be deemed to cover and refer to the instant projects;

3. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the union, shall be afforded substantially the same levels of protection as are herein afforded to employees represented by the union.

Sincerely,

John R. Stepp
Acting Deputy Under Secretary

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Stephen Foreman/RTD

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

Mr. Joel P. Ettinger
Regional Administrator
Urban Mass Transportation
Administration
Region V
300 South Wacker Drive, Suite 1740
Chicago, Illinois 60606

SEP 30 1987

Re: UMTA Application
City of Decatur
Operating Assistance
(IL-90-X099)

Dear Mr. Ettinger:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

The City of Decatur and the Amalgamated Transit Union have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. The terms and conditions of the July 23, 1975 agreement provide protections to employees represented by the union satisfying the requirements of Section 13(c) of the Act.

By letter dated May 27, 1987, the Amalgamated Transit Union (ATU) responded to the Department of Labor's referral letter for the instant project dated April 29, 1987, in which we proposed that certification be made on the same basis as our certification letter dated September 18, 1986. The ATU objects to the Department's previous determination which modified paragraph (8) of the parties May 5, 1972 agreement, previously included as the addendum to the July 23, 1975 agreement pursuant to paragraph (4) thereof, and paragraph (9) of the May 12, 1977 13(c) agreement, for operating and capital assistance respectively, to eliminate the interest arbitration provisions.

The ATU has also raised questions regarding the enforceability of condition 3 of the Departments' certification of September 18, 1986, and the applicability of the proviso in condition 3 should the employees at some future time, be converted to public employment status. Condition 3 has been included in the contract of assistance to ensure the employees' rights and is enforceable in the state courts. It would be premature for the Department to address appropriate certification terms should the employment status of transit workers change at some future date. No modification of condition 3 is, therefore, necessary.

The ATU has further stated that the Department had inappropriately deleted independent rights of the parties to arbitrate over "rights" disputes procedures. When the Department modified paragraphs (8) and (9) of the May 5, 1972 and May 12, 1977 13(c) agreements our intention was to excise only language which was specifically related to interest arbitration. It was never the intent of the Department to delete independent rights of the parties to arbitrate over "rights" disputes, as provided for under the Section 13(c) agreements. Furthermore our records do not indicate that the parties ever intended to take issue with these independent rights in as much as, to the Department's knowledge, these independent rights were never an issue expressed by the parties. It is the Department's determination, therefore, that paragraphs (8) and (9) of the May 5, 1972 and May 12, 1977 agreements shall remain in full force and effect except as these paragraphs are applicable to interest disputes. The terms and conditions of the certification dated September 18, 1986 will in all other respects remain unchanged.

Therefore, the Department makes the certification with respect to the instant project on condition that:

1. By reference, the terms and conditions for operating assistance in the Department's certification dated September 18, 1986, shall be made applicable to the instant project and made part of the contract of assistance;

2. The term "project" as used in the July 23, 1975 Agreement, as referenced in the Department's certification dated September 18, 1986, shall be deemed to cover and refer to the instant project; and

3. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded substantially the same levels of protection as are herein afforded to employees represented by the union.

Sincerely,

John R. Stepp
Acting deputy Under Secretary

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Robert Reed/DPTS

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

SEP 30 1987

Mr. Aubrey Davis
Regional Administrator
Urban Mass Transportation
Administration
Region X
Department of Transportation
Federal Building, 915 Second
Avenue, Suite 3106
Seattle, Washington 98174

Re: UMTA Application
TRI-County Metropolitan
Transportation Dis-
trict of Oregon
Purchase 13 Standard
Buses, 15 (20-25) Foot
Buses, 20 Special
Needs Transportation
Minibuses, etc.
(OR-90-X019) #3

Dear Mr. Davis:

This is in reply to the request from your office that we review the above captioned application for grant under the Urban Mass Transportation Act of 1964, as amended.

In connection with previous grant applications, the TRI-County Metropolitan Transportation District of Oregon (TRI-MET) and the Amalgamated Transit Union (ATU) Local 757, executed an agreement dated June 25, 1980, which provided to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

By letter dated August 14, 1987, the Amalgamated Transit Union responded to the Department of Labor's referral of the instant project in which we proposed that certification be made on the basis of the parties June 25, 1980 agreement with the deletion of interest arbitration language. In their response, the ATU continued to object to the Department's previous determination which excised interest arbitration from the June 25, 1980 Section 13(c) agreement. The ATU further indicated that the Department had "impaired the right of ATU Local 757 to invoke paragraph (17) to arbitrate 'rights' as well as 'interest' disputes."

In response to the ATU's letter of August 14, 1987 to Mr. William D. Robertson of the Board of Directors of the Tri-Met, Mr. Richard N. Van Cleave, an attorney for Tri-Met stated by letter dated August 26, 1987 to Mr. Leo Wetzel, Associate Counsel for the ATU that the recently enacted House Bill 2082 removed the statutory exemption for mass transit districts from the Oregon Public Employees Collective Bargaining Act. As a result, Tri-Met's employees have become public employees subject to the provisions and protections of the Oregon Public Employees Collective Bargaining Act ORS. 243.742 - 243.782. "Tri-Met's employees are now guaranteed both mandatory factfinding, ORS. 243.722 and the right to strike ORS. 243.726 (2)." Mr. Van Cleave indicated that, although the provisions of ORS. 243.726 (2) "allow a public employer and the representative of its employees to voluntarily enter into an interest arbitration arbitration procedure, Tri-Met has no desire or intent to enter into any such agreement."

The Department of Labor agrees that interest arbitration is not a requirement for certification of Tri-Met project applications. The transit employees are clearly covered by the Oregon Public Employees Bargaining Act which provides for dispute resolution procedures which in most respects meet the requirements of 13(c)(2).

However, when the Department excised paragraph (17) from the parties' 13(c) agreement our intention was only to excise language which specifically related to interest arbitration. It was never the intent of the Department to delete independent rights of the parties to arbitrate over "rights" disputes, as was provided for under the Section 13(c) agreement. Furthermore, our records do not indicate that the parties ever intended to take issue with these independent rights in as much as, to the Department's knowledge, the subject was never raised. It is our determination, therefore, that paragraph (17) shall remain in full force and effect except as this paragraph is applicable to interest disputes. The terms and conditions of the agreement dated June 25, 1980 will in all other respects remain unchanged.

The union further requested that the Department, consistent with certifications elsewhere, specifically incorporate provisions of the Oregon Statute into our certification terms and include status quo language to ensure that dispute procedures comply with the guidance provided by the federal court in Amalgamated Transit Union v. Donovan, 767 F.2d 939 (D.C. Cir. 1985). This provision is not required where the employees' right to strike in not significantly impaired or delayed as it would be pending factfinding procedures under the Oregon public employee statute.

The courts have refused to allow the Secretary to certify agreements which allow employers unilateral control over mandatory subjects of collective bargaining. The Donovan court stated:

> While it is true that Congress neither protected the right to strike nor required interest arbitration as a condition of federal transit aid, it in inconceivable that a system that allows an employer to set wages unilaterally is consistent with the continuation of collective bargaining rights required by Section 13(c). We hold that while section 13(c) does not entitle transit workers to any particular form of binding arbitration, it does require some process that avoids unilateral control by an employer over mandatory subjects of collective bargaining.

The Department has consistently complied with the courts'guidance in all situations where employees have lost a private sector right to strike. The Department, therefore, has included language similar to that suggested by the ATU in section 3 below. Finally, the ATU has requested for this as for previous projects, and Tri-Met has agreed, that the language in paragraph two of item 3 be included for certification of projects which include special needs transportation.

Upon careful consideration of the circumstances, including consideration of the arrangements satisfying each of the five matter specified in section 13(c)(1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirements of section 13(c) of the Act. With respect to section 13(c)(2), this conclusion is based on our understanding that employees of Tri-Met are subject to Oregon state law which, as supplemented, provides for a dispute resolution procedure which is sufficient to meet the requirements of the Act.

Accordingly, the Department makes the certification required in the Act, on condition that:

1. By reference, the terms and conditions in ORS.243.650 - 243.782 and in the June 25, 1980 agreement shall be made applicable to the instant project and made part of the contract of assistance, however, the June 25, 1980 agreement will remain in full force and effect with the exception of paragraph (17) as it applies to interest disputes;

2. The term "project" as used in the agreement dated June 25, 1980 shall be deemed to cover and refer to the instant project;

3. The contract of assistance shall included the following language:

"Absent written mutual agreement by the parties to the contrary (such agreement not prejudicing either party's rights or position), the terms and conditions of any expiring collective bargaining agreement shall remain in place following the expiration of such agreement until the effective date of any successor agreement executed by the parties or the publication of the fact-finder's findings of fact and recommendations as provided for under ORS. 243.650 to 243.782, whichever is earlier."

"Tri-Met shall have the obligation and responsibility to ensure that all special needs transportation minibuses referred to in the Project are used only in the provision of elderly and handicapped service. Tri-Met shall, by contract, ensure that no third-party contractor can operate those Project vehicles in such a manner that they compete with, replace, or displace any Tri-Met fixed route services."

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded substantially the same levels of protection as are herein afforded to employees represented by the union.

Sincerely,

John R. Stepp
Acting Deputy Under Secretary

cc: Theodore Munter/UMTA
Earle Putman/ATU
Douglas Capps/TRI-MET
Richard N. Van Cleave/Esquire

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

SEP 30 1987

Joel P.Ettinger
Regional Administrator
Urban Mass Transportation
Administration
Region V
300 South Wacker Drive
Suite 1740
Chicago, Illinois 60606

Re: UMTA Applications
Southwest Ohio Regional
Transit Authority
Leasing Equipment for
Service to University
of Cincinnati
(OH-03-0095)
Purchase of up to 41
New Buses
(OH-90-X072-01)
(OH-90-X059-03)

Dear Mr. Ettinger:

This is in reply to the request from your office that we review the above captioned applications for grants under the Urban Mass Transportation Act of 1964, as amended.

By letters dated June 10, 1987, and September 9, 1987 the Amalgamated Transit Union responded to the Department of Labor's referral of the instant projects in which we proposed that certification be made on the same basis as our certification letter of February 13, 1987. In their response, the ATU continued to object to the Department's previous determination which excised interest arbitration from the August 29, 1975 Section 13(c) agreement and in part substituted in lieu thereof a mediation and factfinding procedure provided for in the Ohio Revised Code. The ATU further indicated that the Department had inappropriately deleted independent rights of the parties to arbitrate over "rights" disputes procedures over matters such as the interpretation, application and enforcement of the 13(c) agreement which are necessary to attain acceptable levels for certification of the project.

Southwest Ohio Regional Transit Authority (SORTA) continues to take the position that the Ohio Revised Code provides for the continuation of collective bargaining rights of transit employees as required by the Act and that interest arbitration, although it had been used in the past, is not required to provide for the continuation of these rights. The Department of Labor agrees that interest arbitration is not a requirement for certification of SORTA project applications.

When the Department excised paragraphs (17) and (18) from the parties' 13(c) agreement our intent was only to excise language which was specifically related to interest arbitration. It was never the intent of the Department to delete independent rights of the parties to arbitrate over "rights" disputes, as was provided for under the Section 13(c) agreement. Furthermore, our records do not indicate that the parties ever intended to take issue with these independent rights in as much as, to the Department's knowledge, the subject was never raised. It is the Department's determination, therefore, that paragraphs (17) and (18) shall remain in full force and effect except as these paragraphs are applicable to interest disputes. The terms and conditions of the certification dated February 13, 1987 will in all other respects remain unchanged. In addition, the parties have executed a side letter agreement dated June 3, 1987 for application to project (OH-03-0095).

Therefore, DOL makes the certification with respect to the instant projects on condition that:

1. By reference, the terms and conditions in the Department's certification dated February 13, 1987, shall be made applicable to the instant projects and made part of the contract of assistance, however the August 29, 1975 agreement referred to therein will remain in full force and effect with the exception of paragraphs (17) and (18) as they apply to interest disputes;

2. The side letter agreement dated June 3, 1987 shall be made applicable to project (OH-03-0095) and made part of the contract of assistance, by reference;

3. The term "project" as used in the agreement dated August 29, 1975, as referenced in the Department's certification dated February 13, 1987, shall be deemed to cover and refer to the instant projects; and

4. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the union, shall be afforded substantially the same levels of protection as are herein afforded to employees represented by the union.

Sincerely,

John R. Stepp
Acting Deputy Under Secretary

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Murray Bond/SORTA

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

NOV 24 1987

Mr. Aubrey Davis
Regional Administrator
Urban Mass Transportation Administration
Region X
Federal Building
915 Second Avenue, Suite 3106
Seattle, Washington 98174

WHITE COPY

Re: UMTA Application
City of Boise
Operating Assistance
Only
(ID-90-X013)-A

Dear Mr. Davis:

This certification is in reference to your request that the Department of Labor provide certification under section 13(c) of the Urban Mass Transportation Act of 1964, as amended, for the above captioned application. Although the Department of Transportation's transmittal of this project originally included both operating and capital assistance, DOL has agreed, at the request of the applicant, to address only the terms and conditions for certification of the operating assistance at this time. We have been informed by UMTA of the urgency of the City's need for the operating assistance included in this grant, and have, therefore, decided to move forward with certification of that portion of the grant.

The City's most recent proposal for certification of the operating project is contained in its letter of October 13, 1987 and consists of the "National (Model) agreement and Paragraph (9) of the March 11, 1975 Section 13(c) Agreement." The City has provided additional "clarifications" in its letter which the Department also includes in its certification. Even with these "clarifications", however, the Department believes that our certification must be further supplemented to address all the concerns which we identified to the parties prior to their last round of negotiations. The Department believes that supplemental language is required for this certification in order to assure that "fair and equitable" arrangements are in place and enforceable by the parties.

The Amalgamated Transit Union (ATU) objects to the certification of the instant operating assistance for reasons set forth in its letter dated October 20, 1987. The ATU has stated its opposition to any certification "in the absence of supplemental arrangements negotiated by the parties or imposed by the Secretary which assure compliance with the March 11, 1975 Section 13(c) Agreement as well as enforceability of the certification terms as it relates to the project now pending." The Department believes that the existing 1975

arrangements provide an adequate mechanism to ensure such compliance. Although the parties are in dispute over the interpretation of certain provisions in the 1975 agreement, there is no evidence that the City has failed to comply with that agreement or with the decision of any court or arbitrator as to the interpretation of that agreement.

The union has also indicated its belief that the issues identified in its letter of October 20, 1987, constitute "special circumstances" which would require supplemental arrangements "beyond those set forth in the October 13, 1987, Clarifications" submitted by the City. The ATU has outlined a number of issues, some of which specifically address the suggested terms and conditions proposed by the City, and the Department has examined these arguments as well as those of the City in fashioning our certification for the pending project. It is apparent, though, that the Department has provided the parties with the opportunity to discuss the issues which the union has identified, and that in addressing these issues in our certification, we have ensured that all necessary supplemental arrangements are in place prior to certification of the instant project.

1. The first issue raised by the ATU concerns the question of the ability of the City to require that contractors comply with or become a party to Section 13(c) commitments as a condition precedent to the granting of a contract. Boise City has indicated that it "can require that any successful bidder agree to become financially and administratively responsible under those agreements." The union does not dispute the ability of the City to impose this requirement on a contractor. Rather, they are concerned with the inconsistency of the City's positions here and in pending litigation in the State courts. The Department believes that the City's most recent opinion is consistent with applicable law and that the City does have the authority to assure compliance with such commitments. The Department of Labor, therefore, will accept the City's assurances, as indicated in section 4 of its "clarifications", that the City will ensure that any subsequent contractor or operator of the system agree to be bound by the terms and conditions of the Model Agreement for purposes of this project.

2. The current operator, Transit West Services (TWS) has agreed to be bound by the terms and conditions of the Model Agreement for purposes of the instant project. The City has requested that TWS do so in order to address the Department's concerns that arrangements would provide for a "financially and administratively responsible party to resolve disputes and remedy adverse effects which result from the Federal assistance." In addition, the City itself has agreed in its October 13, 1987 letter that it will be financially and administratively responsible for claims which cannot be satisfied by TWS. As the grantee for Federal assistance, the City must act as the

guarantor of any liabilities which are the responsibility of its agent TWS with respect to the requirements of 13(c). The City is also free to make any additional contractual arrangements with its agent which may be necessary to protect the interests of the City, but which do not derogate from the City's 13 (c) obligations. The Department clearly intended in its letter of October 1 that procedures be in place to resolve and remedy prior claims regardless of when those claims were filed. The Department accordingly has included additional language in condition three below which requires that the City act as guarantor of any 13(c) claims filed with respect to this project.

3. The union asserts that the "proposed arrangements fail to include protections addressing the employment rights of the relevant transit workers upon a changeover in management contractors." The Department does not believe that it is necessary to address this issue in the context of the pending project because this project is only for operating assistance which reimburses the City for operation of the system for the previous year and because the parties will be addressing this issue in negotiations over protective arrangements for a pending capital assistance project. This decision does not, as the union concludes, rely on a determination that "any effect upon employment rights on a change in management contractors could not be 'as a result of the [operating assistance] project'", but rather from our conclusion that the issue simply is not ripe. Such protections must be discussed as indicated in our letter of March 10, 1987 to the parties; however, those discussions should occur during negotiations over the capital project. The capital project will require a new certification by the Department.

4. The ATU asserts that certification of the pending operating assistance "must include binding and enforceable provisions ensuring that the terms and conditions of any labor contract will be honored throughout its effective term in the absence of an agreement, which is the product of collective bargaining, to the contrary." Clearly, the Model Agreement already provides for this requirement in paragraph 3. It is not necessary for the Department to further address this issue.

5. The ATU has indicated, and the proposal of the City of Boise confirms, that the parties were unable to agree upon language which "makes it clear that the employees of the transit system are intended to be third party beneficiaries to the contract between the Department of Transportation and the City of Boise" as indicated in the Department of Labor's letter of October 1 to the parties. The Department's intent, of course, was to indicate that the employees are third party beneficiaries to the employee protection provisions of the grant contract, and their representative may assert claims on their behalf. It is clear from the legislative history of the UMT Act that protective arrangements must be enforceable in order to

ensure that they are "fair and equitable." The Department has, therefore, included language in condition three below which states that these arrangements are intended for the primary and direct benefit of the transit employees in the service area of the project.

6. The ATU raises the issue of the continuation of collective bargaining rights required under section 13(c)(2) of the Act, concluding that the City's assertion that the parties' agreement of March 11, 1975 has somehow "terminated" disqualifies the City from subsequent assistance. The Department believes that the City must continue to abide by the commitments made in the 1975 agreement for the life of the grant contract or contracts to which the agreement was applied. The City need not elect to apply the March 11, 1975 Agreement to future projects, and we believe that this is what the City has intended when they asserted that the March 11, 1975 agreement had "terminated."

7. The ATU has indicated some concern with the form of the TWS letter to the Department which states that, "for the purpose of meeting its contractual obligations to the City of Boise City(,) Transit West Services, Inc. and Boise Urban Stages, Inc., pursuant to paragraph (26) of the 'National Model 13c Agreement' dated July 23, 1975, hereby serve notice of their desire to become a party to that agreement for UMTA Grant ID-90-X013 through April 3, 1988." While we must agree with the ATU that this is a "unique" endorsement of the National Agreement, it is sufficient for purposes of the Department's determination of the basis for certification of the instant project.

The union's concerns over the specific end date of TWS's section 13(c) obligations is remedied by the language in condition three of the certification conditions expressed below. This is necessary to ensure that there will be a financially responsible party to resolve and remedy claims surrounding the pending project. Therefore, while the City has agreed, in applying the "clarifications" in its letter of October 13, 1987 to the instant project, to obligate any subsequent contractor to hear and honor 13(c) claims to the extent that those claims are founded upon events occurring during that contractor's contract, the City itself will act as the guarantor of such rights when its agent, whether TWS or a subsequent contractor, fails to hear and honor claims. While the Department will not require the City to become a party to the Model Agreement for purposes of this certification, the City is required to abide by all the terms and conditions of that agreement and of this certification, in the same manner that TWS would be so required, during any time period after April 3, 1988 until a subsequent contractor becomes party to the Model agreement.

8. The ATU has also raised concerns over the processing of claims by the City of Boise upon the failure of TWS to satisfy a 13(c) claim. The Department has addressed this issue in resolving the difficulties identified in paragraph number 2 above. The Department, in item three of its conditions, includes language which not only assures that the City will serve as a legally and financially responsible party should its agent fail to do so, but also provides that the procedures followed by the parties in pursuing a claim with TWS need not be repeated should TWS, at some point in the process, fail to comply with its obligations and commitments. We believe that the issue raised by the union with respect to the time limits for filing claims no longer exists in view of the Department's modification of paragraph 6(A) of the clarifications in the attachment to the City's October 13 letter.

The City appears to have made a good faith effort, as demonstrated by its letter of October 13, to address the concerns raised by the Department of Labor in our October 1 letter. It has required TWS to become a party to the Model Agreement, and TWS has agreed that paragraph (9) of the March 11, 1975 agreement shall be included as the addendum pursuant to paragraph (4) of the Model Agreement. The City has provided assurances that "as a condition precedent to the award of any contract for the management and operation of the Boise transit system, any private or public party contracting with Boise will be required, for purposes of the above referenced Project, to agree to become a party to the National (Model) 13(c) Agreement." The City has proposed a supplementary procedure for resolution of claims over the interpretation, application and enforcement of 13(c) disputes which, as modified in condition three below, will provide for fair and equitable claims resolution. Finally, the City has also provided assurances, in a letter from the Boise City Attorney, that the City can bind a subsequent operator of the system to the terms of the Model Agreement as required by paragragh (19) of that agreement.

Upon careful consideration of all of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in sections 13(c)(1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirements of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant operating assistance project on condition that:

1. The terms and conditions of the July 23, 1975 Model Agreement, with paragraph (9) of the March 11, 1975 agreement as the addendum pursuant to paragraph (4) thereof, and the supplemental arrangements set forth in the City of Boise's October 13, 1987 letter, as modified in item three below, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the July 23, 1975 Model Agreement shall be deemed to cover and refer to the instant operating assistance project;

3. The contract of assistance shall include the following language:

(a) Paragraph 6(A) of the "clarifications" included in the City of Boise City's letter of October 13, 1987 to the Department shall be modified to read as follows:

(A) If any claim filed with the City's agent for operation of the transit system cannot be satisfied financially or administratively by that agent, such claim may be filed with the City Clerk of Boise, and Boise will be responsible for the disposition of such claim. The City shall complete the processing of such claim pursuant to the provisions of paragraph (17) of the National (Model) 13(c) Agreement or shall provide an appropriate remedy for such claim if the agent fails to do so. The City is required to abide by all terms and conditions of the Model Agreement and of this certification in the same manner that TWS would be so required, during any time period after April 3, 1988 until a subsequent contractor becomes party to the Model Agreement. Unless otherwise agreed to by the parties, nothing in this paragraph shall require the parties to duplicate any step in processing of a claim which has already been accomplished pursuant to paragragh (17) of the Model Agreement.

(b) This letter and the terms and conditions contained herein are to be included in the contract of assistance for the instant project and are intended for the primary and direct benefit of transit employees in the service area of the project. Their representative may assert claims on their behalf; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union that is signatory to the executed agreement or has become a party to the Model Agreement pursuant to paragraph (27) thereof, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union. Should a dispute arise, absent mutual agreement by the parties to

utilize any final and binding procedure for the resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of his staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp
Acting Deputy Under Secretary

cc: Theodore Munter/UMTA
Mayor Dirk Kempthorne/Boise
Alec Andrus/Boise
Kent Woodman/City
Jim LaSala/ATU
Earle Putnam/ATU

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

DEC 31 1987

Mr. Peter N. Stowell
Regional Administrator
Urban Mass Transportation
Administration
Region III
841 Chestnut Street, Suite 714
Philadelphia, Pennsylvania 19107

Re: UMTA Application
Metropolitan Transit
Authority
Operating Assistance
(TN-90-X051)
Clarifications to Pre-
vious Certification
(TN-90-X056)

Dear Mr. Stowell:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the Metropolitan Transit Authority (MTA) and the Amalgamated Transit Union executed an agreement dated June 26, 1975, which provided to the employees represented by the union protections satisfying the requirements of the Act for capital assistance projects.

In addition, the parties had previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. The parties had agreed that paragraph (9) of their June 26, 1975 Section 13(c) Agreement would be included as the addendum pursuant to paragraph (4) thereof for previous operating grants.

The MTA and the ATU continue to disagree over the inclusion of language in Paragraph (9) of the parties' June 26, 1975 Section 13(c) Agreement as the basis for the Department's certification of pending projects. By letter dated November 25, 1987, the ATU continued to object to the Department's previous determination, dated September 30, 1986, which "modified" Paragraph (9) of the June 26, 1975 Section 13(c) agreement by deleting the requirement for interest arbitration. The ATU also raised two concerns with the Department's certification of September 30, 1987 for project (TN-90-X056) which we believe should appropriately be addressed and clarified by the Department at this time.

First, the union takes issue with the Department's statement in the September 30, 1987 certification that "TMT employees . . . are subject to the National Labor Relations Act, and have the right to strike". We acknowledge that our certification of September 30, 1986 contained a more accurate representation of the Department's position on this issue. While the NLRB has exclusive jurisdiction to determine NLRA coverage, we are nevertheless, compelled to reach an educated conclusion regarding such coverage for purposes of fulfillment of 13(c)(2) requirements in the absence of a recent definitive ruling under current NLRB standards. The Department remains convinced, however, that employees of TMT are covered under the NLRA and that no alternative dispute resolution procedure is required to ensure fulfillment of Section 13(c)(2) requirements.

Second, the union states that because the Department "is not a party to the contract between the Authority and ATU Local 1235, it cannot 'modify' the 1975 Section 13(c) Agreement nor otherwise 'delete' language therefrom." The Department acknowledges that it is not a party to the 13(c) agreement and, therefore, we have not amended or modified that 13(c) agreement. However, we do have the authority to impose appropriate protective arrangements as the basis for certification of UMTA grants, including arrangements which contain only selected paragraphs or portions of paragraphs of the parties' 13(c) agreements. References to the amendment or modification of the June 26, 1975 13(c) agreement or the deleting or excising of specified language are intended only to convey differences between the language in the parties' 13(c) agreement and the language in the Department's imposed terms and conditions and not that the Department is a party to the agreement or that we have changed it for this or for previous projects to which the parties' June 26, 1975 Agreement was applied. The ATU's proposed wording for the Department's certification, therefore, does not have a meaning which differs from that in our September 30, 1987 certification. Paragraph (9) of the June 26, 1975 Agreement was applied to project (TN-90-X056) except to the extent that it requires interest arbitration.

With respect to the pending operating assistance project, the ATU has indicated that the union represents paratransit operators employed by Special Transportation Services, Inc., who are in the service area of the project. The ATU has requested that special language be included in our certification to extend these protective arrangements to ATU Local 1235 employees of Special Transportation Services, Inc.. The instant operating assistance application, however, is being certified on the basis of the Model Agreement to which ATU Local 1235 is already signatory. This agreement was not intended to be limited to the employees of the Recipient and, therefore, employees of Special Transportation Services are already covered under the agreement. However, we believe that MTA should have the opportunity, for capital

projects, to negotiate separate protective arrangements with the ATU to cover employees who work for other transit operators in the service area. Should MTA wish to negotiate a separate protective agreement to cover these employees for future capital grants, they should contact the ATU with a proposal.

Finally, the ATU indicates in their November 25, 1987 letter that the Department's referral of the instant project was interpreted "as envisioning a certification of the instant project on the basis of the National Agreement with an Addendum consisting of Paragraph (9) of the parties' June 26, 1975, Section 13(c) Agreement, subject to the reservations expressed in the September 30, 1987, certification." The Department, however, envisions certification on the basis of the Model Agreement without reference to an addendum. Departmental policy is to specifically reference the addendum to the Model Agreement only where interest dispute procedures in the parties' 13(c) agreements are included in the 13(c) arrangements currently being applied to UMTA grants by the Department. As in the past, other dispute procedures, including rights and grievance procedures in 13(c) arrangements, are attached to the Model Agreement by the parties pursuant to paragraph (4) whether or not they are specifically referenced in the Department's certification.

Accordingly, the Department of Labor makes the certification required in the Act with respect to project (TN-90-X051) on condition that:

1. This letter and the terms and conditions of the agreement dated July 23, 1975 shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement of July 23, 1975, shall be deemed to cover and refer to the instant project;

3. The contract of assistance shall include the following language:

   "Nothing in this certification shall be construed to enlarge or limit the right of the employees covered by this agreement or their employer, to utilize upon expiration of any collective bargaining agreement or otherwise any economic measures that are not inconsistent or in conflict with the collective bargaining agreement or applicable law; provided, however, that in the event said right to take economic measures is lost by operation of law, the parties will renegotiate the applicability of paragraph (9) of their June 26, 1975 agreement or an alternative procedure to resolve disputes other than those arising out of the 13(c) agreement. If no agree-

ment is reached, either party may invoke the jurisdiction of the Secretary of Labor for a determination of the issue and any appropriate action, remedy or relief, including the amendment of previously certified projects which would otherwise no longer have a dispute resolution procedure in place."; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union that is signatory to the executed agreement, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the signatory union under the July 23, 1975 agreement and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp
Acting Deputy Under Secretary

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Jo Federspiel/MTA

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

JAN 13 1988

Mr. Joel Ettinger
Regional Administrator
Urban Mass Transportation
Administration
Region V
300 South Wacker Drive
Suite 1740
Chicago, Illinois 60606

Re: UMTA Application
Miami Valley Regional
Transit Authority
Operating Assistance;
Replacement Buses, etc.
(OH-90-X094)
Project Corrections on
Previous Certifications
(OH-90-X056)
(OH-90-X075)

Dear Mr. Ettinger:

This is in reply to the request from your office that we review the application for project OH-90-X094 under the Urban Mass Transportation Act of 1964, as amended. In addition, the terms and conditions of this certification shall retroactively replace those letters for projects OH-90-X056 and OH-90-X075 that were certified on July 29, 1986 and June 19, 1987, respectively. Those letters are null and void by this certification.

The Miami Valley Regional Transit Authority (RTA) and the Amalgamated Transit Union (ATU) executed an agreement dated October 22, 1975, in connection with a previous grant application, which provided to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act for capital projects.

In addition, the parties had previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. The parties had agreed that paragraph (15) of their October 22, 1975 Section 13(c) agreement would be included as the addendum to the July 23, 1975 agreement pursuant to paragraph (4) thereof for previous operating grants.

The Department is aware that the RTA and the ATU disagree over the inclusion of language in paragraph (15) of the parties' October 22, 1975 Section 13(c) agreement for the Department's certification, and that it is unlikely that the parties will agree on an alternative method for dispute resolution. The ATU and RTA have also indicated that although they are willing to negotiate a settlement over relevant issues they do not want to delay the 13(c) processing of the above mentioned projects by participating in what the ATU characterized as "...what surely would be fruitless negotiation sessions." The parties have sufficiently stated their positions to the Department regarding the mechanism to be included in the Section 13(c) certifications for the above projects. UMTA has also indicated to the Department its desire to certify project OH-90-X094 this quarter. Based on the circumstances described above, the Department makes this determination.

Section 4117 of the Ohio Revised Code provides for the continuation of collective bargaining rights and a means for resolving interest disputes. Section 4117 provides that parties may use any dispute settlement procedure mutually agreed to by the parties or a formal procedure which includes mediation, fact-finding, conciliation and the right to strike.

Prior to the enactment of the Ohio Public Employees Collective Bargaining Law of 1983, interest arbitration was the dispute resolution mechanism agreed to by the parties with respect to projects certified under Section 13(c) of the Act. That mechanism met the requirements of Section 13(c)(2). Although 13(c) does require some dispute resolution process, it is clear from the legislative history and case law that interest arbitration is not specifically required by the Act. Interest arbitration remains an acceptable means of meeting the Section 13(c)(2) requirement for continuation of collective bargaining rights, as is the right to strike and fact-finding. An interest arbitration provision in a Section 13(c) agreement is not automatically perpetuated in a succeeding agreement unless it is mutually agreed to by the parties. In this instance, where there is no mutual agreement "to submit the disputed issues to final and binding arbitration", we believe that Section 4117 provides RTA employees with the right to strike. The Department has determined that the right to strike as provided in Section 4117 in and of itself is sufficient to meet the requirements of a dispute resolution procedure in fulfillment of the Section 13(c)(2) requirement for continuation of collective bargaining rights.

Although transit employees can be enjoined from striking for "health and safety" reasons, the statute provides that: injunctions can be secured following an investigation by the state employment relations board and a determination that the strike did create a clear and present danger to the "health and safety" of the public. The board must then request an injunction from the court. However, the law provides the parties to the dispute shall engage in collective bargaining for a period of sixty days from the date of the order or until agreement is reached.

Furthermore, the statute provides that the parties shall collectively bargain with the assistance of a mediator appointed by the board. The mediator at his discretion, may require that the parties collectively bargain in public or private. At any time after there has been forty-five days of collective bargaining and no agreement has been reached, the mediator may make public a report on the current position of the parties to the dispute and the effort which have been made for settlement. The report shall include a statement by each party of its position and a statement of the employee organization's and public employer's offers of settlement. This clearly ensures a full and fair airing of the parties issues and prevents unilateral control by the employer thereby protecting the rights of the mass transit employees.

In light of Amalgamated Transit Union v. Donovan, 767 F.2nd 939, 956 (D.C. Cir. 1985), the Department has also determined that there are two additional conditions which must be met before certification can be made. These provisions will assure that the terms and conditions of an expiring collective bargaining agreement will remain in place until a successor agreement has been executed or the fact-finder's report has been made public, and that if the fact-finder's recommendation is rejected then the rejecting party will be required to make their reasons for rejection public.

The Department has determined that the additional language in item four below will ensure a full and fair airing of the parties' issues and will ensure that the parties will give serious consideration to the fact-finding recommendations. The language will also guard against unilateral control by the employer over mandatory subjects of collective bargaining while issues are being resolved under the dispute resolution procedure.

By letter dated April 14, 1987, Mr. Lombard, attorney for the RTA, proposed certain language to be added to the UMTA certification. The parties have had subsequent discussions with

each other and with the Department regarding the proposed language for inclusion in the pending certification. The parties are in disagreement over conditioning the continuation of the expiring collective agreement on the employees not engaging in any slowdown, work stoppage, or strikes. The parties have not arrived at any mutually acceptable arrangement. It is the policy of the Department that where the parties have not been able to reach agreement on the language for inclusion in the certification and the language is not required to meet the minimum requirement for certification it would not be included.

The Department has reviewed the proposed language concerning extending the expired collective bargaining agreement on the condition that ". . .employees continue to abide by those terms and do not engage in any slowdown, work stoppage, or strike" and has determined that this qualifying language is not necessary to meet the minimum requirements of the Act.

The parties have also agreed that the contract of assistance for project OH-90-X056 shall be supplemented by special language to assure that in the event the work involved in the trolley coach overhead rerouting contained in the Project is to be performed other than in-house by employees of the Regional Transit Authority, the ATU Local 1385 will receive prior notification of such; and that in any event there will be no adverse impact on any individual in the bargaining unit and no such individual otherwise capable of performing the aforementioned work will be displaced as a result of any contracting out of that work.

In addition, in its request for certification of project OH-90-X075 the ATU requested that the following language be included in the contract of assistance:

> "ATU Local 1385 specifically reserves its right to grieve any and all Project work contracted out in violation of its labor agreement and/or past practice."

While the parties are in disagreement over the inclusion of the above proposed language, the Department believes, nevertheless, that this certification in no way diminishes or expands the rights of the union to bring grievances under their collective bargaining agreement and/or applicable law.

With respect to continuation of the existing interest arbitration provision in the parties' 13(c) agreement, it is clear that interest arbitration is not required under Section 13(c)(2) of the Act and that appropriate alternative procedures are available under the PLRA in the absence of the parties' agreement to

continue to utilize paragraph (15) of their October 22, 1975 agreement. The Department determines that the terms and conditions in the October 22, 1975 13(c) agreement will be applied to these projects' provided, however, that paragraph (15) of the agreement is made applicable except to the extent that it requires interest arbitration.

Therefore, upon careful consideration of all the circumstances, including consideration of the provisions satisfying each of the five matters specified in Section 13(c)(1) through (5) of the Act, the Department of Labor has determined that the protective arrangements described below are fair and equitable and meet the requirements of Section 13(c) of the Act.

As the ATU repeatedly points out, the Department's certification is not based on the parties' October 22, 1975 13(c) agreement, but rather on imposed terms and conditions which differ from those contained in that agreement. The Department acknowledges that we are not a party to the 13(c) agreement and, therefore, have not amended or modified the 13(c) agreement. However, we do have the authority to impose appropriate arrangements, including arrangements which contain paragraphs or portions of paragraphs of the parties' 13(c) agreement, which meet the requirements of the Act.

References to the amendment or modification of the 13(c) agreement or to the extent the arrangement remains in full force and effect are intended only to convey differences between the language in the parties' agreement and the language in the Department's imposed terms and conditions and not that the Department is a party to the 13(c) agreement and can change it for this or for previous projects to which that agreement was applied.

Accordingly, the Department makes the certification called for in the Act with respect to the instant projects on condition that:

1. This letter and the terms and conditions of the agreement dated October 22, 1975, as supplemented by Section 4117 of the Ohio Revised Code, and supplemented by item four below, shall be made applicable to the capital assistance portions of the instant projects and made part of the contracts of assistance, by reference, provided, however, that paragraph (15) of the October 22, 1975 agreement, shall be made applicable to these projects except to the extent that it provides for interest arbitration;

2. The terms and conditions of the agreement dated July 23, 1975, with Section 4117 of the Ohio Revised Code and item four below included as the addendum pursuant to paragraph (4), shall be made applicable to the operating assistance portions of the instant projects and made part of the contracts of assistance, by reference;

3. The term "project" as used in the agreements of July 23, 1975 and October 22, 1975, shall be deemed to cover and refer to the instant projects; and

4. The contracts of assistance shall include the following language:

"Absent written mutual agreement by the parties to the contrary, the terms and conditions of any expiring collective bargaining agreement shall remain in place following the expiration of such agreement until the effective date of a successor agreement between the parties or the publication of the fact-finding report and recommendations as provided for ~~herein~~, whichever is earlier."

In addition:

"If either of the parties ~~were to~~ reject the recommendations of the fact-finding panel, the rejecting party shall state its reasons for such rejection and such statement shall be published in the local media ~~along with~~ the finding of facts and recommendations of the panel. ~~The other party has the opportunity to make its position statement public at its own expense.~~"

Furthermore:

"...in the event the work involved in the trolley coach overhead rerouting contained in the Project OH-90-X056 is to be performed other than in-house by employees of the Regional Transit Authority, ATU Local 1385 will receive prior notification of such; and that in any event there will be no adverse impact on any individual in the bargaining unit and no such individual otherwise capable of performing the aforementioned work will be displaced as a result of any contracting out of that work."

5. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the local union that is signatory to the executed agreements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the

signatory union under the July 23, 1975 and October 22, 1975 agreements and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreements and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of his staff to serve as arbitrator and render a final and binding determination.

Sincerely

John R. Stepp
Acting Deputy Under Secretary

cc: Theodore Munter/UMTA
Earle Putnam/ATU
John Lombard/ATTY
Tom Alderson/MVRTA

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

1/15/88

Mr. Peter N. Stowell
Regional Administrator
Urban Mass Transportation
Administration
Region III
841 Chestnut Street, Suite 714
Philadelphia, Pennsylvania 19107

Re: UMTA Application
Transit Authority of River
City
Operating & Capital
Assistance
Purchase buses, etc.
(KY-90-X035)
Clarifications to Prior
Certifications
(KY-90-X030)
(KY-90-X019)
(KY-05-0027)

Dear Mr. Stowell:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

In connection with previous grant applications, the Transit Authority of River City and the Amalgamated Transit Union agreed to certification based on the terms and conditions set forth in an agreement dated February 26, 1974.

In addition, the parties had previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. The parties had agreed that paragraph (11) of their February 26, 1974 Section 13(c) agreement, executed in connection with an earlier grant application, would be included as the addendum to the July 23, 1975 agreement pursuant to paragraph (4) thereof. The terms and conditions of the July 23, 1975 agreement provide protections to employees represented by the union which satisfy the requirements of Section 13(c) of the Act in general purpose operating assistance project situations.

The Department of Labor, in its certification letter of April 15, 1986 "modify" the parties' February 26, 1974 Agreement to remove interest arbitration and included a factfinding procedure in its place. In the Department's subsequent certification letter of January 23, 1987, we imposed additional terms and conditions to refine the factfinding procedure. The ATU indicated, without waiving its fundamental objections to our April 15, 1986 certification, that they would urge further modifications to the factfinding procedure should DOL decide to certify the pending project. TARC indicated it would not object if the Department chose to include those modifications. The Department included the provisions in items 3 through 6 of the January 23, 1987 certification in order to conform with the Court's guidance in ATU v. Donovan, 767 F.2nd 939, 956 (D.C. Cir. 1985) concerning appropriate dispute resolution mechanisms under 13(c)(2).

In its letter of January 8, 1988 the ATU has raised a number of concerns with the Department's April 15, 1986 and January 23, 1987 certifications which we believe should appropriately be addressed and clarified by the Department at this time. First, the union expressed some concern that DOL has indicated that the parties reached an agreement on modifications to the factfinding procedures. The Department's understanding of the events surrounding modification of these procedures is clarified above and reflected in the changes to items 5 and 7 below. These changes shall also apply retroactively to the January 23, 1987 certification of KY-90-X030.

Second, the ATU notes that, in modifying the definition of "labor dispute" in paragraph (11) of the February 26, 1974 Agreement, "the Department vitiated entirely independent state law arbitration rights of ATU Local 1447 and its members." When the Department modified paragraph (11) of the 13(c) agreement our intention was to excise language which was specifically related to interest arbitration. It was never the intent of the Department to delete independent rights of the parties to arbitrate over rights disputes, as provided for under the Section 13(c) agreements. To the Department's knowledge these independent rights were never an issue expressed by the parties. It is the Department's determination, therefore, that paragraph (11) of the February 26, 1974 Agreement shall be made applicable except to the extent that it provides for interest arbitration. The April 15, 1986 certification is herein retroactively modified to incorporate item 2 below in lieu of changes in the definitions which were included in that original letter.

Finally, the ATU points out that since the Secretary "is not a party to the contract between TARC and ATU Local 1447, she cannot 'modify' or 'amend' the 1974 Section 13(c) Agreement." We do, however, have the authority to apply or impose appropriate arrangements, including arrangements which contain only selected paragraphs or portions of paragraphs of the parties' agreements. References to the modification of the February 26, 1974 Agreement are intended to convey that the Department has imposed terms and conditions which differ from the agreement negotiated by the parties.

The parties continue to disagree over the inclusion of language in paragraph (11) of the parties' February 26, 1974 Section 13(c) Agreement. However, for the reasons set forth, above and in the Department's certification letter of April 15, 1986, we have determined that the terms and conditions below are fair and equitable, meet the requirements of the Act and shall be made applicable for Section 13(c) of the instant project.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated July 23, 1975, with Appendix A to our April 15, 1986 certification, as modified by items 4 through 7 below, as the addendum pursuant to paragraph (4) thereof, shall be made applicable to the operating assistance portion of the instant project and made part of the contract of assistance, by reference;

2. This letter and the terms and conditions of the agreement dated February 26, 1974, as supplemented by Appendix A to the April 15, 1986 certification and items 4 through 7 below, shall be made applicable to the capital portion of the instant project and made part of the contract of assistance, by reference provided, however that paragraph (11) of the February 26, 1974 agreement shall be made applicable except to the extent that it provides for interest arbitration;

3. The term "project" as used in the agreements of July 23, 1975 and February 26, 1974, shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant projects;

4. The terms and conditions of the expiring collective bargaining agreement, absent written mutual agreement by the parties to the contrary, shall remain in place following the expiration of such agreement until the effective date of a successor agreement between the parties or until the factfinding procedure is completed, whichever is earlier;

5. The parties shall submit their positions on all outstanding issues to the other party and the listing of unresolved issues and the parties' positions thereon shall be submitted to the factfinder;

6. In order to clarify that factfinding may occur following contract expiration the word "beginning" shall be substituted for the word "within" in the first line of the fourth paragraph on page one of Appendix A;

7. The factfinder will apprise the parties of the rules and procedures which will be applicable in advance of the factfinding hearing should the factfinder be obligated to follow rules other than those of the Federal Mediation and Conciliation Service; and

8. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union that is signatory to the executed agreements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the signatory union under the July 23, 1975 and February 26, 1974 agreements as modified herein, and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreements and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp
Acting Deputy Under Secretary

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Dwight Maddox/City

Newton:2-24-88
DLP:DLMRCP:Room N-5416

MAR 8 1988

Mr. Richard H. Doyle
Regional Administrator
Urban Mass Transportation
Administration
Region I
Kendall Square
55 Broadway
Cambridge, Massachusetts 02412

Re: UMTA Application
Greater Portland Transit
District
Operating Assistance
(ME-90-X033)

Dear Mr. Doyle:

This is in reply to the request from your office that we review the above captioned grant application for operating assistance under the Urban Mass Transportation Act of 1964, as amended.

The Greater Portland Transit District (GPTD) and the Amalgamated Transit Union (ATU) have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. Prior to January 1, 1985, the parties had agreed that paragraph (9) of their February 28, 1975 Section 13(c) agreement, executed in connection with an earlier grant application, would be included as an addendum to the July 23, 1975 agreement pursuant to paragraph (4) thereof. The terms and conditions of the July 23, 1975 agreement provide protections to employees represented by the union satisfying the requirements of Section 13(c) of the Act.

The GPTD and the ATU continue to disagree over the inclusion of interest arbitration language in paragraph (9) of the parties' February 28, 1975 agreement as the basis for the Department's certification of the pending projects.

For reasons set forth in our certification letters dated April 15, 1986 and September 30, 1987, the Department of Labor is certifying this project without the inclusion of paragraph (9) of the parties' February 28, 1975 agreement as an addendum pursuant to paragraph (4) of the Model Agreement.

The Department has determined that an appropriate dispute resolution procedure for application to GPTD projects is that contained in Section 965 of the Municipal Public Employee Labor Relations Law (MPELRL), with some minor modifications to the procedures set forth in Part 4 of that Section to meet the requirements of Section 13(c)(2) of the UMT Act for continuation of collective bargaining rights. Specifically, the Department requires that, in those instances where procedures are optional under the MPELRL, they must be considered mandatory to meet the requirements of 13(c). For instance, where Section 965 (4) of the MPELRL reads "...may make findings of fact", the Department's dispute procedure, contained in Appendix A (revised), reads "...will make findings of fact." The Department further requires the parties to provide the arbitrator with a statement of their reasons should they reject the panel's recommendations, and these, too, must be made public.

The ATU, in its January 11, 1988 reply to our referral of the above project also raises three concerns with the Departments certification of September 30, 1987 for projects (ME-03-0019) and (ME-90-X032) which appropriately should be addressed and clarified by the Department at this time.

First, the ATU points out that the Department's certifications are not based on the parties' execution of the Model 13(c) agreement, but rather on imposed terms and conditions which differ from those contained in that agreement in that we are not applying paragraph (9) of the parties' February 28, 1975 agreement as the addendum pursuant to paragraph (4) of the Model. The Department acknowledges that we are not a party to the 13(c) agreement. However, we do have the authority to impose appropriate arrangements, including arrangements which contain only selected paragraphs of the parties' 13(c) agreement.

Substitution of alternative language as the addendum to the Model Agreement is intended only to convey differences between the language in the parties' agreement and the language in the Department's imposed terms and conditions and not that the Department is a party to the 13(c) agreement and can change it for this or for previous projects to which that agreement was applied. Our September 30, 1987 certification letter was intended to convey the Department's intent that the February 28, 1975 agreement would be made applicable to the pertinent projects except to the extent that paragraph (9) provided for interest arbitration. The ATU has correctly concluded that the Department has not provided for interest arbitration in its certification.

The ATU also has raised a question concerning the projects to which our September 30, 1987 certification applied. Per Larry Newton's conversation with Mary Beth Mello in UMTA Region I, the Federal Register dated November 13, 1987 incorrectly listed project ME-03-0020 as being obligated by UMTA. This was a typographical error. Project ME-03-0019 was actually approved at that time in the amount of $1,249,995. This represents an incremental increase for contingency funds and there was no change in the scope of the project referred to the ATU. Project ME-90-X032 was obligated by UMTA on December 31, 1987 in the amount of $119,692.

Finally, in the context of the instant application the union has expressed "concern with the suggestion that the Department would certify the instant project on a basis consisting only of the Departments' September 30, 19887 (sic), 'Appendix A.'" Departmental policy is to specifically reference the addendum to the Model Agreement only where interest dispute procedures in the parties' 13(c) agreements are included in the 13(c) arrangements currently being applied to UMTA grants by the Department. As in the past, other dispute procedures, including rights and grievance procedures in 13(c) arrangements, are attached to the Model Agreement by the parties pursuant to paragraph (4) whether or not they are specifically referenced in the Department's certification.

Upon careful consideration of all of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Sections 13(c)(1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated July 23, 1975, and Appendix A (revised) as the addendum pursuant to paragraph (4) thereof, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement of July 23, 1975, shall be deemed to cover and refer to the instant project; and

3. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union that is signatory to the executed agreement, shall be afforded substantially the same levels of protection as are afforded to employees represented by the signatory union under the July 23, 1975 agreement and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp
Acting Deputy Under Secretary

cc: Theodore Munter/UMTA
Earle Putman/ATU
Sarah P. deDose/GPTD

3LMRCP:GAILLIOT:ys:3/31/88
·Room N5416

MAR 29 1988

Mr. Peter N. Stowell
Regional Administrator
Urban Mass Transportation Administration
Region III
841 Chestnut Street
Suite 714
Philadelphia, Pennsylvania 19107

Re: UMTA Application
Port Authority of Allegheny County
Operating Assistance; Rail Rehabilitation, Continued Rehabilitation of Facilities, Modernization of Radio Network, Purchase Coaches, etc.
(PA-90-X137)

Dear Mr. Stowell:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the Port Authority of Allegheny County (PAT) and the Amalgamated Transit Union (ATU) executed an agreement dated March 5, 1979, which provided to the employees represented by the union, protections satisfying the requirements of the Act for capital assistance projects.

In addition, the parties had previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. Also, the parties had agreed that paragraph (15) of their March 5, 1979 Section 13(c) agreement would be included as the addendum to the July 23, 1975 agreement pursuant to paragraph (4) thereof. The terms and conditions of the July 23, 1975 agreement provide protections to employees represented by the union which satisfy the requirements of Section 13(c) of the Act in general purpose operating assistance project situations.

For the reasons set forth in our certification letter dated June 23, 1987, the Department of Labor imposed terms and conditions which differed from those previously agreed to by the parties for the most recent project applications.

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On November 9, 1987, the instant project was referred to the parties for their review. On December 17, 1987, a follow-up letter was sent to the parties indicating the project would be certified based on the terms and conditions of the Department's June 23, 1987 certification if no objections were received from the parties within 10 days. While PAT stated no objection to the proposed terms and conditions, the ATU did object to certification in a letter to DOL dated January 11, 1988. The ATU's letter urged DOL to reconsider the ATU's previous views and to address several additional issues presented in their letter of objection. The Port Authority, by letter dated March 4, 1988 responded to a request from the Department that their views be submitted as well. We have addressed below those items which we believe need clarification or modification. With respect to issues raised by the ATU in their January 11, 1988 letter which were argued in earlier position statements by the parties, such as the status of first line supervisors, the Department will not provide additional justification here for terms of our June 23, 1987 certification which need no modification.

First, however, we wish to make it clear that we have reconsidered, but have not changed our position on, a threshhold issue raised by the union. The ATU objects to the Department's determination in our June 23, 1987 letter, that the provisions of the amended Second Class County Port Authority Act do not "substantially" limit the collective bargaining rights of employees represented by the ATU. The union believes there is no justification for the standard established by the Department. After reviewing pertinent materials, DOL believes that the guidance provided by the legislative history of the UMT Act and by Amalgamated Transit Union v. Donovan does justify the Department's determination that collective bargaining rights have been continued as required in the Act. Donovan specifically states that "by passing section 13(c), Congress did not intend to subject local government employers to the precise strictures of the NLRA." The ATU would have us conclude that there can be no federal assistance where employees enjoy rights which are not identical to those at the time such assistance is first received.

On page 9 of the ATU's letter the union raises several questions concerning DOL's "modification" of the parties prior agreements. As an initial point, the union indicates that because the Department "is not a party to the contract between the Authority and ATU Local 1235, it cannot 'modify' the 1979 Section 13(c) Agreement nor otherwise 'delete' language therefrom." The Department acknowledges that it is not a party to the 13(c) agreement and, therefore, we have not amended or modified that 13(c) agreement. However, we do have the authority to impose appropriate protective arrangements as the

basis for certification of UMTA grants, including arrangements which contain only selected paragraphs or portions of paragraphs of the parties' 13(c) agreements. References to the "amendment" or "modification" of the March 5, 1979 agreement or the deleting or excising of specified language are intended only to convey differences between the language in the parties' 13(c) agreement and the language in the Department's imposed terms and conditions and not the Department is a party to the agreement.

In the certification of June 23, 1987 the Department concludes that the imposition of a status quo requirement, applied in the period between expiration of the collective bargaining agreement and the vesting of any right to strike, is not necessary. The ATU disagrees with the Department's conclusion. The Port Authority, in its March 4, 1988 response, has agreed to include the language in item 4 below to address this issue. Their position with respect to the need for such language, however, remains unchanged from their prior submissions.

Next, the ATU states that on page 10 of the Department's certification of June 23, 1987 "the Department applies terms and conditions which differ from the agreed-upon Paragraph 15(a) by making deletions and substitutions that go far beyond the scope required." We disagree with this assertion. It was clearly the Department's intention that Paragraph 15(a) of the March 5, 1979 agreement would provide the appropriate dispute resolution procedures for controversies over the interpretation, application and enforcement of these 13(c) arrangements, including controversies concerning whether a specific issue is a mandatory subject of negotiations as measured against the requirements articulated in ATU v. Donovan.

However, since Item 3(d) provides for the resolution of disputes over the interpretation, application and enforcement of 13(c) issues, we did err in also including paragraph (3) on page 15 of our June 23, 1987 certification. This paragraph originally contained PAT's proposed language for application to the above disputes. (The entire paragraph rather than selected portions should have been dropped from our prior certification.)

In addition, we wish to address the issue of the exclusion of paragraph (22) of the parties March 5, 1979 agreement from our certification of June 23, 1987. The ATU argues that the parties' current collective bargaining agreement contains a "restriction on the Authority's right to hire employees both at Section 107 and Section 403(I) of the parties' labor contract." Although DOL mistakenly concluded that the parties' collective bargaining agreement contained no such restriction, we nevertheless believe that Paragraph (22) is not required for certification of Port Authority projects. PAT, however, is required, in accordance with the terms in paragraph 3 of the agreement applied to this certification, to continue to abide by

the terms of the existing collective bargaining agreement and the hiring restrictions contained therein.

Finally, the ATU has requested that the following language regarding the bus rehabilitation and bus radio system modernization work referenced in the project application be included in the Department's certification.

> The agreement is not to be construed as a waiver of ATU Local 85's right to grieve any and all project work contracted out in violation of its labor agreement and or past practice."

While the parties are in disagreement over inclusion of the proposed language, the Department believes, nevertheless, that this certification in no way diminishes or expands the right of the union to bring grievances under their collective bargaining agreement or applicable law.

Upon careful consideration of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Section 13(c)(1) through (5) of the Act, we have concluded that the protective arrangements described herein are fair and equitable and in accordance with all requirements of Section 13(c) of the Urban Mass Transportation Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. This letter and the terms and conditions of the agreement dated July 23, 1975, (with the provisions of Section 13.2 of the Second Class County Port Authority Act and item 3 below as the Addendum pursuant to paragraph (4) of the July 23, 1975 agreement) shall be made applicable to the operating assistance portion of the instant project and made part of the contract of assistance by reference;

2. This letter and the terms and conditions of the agreement dated March 5, 1979, with the modifications to paragraph (15) indicated in item 3 below, as supplemented by the provisions of Section 13.2 of the amended Second Class County Port Authority Act and a side letter dated December 22, 1981, shall be made applicable to the capital portion of the instant project and made part of the contract of assistance, by reference;

[redacted]act of assistance shall include the [redacted] language for application to the instant [redacted]:

(a) As a condition of this certification, the Port Authority agrees that it will bargain in good faith to impasse over those "policy matters affecting wages, hours and conditions of employment" which are determined in accordance with item 3(d) of this certification, to be mandatory subjects of collective bargaining as measured against the requirements articulated in ATU v. Donovan;

(b) Paragraph (3) of the parties' March 5, 1979 Section 13(c) Agreement shall be replaced by paragraph (3) of the July 23, 1975 Model Agreement;

(c) Paragraph (10) of the parties' March 5, 1979 Section 13(c) Agreement shall be modified to replace the words "himself and his family" with "the employee";

(d) Paragraph (15) of the parties' March 5, 1979 Agreement shall be modified by deleting the words "labor dispute" in the first line and substituting the words "grievance dispute".

Also deleted from paragraph (15) are the words: "The term 'labor dispute' shall be broadly construed and shall include but not be limited to, any controversy concerning wages, salaries, hours, working conditions or benefits, including health and welfare, sick leave, insurance, or pension and retirement provisions, the making or maintaining of collective bargaining agreements, the terms to be included in such agreements and the interpretation or application of such collective bargaining agreements, any grievance that may arise, and any provisions of this agreement."

Substituted therefore are the words: "The term 'grievance dispute' bargaining shall be construed to mean any construed to mean any controversy concerning the protection afforded by this agreement or the interpretation, application or enforcement of these arrangements."

The following language shall also be added to paragraph (15), as modified:

For the purposes of this Agreement, dispute resolution procedures pertain to resolving an impasse when collective bargaining over the terms and conditions of employment does not result in an agreement, and resolving individual grievances that allege violations of specific written provisions of a Union contract or the imposition of discipline without cause.

(1) Interest Arbitration - In the case of any labor dispute where collective bargaining does not result in an agreement, the dispute, with the written consent of both parties, shall be submitted to final and binding interest arbitration. No such submissions shall occur before the completion of any fact finding required by law. The term, "Interest Arbitration" shall mean formulation by a neutral arbitrator of provisions governing wages, hours of work and other terms and conditions of employment after consideration of proposals relating to wages, hours of work and other terms and conditions of employment advanced by the recipient and the Union representing the employees of the receipient. The arbitration provided for hereunder shall be conducted under Section 13.2 of the Second Class County Port Authority Act, Act of the General Assembly of the Commonwealth of Pennsylvania, 55 P.S. 551 et seq.

(2) Grievance Arbitration - In the case of an individual grievance where utilization of the grievance procedure does not settle the grievance, based upon the demand of the Union may be submitted to final and binding arbitration. The term "labor dispute," as it pertains to grievances, includes any controversy regarding a written provision of a collective bargaining agreement between the parties concerning wages, salaries, hours, terms and conditions of employmwnt or benefits, including health and welfare, sick leave, insurance for pension or retirement provisions.

(f) Paragraph (4) of the parties' March 5, 1979 Section 13(c) Agreement shall be replaced with the following language:

(f) The collective bargaining rights of employees covered by this agreement, including the right to arbitrate labor disputes and to maintain union security and checkoff arrangements, as provided by applicable laws, policies and/or existing collective bargaining agreements, shall be preserved and continued. Provided, however, that this provision shall not be interpreted so as to require the Recipient to retain any such rights which exist by virtue of a collective bargaining agreement after such agreement is no longer in effect. The Recipient agrees that it will bargain with the union or otherwise arrange for the continuation of collective bargaining, and that it will enter into agreement with the union or arrange for such agreements to be entered into, relative to all subjects which are or may be proper subjects of collective bargaining. If, at any time, applicable law or contracts permit or grant to employees covered by this agreement the right to utilize any economic measures, nothing in this agreement shall be deemed to foreclose the exercise of such right.

(g) Paragraph (22) of the parties March 5, 1979 Section 13(c) agreement shall be deleted from that agreement.

4. The contract of assistance shall include the following language:

"Unless the parties agree otherwise in writing, the terms and conditions of any expiring collective agreement between the parties shall remain in place following its expiration until the effective date of any successor agreement executed by the parties or the publication of the fact-finding report and recommendation as provided for in the Second Class County Port Authority Act, whichever is earlier."

5. The term "project" as used in the agreements of July 23, 1975 and March 5, 1979, as modified above, shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant projects; and

6. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union that is signatory to the executed agreements, shall be afforded substan-

tially the same levels of protection as are afforded [redacted] represented by the signatory union under [redacted] 1975 and March 5, 1979 agreements, as [redacted]ein, as supplemented a side letter dated [redacted] 1981 and this certification. Should a dispute arise, after exhausting any available remedies under applicable 13(c) agreements and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

cc: Theodore Munter/UMTA
William W. Millar/PAT
Earle Putnam/ATU

BLMRCP:SMITH:ys:3/30/88
DEP:Room N5416

MAR 30 1988

Mr. Peter N. Stowell
Regional Administrator
Urban Mass Transportation Administration
Region III
841 Chestnut Street
Suite 714
Philadelphia, Pennsylvania 19107

Re: UMTA Application
Chattanooga Area Regional
Transportation Authority
Operating Assistance;
Purchase Six 35-foot
Replacement Coaches, etc.
(TN-90-X052)

Dear Mr. Stowell:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended. In connection with previous certifications, the Department of Labor has noted that the Chattanooga Area Regional Transportation Authority (CARTA) and the Amalgamated Transit Union (ATU) have been in disagreement since 1979 over the force and effect of paragraph (9) of their May 30, 1975 Section 13(c) agreement. This paragraph contains an interest arbitration provision which had been included in protective arrangements for all UMTA applications prior to August 19, 1981.

In January 1986 the parties undertook negotiations over an alternative dispute procedure at the direction of the Department and were able to agree upon a mediation and fact-finding procedure which, the ATU asserted, "is an appropriate prelude to an interest arbitration requirement" and which, CARTA suggested, "meet(s) the statutory requirements," and is an appropriate basis for continued certification of UMTA projects. The Department determined, in its certification of March 7, 1986, that this procedure would be substituted for the interest dispute procedures in paragraph (9) of the May 30, 1975 agreement.

By letter dated January 30, 1987, CARTA submitted modifications to the fact-finding procedure included in our March 7, 1986

letter. This modified procedure, which was developed by CARTA in response to the ATU's criticisms, was not agreed to by the parties. The Department found, however, that it ensures a full and fair airing of the parties' issues, permits either party to invoke the services of a neutral, and ensures fully informed and fair recommendations for settlement by an impartial fact-finder. The procedure provides for significant consideration of the positions of both sides in a bargaining dispute, thereby preventing unilateral employer control over mandatory subjects of collective bargaining. In addition, it ensures that the parties will give serious consideration to the fact-finders' recommendations by requiring publication of any disagreements that remain at the end of this process.

With respect to the instant project, although CARTA originally indicated in May 1987 their desire to withdraw from the Model Agreement, by letter dated March 22, 1988 they readopted the July 23, 1975 Agreement for application to grants of Federal operating assistance. In addition, in the context of discussions concerning appropriate arrangements for application to this grant, the parties agreed that the language in item 4 below would be included in the contract of assistance.

The ATU has also raised two concerns with the Department's previous certifications which properly should be addressed here. First, the union notes that, in modifying the definition of "labor dispute" in paragraph (9) of the parties 13(c) agreement, the Secretary vitiated entirely independent state law arbitration rights of ATU Local 1212 and its members. As we have informed the transportation authority, when the Department modified paragraph (9) of the 13(c) agreement our intention was only to excise language which was specifically related to interest arbitration. It was never the intent of the Department to delete independent rights of the parties to arbitrate over rights or grievance disputes, as provided for under Section 13(c) agreements. To the Department's knowledge these independent rights were not an issue expressed by the parties at the time of the request to excise interest arbitration. CARTA now indicates that these "language changes have not impaired independent rights of Local 1212 to arbitrate rights" disputes and that "13(c) has no business providing for a grievance procedure." The parties, however, negotiated and agreed to the procedure at issue. It is the Department's determination, therefore, that paragraph (9) of the May 30, 1975, agreement shall be made applicable except to the extent that it provides for interest arbitration.

The union also indicates that because the Secretary is not a party to the contract between the parties she cannot 'delete' language from the 1975 Agreement nor otherwise 'amend' or modify such. In certifying a project, the Department of Labor only applies a negotiated agreement. The Department acknowledges that it is not a party to the 13(c) agreement and, therefore, we have

not amended or modified that 13(c) agreement. However, we do have the authority to apply or impose appropriate protective arrangements as the basis for certification of UMTA grants, including arrangements which contain only selected paragraphs or portions of paragraphs of the parties' 13(c) agreements. References to the amendment or modification of the May 30, 1975 13(c) agreement or the deleting or excising of specified language are intended only to convey differences between the language in the parties' 13(c) agreement and the language in the Department's imposed terms and conditions and not that the Department is a party to the agreement.

Upon careful consideration of all of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Section 13(c)(1) through (5) of the Act, we have concluded that the protective arrangements describe below are fair and equitable and in accordance with all requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated July 23, 1975, with Appendix A hereto attached as the addendum pursuant to paragraph (4) thereof, shall be made applicable to the operating assistance portion of the instant project and made part of the contract of assistance, by reference;

2. This letter and the terms and conditions of the agreement dated May 30, 1975, as supplemented by Appendix A hereto attached, shall be made applicable to the capital portion of the instant project and made part of the contract of assistance, by reference provided however that paragraph (9) of the May 30, 1975 Agreement shall be made applicable except to the extent that it provides for interest arbitration;

3. The term "project" as used in the agreements of July 23, 1975 and May 30, 1975, as modified, shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant project;

4. The contract of assistance shall include the following language:

   "With respect to the Model Agreement, the parties stipulate that there is an arbitrator's award

which states Section 23 of that agreement provides that the designated Recipient shall be the sole provider of mass transportation services to the Project and such services shall be provided exclusively by its employees; but it also indicates that this is to be in accordance with any applicable collective bargaining agreement."; and

"This certification shall not be used as evidence by either party in arbitration proceedings involving the grievance filed by ATU Local 1212 on or about August 5, 1987. In addition, CARTA agrees that it will not argue in such arbitration proceedings that the issues raised by that grievance are moot or such does not present a live controversy due to CARTA's May 27, 1987, withdrawal from the National Agreement."; and

5. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union that is signatory to the executed agreement, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the signatory union under the July 23, 1975 and May 30, 1975 agreements, as modified herein, and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

cc: Theodore Hunter/UMTA
Earle Putnam/ATU
George Derryberry/Miller & Martin
Maury Miles/CARTA

BLMRCP:SMITH:ys:3/31/88
DEP: ROOM N5416

MAR 31 1988

Mr. Aubrey Davis
Regional Administrator
Urban Mass Transportation Administration
Region X
Department of Transportation
Federal Building
915 Second Avenue
Suite 3106
Seattle, Washington 98174

Re: UMTA Application
Lane Transit District
Operating Assistance; Office Furniture, Computer Software and Equipment, Maintenance Equipment, Replacement Buses, etc.
(OR-90-X023)

Dear Mr. Davis:

This is in reply to the request from your office that we review the above captioned application for a grant which includes both operating and capital assistance under the Urban Mass Transportation Act of 1964, as amended.

The Lane County Mass Transit District (LTD) and the Amalgamated Transit Union have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. The terms and conditions of the July 23, 1975 agreement provide protections to employees represented by the union which satisfy the requirements of Section 13(c) of the Act in general purpose operating assistance project situations.

In connection with a previous capital assistance application, the Lane Transit District (LTD) and the Amalgamated Transit Union (ATU) Local 757, executed an agreement dated June 19, 1975, which provided to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

The Department of Labor (DOL) has been aware that Lane Transit District (LTD) and the Amalgamated Transit Union (ATU) have for

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Last Name ►	SMITH	MULLEN						
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CONCUR/

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agreements which allow employers unilateral control over mandatory subjects of collective bargaining. The Donovan court stated:

> While it is true that Congress neither protected the right to strike nor required interest arbitration as a condition of federal transit aid, it is inconceivable that a system that allows an employer to set wages unilaterally is consistent with the continuation of collective bargaining rights required by section 13(c). We hold that while section 13(c) does not entitle transit workers to any particular form of binding arbitration, it does require some process that avoids unilateral control by an employer over mandatory subjects of collective bargaining.

The Department has consistently complied with the courts' guidance in all situations where employees have lost a private sector right to strike. The Department, therefore, has included language similar to that suggested by the ATU in section 4 below.

With respect to the issue of resolution of independent "rights" disputes which were deleted by the Department when we excised interest arbitration from the arrangements imposed in prior certifications, it was clearly our intention only to excise language which specifically related to interest arbitration. It was never the intent of the Department to delete independent rights of the parties to arbitrate over "right" disputes, as was provided for under the Section 13(c) agreement. Furthermore, our records do not indicate that the parties ever intended to take issue with these independent rights in as much as, to the Department's knowledge, the subject was never raised.

The Department's certification is not based on the parties' execution of the Model Agreement or their June 19, 1975 agreement but rather on imposed terms and conditions which differ from those contained in those agreements, in that we are not applying paragraph (17) of the parties' June 19, 1975 agreement. The Department acknowledges that we are not a party to these 13(c) agreements. However, we do have the authority to impose appropriate arrangements, including arrangements which contain only selected paragraphs of the parties' 13(c) agreements. Substitutions of alternative language as the addendum to the Model or in the June 19, 1975 Agreement is intended only to convey differences between the language in the parties' agreements and the language in the Department's imposed terms and conditions.

Upon careful consideration of all the circumstances, including consideration of the provisions satisfying each of the five

matters specified in Section 13(c)(1) through (5) of the Act, the Department of Labor has determined that the protective arrangements described below are fair and equitable and meet the requirements of Section 13(c) of the Act. With respect to Section 13(c)(2) this conclusion is based on our understanding that employees of LTD are subject to Oregon State law which, as supplemented in item 4, provides for a dispute resolution procedure that is sufficient to meet the requirements of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. The terms and conditions of the agreement dated July 23, 1975, as supplemented by item 4 below and ORS. 243.650-243.782, shall be made applicable to the operating assistance portion of the instant project and made part of the contract of assistance, by reference;

2. By reference, the terms and conditions of the agreement dated June 19, 1975, as supplemented by item 4 below and ORS. 243.650-243.782, shall be made applicable to the capital portion of the instant project and made part of the contract of assistance, provided however that paragraph (9) of the June 19, 1975 agreement shall be made applicable except to the extent that it provides for interest arbitration;

3. The term "project" as used in the agreements of July 23, 1975 and June 19, 1975, as supplemented, shall be deemed to cover and refer to the instant project;

4. The contract of assistance shall include the following language:

   "Absent written mutual agreement by the parties to the contrary (such agreement not prejudicing either party's rights or position), the terms and conditions of any expiring collective bargaining agreement shall remain in place following the expiration of such agreement until the effective date of any successor agreement executed by the parties or the publication of the fact-finder's findings of fact and recommendations as provided for under ORS. 243.650 to 243.782, whichever is earlier."

5. Employees of urban mass transportation carriers

some time disagreed over the inclusion of an interest arbitration provision in Paragraph (9) of their 13(c) agreement. The Department of Labor, on May 18, 1987 issued its certification without including language which required interest arbitration. We concluded that the basis of the LTD employees' right to strike was a Court decision by Judge Clifford Olson. In Division 757 of the Amalgamated Transit Union of Portland, Oregon, AFL-CIO v. Tri-County Metropolitan Transit District of Oregon, case no. A-85-07-04670 (Oregon Fourth Circuit, 8-8-85), the court ruled that transit employees have a right to strike in the State of Oregon. This decision was affirmed by the Oregon Supreme Court on August 15, 1985.

The ATU by letter dated November 24, 1987, to Mark Panghorn, Lane Transit District, suggested that the parties negotiate an amendment to Paragraph (9) of their June 19, 1975 Section 13(c) agreement. This re-evaluation on the part of the ATU came as the result of the July 18, 1987 passage of House Bill 2082 which made employees of Lane Transit District public employees within the meaning of the Oregon Public Employee Collective Bargaining Act, ORS-243.650-243.782.

Joseph S. Kaufman, counsel for Lane Transit District, by copy of a letter addressed to this Department dated January 20, 1988, rejected the ATU's proposal to negotiate on interest arbitration, stating that LTD believes the May 27, 1986 certification, as well as the May 18, 1987 certification, provides the appropriate basis for approval of the pending application. The Department of Labor agrees that interest arbitration is not a requirement for certification of LTD project applications. The transit employees are clearly covered by the Oregon Public Employee Bargaining Act which provides for dispute resolution procedures which in most respects meet the requirements of 13(c)(2). Also, consistency requires that the same standards be utilized at LTD as were applied in Portland, Oregon (TRI-MET), which is covered by the same statute.

The Oregon Statute would permit a public employer to exercise unilateral control over the terms and conditions of the collective bargaining agreement prior to the issuance and publication of the factfinder's report. The union has requested that the Department, consistent with certifications elsewhere, specifically incorporate provisions of the Oregon Statute into our certification terms and include status quo language to ensure that dispute procedures comply with the guidance provided by the federal court in Amalgamated Transit Union v. Donovan, 767 F.2d 939 (D.C. Cir. 1985). This provision is not required where the employees' right to strike is not significantly impaired or delayed as it would be pending factfinding procedures under the Oregon public employee statute.

The courts have refused to allow the Secretary to certify

in the service area of the project, other than those represented by the local union that is signatory to the executed agreements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the signatory union under the July 23, 1975 and June 19, 1975 agreements, as supplemented, and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Mark Pangborn/LTD
Joseph S. Kaufman/LTD

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

Chron

President

MAR 31 1988

Joel Ettinger
Regional Administrator
Urban Mass Transportation
Administration
Region V
300 Wacker Drive, Suite 1740
Chicago, Illinois 60606

Re: UMTA Applications
Southwest Ohio Regional
Transit Authority
Operating Assistance;
Purchase Replacement
Coaches, etc.
(OH-90-X092)
Mobile Radios
(OH-90-X059-04)

Dear Mr. Ettinger:

This is in reply to the request from your office that we review the above captioned applications for grants under the Urban Mass Transportation Act of 1964, as amended.

The Department is aware that Southwest Ohio Regional Transit Authority (SORTA) and the Amalgamated Transit Union (ATU) have previously and continue to disagree over the inclusion of certain language relating to interest arbitration as provided for in the parties August 29, 1975 13(c) agreement.

The Department of Labor, in connection with previous grant applications, has determined that the terms and conditions provided for and referenced in the September 30, 1987 certification for the parties provided to employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

In response to the numerous letters from the ATU requesting that the Department clarify the protective arrangements provided in the September 30, 1987 certification, the Department issued a letter Dated March 4, 1988 that adequately addresses the ATU's concerns for purposes of Section 13(c) certification. The Department continues to support its position as provided in the March 4, 1988 letter for the above referenced projects. If the parties are seeking resolution regarding the interpretation, application, or enforcement of the protective arrangement, the Department suggests that the parties' do so through the appropriate forum.

Initials ➡		Robert	Kei					
Date ➡		3/30/88	4/6/88	247				
Last Name ➡								

For purposes of this certification, the terms and conditions in the Department's certification dated September 30, 1987, shall be made applicable to the instant projects and made part of the contact of assistance, however the August 29, 1975 agreement referred to therein will remain in full force and effect except to the extent that it compels interest arbitration.

The ATU also contends that the special language as referenced in the Department's September 30, 1987 certification does not clearly provide for certain procedures in the event that either party were to reject the fact-finding panel's recommendation. The Department believes that additional language is necessary to ensure a full and fair airing of the parties' issues and will also ensure that the parties will give serious consideration to the fact-finding recommendation(s) and guard against unilateral control by the employer over manditory subjects of collective bargaining in their dispute resolution procedure.

Therefore, in addition to the special language referenced in the September 30, 1987 certification regarding the procedures in the event that the fact-finding panel's recommendation is rejected, it shall be a condition for this certification and the contract of assistance that the rejecting party(s') give reasons for rejection in writing to the other party within a reasonable period of time and state with particularity the reason(s) for rejection. This language is in addition to, not in lieu of the language referenced in the September 30, 1987 certification.

Therefore, DOL makes the certification with respect to the instant projects on condition that:

> 1. By reference, the terms and conditions in the Department's certification dated September 30, 1987, and this certification shall be made applicable to the instant projects and made part of the contracts of assistance, however the August 29, 1975 agreement referred to therein will remain in full force and effect except to the extent that it compels interest arbitration.
>
> 2. The term "project" as used in the agreement dated August 29, 1975, as referenced in the Department's certification dated September 30, 1987, shall be deemed to cover and refer to the instant projects; and
>
> 3. The contracts of assistance shall include the following language:
>
> It shall be a condition for certification and included in the contract of assistance that the rejecting party(s') give its reason(s) for rejection with particularity in writing to the other party within a

reasonable period of time. This additional language is in addition to, not in lieu of the language referenced in the September 30, 1987 certification."; and

4. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the local union that is signatory to the executed agreement, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the signatory union and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Michael Setzer/SORTA

(66

U.S. Department of Labor

Bureau of Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

APR 4 1988

Mr. Aubrey Davis
Regional Administrator
Urban Mass Transportation Administration
Region X
Federal Building
915 Second Avenue
Suite 3I06
Seattle, Washington 98174

Re:. UMTA Application
City of Boise
Construction of Downtown
Transit Mall, etc.
(ID-90-X013)#3

Dear Mr. Davis:

This is in reply to the request from your office that we review the above application for assistance under the Urban Mass Transportation Act of 1964, as amended. The proposed capital project was originally referred to the Department of Labor in a grant which included planning assistance (approved by UMTA as (ID-90-X013) and Amendment #1) and operating assistance (approved and funded as (ID-90-X013)#2). The project value included in this grant is $2,601,000 for capital items within the scope of the original project referred to the union. Included in this figure are incremental funds in the amount of $641,677 which were requested by UMTA due to a reassessment of the cost of work to complete the Eighth Street pedestrian way, an item which was included within the scope of the original application.

The City of Boise and the Amalgamated Transit Union (ATU), which represents employees of the management company operating the transit system, have been unable to agree upon appropriate terms and conditions for certification of the required protective arrangements for the instant capital application. The City and the ATU concluded their negotiations with two days of negotiation and mediation at the Department of Labor on January 21 and 22, 1988. At the end of these meetings, DOL identified three issues upon which the parties were in dispute and established a briefing schedule which required initial positions from the parties on February 22 and reply briefs on March 8, 1988. A number of additional items for resolution by the Department were subsequently identified by the parties in their briefs. The Department has reviewed the positions of the parties, and we have made our determination of the appropriate protections to be applied for the instant application. These arrangements are attached hereto as Appendix A.

DISCUSSION

During the meetings at the Department, the parties tentatively agreed upon most of the provisions in Appendix A as part of an effort to reach a "settlement agreement." This agreement was not completed due to irresolvable differences between the parties' positions on interest arbitration, hiring provisions, and language defining situations where employees would not be considered eligible for protections. Subsequent issues raised by the parties included the Public Body's role as guarantor for training, a request that the City be required to sign the protective arrangement which serves as the basis for this determination, a request that a proposed side letter be imposed by the Department, and assertions by the union that the City must provide affirmative guarantees that it would not restrict negotiations over the duration of any collective bargaining agreement between its new management company and the union representing that company's employees.

Interest Arbitration

The City of Boise has proposed that arbitration procedures be applied only to disputes over the interpretation, application, and enforcement of the 13(c) agreement, and that a factfinding procedure be applied to resolve interest disputes. Boise suggests that they "could take the position that due to the fact that the employees of the transit system enjoy the right to strike, this in and of itself is legally sufficient under Section 13(c)(2)." The Department of Labor takes no position on this point.

With respect to the proposed factfinding procedure, the ATU identifies a number of "shortcomings" in Boise's proposal and suggests that the Secretary cannot fashion an appropriate factfinding procedure on her own. The Department, however, is not compelled to simply choose between alternative proposals by the parties. Rather, it is our obligation to ensure that "fair and equitable arrangements" which meet the requirements of the Act are applied to the grant. As the Department has stated in previous certifications, Section 13(c) requires that protective arrangements provide for "the continuation of collective bargaining rights." The Department does not require that Section 13(c) arrangements provide for interest arbitration. In the absence of mutual agreement by the parties to utilize an interest arbitration procedure, we believe a factfinding procedure similar to that proposed by the City is an appropriate dispute procedure in this situation.

The procedure imposed by the Department in Paragraph (20) of Appendix A differs from that proposed by the City in the factors to be taken into consideration. We have included for the consideration of the neutral factfinder "collective bargaining agreements between the parties" and "such other factors" as will ensure a full and fair airing of the issues in dispute. In addition, in paragraph (20)(e) we have clarified the need for publication of the recommendations in the local media.

Preferential Hiring

The ATU has proposed a hiring provision which would guarantee that employees of the present transit system are transferred to a new operator assuming responsibility for operation of the system. Boise's proposal, however, only provides for preferential hiring into available job openings. Section 13(c) does not require a guarantee of jobs in this non-acquisition situation, but a hiring preference is required to comply with 13(c)(4) and the "...priority of reemployment of employees terminated or laid off." The City's proposal recognizes that displacement or dismissal allowances may be a necessary alternative in some instances. The City's proposal also provides for credit for years of service for purposes of seniority, vacations and pensions. We believe, however, that it is also necessary for Boise to acknowledge its 13(c)(1) obligation to continue wages, hours, working conditions, etc. We have, therefore, included appropriate language in item 25(b) of Appendix A.

Language Defining Situations Where Employees Would Not Be Eligible For Protections

The City of Boise has proposed that a provision, taken from the Model Agreement and modified, be included in the arrangements for this grant. This provision discusses situations under which employees would not be eligible for compensation under the Agreement (e.g., because of the total or partial termination of the Project, discontinuance of Project services on particular routes, etc.). Although this arrangement has been used frequently for operating assistance projects, the parties have not agreed to it for application to this capital project. The provision is not required under 13(c) and, in fact, many of the concepts included in this language are envisioned by the definition of "Project" in Paragraph (1) of Appendix A. Employees must be affected "as a result of the Project" in order to trigger monetary allowances under 13(c). Therefore, the Department will not impose this new provision here in the absence of an agreement by the parties.

Boise's Role as Guarantor

The City's role as guarantor of protections, where it is the recipient of UMTA grants, has been raised in Paragraphs (22)(a) and (23)(a) of the ATU and Boise proposals, respectively. The City, in Paragraph (26) of its proposal, guarantees that the Company entering into a contract to manage the system will be financially and administratively responsible to resolve disputes under the Agreement. Throughout the parties' proposals, however, the role of the Public Body in providing and guaranteeing protections is addressed. Consistent with the Department's position in the recently certified Boise operating grant, we believe the City must act as the guarantor of employee rights if its agent fails to do so. Therefore, we have included language in Paragraph (22)(a) of Appendix A which reflects the ATU proposal. Similar language is included in Paragraph 19(a) with respect to disputes over protective arrangements. The management company which employs the transit employees is not a party to the grant contract with the Department of Transportation. It is required to assume only those obligations which are placed on it by the City of Boise. The Secretary, therefore, must ensure that these obligations are first placed on the recipient.

Proposed Side Letter

In the course of negotiations, the parties discussed a side letter to their negotiated protective agreement which addressed the exercise of rights by the ATU under a March 11, 1979 Agreement between the union and Boise Urban Stages. The City of Boise has asserted that the ATU withdrew from an agreement to sign such a letter. The ATU's tentative agreement to this proposal, however, was conditioned upon the parties reaching a settlement agreement during their discussions on January 21-22, 1988. The Department clearly cannot impose language, at the unilateral request of either party, which would prohibit the other party from exercising its rights under a prior 13(c) agreement.

Execution of Department's Imposed Protective Arrangement by the Parties

The ATU has requested that the Department require the City to execute the 13(c) arrangements which it determines shall be applied to the instant grant, and to provide the ATU with the opportunity to execute these arrangements as well. The Department's standard procedure in making determinations is to include appropriate arrangements in the certification letters which are then made part of the contract of assistance between the applicant and the Department of Transportation. We have no reason to believe that this procedure makes the protective arrangements any less enforceable than if an agreement were signed by the parties. Similar concerns were raised by the ATU in the context of the operating assistance grant, and the Department addressed these by including language in Appendix A at Paragraph (31) which confirms that the employees represented by the union are third-party beneficiaries of the grant contract.

Restrictions on the Duration of the Contract Between the ATU and the Management Company

The ATU has asserted that the City of Boise has placed or intends to place restrictions on the management company selected to operate the transit system which will improperly restrict it in negotiations. This alleged restriction would provide that any collective bargaining agreement between the management company and the union may not extend beyond the term of the operator's contract with Boise. The City has agreed, in Paragraph (8) of its proposal, to continue collective bargaining rights in accordance with Section 13(c). The Department's determination includes this language, also at Paragraph (8). If the City attempts to restrict collective bargaining over the terms of the contract with the management company, Paragraph 19 of Appendix A provides the ATU an appropriate forum to resolve the issue. We agree with the City that this issue is not ripe for consideration by the Department at this time.

Upon careful consideration of all of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Section 13(c)(1) through (5) of the Act, we have concluded that the protective arrangements included in Appendix A, attached, are fair and equitable and in accordance with all requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions in Appendix A, attached hereto, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "Project" as used in the Appendix A shall be deemed to cover and refer to the instant project;

3. Employees of urban mass transportation carriers in the service area of the project, other than those represented by ATU Local 398, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under Appendix A and this certification.

Should such a dispute arise, and absent any mutual agreement by the parties to utilize any final and binding procedure for resolution of the the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

cc: Theodore Munter/UMTA
Alec Andrus/City
Earle Putnam/ATU
Kent Woodman/City

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

APR 1 1 1988

Ms. Charlotte Adams
Acting Regional Administrator
Urban Mass Transportation Administration
Region IV
1720 Peachtree Road, N.W.
Suite 400
Atlanta, GA 30309

Re: UMTA Applications
Memphis Area
Transit Authority
Construction of
Bus Service
Building, etc.
(TN-90-X036)

Dear Ms. Adams:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the Memphis Area Transit Authority and the Amalgamated Transit Union executed an agreement dated November 28, 1975, which as supplemented by a side letter of agreement dated November 26, 1975, provided to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

On September 23, 1985, the Department of Labor issued its most recent certification letters for the Memphis Area Transit Authority (MATA) for projects (TN-90-X030) and (TN-23-9003) for operating and capital assistance grants. As with previous certifications, we noted that MATA and the Amalgamated Transit Union (ATU) have been in disagreement since 1982 as to the force and effect of paragraph (15) of their November 28, 1975 Section 13(c) agreement. This paragraph contains an interest arbitration provision which the parties had originally agreed to in 1975 and which had been included in protective arrangements for UMTA applications prior to August 20, 1982.

Beginning in 1982, certification letters for MATA projects stated that the "Department of Labor does not require that Section 13(c) arrangements provide for conventional interest arbitration of new contract terms. However, in those instances where employees lose the right to strike, the parties should agree upon a procedure for the resolution of labor disputes." Our certification,

therefore, was based upon the parties' agreement to continue bargaining in good faith over a method for the resolution of labor disputes.

The Department's September 23, 1985 certifications for MATA established a deadline for the parties to report on the status of their negotiations and put them on notice that the Secretary was considering additional steps to assure that a procedure would be put in place. Representatives of MATA, however, have informed the Department that transit workers in Memphis are employed by a private sector company which is subject to the National Labor Relations Act (NLRA) and that transit workers in Memphis, therefore, have NLRA rights and protections, including the right to strike. By letter dated November 12, 1985, the Department solicited the views of the ATU on this matter.

On the basis of the information presented to us by the parties, it appears that Mid-South Transportation Management, Inc. (MTM) employees are, indeed, private sector employees with a right to strike. Consequently, we have concluded that the parties need not negotiate an alternative dispute resolution procedure. The right to strike in and of itself is a sufficient dispute resolution procedure to ensure fulfillment of the Section 13(c)(2) requirement for continuation of collective bargaining rights. It is our intention to certify the instant MATA grant application on the basis of the existing Section 13(c) arrangement except insofar as we omit interest arbitration.

In making our determination on this matter, we have relied principally upon the Advice Memorandum of the General Counsel of the National Labor Relations Board in Cases 26-CB-1981 and 26-CA-10302 dated November 29, 1983. While we recognize that the Memorandum would not be considered conclusive evidence that MTM employees are private sector employees subject to the NLRA, nevertheless we found the analysis in the Memorandum persuasive and, in the absence of any other definitive policy precedent, an Advice Memorandum reflects the position that the General Counsel can be expected to take with respect to any future unfair labor practice charges. In this instance, the 1983 Memorandum concluded that Mid-South Transportation Management, Inc. (MTM) was an employer subject to NLRB jurisdiction. Furthermore, in the materials submitted to us by the parties, there is nothing to suggest that ATU Local 713, MTM, MATA or the city have changed their relationships since issuance of the Memorandum. It appears that MTM retains sufficient control over its employees' terms and conditions of employment so as to be capable of effective bargaining with the representative of those employees. Accordingly, MTM appears to be an employer subject to the NLRA and its employees' right to bargain collectively would be protected under that Act. As recently as May 31, 1985, the ATU has itself filed unfair labor practice charges with the NLRB.

Upon careful consideration of the circumstances, including consideration of the arrangements satisfying each of the five

matters specified in Section 13(c)(1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirements of Section 13(c) of the Act. With respect to Section 13(c)(2), this conclusion is based on our understanding that the employees of MTM are private sector employees subject to the NLRA and entitled to the collective bargaining rights and remedies ordinarily available to employees covered by that Act.

In reviewing an earlier MATA application, the Department became aware that, with the deletion of paragraph (15) from the parties' November 28, 1975 agreement, that agreement no longer contained a neutral, final and binding dispute resolution procedure to resolve any controversy which may arise with respect to the interpretation, application or enforcement of the terms of the 13(c) agreement itself. Such procedures for resolution of grievance disputes under the 13(c) agreement are a necessary requirement to ensure that employee protective arrangements are enforceable by the parties.

In order to certify that the 13(c) arrangement meets the minimum statutory requirements, the Department has determined that a neutral, final and binding dispute resolution procedure must be included to resolve disputes over the interpretation, application or enforcement of the 13(c) agreement. The Department, therefore, is including language in its certification for purposes of resolving grievances concerning the interpretation, application or enforcement of disputes over the terms of the November 28, 1975 Section 13(c) agreement. This language, which is included under condition (3) of the Department's certification, tracks the language previously negotiated by the parties for resolution of a broader range of disputes.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. The terms and conditions of the agreement dated November 28, 1975, with the deletion of paragraph (15) thereof, and the side letter dated November 26, 1975, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement of November 28, 1975, and the side letter dated November 26, 1975, shall be deemed to cover and refer to the instant project;

3. The following language shall be applicable for the resolution of grievance disputes over the interpretation, application or enforcement of the November 28, 1975 agreement:

(a) In case of any grievance dispute over the application, interpretation or enforcement of the agreement of November 28, 1975, where grievance resolution procedures in the existing collective bargaining agreement do not result in agreement, the same may be submitted at the written request of either party to a board of arbitration, composed of three (3) persons to be selected as hereinafter provided, one (1) to be chosen by the Recipient, one (1) to be chosen by the Union, and the two thus selected to select a third disinterested arbitrator; the findings of the majority of said board of arbitration to be final and binding on the parties thereto.

Each party shall appoint its arbitrator within ten (10) days after notice of submission to arbitration has been given. Should the two arbitrators selected by the parties be unable to agree upon the selection of the third arbitrator within ten (10) days from the date of appointment of the second-named arbitrator, then either arbitrator may request the Secretary of Labor to furnish a list of 15 persons to be selected from the latest available "geographic list of members" of the National Academy of Arbitrators, of which eight (8) shall be selected from states below the Mason-Dixon line. The arbitrators appointed by the parties shall, within five (5) days after the receipt of such list, determine by lot the order of elimination, and thereafter each shall, in that order, alternately eliminate one name until only one name remains. The remaining person on the list shall be the third arbitrator.

(b) In the event of any dispute as to whether or not a particular employee was affected by the Project, it shall be his obligation to identify the Project and specify the pertinent facts of the Project relied upon. It shall then be the Recipient's burden to prove that factors other than the Project affected the employee. The claiming employee shall prevail if it is established that the Project had an effect upon the employee even if other factors may also have affected the employee; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to employees represented by the union under the November 28, 1975 agreement, with the deletion of paragraph (15), as supplemented by the side letter of November 26, 1975, and this certification.

The Department's determination that the continuation of collective bargaining rights requirement for MTM employees is satisfied by the existence of the right to strike will also be applicable to all previous MATA projects that have been certified on the condition that the parties continue to negotiate a dispute resolution procedure. These projects include (TN-90-X030), (TN-23-9003), (TN-23-9002), (TN-90-X022), (TN-90-X021), (TN-23-9001#1), (TN-05-0015), (TN-90-X008), (TN-90-0014), (TN-05-4050), (TN-05-4046), and (TN-06-0013). This certification letter is not intended to affect certifications made prior to August 20, 1982.

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Michael J. Hufnagel/MATA
Samuel J. Weintraub/MTM
Bruce M. Smith/MATA

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

April 27, 1988

Mr. Lou Mraz
Regional Manager
Urban Mass Transportation Administration
Region VIII
Department of Transportation
Prudential Plaza
Suite 1822
Denver, Colorado 80265

Re: UMTA Applications
Regional Transportation
Authority
Operating Assistance
(CO-90-X036)
Purchase and Install Maint.
Items, Design and
Construct Park-n-Rides,
Purchase Support Vehicles,
etc.
(CO-90-X040)

Dear Mr. Mraz:

This is in reply to the request from your office that we review the above captioned applications for grants under the Urban Mass Transportation Act of 1964, as amended.

By letter dated November 10, 1987, Project CO-90-X036 was referred to the Regional Transportation Authority (RTD) and the Amalgamated Transit Union (ATU). The November 10, 1987 referral was supplemented by letters dated December 22, 1987 and January 7, 1988, the latter clarifying that the basis of our certification would be the arrangements in our certification of March 19, 1987 as supplemented by our letter of September 29, 1987.

In a letter to DOL dated January 15, 1988 the ATU objected to certification of Project CO-90-X036 on the basis of our March 19, 1987 certification, as modified by the letter of September 29, 1987, or on the basis of our September 30, 1987 certification. The ATU's letter reiterates previous views and

presents additional issues it wishes the Department to address. In its letter of March 8, 1988, the RTD, on the other hand, requests certification of Project CO-90-X036 based on the "Department's May 27, 1986 Certification as supplemented by its September 29 and 30, 1987 Certifications."

DOL referred Project CO-90-X040 to the RTD and ATU on March 4, 1988, indicating that, absent objections from the parties, the terms and condition of our certification would be the same as those in our certification letter of September 30, 1987. We have received no response to this referral, for which the review period expired on April 4, 1988. We have addressed below only those items which we believe need clarification or modification.

The Department will not provide additional justification regarding issues which were argued in earlier positions by the parties, but we feel the need to elaborate in part on our decision not to require interest arbitration. First, let us state that DOL believes that under the CLPA, CRS (1973) 8-3-101, RTD employees clearly have a right to strike. The justification for this is discussed thoroughly in DOL's previous certifications dating back to May 27, 1986. The right to strike is a sufficient dispute resolution procedure to ensure fulfillment of the Section 13(c)(2) requirement of the UMT Act.

One problem the union poses to DOL deals with the alternative dispute resolution procedure in place should the union be denied the right to strike. To date the right to strike has never been denied to RTD employees, and was most recently granted in February 1988. The ATU, however, argues that if the RTD is correct and the arbitration of interest disputes involving public employees is unconstitutional, then there can be no doubt whatsoever that the provisions of the Colorado Labor Peace Act are <u>not</u> sufficient for purposes of Section 13(c) because the interest arbitration procedures that would be required, should the right to strike be denied would also be unconstitutional.

In light of the fact that the right to strike has always been granted for RTD employees, and because the courts have not addressed the authority of the Director of Labor Relations to order interest arbitration, DOL believes it is unnecessary for the Secretary to engage in such speculation or decide this issue for the purposes of certifying these grant applications.

The ATU points out that in our March 19, 1987 certification the terms and conditions of the entire Colorado Labor Peace Act (CLPA) were applied to the then pending grants. The September 29, 1987 supplemental correspondence from the Department did not alter this, but our September 30, 1987 certification, by reference to the May 27, 1986 certificaiton, cites the CLPA only in part. The RTD believes that the Department was correct in referencing only the dispute resolution procedures of the CLPA, C.R.S. Section 8-3-113(3).

After review of the situation, the Department of Labor believes that it is appropriate to apply all those parts of the CLPA which impact upon dispute resolution. Our certification of March 19, 1987, in applying the terms and conditions of the entire CLPA, addressed provisions which were part and parcel of the Department's determination that the available dispute procedures met the requirements of the Act and, therefore, we incorporate the entire CLPA into this certification.

The union next indicates its belief that a contract between two parties can be amended or altered only by mutual action of those parties. The ATU believes that the Secretary has no authority to modify or amend the Section 13(c) agreement between the parties. The Department acknowledges that it is not a party to the 13(c) agreement and, therefore, we have not amended or modified that 13(c) agreement. However, we do have the authority to impose appropriate protective arrangements as the basis for certification of UMTA grants, including arrangements which contain only selected paragraphs or portions of paragraphs of the parties' 13(c) agreements. References to the "amendment" or "modification" of the April 7, 1976 agreement or the "deleting" or "excising" of specified language are intended only to convey differences between the language in the parties' 13(c) agreement and the language in the Department's imposed terms and conditions and not that the Department is a party to the agreement.

In addition, the Department did not intend to conclude, by "modifying" paragraph (15) of the parties April 7, 1976 agreement, that that part of the parties' Section 13(c) agreement does not "remain in full force and effect." In certifying a project the Department only applies a Section 13(c) agreement to the certified grant and the applicability and enforceability of a Section 13(c) agreement is left as a matter to be determined through arbitration or litigation.

Finally, the ATU takes issue with the Departments determination regarding status quo language in the Department's September 29, 1987 supplemental correspondence. ("status quo language" means a requirement that the parties maintain the terms and conditions of employment specified by an expired collective bargaining agreement while a new agreement is being negotiated or while dispute resolution mechanisms are utilized.) The ATU still argues the need for status quo language. The union expanded on its concern about the lack of any status quo requirement in the state law during the "window period" which could occur prior to vesting of the right to strike or if the Director of Labor Relations should deny the Union the right to stike and order arbitration. The RTD argues that such "window periods" have never occurred. The RTD, therefore, continues to believe that there is no need for status quo language. However, RTA has indicated that it will not object if the Department includes

language in its certification which provides for retention of the status quo until impasse procedures are completed if the right to strike is denied.

After reviewing both the union's and the RTD's letters, it is clear that the RTD could conceivably unilaterally alter the terms and conditions of employment under these circumstances. Therefore, the Department believes that the status quo language which appears in item 3 below will satisfy the requirements of Section 13(c) as discussed in Amalgamated Transit Union v. Donovan, 767 F.2d 939, 954 (D.C. Cir. 1985). This is distinguished from the "window period" which the Department addressed in our September 29, 1987 correspondence. Our views, as stated in the September 29, 1987 certification letter, have not changed.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. This letter and the terms and conditions in the agreement of April 7, 1976, as supplemented by the Colorado Labor Peace Act, C.R.S. 8-3-101 et seq., shall be made applicable to the instant projects and made part of the contracts of assistance, by reference, provided however that paragraph (15) of the April 7, 1976 agreement shall be made applicable except to the extent that it provides for interest arbitration;

2. The term "Project" as used in the agreement dated April 7, 1976, shall be deemed to cover and refer to the instant projects;

3. The contract of assistance shall include the following language:

   "Should the right to strike be denied employees of the RTD, then, in the absence of written mutual agreement by the parties to the contrary, such agreement not prejudicing either party's rights or positions under the impasse procedures herein, the terms and conditions of any expiring collective bargaining agreement shall remain in place following the expiration of such agreement until the effective date of a successor agreement between the parties, or the completion of the impasse procedures provided for herein, whichever is earlier." and

4. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the local union that is signatory to the executed agreement, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the signatory union under the April 7, 1976 agreement and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Stephen Foreman/RTD
John Kennedy/RTD

DE:TRCP:FLANAGAN:ys:6/27/88
DEP:Room N5416

JUN 27, 1988

Mr. Lee Waddleton
Regional Manager
Urban Mass Transportation Administration
Region VII
6301 Rock Hill Road
Suite 303
Kansas City, Missouri 64131

Re: UMTA Application
Bi-State Development
Agency
Operating Assistance;
Purchase Coaches, Spare
Parts, Microcomputers, etc.
(MO-90-X047)

Dear Mr. Waddleton:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the Bi-State Development Agency and Amalgamated Transit Union (ATU) executed an agreement dated April 9, 1974, which provides to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act for capital assistance projects.

In addition, the parties had previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. The parties had agreed that paragraph (9) of their April 9, 1974 Section 13(c) agreement would be included as the addendum pursuant to paragraph (4) thereof for previous operating grants.

Bi-State and the ATU continue to disagree over the inclusion of language in paragraph (9) of the parties April 9, 1974 Section 13(c) agreement as the basis for the Department's certification of the pending project.

FLANAGAN MULLEN SPRING
DEP DEP D/US

In its letters of March 1, 1988 and September 5, 1986, the ATU has raised concerns with the Department's previous certifications. The union states that the Secretary "is not a party to the Section 13(c) contract between Bi-State and the Union", and that she cannot "delete" language from the 1974 Agreement or otherwise amend or "modify" such. In certifying a project, the Department only applies a negotiated agreement. The Department acknowledges that it is not a party to the 13(c) agreement and, therefore, we have not amended or modified that 13(c) agreement. However, we do have the authority to apply or impose appropriate protective arrangements as the basis for certification of UMTA grants, including arrangements which contain only selected paragraphs or portions of paragraphs of the parties' 13(c) agreements. References to the amendment or modification of the April 9, 1974 13(c) agreement or the deletion or excising of specified language are intended only to convey differences between the language in the parties' 13(c) agreement and the language in the Department's imposed terms and conditions and not that the Department is a party to the agreement or that we have changed it for this or for previous projects to which the parties' April 9, 1974 agreement was applied.

The union also states that "the Secretary should clarify that the entirety of Paragraph (9) remains in full force and effect as applied to projects certified prior to May 27, 1986." The Department addressed this matter in our May 27, 1986 certification of projects Mo-90-X029 and Mo-90-X030, when we stated, "This procedure will be made applicable to all previous Bi-State grants which have been certified on the condition that the parties continue to negotiate a dispute resolution procedure. These projects include (MO-03-0021), (MO-03-0024), (MO-03-4002), (MO-03-4005), (MO-90-0002), (MO-90-X013), (MO-90-X019), (MO-90-X021), and (MO-90-0022)."

While not waiving their objections to any certification which fails to include among the applicable terms and conditions paragraph (9) of the parties' April 9, 1974 agreement, the ATU has requested that the Department review the Impasse Resolution Procedure which was a part of our May 27, 1986 certification and later amended in our September 30, 1986 certification. After reviewing Appendix A of our May 27, 1986 certification and the positions of the parties, the Department is making some minor modifications in the Impasse Resolution Procedures in order to correct some technical deficiencies and to provide a more equitable procedure. This revised Impasse Resolution Procedure for application to this project and future Bi-State grants will be the mediation and fact-finding procedures contained in Appendix B.

The changes to the third numbered paragraph of Appendix A reflects Bi-State's agreement in principle that the mediator should have the ability to invoke fact-finding. The changes to paragraphs (4) and (7) represent technical corrections. Paragraph (4) will ensure that the fact finding panel is notified of unresolved issues in dispute prior to a hearing, if any. Paragraph (7) will now provide a due date for the fact finding panel's written report in the event that no hearings are held. Paragraph (8) is now consistent with other determinations by the Department and with other procedures in the public sector. Further, we do not believe that a requirement that the parties accept or reject the fact finding recommendations in their entirety contributes to agreement on all issues in a procedure which is not binding on the parties.

Upon careful consideration of all of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Section 13(c)(1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on conditions that:

1. This letter and the terms and conditions of the agreement dated July 23, 1975, as supplemented by Appendix B, shall be made applicable to the operating assistance portion of the instant project and made part of the contract of assistance, by reference;

2. The terms and conditions of the agreement dated April 9, 1974, as modified by this letter, shall be made applicable to the capital assistance portion of the instant project and made part of the contract of assistance, by reference, provided however that paragraph (9) of the April 9, 1974 agreement shall be made applicable except to the extent that it provides for interest arbitration;

3. The terms "project" as used in the agreements of July 23, 1975 and April 9, 1974, shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant project; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union that is signatory to the executed agreements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the signatory union under the July 23, 1975 and April 9, 1974 agreements, as modified, and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

cc: Theodore Munter/UMTA
Earle Putnam/ATU
R. Raleigh D'Adamo/Bi-State
Gene Leung/Bi-State

BLMRCP:SMITH:yd:6/7/88
DEP:Room N5416

JUN 30 1988

Mr. Joel P. Ettinger
Regional Manager
Urban Mass Transportation Administration
Region V
300 South Wacker Drive
Suite 1740
Chicago, Illinois 60606

3 Ramp Bus

Re: UMTA Application
Transit Authority of
Northern Kentucky
Operating Assistance;
Purchase 2 Superyisory
Automoblies, Spare Engine
and Transmissions, 4
Transit Buses, etc.
(KY-90-X039)
Clarification of UMTA
Project:
(KY-90-X031)

Dear Mr. Ettinger:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

The Transit Authority of Northern Kentucky (TANK) and the Amalgamated Transit Union (ATU) have previously agreed to become party to the agreement executed on July 23, 1975 by the American Public Transit Associations and transit employee labor organizations. The terms and conditions of the July 23, 1975 agreement provide protections to employees represented by the union which satisfy the requirements of Section 13(c) of the Act in general purpose operating assistance project situations.

Also, in connection with previous grant applications, the TANK and the ATU agreed to certification based on the terms and conditions set forth in an agreement dated September 20, 1973. The Department of Labor in its certification letter of April 15, 1986 did not apply the interest arbitration provision, which the parties were unable to agree upon, and in its place included a fact-finding procedure. The ATU, continues to object to the Department's certification actions of April 15, 1986 (KY-90-X018) and June 29, 1987 (KY-90-X031), as well as to the instant project. The ATU continues to assert that the Department's

SMITH MULLEN SPRING
DEP DEP D/US

certification of June 29, 1987 constituted certification of terms and conditions that differ from those in the parties' contract. In the instant project, the ATU questions the Department's propriety in "modification" of the definition of labor dispute in paragraph (9) of the parties' 13(c) agreement. The Department's response to issues raised in the ATU's letter of May 10, 1988 remains the same as previously discussed in the Department's certification of June 29, 1987. That is, that while the Department acknowledges that it is not a party to either the contract between the parties or to the parties' 13(c) agreement, it does have the authority to apply or impose appropriate protective arrangements as the basis for certification of UMTA grants.

The ATU also indicated that the June 29, 1987 certification of KY-90-X031 states that the National Agreement was modified by the April 15, 1986 certification action. The April 15, 1986 certification letter states:

> "1. The terms and conditions of the agreement dated July 23, 1975 and Appendix A as the addendum pursuant to paragraph (4) thereof, shall be made applicable to the instant project and made part of the contract of assistance, by reference;..."

The June 29, 1987 certification states that:

> "1. The terms and conditions of the agreement dated July 23, 1975, as modified by our certification of April 15, 1986 and by item 3 below, shall be made applicable to the operating assistance portion of the instant project and made part of the contract of assistance, by reference..." (emphasis added)

The Department of Labor did not intend to modify its April 15, 1986 certification. We did intend to include Appendix A as a supplement to the National Agreement in that certification. To make clear any misunderstanding of the Department's certification action in this project, the Department here clarifies that its certification of June 29, 1987 for project KY-90-X031 included Appendix A to supplement the July 23, 1975 agreement. The certification date for project KY-90-X031 will remain that of June 29, 1987.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. The terms and conditions of the National Agreement of July 23, 1975, as supplemented by the appendix in the Department's certification of April 15, 1986 will be made applicable to the operating assistance portion of the instant project and made a part of the contract of assistance, by reference;

2. The terms and conditions of the agreement dated September 20, 1973, as supplemented by the appendix in our certification of April 15, 1986 and by the item 3 below, shall be made applicable to the capital portion of the instant project and made part of the contract of assistance, by referance;

3. The procedures in the Department's certification of April 15, 1986 shall be as follows:

(a) Absent written mutual agreement by the parties to the contrary (such agreement not prejudicing either party's rights or position under this procedure), the terms and conditions of any expiring collective bargaining agreement between the parties shall remain in place following expiration of such agreement until the effective date of any successor agreement executed by the parties to the publication of the factfinding report and recommendations as provided for herein, whichever is earlier.

(b) The parties shall submit their positions on all outstanding issues to the other party and the listing of unresolved issues and the parties' postions thereon shall be submitted to the factfinder;

(c) In order to clarify that factfinding may occur following contract expiration, the word "beginning" shall be substituted for the word "within" in the first line of the fourth paragraph on page one of Appendix A;

(d) The factfinder will apprise the parties in advance of the proceedings, of the rules and procedures that will be applicable and whether the factfinder is obligated to follow rules other than those of the Federal Mediation and Conciliation Service; and

4. The term "project" as used in the agreements of July 23, 1975, and September 20, 1973, shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant project; and

5. Employees of urban mass transportation carries in the service area of the project, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to employees represented by the union under the July 23, 1975 agreement the September 20, 1973(as modified) agreement and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Carole Beach/TANK

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

JUN 30 1988

Mr. Peter N. Stowell
Regional Manager
Urban Mass Transportation Administration
Region IV
1720 Peachtree Road, N.W.
Suite 400
Atlanta, Georgia 30309

Re: UMTA Application
Jackson Transit Authority
Operating Assistance
(TN-90-X064)

Dear Mr. Stowell:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

The Jackson Transit Authority (JTA) and the Amalgamated Transit Union (ATU) have previously agreed to become party to the agreement executed on July 23, 1975 by the American Public Transit Association and transit employee labor organizations. The terms and conditions of the July 23, 1975 agreement, as supplemented by Appendix A to the Department's June 27, 1986 certification letter, provide protections to employees represented by the union which satisfy the requirements of Section 13(c) of the Act in general purpose operating assistance project situations.

The parties have been in dispute since 1975 as to the application of paragraph (6) of the July 26, 1966 agreement which was previously included in Departmental certifications pursuant to paragraph (4) of the Model Agreement. Litigation over the matter in federal court culminated in the U.S. Supreme Court's decision in Jackson Transit Authority v. Local Division 1285, Amalgamated Transit Union, 457 U.S. 15 (1982).

By letter dated May 19, 1988, the Amalgamated Transit Union responded to the Department's referral of the instant project. In their response, the ATU objected to the Department's recent certifications which excised interest arbitration from the July 26, 1966 Section 13(c) agreement and substituted in lieu

thereof a mediation and factfinding procedure without the agreement of the parties. Among other concerns, the ATU further indicated that the Department had (1) abrogated independent rights arbitration provisions in "deleting" paragraph (6), (2) had failed to include "status quo" language under Appendix A, and (3) had not clarified what rules and procedures would apply in factfinding.

We have reviewed both the ATU's letter and the JTA's response dated June 15, 1988 with respect to the instant project. The Department's prior determination not to apply interest arbitration will continue for the instant project. However, we find it necessary to address the above three issues raised by the ATU.

First, the ATU has asserted that the Department has abrogated independent rights arbitration provisions in "deleting" too much language from paragraph (6) of the parties' July 26, 1966 Section 13(c) agreement. It was the intent of this Department to excise language which was specifically related to interest arbitration. It was never our intent to delete independent rights of the parties to arbitrate over "rights" disputes. Furthermore, our records do not indicate that the parties ever intended to take issue with these independent rights in as much as, to the Departments' knowledge, the subject was never raised. The Department will here apply paragraph (6) of the July 26, 1966 agreement except as it pertains to interest arbitration.

Departmental policy is to specifically reference the addendum to the Model Agreement only where interest dispute procedures in the parties' 13(c) agreements are included in the 13(c) arrangements currently being applied to UMTA grants by the Department. As in the past, other dispute procedures, including rights and grievance procedures such as those in paragraph (6) of the July 26, 1966 Section 13(c) arrangement, are attached to the Model Agreement by the parties pursuant to paragraph (4) whether or not they are specifically referenced in the Department's certification.

In a related matter, the ATU points out that the Department's certification is not based on the parties' July 26, 1966 13(c) agreement or their execution of the July 23, 1975 Model Agreement, but rather on imposed terms and conditions which differ from those contained in that agreement. The Department acknowledges that we are not a party to the 13(c) agreements and, therefore, have not "amended" or "modified" the 13(c) agreements. However, we do have the authority to impose appropriate arrangements, including arrangements which contain paragraphs or portions of paragraphs of the parties' 13(c) agreements, which meet the requirements of the Act. References to the "amendment" or "modification" of a 13(c) agreement were intended only to convey differences between the language in the parties' agreements and

the language in the Department's imposed terms and conditions and not that the Department is a party to the agreements.

Second, the procedures in Appendix A to the June 27, 1986 certification will be applied to provide an interest dispute resolution procedure for this project. The Department does not believe it is necessary to modify this procedure to include "status quo" language for the reasons set forth on page 4 of our letter of June 27, 1986.

Finally, we acknowledge that some confusion may be caused by the phrase "in accordance with the rules and procedures established by the mediation services" in paragraph 4 of Appendix A. Language is included in item 3 below to clarify this issue for the parties.

Upon careful consideration of all of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Sections 13(c)(1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated July 23, 1975, as supplemented by Appendix A, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement of July 23, 1975, shall be deemed to cover and refer to the instant project;

3. The procedures in Appendix A to the Departments' June 27, 1986 certification shall be modified as follows:

   After the second full sentence in paragraph (4) insert "The factfinder will apprise the parties, in advance of the proceedings, of the rules and procedures which will be applicable and whether the factfinder is obligated to follow rules other than those of the Federal Mediation and Conciliation Service."

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union that is signatory

to the executed agreement, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the signatory union under the July 23, 1975 agreement and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

Enclosure

cc: Theodore Munter/UMTA
Earle Putnam/ATU
J. Bryant Worley/JTA
Joseph Kaufman, Esq./JTA

JFlanagan:tl:7/14/88
DEP:Room N5416:357-0473

JUL 19 1988

Mr. Richard H. Doyle
Regional Manager
Urban Mass Transportation Administration
Region I
Kendall Square
55 Broadway
Cambridge, Massachusetts 02142

Re: UMTA Application
Pioneer Valley Transit
Authority
Operating Assistance;
Refurbish Buses, Purchase
Vans, etc.
(MA-90-X079)

Dear Mr. Doyle:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the Pioneer Valley Transit Authority (PVTA) and Amalgamated Transit Union (ATU) Locals 448, 537, and 1512 executed an agreement dated November 5, 1979, which provides to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act. At that time the Springfield Street Railway Company (SSRC) provided mass transit services in the Springfield service area as if it were the "Recipient" as that term is defined in the November 5, 1979 agreeement. SSRC continued to provide those services until November 1, 1981. On November 2, 1981, Springfield Transit Management (STM) started providing mass transit services in the Springfield service area.

STM acknowledges that for purposes of Section 13(c) it is a successor to SSRC as "Recipient" as that term is defined and used in the November 5, 1979 Section 13(c) agreement and the Department of Labor here confirms that STM is bound under the terms of paragraph (19) of that agreement as it is applied to projects certified between November 5, 1979 and November 1, 1981.

On April 21, 1983 the Department of Labor for the first time certified a PVTA project without the requirement for arbitration of interest disputes by deleting the words "the making or maintaining of collective bargaining agreements, the terms to be included in such agreements and the interpretation or application of such collective bargaining agreements" from paragraph (15) of the November 5, 1979 agreement.

CONCURRENCES								
Initials								
Date ►		7/19/88		7/26				
Last Name ►	FLANAGAN	MULLEN	ANDREWS	SPRING	STEPP			
Office Symbol ►	DEP	DEP	DOS	DOS	DOS			

OFFICAL FILE COPY Return to: Room 3219 Bldg. DL 1-441, Rev. July 1976

For project applications certified by the Department of Labor between November 2, 1981 and April 20, 1983, and on amendments to those projects for which the Department on its own initiative applied the same terms and conditions pursuant to the Department's guidelines (29CFR Section 215.5), STM has signed and shall be bound by the provisions of the November 5, 1979 agreement as the "Recipient", as that term is defined, specified and used in that agreement.

For project applications certified by the Department of Labor since April 20, 1983 and for the instant project, STM has signed and shall be bound as the "Recipient" as that terms is defined, specified and used in the November 5, 1979 agreement except to the extent that paragraph 15 of that agreement provides for interest arbitration.

The Department will also address the union's statements that the Secretary is not a party to the Section 13(c) contract between PVTA and the ATU, and that she cannot "delete" language from the 1979 Agreement or otherwise amend or "modify" such. The Department acknowledges that it is not a party to the 13(c) agreement and, therefore, we have not amended or modified that 13(c) agreement. However, we do have the authority to apply or impose appropriate protective arrangements as the basis for certification of UMTA grants, including arrangements which contain only selected paragraphs or portions of paragraphs of the parties' 13(c) agreements. References to the "amendment" or "modification" of the November 5, 1979 Section 13(c) agreement or the deletion or excising of specified language are intended only to convey differences between the language in the parties' 13(c) agreement and the language in the Department's imposed terms and conditions and not that the Department is a party to the agreement.

Upon careful consideration of all of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Section 13(c) (1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirements of Section 13 (c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on conditions that:

1. This letter and the terms and conditions of the agreement dated November 5, 1979, shall be made applicable to the instant project and made part of the contract of assistance, by reference, provided however that paragraph (15) of the November 5, 1979 agreement shall be made applicable <u>except to the extent that it provides for interest arbitration</u>;

2. The term "project" as used in the agreement of November 5, 1979, shall be deemed to cover and refer to the instant project; and

3. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union that is signatory to the executed agreement, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the signatory union under the November 5, 1979 agreement and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Robert Manz/PVTA

MAMullen:tl:7/27/88
DEP:Room N5416:357-0473

JUL 29 1988

Don B. Long, Jr.
Johnston, Barton, Proctor
Swedlaw & Naff
1100 Park Place Tower
Birmingham, Alabama 35203

Leo E. Wetzel
Associate Counsel
Amalgamated Transit Union
5025 Wisconsin Avenue N.W.
Washington, D.C. 20016

Re: UMTA Applications
Birmingham-Jefferson
County Transit
Authority
Purchase 6 DART
Vehicles; Transfer
6 E&H Vans
Purchase 3 Trolleys
(AL-90-X006)#3
(AL-90-X006)#3 Revised
Purchase 5 Vanpool
Vans
(AL-90-X031)#1

Gentlemen:

This is in reference to the above-captioned projects which are pending certification by the Department of Labor under Section 13(c) of the Urban Mass Transportation Act of 1964, as amended. In addition, I take this opportunity to respond to a letter dated July 13 from the Birmingham-Jefferson County Transit Authority concerning the pending grant applications. The Transit Authority has indicated that there are two grants pending; the parties should be aware that the Department of Transportation has also transmitted to the Department of Labor a request for certification for a revision to project AL-90-X006 #3 which includes the transfer of title for six buses from Miami, Florida to the Transit Authority. These buses are intended to be used in the paratransit operations which have recently been contracted to DAVE Systems, Inc.

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DEP DEP

Section 13(c) of the Urban Mass Transportation Act of 1964, as amended requires that, as a condition of federal assistance to a mass transportation system, fair and equitable arrangements must be made, as determined by the Secretary of Labor, to protect the interests of employees who may be affected by such assistance. Section 13(c) of the UMT Act specifically requires that protective arrangements contain provisions including, but not limited to the following areas:

> ...(1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their positions with respect to their employment; (4) assurances of employment to employees of acquired mass transportation systems and priority of employment of employees terminated or laid off; and (5) paid training or retraining programs.

During processing of the pending grants, the Department of Labor was informed that the Amalgamated Transit Union represented employees of Positive Maturity. We then directed the parties to negotiate an agreement to cover these employees. The ATU, by letter dated June 8, 1988, proposed an arrangement which would have met the requirements of the Act. We understand however, that the June 8 proposal was subsequently withdrawn by the ATU.

We continue to believe that 13(c) arrangements must be put in place which cover employees of Positive Maturity even though that operator has been replaced by DAVE Systems. Section 13(c) protections are intended to cover any adverse effects which occur in anticipation of a project, as well as during and subsequent to a project. If, through an appropriate procedure, ATU-represented employees prevail in a claim that they were adversely affected by a federally-assisted project, they will be entitled to the remedies provided for in the applicable Section 13(c) arrangement.

In the letter of July 13, 1988 the Transit Authority also suggests that protections in the June 12, 1975 Section 13(c) agreement, executed by the Birmingham-Jefferson County Transit Authority and Amalgamated Transit Union Local 725, and the July 23, 1975 "National Agreement", endorsed by the Transit Authority and ATU Local 725, do not extend to the employees of Positive Maturity because these are employees of a third-party contractor. On the contrary, employees of third-party

contractors which provide mass transportation services are not excluded from coverage under the UMT Act. While the term "employee" is not defined in the Act, the legislative history shows that Congress intended that the basic general definition of "employee" was to be applied under UMTA. Exceptions to the term "employee" have been narrowly defined by the courts in order to carry out Congressional purposes in enacting legislation.

In response to the Transit Authority's statements concerning the status of employees of Positive Maturity and whether they are specifically covered by the June 12, 1975 Section 13(c) agreement, this Department does not have the jurisdiction to make such a determination. Paragraph (9) of that agreement provides for resolution of this question with respect to previously certified projects. It is clear, however, that if these employees were not specifically covered by the June 12, 1975 agreement, they would nevertheless be afforded the required protections. The final paragraph of each Department of Labor certification provides for "substantially the same levels" of protection to be afforded to employees in the service area of each project certified for assistance. The Secretary of Labor has the authority to resolve any disputes over the parties' obligations and appropriate protections raised under such circumstances.

With respect to the application of the July 23, 1975 Model Agreement to operating assistance which includes elderly and handicapped services, the Transit Authority's interpretation of the Gill Memorandum is not consistent with the administrative practice and procedures which have been followed by the Department of Labor over the past twenty-three years. The Gill Memorandum indicates the agreement of the parties as to the administrative use of the Model Agreement. They agreed that the Model Agreement would not be applied to projects funding paratransit services, including elderly and handicapped projects. Rather, the Gill Memorandum provided for individual negotiation of protective arrangements for the particular project for other non-covered projects such as these. In many situations, though, as in Birmingham, neither party proposes alternative protective arrangements where operating assistance is included for E&H services in addition to general purpose operating assistance, and the Department of Labor certifies the <u>entire</u> project on the basis of the Model Agreement.

Also, the Transit Authority's assertion that the Model Agreement is "applicable only to the employees of employers which are signatories to the agreement" is not consistent with the clear language of that agreement. The agreement specifies that the arrangements are applicable to the Recipient of federal assistance "to protect urban mass transportation industry employees affected by such assistance." Nowhere in the Model are protections limited to "employees of employers which are signatories to the agreement." In fact, paragraph (27) specifically provides a procedure for other unions in the service area to become party to the Model Agreement -- a provision which would conflict with the assertion that the agreement covers only employees of the Recipient. As with the entire Model agreement, Paragraph (23) is not limited to "employees of the Recipient" as the Transit Authority suggests. The obligations of the Recipient where other employers provide services through contracts with the Recipient are subject to the terms of the July 23, 1975 Model agreement. Any disputes over such obligations must be resolved in accordance with the procedures in paragraph (15) thereof.

Generally, the Department has not required a union such as ATU Local 725 which is already signatory to the Model Agreement to sign on a second time when that union extends representation to employees of another employer in the service area. Of course, even if a union did not become party to the Model Agreement, the Department's certification letter applying the terms and conditions of the Model Agreement to a project would provide for "substantially the same levels" of protection for employees in the service area.

In summary, it is clear that there is an obligation to provide protective arrangements to cover employees of Positive Maturity, and it is clear that these employees were intended to be covered by the Act and that protections afforded for previous projects do extend to these employees. Because of the special circumstances surrounding the pending projects, we believe that it is appropriate to establish a time schedule to expedite certification of these grants.

The Department, therefore, directs the parties to provide DOL and each other with position papers by August 22 which specify in detail proposed protective arrangements for application to the pending projects. Submissions should include the rationale for positions taken by the parties and documentary evidence in support thereof. (e.g. contracts between Positive Maturity and the Transit Authority and between Dave Systems and the Transit Authority, collective bargaining agreements, solicitations for bids to provide service, etc.). Within 7 days of receipt of these

positions, the parties may submit reply briefs to each other and to the Department of Labor. The Department will review the positions of the parties to determine appropriate action. Such action may include the Secretary's determination of the terms and conditions upon which she will base her certification.

If you have any questions concerning this letter, please contact Mrs. Dorothy Hodge or Ms. MaryAnn Mullen on (202) 357-0473.

Sincerely,

James L. Perlmutter

cc: Theodore Munter/UMTA
Nancy Greene/UMTA
Earle Putnam/ATU

BLMRCP:SMITH:ys:ilm:8/16/88
DEP:Room N5416

AUG 22 1988

Mr. Wilbur E. Hare
Regional Manager
Urban Mass Transportation Administration
Region VI
819 Taylor Street
Suite 9A32
Fort Worth, Texas 76102

Re: UMTA Application
Capital Metropolitan
Transportation Authority
(Capital Metro)
Purchase Paratransit
Vehicles, Construct Park
and Ride, Purchase Support
Vehicles, etc.
(TX-90-X091)

Dear Mr. Hare:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the American Transit Corporation and Amalgamated Transit Union Local 1091 (ATU) executed an agreement dated May 31, 1974, which, as supplemented by side letters dated May 29, 1974 and June 13, 1985, provided to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

The ATU and Capital Metro have agreed that the terms and conditions of the agreement dated May 31, 1974, and the June 13, 1985 side letter shall be made applicable to the instant project.

However, the parties are in disagreement on two other items. First, they are in dispute as to whether a December 11, 1978 side letter, as the ATU suggests, should be substituted for the May 29, 1974 side letter containing assurances from the City of Austin. The ATU points out that the letters are identical except that the 1978 letter contains an error in referencing an incorrect agreement date. They, nevertheless, believe that the 1978 letter should be applied by DOL by virture of the fact that it is

CONCUR.									
Initials ►									
Date ►		8/16/88	8/18/88						
Last Name ►	SMITH	MULLEN	SPRING						
Office Symbol ►	DEP	DEP	D/HS						

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the latter of the two letters. However, we have determined that the appropriate side letter for application to Capital Metro projects is the May 29, 1974 letter which was referenced in their June 13, 1985 letter to this Department as the basis for Capital Metro's assumption of the City's prior grants.

In addition, the ATU requested that language concerning the provision of special transportation services be included in our certification. The ATU asserts, in its letter of March 18, 1987, that the parties had previously agreed that "all special transportation services to its (Capital Metro's) federally funded projects will be performed by employees of the Austin Transit System or its successor." We find that the parties had agreed to similar language for the purposes of projects (TX-90-X041)#2, (TX-90-X030)#2 and (TX-90-X003)#2. Also, the City of Austin extended such an agreement to previous projects certified by the Department. Capital Metro, however, has not agreed to the proposed language for the instant project and the Department has determined that the specific language proposed in the March 18, 1987 letter is not necessary for certification of this project.

The parties met at the Department of Labor on May 11 and discussed protective arrangements addressing restrictions on the assignment of special transportation service work and language addressing the impact of a decision to contract out work. Because Capital Metro, and not the Management Company which is signatory to the 13(c) agreement, controls assignment of the work, the ATU proposed that the following language be included in the Department's certification:

> Operation and or management, consistent with current practices, of the "STS" vehicles referred to in the Project, shall not be contracted to other than the Austin Transit Division of American Transit Corporation, Austin Texas, its sucessors or assigns in the management and or operation of the transit system ("Austin Transit"), unless supported by good economic reasons. However, prior to such contracting to other than Austin Transit, the Capital Metropolitan Transportation Authority ("Capital Metro") will review the matter with Austin Transit and Amalgamated Transit Union Local 1091 ("the Union") for reasonable alternatives.
>
> Any dispute or controvery regarding the interpretation or application of the foregoing provisions which cannot be settled twenty (20) days after such dispute first arises may be submitted at the written request of either Capital Metro or the Union to any mutually acceptable final and binding disputes procedure, or in the event Capital Metro and the Union cannot agree upon such procedure within ten (10) days after such request, to the Secretary of Labor, or her designee, for purposes of final and binding determination of any and all matters in dispute.

DOL has determined that such a provision is necessary to meet the requirements of the Act pursuant to Section 13(c)(3) which requires benefits no less than those in 5(2)(f) of the Interstate Commerce Act. The existing language in paragraph (8) of the May 31, 1974 Section 13(c) agreement is insufficient to the extent that it binds only the management company which is not the decision-making entity in this case. Language addressing the resolution of disputes over the application of the provision is, of course, also required under 13(c). The Department has applied the language in item 3 below to this project. Capital Metro's final proposal differed from the ATU's in that it proposed to meet with Austin Transit, to the exclusion of the union, to confer on the matter.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated May 31, 1974, as supplemented by item 3 below and side letters dated May 29, 1974 and June 13, 1985, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement of May 31, 1974, shall be deemed to cover and refer to the instant project;

3. The contract of assistance shall include the following language:

   Operation and or management, consistent with current practices, of the "STS" vehicles referred to in the Project, shall not be contracted to other than the Austin Transit Division of American Transit Corporation, Austin Texas, its sucessors or assigns in the management and or operation of the transit system ("Austin Transit"), unless supported by good economic reasons. However, prior to such contracting to other than Austin Transit, the Capital Metropolitan Transportation Authority ("Capital Metro") will give reasonable written notice of such intended change to the Union. Thereafter, within thirty (30) days from the date of such notice, Capital Metro shall meet to review the matter with Austin Transit and Amalgamated Transit Union Local 1091 ("the Union").

Any dispute or controvery regarding the interpretation or application of the foregoing provisions which cannot be settled twenty (20) days after such dispute first arises may be submitted at the written request of either Capital Metro or the Union to any mutually acceptable final and binding disputes procedure, or in the event Capital Metro and the Union cannot agree upon such procedure within ten (10) days after such request, to the Secretary of Labor, or her designee, for purposes of final and binding determination of any and all matters in dispute.

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union that is signatory to the executed agreement, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the signatory union under the May 31, 1974 agreement and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination. The compensation and expenses of any impartial third party designated by the Department, and any other jointly incurred expenses, shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

Sincerely,

John R. Stepp

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Anthony Kouneski/Capital Metro

BLMRCP:NEWTON:ilm:9/16/88
DEPL:Room N5416
Corrected:9/21/88

SEP 29 1988

Mr. Hiram J. Walker
Regional Manager
Urban Mass Transportation Administration
Region II
26 Federal Plaza
Suite 1410
New York, New York 10007

Re: UMTA Application
Central New York Regional
Transportation Authority
Operating Assistance;
Purchase (11) Replacement
Coaches, Phase I Planning,
Design and Construction of
Downtown Transportation
Center
(NY-90-X145)
(NY-90-X109) Corrected
Certification

Dear Mr. Walker:

This is in reply to the request from your office that we review the above captioned application for a grant which includes both operating and capital assistance under the Urban Mass Transportation Act of 1964, as amended. In addition, the Department is correcting the certification for project, NY-90-X109 to be retroactive to the original certification date of June 4, 1987.

The Central New York Regional Transportation Authority (CNYRTA) and the Amalgamated Transit Union (ATU) have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. In addition, the parties have previously agreed to include paragraph (9) of their March 11, 1975 Section 13(c) agreement, executed in connection with an earlier grant application, as addendum to the July 23, 1975 agreement pursuant to paragraph (4) thereof. The terms and conditions of the July 23, 1975 agreement provide protections to employees represented by the union which satisfy the requirements of Section 13(c) of the Act in general purpose operating assistance project situations.

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The parties, furthermore, had agreed to utilize the terms and conditions of their agreement dated March 11, 1975, for previous capital assistance projects. This agreement executed in connection with a previous grant application, provides to employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

The Department of Labor (DOL) is aware that for approximately two decades, the CNYRTA and the ATU have been in disagreement over the interpretation and application of paragraph (4) of their earlier October 13, 1971 Section 13(c) agreement and currently paragraph (9) of their March 11, 1975 Section 13(c) agreement.

The CNYRTA has requested that certification of the instant grant application for operating assistance be made based on the July 23, 1975 agreement, without paragraph (9) of the March 11, 1975 agreement as an addendum. Additionally, the CNYRTA proposes that the certification for capital assistance be based on the March 11, 1975 Section 13(c) agreement, "without the interest arbitration provisions which had been a part of previous agreements." CYNRTA requests that certification be based upon the terms and conditions in the Department of Labor's letter of June 4, 1987 for project NY-90-X109. The CNYRTA believes that impasse resolution should be governed solely by the mediation and fact-finding procedures in the New York State Taylor Law.

The Department has determined, for the reasons set forth in our letter of June 4, 1987, that these procedures meet the requirement of 13(c)(2) by providing a satisfactory dispute resolution procedure as a substitute for the interest arbitration procedures in paragraph (9) of the parties March 11, 1975 Section 13(c) agreement. The transportation authority does not wish to continue to agree, for this and future UMTA grants, to the provisions in paragraph (9) which would require arbitration of interest disputes.

However, by letter dated June 18, 1987, the ATU has requested that we amend our earlier certification, indicating to the Department that in our certification letter of June 4, 1987, the modification of paragraph (9) of the parties Section 13(c) agreement prevents the parties from arbitrating over many subjects unrelated to the negotiations of collective bargaining agreements, including the right to invoke paragraph (9) to arbitrate "rights" disputes.

When the Department excised portions of paragraph (9) from the parties' Section 13(c) agreement, our intention was only to excise language which specifically related to interest arbitration. It was never the intent of the Department to delete independent rights of the parties to arbitrate over "rights" disputes, as was provided for under the Section 13(c) agreement. Furthermore, our records do not indicate that the parties ever intended to take issue with these independent rights in as much as, to the

Department's knowledge, the subject was never raised. It is the Department's determination, therefore, that paragraph (9) shall be applied in our certification except to the extent that this paragraph provides for resolution of interest disputes. The terms and conditions of the agreement dated March 11, 1975 will in all other respects remain unchanged.

Furthermore, consistent with the Department's certifications elsewhere, we have included specific reference to the state law which satisfies 13(c)(2) requirements for a dispute resolution procedure.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project and our previous certification for project, NY-90-X109 on condition that:

1. This letter and the terms and conditions of the agreement dated July 23, 1975, as supplemented by the dispute resolution procedures of the New York State Taylor Law, shall be made applicable to the operating assistance portion of the instant project and made part of the contract of assistance, by reference;

2. This letter and the terms and conditions of the March 11, 1975 Section 13(c) agreement, as supplemented by the dispute resolution procedures of the New York State Law, shall be made applicable to the capital assistance portions of the instant project and made part of the contract of assistance, by reference, provided, however, that paragraph (9) of the March 11, 1975 agreement, shall be made applicable except to the extent that it provides for interest arbitration;

3. The term "project" as referenced in the agreements of July 23, 1975 and March 11, 1975, shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant project; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union that is signatory to the executed agreement, shall be afforded substantially the same levels of protection as are afforded to employees represented by union under the July 23, 1975 and March 11, 1975 agreements and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent

mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Stephen G. Bland/CNYRTA
Barry M. Shulman/Esquire

BLMRGP:SMITH:ilm:ys:9/30/88
DEP:Room N5416

SEP 30 1988

Mr. Peter H. Stowell
Regional Manager
Urban Mass Transportation Administration
Region III
841 Chestnut Street
Suite 714
Philadelphia, Pennsylvania 19107

Re: UMTA Application
Lexington Transit Authority
Operating Assistance;
Purchase 5 35-Foot Buses, 3
Supervisory Autos, Lease
Bus Tires, etc.
(KY-90-X036)

Dear Mr. Stowell:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

The Lexington Transit Authority and the Amalgamated Transit Union (ATU) previously agreed to become party to the agreement executed on July 23, 1975 by the American Public Transit Association and transit employee labor organizations. The terms and conditions of the July 23, 1975 agreement provide protections to employees represented by the union which satisfy the requirements of Section 13(c) of the Act in general purpose operating assistance project situations.

The parties, furthermore, had agreed that the terms and conditions of their agreement dated March 19, 1973 would be made applicable to previously certified capital assistance projects. This agreement, executed in connection with a previous grant application, provides to employees represented by the union protections satisfying the requirements of Section 13(c) of the Act. The Department of Labor, in its certification letter of April 15, 1986, indicated we had "modified" the parties' March 19, 1973 agreement to remove interest arbitration and included a factfinding procedure in its place. In the Department's subsequent certification letters, we imposed additional terms and conditions to refine the factfinding procedures.

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Last Name ►	SMITH	MULLEN	SPRING	ANDREWS	STEPP			
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By letter dated April 22, 1988 the ATU responded to the Department's referral of the instant project. The ATU objected to the Department's certification of the instant project without the interest arbitration provision in paragraph (8) of the March 19, 1973 agreement. In its letter of April 22, 1988 the ATU has raised a number of concerns with the Department's earlier certifications which we believe should appropriately be addressed and clarified by the Department at this time. The ATU notes that, in modifying the definition of "labor dispute" in paragraph (8) of the March 19, 1973 Agreement, "the Department vitiated entirely independent state law arbitration rights of ATU Local 639 and its members." When the Department modified paragraph (8) of the 13(c) agreement our intention was to excise language which was specifically related to interest arbitration. It was never the intent of the Department to delete independent rights of the parties to arbitrate over rights disputes, as provided for under the Section 13(c) agreements. To the Department's knowledge these independent rights were never at issue between the parties. It is the Department's determination, therefore, that paragraph (8) of the March 19, 1973 Agreement shall be made applicable except to the extent that it provides for interest arbitration. The April 15, 1986, January 23, 1987 and June 30, 1987 certifications are herein retroactively modified to incorporate item 2 below in lieu of changes in the definitions which were included in that original letter.

In addition, the ATU points out that the Secretary cannot modify or amend the 1973 Section 13(c) Agreement. We do, however, have the authority to apply or impose appropriate arrangements, including arrangements which contain only selected paragraphs or portions of paragraphs of the parties' agreements. References to the modification of the March 19, 1973 Agreement are intended to convey that the Department has imposed terms and conditions which differ from the agreement negotiated by the parties.

Finally, the ATU argues that the Department can not certify that appropriate employee protective arrangements are in place in the face of the arbitration panel's award in ATU Local 639 and Transit Authority of Lexington-Fayette County, AAA Case No. 52 30 0332-87 (Volz, Dec. 14, 1987). The union suggests that this award provides that affected employees have no right to assert any Section 13(c) claims independent of the collective bargaining agreement except to enforce the Section 13(c)(2) right to collective bargaining.

The Department recognizes that this decision raises concerns about the future enforceability of the protective arrangements referenced in our certifications. The arbitrator's discussion of the requirements of Section 13(c) of the UMT Act is not entirely clear. The Secretary of Labor, however, takes the position that Section 13(c) arrangements are separately binding and enforceable. Such arrangements must include all five enumerated requirements of the Act, and they do not need to be incorporated into a collective bargaining agreement to have force and effect. While the cited award is clearly binding upon the parties', we understand that the ATU has sought to have it set aside in the state courts. Upon careful consideration of the circumstances, the Department has determined that the protective arrangements below are fair and equitable, and meet the requirements of Section 13(c) of the Act. However, if the arbitrator's decision is upheld in the state courts, this certification is suspended. The certification would then be subject to the Department of Labor review and recertification to ensure that all requirements of Section 13(c) of the Act continue to be met.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated July 23, 1975, as supplemented by the Appendix A to the Department's certification of April 15, 1986 as modified by item 3 below, will be made applicable to the operating assistance portion of the instant project and made part of the contract of assistance, by reference;

2. This letter and the terms and conditions of the agreement dated March 19, 1973 as supplemented by Appendix A to our certification of April 15, 1986 and by item 3 below, shall be made applicable to the capital portion of the instant project and made part of the contract of assistance, by reference provided, however that paragraph 8 of the March 19, 1973 agreement shall be made applicable except to the extent that it provides for interest arbitration;

3. The procedures in the Department's certification of April 15, 1986 shall be modified as follows:

   (a) Absent written mutual agreement by the parties to the contrary (such agreement not prejudicing either party's rights or position under

this procedure), the terms and conditions of any expiring collective bargaining agreement between the parties shall remain in place following expiration of such agreement until the effective date of any successor agreement executed by the parties or the publication of the factfinding report and recommendations as provided for herein, whichever is earlier.

(b) The parties shall submit their positions on all outstanding issues to the other party and the listing of unresolved issues and the parties' positions thereon shall be submitted to the factfinder;

(c) In order to clarify that factfinding may occur following contract expiration, the word "beginning" shall be substituted for the word "within" in the first line of the fourth paragraph on page one of Appendix A;

(d) The factfinder will apprise the parties, in advance of the proceedings, of the rules and procedures that will be applicable and whether the factfinder is obligated to follow rules other than those of the Federal Mediation and Conciliation Service;

4. The term "project" as used in the agreements of July 23, 1975, and March 19, 1973 shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant project; and

5. Employees of urban mass transportation carrires in the service area of the project, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to employees represented by the union under the July 23, 1975 and March 19, 1973 agreements and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreements and absent mutual agreement by the parties to utilize any

final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Pat Hamric/Authority

ELMRCP:ANDRES:ilm:9/30/88
DEP:Room N5416

SEP 30 1988

Mr. Joel Ettinger
Regional Administrator
Urban Mass Transportation Administration
Region V
300 South Wacker Drive
Suite 1740
Chicago, Illinois 60606

Re: UMTA Application
Rock Island County
Metropolitan Mass
Transit District
Purchase Fareboxes,
Office Equipment, etc.
(IL-90-X105)

Dear Mr. Ettinger:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the Rock Island County Metropolitan Mass Transit (MTD) and the Amalgamated Transit Union (ATU) Local 313 executed an agreement dated June 1, 1978, incorporating by reference their entire January 13, 1975 Section 13(c) agreement, which provided to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

MTD and the ATU have been in disagreement for the past year over the inclusion of paragraph (9) of the June 1, 1978 agreement in the Department of Labor's certification of the above captioned grant.

By letter dated June 4, 1987, MTD indicated to the Department of Labor that the terms and conditions of the agreement dated June 1, 1978 should be applied to the instant project "so long as any obligation to mandatory interest arbitration" was omitted and replaced by the rights provided under the Illinois Public Labor Relations Act.

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The MTD contends that interest arbitration is not a requirement for certification of the project. In addition, the MTD stated that transit employees are afforded a dispute resolution mechanism by the Illinois Public Labor Relations Act (PLRA) (Ch. 48; Paragraph 1601 et seq.) which meets the requirements of Section 13(c).

The ATU contends that the MTD has not provided any justification for altering the interest arbitration provision in Paragraph (9) of the parties' 13(c) agreement. The ATU further states that, while the Donovan decision established that interest arbitration was not necessarily a requirement of Section 13(c), it is an acceptable arrangement for resolution of interest disputes and, depending upon the circumstances, it may be the only appropriate dispute resolution procedure. The ATU believes this is the case with MTD projects. The ATU believes that the revision proposed by the MTD would not satisfy the requirements of the Act because the State statute is no more than "permissive fact-finding" and the right to strike is unavailable to MTD employees represented by the ATU.

The ATU argues that the Illinois Public Labor Relations Act of 1984 (PLRA) mandates the use of interest arbitration in the present circumstances where, in accordance with Section 17 of the PLRA, "Public employees who are permitted to strike may strike only if: *** (3) the public employer and labor organization have not mutually agreed to submit the disputed issues to final and binding arbitration ..."

The ATU asserts that because the parties agreed to interest arbitration in the June 1, 1978 agreement, employees of MTD have no right to strike.

This project has been pending since mid-1987. The parties have been discussing the issues relevant to this situation and the Department has received copies of all correspondence. The Department believes that it is very unlikely that the parties will reach closure on the issues on their own and further explanation will not make the parties' positions any clearer. On the contrary, the Department believes that further exchange by the parties would only cause unnecessary delays in the UMTA funding process. Therefore, the Department makes this determination.

It is DOL's position that an interest arbitration provision in a Section 13(c) agreement is not automatically perpetuated in a succeeding agreement unless it is mutually agreed to by the parties. In this instance, where there is no mutual agreement "to submit the disputed issues to final and binding arbitration," we believe that the PLRA provides MTD employees with the right to strike. The Department has determined that the right to strike,

as provided in the PLRA, in and of itself is sufficient to meet the requirements for a dispute resolution procedure in fulfillment of the Section 13(c)(2) requirement for continuation of collective bargaining rights.

Although it appears that under Section 18(a) of the PLRA (Ch. 48; Paragraph 1618 Ill. Rev. Statutes, July 1, 1984) the transit employees can be enjoined from striking for "health and safety" reasons, the statute provides that an injunction can be secured only after petitioning the labor relations board and upon the board's investigation and finding of a clear and present danger to the "health and safety of the public"; the employer shall then petition the appropriate circuit court. No injunction shall be granted except where the courts have found there is a "clear and present danger." The statute further provides that, if the court determines there is a "clear and present danger" and orders striking employees back to work, the employer is required to participate in the impasse arbitration procedures set forth in Section 14 of the PLRA. In part, the procedures provide that (1) the panel at the conclusion of the hearing shall make written findings of fact and promulgate a written opinion and deliver it to the parties and the Board; (2) if the governing body rejects any term of the panel's decision, it must provide reasons for such rejection and the parties shall return to the arbitration panel for further proceedings and issuance of a supplemental decision. This clearly ensures a full and fair airing of the parties' issues and prevents unilateral control by the employer thereby protecting the rights of the mass transit employees.

The modification of paragraph (9) proposed by MTD would eliminate independent rights of the parties to arbitrate over "rights disputes," in addition to the interest dispute procedures of the Section 13(c) agreement. The MTD, in its correspondence, emphasized that it was not their intent to effect the rights of the parties to arbitrate rights disputes under their 13(c) agreement. The Department, therefore, will apply paragraph (9) of the June 1, 1978 agreement to the pending project except to the exent that it provides for interest arbitration.

Therefore, upon careful consideration of all the circumstances, including consideration of the provisions satisfying each of the five matters specified in Sections 13(c)(1) through (5) of the Act, DOL has determined that the protective arrangement described below are fair and equitable and meet the requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated June 1, 1978, as supplemented by Illinois Public Labor Relations Act (Ch. 48; Paragraph 1601 et seq.), shall be made applicable to the instant project and made part of the contract of assistance by reference, provided, however, that paragraph (9) of the June 1, 1978 agreement shall be made applicable except to the extent that it provides for interest arbitration;

2. The term "project" as used in the agreement of June 1, 1978, shall be deemed to cover and refer to the instant project; and

3. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union that is signatory to the executed agreement, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the signatory union under the June 1, 1978 agreement and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

cc: Theodore Hunter/UMTA
Earle Putnam/ATU
Jeffery Nelson/MTD

BLMR:MA, MULLEN:ilm:10-25-88
STAT:Room N5416:357-0473

OCT 25 1988

Mr. Terry L. Ebersole
Acting Regional Manager
Urban Mass Transportation Administration
Region X
Federal Building
915 Second Avenue
Suite 3106
Seattle, Washington 98174

Re: UMTA Application
City of Boise
FY 1988 Operating Assistance Only
(ID-90-X015)

Dear Mr. Ebersole:

This certification is in reference to your request that the Department of Labor provide certification under section 13(c) of the Urban Mass Transportation Act of 1964, as amended, for the above project. The applicant has informed us that the original application is being revised to include only operating assistance.

The Amalgamated Transit Union and Transportation Systems Management, Inc, have agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. In addition, the parties have agreed that paragraph (9) of the March 11, 1975 Section 13(c) agreement, executed in connection with an earlier grant application, shall be included as the addendum to the July 23, 1975 agreement pursuant to paragraph (4) thereof. The terms and conditions of the July 23, 1975 agreement, as supplemented below, provide protections to employees represented by the Union satisfying the requirements of section 13(c) of the Act.

This certification relates to the application by the City of Boise for operating assistance for its mass transportation system for its 1988 fiscal year. By letter dated April 4, 1988, addressed to Mr. Aubrey Davis, Regional Administrator of the Urban Mass Transportation Administration (UMTA), in Seattle, Washington, the Department of Labor (DOL) imposed labor protective arrangement with respect to Boise's application for capital assistance in the construction of a downtown transit mall (project no. ID-90-X013).

MULLEN SPRING ANDREWS STEPP
STAT. BLMR A/DUS DUS

Paragraph 25 of our April 4, 1988 labor protective arrangement provides for priority-rehiring of transit employees laid off in the event of a transition from private to public management of Boise's mass transportation system, or in the event of a transition from one private operator to another. Although DOL does not normally include language of this kind in operating assistance grants, the Amalgamated Transit Union (ATU) has requested that the language of paragraph 25 of the April 4, 1988 capital assistance grant labor protective arrangement be included in the labor protective arrangement for this operating assistance grant. Boise, through its counsel, has asserted that including this priority-rehiring language in this operating assistance grant is not necessary because, Boise acknowledges, paragraph 25 of the April 4, 1988 arrangement is still in effect and still binding upon the City.

It has been determined that the language of paragraph 25 of the capital assistance grant should not be included in this operating assistance grant, but the absence of such priority-rehiring language from this arrangement should not be construed to in any way affect the extant rights and obligations of the parties under the April 4, 1988 capital assistance arrangement.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated July 23, 1975, as supplemented by the October 17, 1988 "Clarifications," shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement of July 23, 1975, shall be deemed to cover and refer to the instant project; and

3. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union that is signatory to the executed agreement, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the signatory union under the July 23, 1975 agreement, as supplemented, and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent

mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

cc: Theodore Hunter
Alec Andrus/City
Earle Putnam/ATU

2K

@SP:MA.MULLEN:tc:12-22-88:
Rm.N5402:357-0473

DEC 28 1988

Mr. Joel P. Ettinger
Regional Manager
Urban Mass Transportation Administration
Region V
55 East Monroe Street
Suite 1415
Chicago, Illinois 60613

Re: UMTA Application
Miami Valley Regional Transit Authority
Operating Assistance, Trolley Support System, CBD Transit Corridor
(OH-90-X112)
Correction
(OH-90-X039)#1

Dear Mr. Ettinger:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

In connection with previous grant applications, the Department of Labor issued a certification dated January 13, 1988. Representatives of Miami Valley Regional Transit Authority and the Amalgamated Transit Union met at the Department of Labor on December 15, 1988 and discussed several outstanding issues pertaining to the previous certifications. The parties agreed that the Department's resolution of those issues would apply to project (OH-90-X039)#1 as well as (OH-90-X112). The ATU, however, continued to object to any certification which fails to include paragraph (15) of the parties' October 22, 1975 Agreement as originally constituted.

As a result of the discussions by the parties, the Department has revised Item 4 on page 6 of the January 13, 1988 certification to read as specified in Item 3 below. (Language in the third paragraph of item 4 which pertained only to project (OH-90-X056) is omitted for this certification, but of course, continues to apply for that project.)

In addition, we wish to address the language of the second paragraph on page 3 of the Department's January 13, 1988 letter. The last sentence of that paragraph indicates that the procedures referenced in that paragraph "ensure(s) a full and fair airing of the parties issues and prevents unilateral control..." thereby meeting the requirements of the Act for a dispute resolution procedure. The Department's determination that an appropriate procedure was in place was based, however, on a review of Section 4117 of the Ohio Revised Code and the factfinding procedures required therein -- not on the mediation procedures referenced in the aforementioned paragraph. This is confirmed by the fact that DOL would not have had to supplement the factfinding procedures, as we did, if the mediation procedures were sufficient as we unfortunately indicated.

The Department has determined that the terms and conditions of the certification dated January 13, 1988, as modified below, shall be made applicable to the instant projects.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. This letter and the terms and conditions of the certification dated January 13, 1988, as modified herein, shall be made applicable to the instant projects and made part of the contracts of assistance, by reference;

2. The term "project" as referenced in the certification dated January 13, 1988, shall be deemed to cover and refer to the instant projects;

3. The contracts of assistance shall include the following language:

   "Absent written mutual agreement by the parties to the contrary, the terms and conditions of any expiring collective bargaining agreement shall remain in place following the expiration of such agreement until the effective date of a successor agreement between the parties, or the publication of the fact-finding report and recommendations, as provided for under Section 4117 of the Ohio Revised Code, whichever is earlier."

In addition:

"If either of the parties rejects the recommendations of the factfinding panel, the rejecting party shall state its reasons for such rejection with specificity in writing upon such rejection, and in any event not later than seven (7) days after the factfinding panel transmits its findings and recommendations to the parties, and contemporaneously publish such statement in the local media."

4. Employees of urban mass transportation carriers in the service area of the project other than those represented by the local union that is signatory to the executed agreement shall be afforded substantially the same levels of protection as are afforded to the employees represented by the signatory union under the January 13, 1988 certification as modified, and this certification. Should a dispute arise after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

cc: Theodore Munter/UMTA
Earle Putnam/aTU
Allan H. Gray/MVRTA

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

MAR 15 1989

Mr. Joel Ettinger
Regional Manager
Urban Mass Transportation Administration
Region V
55 East Monroe Street, Suite 1415
Chicago, Illinois 60603

Re: UMTA Application
Rockford Mass Transit
District
Operating Assistance;
Purchase Four 35-Foot
Replacement Buses and
15 Bus Shelters
(IL-90-X132)

Dear Mr. Ettinger:

This is in reply to the request from your office that we review the above captioned application for a grant which includes both operating and capital assistance under Section 13(c) of the Urban Mass Transportation Act of 1964, as amended.

The Rockford Mass Transit District (RMTD) and the Amalgamated Transit Union (ATU) have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. Until 1983, the parties also agreed that paragraph (9) of their June 27, 1975 Section 13(c) agreement, executed in connection with an earlier grant application, be included as an addendum to the July 23, 1975 agreement pursuant to paragraph (4) thereof. These terms and conditions satisfied the requirement for Section 13(c) certification for general purpose operating assistance project situations.

In addition, the RMTD, the ATU and the International Brotherhood of Electrical Workers (IBEW) Local 196, have previously agreed to and applied the terms and condition of their Section 13(c) agreement dated June 27, 1975 for capital assistance projects.

The Rockford Mass Transit District and the ATU are in disagreement over the inclusion of paragraph (9) of the parties' June 27, 1975 agreement, either as contained in that agreement for capital

assistance projects, or as the addendum to the July 23, 1975 agreement for operating assistance projects. Since April 15, 1985 the Department has not included the paragraph (9) requirement for interest arbitration in our certifications for UMTA projects.

The ATU has argued that the Illinois Public Labor Relations Act of 1984 (PLRA) mandates the use of interest arbitration in the present circumstances where, as provided in Section 17 of the PLRA, "Public employees who are permitted to strike may strike only if: ***(3) the public employer and labor organization have not mutually agreed to submit the disputed issues to final and binding arbitration..."

The ATU stated that the parties executed a Section 13(c) agreement dated June 27, 1975, in paragraph (9) of which the parties agreed to resolve labor contract disputes through final and binding arbitration. The union concluded that because the parties have at one time agreed to interest arbitration, these public employees have no right to strike.

The ATU has also argued that "the Illinois Circuit Court ruled that Paragraph (9) of the parties' Section 13(c) Agreement is, under Illinois state law, a valid and enforceable agreement to arbitrate interest disputes. See Local Division 1333 v. Rockford Mass Transit District, Case No. 84-MR-28 (Ill. Cir. Ct., September 17, 1984)". The Department has taken no position on the interpretation or enforcement of Paragraph (9) of the 1975 agreement as it was applied to previously certified projects. Rather, we have here taken the position that, in the absence of mutual agreement by the parties, DOL would not require interest arbitration for new grants.

The District's position is that mass transit employees are afforded a dispute resolution mechanism by the Illinois Public Labor Relations Act (Ch. 48; Paragraph 1601 et seq.), which fully satisfies the requirements of Section 13(c).

The PLRA provides public employees with the right to collectively bargain and a means for resolving interest disputes. Paragraph 1617 of the PLRA provides public employees with the right to strike provided, in pertinent part, "(3) the public employer and the labor organization have not mutually agreed to submit the disputed issues to final and binding arbitration."

Prior to the enactment of the PLRA of 1984, interest arbitration was the dispute resolution mechanism agreed to by the parties with respect to projects certified under Section 13(c) of the

Act. That mechanism met the requirements of Section 13(c)(2). Although 13(c) does require some dispute resolution process, it is clear from the legislative history and case law that interest arbitration is not specifically required by the Act. Interest arbitration remains an acceptable means of meeting the Section 13(c)(2) requirement for continuation of collective bargaining rights, as are the right to strike and fact-finding.

It is clear that the parties have not mutually agreed to submit disputes to binding arbitration or abide by the terms of paragraph (9) of the June 27, 1975 13(c) agreement for purposes of the pending project. An interest arbitration provision in a Section 13(c) agreement is not automatically perpetuated in a succeeding agreement unless it is mutually agreed to by the parties.

In this instance, where there is no mutual agreement to submit the disputed issues to final and binding arbitration, we believe that the PLRA provides District employees with the right to strike. The Department has determined that the right to strike as provided in the PLRA is sufficient to meet the requirements for a dispute resolution procedure in fulfillment of the Section 13(c)(2) requirement for continuation of collective bargaining rights.

Under Section 18(a) of the PLRA (Ch. 48; Paragraph 1618 Ill. Rev. Statutes, July 1, 1984) the transit employees can be enjoined from striking for "health and safety" reasons, but the statute provides that an injunction can be secured only after petitioning the labor relations board and upon the board's investigation and finding of a clear and present danger to the "health and safety of the public"; the employer shall then petition the appropriate circuit court for an injunction which shall be granted only where the courts have found there is a "clear and present danger." The statute further provides that, if the court orders striking employees back to work, the employer is required to participate in the impasse arbitration procedures set forth in Section 14 of the PLRA. In part the procedures provide that (1) the panel at the conclusion of the hearing shall make written findings of fact and promulgate a written opinion and deliver it to the parties and the board; (2) if the governing body rejects any term of the panel's decision, it must provide reasons for such rejection and the parties shall return to the arbitration panel for further proceedings and issuance of a supplemental decision. The procedures in Section 14 clearly ensure a full and fair airing of the parties issues and prevent unilateral control by the employer thereby protecting the rights of the mass transit employees.

In addition, RMTD has agreed to include language in the certification which assures public notice of reasons for rejection of the arbitration panel's recommendation by the governing body under Section 14 of the PLRA of 1984 (See letter of May 12, 1987). Although the Department of Labor's certification of June 19, 1987 included publication language, it has been revised for the pending project to reflect that it is the public employer's governing body, and not the parties, which has the authority to reject the arbitration panel's recommendation. Publication of the reasons for any rejection as required in item 4 below, will bring public pressure to bear on the public employer's governing body.

The ATU also continues to assert that the factfinding procedures of Section 13 of the PLRA of 1984 fail to satisfy the requirements of 13(c)(2). It is not the procedures in Section 13 of the PLRA, however, which are the basis of the Department's determination -- rather, these are (a) the right to strike embodied in Section 17 of the PLRA and, in the unlikely event that an injunction is obtained, (b) the impasse procedures in Section 14 of the PLRA. Thus the language in item 4 supplements the arbitration procedures of Section 14 and Section 13 factfinding procedures need not be addressed.

The Department has also considered the ATU's assertion that there is a need for "status quo" language prior to vesting of the right to strike under Section 17 to eliminate any period of time during which the employer could unilaterally alter terms and conditions of employment. We have concluded, however, that the ATU has it within its power to request mediation and provide proper notice to the employer. RMTD is persuasive in its argument that "the timing of these acts by the Union are within its control and, if performed in advance of the contract expiration date, in no way inhibit the ability of the Union to strike immediately upon expiration of the contract."

Departmental policy has been to require the parties to execute a Section 13(c) Agreement which, in part, provides for a neutral, final and binding dispute resolution procedure to resolve any controversy which may arise with respect to the interpretation, application, or enforcement of the terms of the 13(c) agreement itself. Such procedures for resolution of grievance disputes under the 13(c) agreement are necessary to ensure that employee protective arrangements are enforceable by the parties. These procedures are contained in Paragraph (9) of the June 27, 1975 Agreement and shall be made applicable to this grant.

As indicated in our certification letter of September 30, 1987, the Department has addressed the ATU's concerns over the deletion of specific language from Paragraph (9) of the June 27, 1975

Agreement. We have indicated that when the Department modified paragraph (9) of the June 27, 1975 13(c) Agreement our intention was to excise language which was specifically related to interest arbitration. It was never the intent of the Department to delete independent rights of the parties to arbitrate over "rights" disputes, as provided for under the Section 13(c) agreements. To the Department's knowledge these independent rights were never an issue expressed by the parties. Therefore, the Department determined that paragraph (9), as provided in the June 27, 1975 agreement, should be made applicable except as the paragraph provides for interest arbitration.

Therefore, upon careful consideration of all the circumstances, including consideration of the provisions satisfying each of the five matters specified in Sections 13(c)(1) through (5) of the Act, DOL has determined that the protective arrangements described below are fair and equitable and meet the requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated July 23, 1975, as supplemented pursuant to paragraph (4) thereof by the Illinois Public Labor Relations Act (Ch. 48; Paragraph 1601 et seq.) and item 4 below, shall be made applicable to the operating assistance portion of the instant project and made part of the contract of assistance, by reference;

2. This letter and the terms and conditions of the agreement dated June 27, 1975, as supplemented by the Illinois Public Labor Relations Act (Ch. 48; Paragraph 1601 et seq.) and item 4 below, shall be made applicable to the capital assistance portion of the instant project and made part of the contract of assistance, by reference, provided, however, that paragraph (9) of the June 27, 1975 agreement shall be made applicable to the project except to the extent that it provides for interest arbitration;

3. The term "project" as used in the agreements of July 23, 1975 and June 27, 1975, shall be deemed to cover and refer to the operating and capital portions respectively, of the instant project;

4. The contract of assistance shall include the following language:

"If the right to strike is denied, the parties are required to follow the impasse procedures in Section 14 of the PLRA; if the public employer's governing body rejects the recommendations of the arbitration panel, it shall state it's reasons for such rejection and the RMTD shall ensure that such statement shall be published in the local media along with positions of the parties and the recommendations of the panel"; and

5. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local unions that are signatory to the executed agreements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the signatory unions under the July 23, 1975 and June 27, 1975 agreements and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Mary L. Belk/RMTD
Joan Baker/Labor Service
John J. Barry/IBEW

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C 20210

MAR 17 1989

Mr. Peter Stowell
Regional Manager
Urban Mass Transportation Administration
Region III
841 Chestnut Street
Suite 714
Philadelphia, Pennsylvania 19107

Re: UMTA Application
Chattanooga Area Regional
Transportation Authority
(CARTA)
Operating Assistance;
Purchase Six 35-Foot
Replacement Buses, etc.
(TN-90-X069)

Dear Mr. Stowell:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended. In connection with previous certifications, the Department of Labor has noted that the Chattanooga Area Regional Transportation Authority (CARTA) and the Amalgamated Transit Union (ATU) have been in disagreement since 1979 over the force and effect of paragraph (9) of their May 30, 1975 Section 13(c) agreement. This paragraph contains an interest arbitration provision which the parties had originally agreed to in 1972 and which had been included in protective arrangements for all UMTA applications prior to August 19, 1981.

In January 1986 the parties undertook negotiations over an alternative dispute procedure at the direction of the Department and were able to agree upon a mediation and fact-finding procedure which, the ATU asserted, "is an appropriate prelude to an interest arbitration requirement" and which, CARTA suggested, "meet(s) the statutory requirements," and is an appropriate basis for continued certification of UMTA projects. The Department determined, in its certification of March 7, 1986, that this procedure would be substituted for the interest dispute precedures in paragraph (9) of the May 30, 1975 agreement.

With respect to the instant project, the ATU, by letter dated December 9, 1988, has objected to certification for several reasons. First, the ATU continues to object to any certification which does not include among the applicable terms and conditions Paragraph (9) of the parties' March 30, 1975, Section 13(c) Agreement.

The Department of Labor, for the reasons set forth in our certifications of March 7, 1986 and February 27, 1987, will continue to substitute the proposed fact-finding procedures attached to CARTA's January 30, 1987 letter to the Department for the interest arbitration procedures in paragraph (9) of the May 30, 1975 agreement. Procedures in paragraph (9), however, will continue to apply for the resolution of disputes over the interpretation, application, and enforcement of the terms and conditions of the 13(c) arrangements.

The ATU also objects to the continued inclusion of a stipulation by the parties included in the Department of Labor's certifications dated February 27, 1987 and March 30, 1988. In the context of discussions regarding proposed modifications to existing arrangements which addressed CARTA's "privatization" concerns, the transit authority proposed that paragraph (23) of the Model Agreement be excised from that agreement. The parties were unable to agree on that proposal in their 13(c) negotiations, which included a meeting on February 27, 1986 at the Department of Labor. However, the parties at that time stipulated that there was an arbitrator's award on the subject which stated:

> "Section 23 of that agreement provides that the designated Recipient shall be the sole provider of mass transportation services to the Project and such services shall be provided exclusively by its employees; but it also indicates that this is to be in accordance with any applicable collective bargaining agreement."

In the context of discussions for project (TN-90-X052) the Department added a second stipulation by the parties that these letters would not be submitted as evidence in a grievance arbitration which was then pending. The ATU's objection to continued inclusion of such language arises, in part, because that grievance arbitration has been concluded. The Union asserts that the arbitrator has misconstrued the parties' stipulation to the existence of the Teple Award as an agreement to insert the conclusions of the Teple Award into the National Agreement. Also, they are concerned that other transit authorities have "urged that the language at issue establishes a Department of Labor adoption of the Teple Award's interpretation of Paragraph (23) of the National Agreement.

CARTA has requested that the original stipulation be contained in the instant certification with additional language to the effect that "The parties further stipulate that the existence of this

language has been recognized in a subsequent final arbitrator's award on the same issue" (letter of January 3, 1989). CARTA also indicates that it "does not believe that inclusion of such language 'establishes a Department of Labor adoption of the Teple award's interpretation of paragraph (23) ...'" Rather, CARTA suggests that the DOL certification "did nothing more than point out that the parties had agreed that such a final arbitration award was in existence."

CARTA is correct that the Department of Labor's inclusion of the original stipulation was not intended to establish a Department of Labor position on the proper interpretation of paragraph 23 of the Model Agreement. Moreover, we take no position as to what the parties themselves intended when the language of the stipulation was agreed to in February 1987. It is clear, however, that the parties are no longer willing to agree to a stipulation as to the existence of one or more arbitrator's awards. The Department, therefore, will not include the disputed language for the pending project. This is not intended to prejudice the positions of either of the parties in any future grievance should one arise, concerning these issues.

Finally, the ATU asserts that the proposed certification action would "actively and affirmatively impact upon employee rights under previously issued certifications of CARTA grants" because a recent Tennessee state court decision held that new 13(c) arrangements would supersede previous arrangements. CARTA indicates that the court decision holds only that "a later certification adopting terms and conditions some of which are inconsistent with prior terms and conditions must be given effect," or there would be no point in negotiating new protective arrangements.

We understand that the ATU has applied to the Tennessee Supreme Court for permission to appeal from the Tennessee Court of Appeals' decision in Local 1235 v. Metropolitan Transit Authority. Pending a final determination of the issues in the Tennessee courts, we do not believe that the Department need address this issue at this time.

Upon careful consideration of all of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Section 13(c) (1) through (5) of the Act, we have concluded that the protective arrangements describe below are fair and equitable and in accordance with all requirements of Section of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated July 23, 1975, with Appendix A hereto attached as the addendum pursuant to paragraph (4) thereof, shall be made applicable to the operating assistance portion of the instant project and made part of the contract of assistance, by reference;

2. This letter and the terms and conditions of the agreement dated May 30, 1975, as supplemented by Appendix A hereto attached, shall be made applicable to the capital portion of the instant project and made part of the contract of assistance, by reference provided however that paragraph (9) of the May 30, 1975 Agreement shall be made applicable except to the extent that it provides for interest arbitration;

3. The term "project" as used in the agreements of July 23, 1975 and May 30, 1975, shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant project; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union that is signatory to the executed agreements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the July 23, 1975 and May 30, 1975 agreements, as modified herein, and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

cc: Theodore Munter/UMTA
Earle Putnam/ATU
George Derryberry/Miller & Martin
David Miree/CARTA

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington D.C. 20210

MAR 20 1989

Mr. Lou Mraz
Regional Administrator
Urban Mass Transportation
Administration
Region VIII
Federal Office Bldg.
1961 Stout Street
Room 520
Denver, Colorado 80294

Re: UMTA Application
Utah Transit Authority
Purchase 20 Forty-Foot
Transit Coaches and
Related Equipment
(UT-03-0013)

Dear Mr. Mraz:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

The Utah Transit Authority (UTA) and the Amalgamated Transit Union Local 382 (ATU) executed an agreement dated April 22, 1974 in connection with a previous grant application. On April 19, 1988 the UTA informed the ATU and the Department of Labor that it intended to negotiate a new Section 13(c) Agreement for application to the pending capital project application. In September 1988 the UTA proposed new protective arrangements; the parties, though, were unable to agree on appropriate arrangements. After mediatory efforts by the Department in December were unsuccessful, the parties were directed, on January 5, 1989, to submit briefs on the areas of disagreement. They were further afforded an opportunity to submit reply briefs on February 13, 1989. In view of the parties contining inability to reach agreement the Department has itself determined the protective arrangements to be imposed for the pending grant application.

New or Amended Agreement

The parties are in dispute over whether the negotiations undertaken between the UTA and ATU should result in a new or an amended Section 13(c) Agreement. The more common approach has been to amend Section 13(c) Agreements. However, either approach is acceptable. The number of issues in dispute lends itself to

a consolidated document rather than an amended document. The Department's imposed arrangements, therefore, have been reduced to one document attached hereto as Appendix A. Subheadings in this letter generally refer to the paragraphs in Appendix A.

The ATU asserted that third-party beneficiary language need not be included for the instant certification since "there is no specific evidence that the UTA may attempt to disavow certified arrangements." The Department, however, has included such language in this certification to ensure that the Section 13(c) protective arrangements are enforceable.

Paragraph (1): Duty to Minimize Effects on Employees

We must agree with the UTA that the language of Paragraph (1) of the parties' April 22, 1974, Section 13(c) Agreement, would seem to preclude any action that would adversely affect employees, if taken literally. However, the language UTA has proposed is not adequate by itself given UTA's expressed understanding of the requirements of 13(c). There is a duty to minimize adverse effects on employees under 13(c). The language of the Act itself provides for protection of the interests of employees who may be adversely affected by Federal assistance. The legislative history and 5(2)(f) of the Interstate Commerce Act support the negotiation of protective arrangements prior to the approval of a Federally-assisted project to facilitate consideration of the impact of the project upon employees. The Department has fashioned a provision which combines the first sentence of Section B, Paragraph (1) of the "Section 18" Warranty with the UTA's proposal to arrive at an appropriate provision. See pages 5-6 of the Rural Transportation Employee Protection Guidebook for a discussion of the Department's interpretation of this language.

Paragraph (2)

There is no dispute over the language to be included in this paragraph.

Paragraph (3): Management Rights; Resolution of Grievances Following Contract Expiration

The "management rights" clause proposed by the UTA is not necessary to meet the requirements of Section 13(c). In the absence of an agreement by the parties the Department will not impose such a provision for application to this project. This language is more appropriately a subject for discussions under the parties' collective bargaining agreement.

The parties are also in disagreement over language relating to the resolution of grievances under the collective bargaining agreement following expiration of that agreement. The ATU argues that UTA's provision is contrary to Federal labor policy. The

UTA's proposal included language which provides for arbitration of grievances under expired collective bargaining agreements "as may be required with respect to the arbitration of grievances arising under such agreement". We have added language which states that such a requirement must also be considered "under Federal labor policy" to meet the requirements of Section 13(c). This is consistent with UTA's discussion of the issues yet relies on Federal labor policy to define the exact parameters of the parties' obligation.

Paragraph (4): Protection of Benefits

The history of the 13(c) program clearly supports the principle that protections extend to working conditions and fringe benefits and are not limited to monetary compensation. The Department, therefore, has imposed the provision proposed by the ATU with some minor modifications to permit an arbitrator greater flexibility in fashioning an award. To this end, we have indicated that employees are entitled to "offsetting benefits" rather than "offsetting make-whole benefits."

Paragraphs (5) and (6)

There is no dispute over the language to be included in these paragraphs.

Proposals Regarding Paragraph (7) of the April 22, 1974 Section 13(c) Agreement: First Opportunity for Comparable Employment

The Department has determined that the proposed 13(c) provision providing ATU-represented employees with the first opportunity of employment in any new jobs need not be included in the 13(c) Arrangement for purposes of this Project certification. The Department has referenced or incorporated state statutes in protective arrangements in the past where such statutes were necessary in order to meet the requirements of the Act or where they were agreed to by grant recipients. However, in this situation, the provision of the state statute is not required under Section 13(c). The ATU proposal would incorporate a requirement under State law into the Section 13(c) arrangement. This proposal is beyond the minimum requirements of Section 13(c). The interests of employees under Section 13(c)(3) and (4) are protected by a requirement for priority of reemployment of employees terminated or laid off which is included in Paragraph (6) of Appendix A.

Paragraph (7): Selection Forces; Implementing Agreements

The UTA has proposed that the "selection of forces" language of the April 22, 1974 Agreement be eliminated because it is not legally required by 13(c). The Department, however, believes

that some type of selection of forces language is required to provide employees with the protections to which they are entitled under 5(2)(f) of the Interstate Commerce Act. While the ATU cannot negotiate on behalf of employees of other urban mass transportation employers in the service area of this Project, such employees are, nevertheless, entitled to the UTA's consideration if they are impacted by the Project. Therefore, we have modified the ATU's proposal to substitute language from the Model Agreement which makes this position clear.

The parties are also in dispute over the UTA proposal which provides for factfinding of any interest issues which may arise during the negotiation of implementing agreements. The term "implementing agreement" presupposes that there is authority in an existing Agreement for further development by the parties or for application and interpretation by a neutral arbitrator. Where the implementing agreement does not concern the application of the protective agreement (or imposed arrangement), but instead involves issues related to the making or maintaining of a collective bargaining agreement, those issues are interest issues. Only in the rarest of circumstances should interest issues be raised during discussions over implementing agreements. If interest issues are raised during the course of discussions over implementing agreements, such issues should be referred to factfinding in accordance with paragraph (9). Issues arising in the course of negotiating implementing agreements are to be construed as implementing agreement issues whenever possible. We believe that there is sufficient flexibility under section 5(2)(f) of the Interstate Commerce Act for the Department to conclude that the procedures in Appendix A meet the requirements of the Act even though the parties are precluded under state law from arbitrating interest disputes.

Paragraph (8): Arbitration of 13(c) Claims

The UTA has proposed an arbitration procedure for resolution of disputes over the application, interpretation and enforcement of the terms and conditions of the Section 13(c) Arrangement which is binding and enforceable upon the parties. This procedure, which is a necessary part of the Section 13(c) Arrangement, is essentially the same as that in the parties' 1974 Agreement. The scope of disputes to be resolved under the paragraph, however, has been narrowed substantially. See discussion of Paragraph (9) regarding procedures which would be applicable for interest disputes and Paragraph (3) regarding procedures for resolution of grievances following expiration of a collective bargaining agreement.

Paragraph (9): Factfinding of Interest Disputes

The UTA has provided substantial arguments to justify its position that "there is persuasive evidence that an interest

arbitration provision imposed as part of a 13(c) arrangement, would be void and unenforceable in Utah." (See UTA Reply Brief, February 13, 1989 at page 3.) The Department is convinced that binding interest arbitration would violate the Constitution of the State of Utah under the rationale set forth in the Utah Supreme Court decision in Salt Lake City v. International Association of Firefighters 563 P.2d 786 (Utah) 1977. In order to meet the requirements of 13(c)(2) as discussed in ATU v. Donovan, 767 F.2nd 939, 956 (D.C. Cir. 1985), the Secretary must ensure that an enforceable interest dispute resolution procedure is included for the pending grant. Therefore, the Department of Labor will impose the factfinding procedure set forth in paragraph (9).

The procedure imposed by the Department is mandatory at the request of either party and provides for a full and fair airing of the parties' issues thus ensuring that the parties will give serious consideration to the factfinder's recommendations. The procedure gives equal consideration to the positions of both parties in a bargaining dispute and thereby prevents unilaterial control over mandatory subjects of collective bargaining.

The procedure in Appendix A provides for a geographic restriction on the selection of a neutral which is quite reasonable given similar guidance in Utah State law. It provides for a neutral with experience pertinent to the issues which must be addressed, it also includes appropriate criteria for the consideration of the neutral. We have substituted "stipulations of the parties" for "positions of the parties" under (9)(c)(1) to conform to general practice. Paragraph (9)(c)(3) has been revised to provide for comparison with employers doing comparable work with "consideration to factors peculiar to the community" because of the lack of other urban mass transportation providers in the Utah area.

The status quo provision of Paragraph (9)(f) has been revised to read "the terms and conditions of any expiring collective bargaining agreement between the parties shall remain in place ..." rather than "conditions of employment shall continue ...". The former language is more precise, leaving little room for misinterpretation by the parties.

The UTA's proposed paragraph (g) has not been included by DOL. All the requirements of 13(c) have been met in the arrangements attached at Appendix A for the instant grant application.

Paragraph (10): Duplication of Benefits

The UTA has proposed a "no duplication of benefits" proposal to modify that provision in the parties' 1974 Agreement. The ATU has proffered a counterproposal based on a decision by the Interstate Commerce Commission concerning the proper

interpretation of such language in Appendix C-1. Contrary to the ATU's assertions, the language proposed by the UTA does not require the "complete forfeiture of other existing labor protective conditions"; it requires only "that there shall be no duplication of benefits" (emphasis added). Read in its entirety, the UTA's Paragraph does not result in the elimination of rights or benefits "under any ... protective conditions or arrangements," but, rather, preserves these. The language proposed by UTA is generally accepted throughout the industry and clearly meets the requirements of the Act.

Paragraph (11): Discountinuance of Project Services Language

The ATU has proposed, to be included in a paragraph 11(c), language which provides protections for employees adversely affected "because of a discontinuance of Project services which is as a result of the Project." This proposal was made in response to a UTA proposal, later withdrawn, that employees would not be protected under such circumstances. Clearly employees are intended to be protected under such circumstances and numerous examples of potential adverse affects have been suggested for the UTA's benefit. The ATU's proposal, however, is redundant given the definition of "as a result of the Project" in Paragraph 11(b) of this Arrangement. It need not be included to meet the requirements of the Act.

Paragraph (12): Successor Provision

The UTA has proposed that Paragraph (12) of the parties' April 22, 1974 Section 13(c) Agreement be replaced with a successor clause which only places 13(c) obligations upon a "successor in interest" which undertakes management and operation of the transit system. The successorship obligation envisioned by the transportation authority is clearly more limited than that contemplated in the legislative history of the Act.

Contrary to the UTA's suggestion, DOL does not have an obligation to "either accept language such as that proposed by the Authority or craft a provision of its own." We are not convinced that the existing language would impact upon agents of the transit authority in any manner that was not intended by the Act. For instance, [redacted] "operation of the transit system" should be bound by the commitments which the UTA made in its 13(c) Agreement. Any other interpretation would have the effect of circumventing the requirements of the Act by passing along Federal assistance but not the corresponding obligations to an alter ego of the transit system.

While there are possible alternative provisions which would also meet requirements of the Act, the provision in the parties' 1974 Agreement is generally well-accepted throughout the industry and need not be revised for this project.

Paragraphs (13), (14), and (15)

The parties have indicated that no changes have been proposed to these paragraphs of the April 22, 1974 Section 13(c) Agreement.

Arrangements To Be Imposed

We do not believe that it is necessary for the parties to execute a formal agreement prior to certification of this project by the Department. However, they are encouraged to do so prior to approval of subsequent UTA grants of assistance. Language in item three below establishes that employees represented by the ATU are intended third-party beneficiaries of the employee protection provisions of the grant contract. In executing the grant contract the Department of Transportation (DOT) and UTA are acknowledging their agreement to the terms therein. The Department of Labor's certification is not merely an opinion of a third party, but a binding prerequisite to approval of Federal Assistance by DOT.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the Arrangement in Appendix A, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the Arrangement in Appendix A, shall be deemed to cover and refer to the instant project; and

3. The contract of assistance shall include the following language:

   "The terms and conditions of the aforementioned protective arrangements are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements of the grant contract between the Department of Transportation and the UTA and the parties to the contract have so signified in executing that contract. The employees' representative may assert claims on their behalf."

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by Amalgamated Transit Union Local 382 shall be afforded substantially the same levels of

protection as are afforded to the employees represented by ATU Local 382 under the attached Arrangement and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

John R. Stepp

cc: Theodore Munter
Earle Putnam/ATU
G. Kent Woodman/UTA
Gayland Moffat/UTA

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

MAY 11 1989

Mr. Brian P. Sterman
Regional Manager
Urban Mass Transportation Administration
Region II
26 Federal Plaza, Suite 1811
New York, New York 10007

Re: UMTA Application
Central New York Regional
Transportation Authority
Demonstrate Feasibility of
Compressed Natural Gas
Fueled Buses and the
Purchase of 8 Coaches
(NY-03-0241)

Dear Mr. Sterman:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the Central New York Regional Transportation Authority (CNYRTA) and the Amalgamated Transit Union (ATU) Local 580 executed an agreement dated March 11, 1975, which provides to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

The CNYRTA and the ATU continue to be in disagreement over the interpretation and application of paragraph (4) of their earlier October 13, 1971 Section 13(c) agreement and paragraph (9) of their March 11, 1975 Section 13(c) agreement which provides for interest arbitration.

The CNYRTA proposes that the certification for the pending project be based on the March 11, 1975 Section 13(c) agreement without the interest arbitration provisions of paragraph (9) and that impasse resolution be governed solely by the mediation and factfinding procedures in the New York State Taylor Law. The ATU urges that certification be based on the parties' March 11, 1975, Section 13(c) agreement including paragraph (9).

The Department acknowledges that the parties have raised the issue of whether the terms and conditions of this certification will replace or supercede the terms and conditions of previous certifications for prior projects. We do not believe that it is necessary to address that question in order to meet the requirements of the Act for the instant project.

It is the Department's determination that the dispute resolution procedures of the New York State Taylor Law are fair and equitable to both parties in resolving collective bargaining issues. This Law which includes both mediation and factfinding contains a sufficient dispute resolution procedure to ensure fulfillment of the Section 13(c)(2) requirement for the continuation of collective bargaining rights. Unless otherwise agreed upon by the parties the Department will certify the instant CNYRTA grant application on the basis of the existing Section 13(c) arrangement except insofar as paragraph (9) provides for interest arbitration of collective bargaining disputes. The terms and conditions of the agreement dated March 11, 1975 will in all other respects remain unchanged.

We have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirements of Section 13(c)(1) through (5) of the Act. Therefore, the Department makes this certification with respect to this instant project based on the following:

1. This letter and the terms and conditions of the March 11, 1975 Section 13(c) agreement, as supplemented by the dispute resolution procedures of the New York State Taylor Law, shall be made applicable to the instant project and made part of the contract of assistance, by reference, provided, however, that paragraph (9) of the March 11, 1975 agreement, shall be made applicable except to the extent that it provides for interest arbitration;

2. The term "project" as used in the agreement of March 11, 1975, shall be deemed to cover and refer to the instant project; and.

3. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local unions that are signatory to the executed agreement, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the signatory unions under the March 11, 1975 agreement and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Stephen G. Bland/CNYRTA
Barry M. Shulman/CNYRTA

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

MAY 26 1989

Mr. Peter N. Stowell
Regional Manager
Urban Mass Transportation Administration
Region III
841 Chestnut Street
Suite 714
Philadelphia, Pennsylvania 19107

Re: UMTA Application
Memphis Area Transit
Authority
Operating Assistance (7-1-88
to 6-30-89); Purchase Six
30-Foot Replacement Buses,
Thirteen 40-Foot
Replacement Buses, Office
Equipment, New and
Replacement Tools and
Equipment, Computerized
Dispatching System for
Handilift Paratransit
Service, etc.
(TN-90-X071)

Dear Mr. Stowell:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the Memphis Area Transit Authority (MATA) and the Amalgamated Transit Union (ATU) executed an agreement dated November 28, 1975, which, as supplemented by appropriate side letters, provided to the employees represented by the union protections satisfying the requirements of the Act for capital assistance projects.

In addition, the parties had previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. The parties had agreed that paragraph (15) of their November 28, 1975 Section 13(c) Agreement would be included as the addendum pursuant to paragraph (4) thereof for previous operating grants.

The MATA and the ATU continue to disagree over the inclusion of language in Paragraph (15) of the parties' November 28, 1975 Section 13(c) Agreement as the basis for the Department's certification of pending projects.

With respect to the instant project, the ATU, by letter dated May 12, 1989, has objected to certification for several reasons. The ATU indicates that the language in item 3 of the January 15, 1988, certification is inappropriate because it "provides that if the right to settle interest disputes through strike action is lost, the parties are to negotiate an alternative procedure to resolve disputes 'other than those arising out of the 13(c) agreement'." We have corrected item 3 to indicate that the procedure to be negotiated is one which would resolve interest disputes.

The ATU further indicates that the procedure in item 3 "fails to satisfy the Section 13(c) requirement that the contract of assistance must 'specify the terms and conditions of the protective arrangements'." On the contrary, the certification specifies that the right to strike satisfies the requirements of 13(c)(2). The procedure in item 3 provides an additional mechanism for choosing a substitute for an existing, valid dispute resolution procedure and thus does not share the shortcomings that the Court of Appeals found in other certifications.

The ATU asserts that the proposed certification action would "actively and affirmatively impact upon employee rights under previously issued certifications of MATA grants" because a recent Tennessee state court decision held that new 13(c) arrangements would supersede previous arrangements. We understand that the ATU has applied to the Tennessee Supreme Court for permission to appeal from the Tennessee Court of Appeals' decision in Local 1235 v. Metropolitan Transit Authority. Permission to appeal was granted March 27, 1989. Pending a final determination of the issues in the Tennessee courts, we do not believe that the Department need address this issue at this time.

Upon careful consideration of all of the circustances, including consideration of the arrangements satisfying each of the five matters specified in Section 13(c)(1) through (5) of the Act, and for the reasons set forth in our letters dated April 11 and December 19, 1986, we have concluded that the protective arrangements describe below are fair and equitable and in accordance with all requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act on condition that:

1. This letter and the terms and conditions of the agreement dated July 23, 1975, as supplemented by the side letter agreements dated November 26, 1975 and October 27, 1978, shall be made applicable to the operating assistance portion of the instant project and made part of the contract of assistance, by reference;

2. This letter and the terms and conditions of the agreement dated November 28, 1975, as supplemented by side letter agreements dated November 26, 1975 and October 27, 1978, shall be made applicable to the capital portion of the instant project and made part of the contract of assistance, by reference, provided however that paragraph (15) of the November 28, 1975 agreement shall be made applicable except to the extent that it provides for interest arbitration;

3. The term "project" as used in the agreements of July 23, 1975 and November 28, 1975, shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant project;

4. The contract of assistance shall include the following language:

   "Nothing in this certification shall be construed to enlarge or limit the right of the employees covered by this agreement or their employer, to utilize upon expiration of any collective bargaining agreement or otherwise any economic measures that are not inconsistent or in conflict with the collective bargaining agreement or applicable law; provided, however, that in the event said right to take economic measures is lost by operation of law, the parties will renegotiate the applicability of paragraph (15) of their

November 28, 1975 agreement or an alternative procedure to resolve interest disputes. If no agreement is reached, either party may invoke the jurisdiction of the Secretary of Labor for a determination of the issue and any appropriate action, remedy or relief, including the amendment of previously certified projects which would otherwise no longer have a dispute resolution procedure in place.";

5. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union that is signatory to the executed agreements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the signatory union under the above arrangements and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Fred Gilliam/MATA

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

MAY 30 1989

Mr. Lou Mraz
Regional Manager
Urban Mass Transportation Administration
Region VIII
Federal Office Building
1961 Stout Street
Room 520
Denver, Colorado 80294

Re: UMTA Applications
Utah Transit Authority
Purchase 16 Replacement
Buses, 3 Vans for Special
UTA Services to Children's
Center, Purchase and
Installation of New
Communications System
(Phase I), Purchase
Support Vehicles
(UT-90-X013)
Clarification
(UT-03-0013)
Purchase Forty-Eight 35
to 40 Foot Transit Coaches
(UT-03-0014)

Dear Mr. Mraz:

This is in reply to the request from your office that we review the above captioned applications for grants under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application the Department of Labor determined that protections attached to our certification dated March 20, 1989, would be applied to a grant for the Utah Transit Authority. The Department has revised Paragraphs (13) and (14) of Appendix A to that letter to reflect language which was agreed upon ~~by the parties~~ prior to the certification. The arrangements in Appendix B (attached) incorporate those changes. These ~~arrangements provide~~ to the employees represented by the Amalgamated Transit Union protections satisfying the requirements of Section 13(c) of the Act.

The Department has determined that the terms and conditions of Appendix B shall be made applicable to the instant projects.

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Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. This letter and the terms and conditions of Appendix B shall be made applicable to the instant projects and made part of the contracts of assistance, by reference;

2. The term "project" as used in Appendix B shall be deemed to cover and refer to the instant projects; and

3. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the Amalgamated Transit Union shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under Appendix B and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) arrangement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Gayland Moffat/UTA
Kent Woodman/UTA

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

MAY 31 1989

Ms. Brigid Hynes-Cherin
Regional Manager
Urban Mass Transportation Administration
Region IX
211 Main Street, Room 1160
San Francisco, CA 94105

Re: UMTA Application
Los Angeles County
Transportation Commission
Purchase of Twenty-one (21)
Buses to Provide Service
for Three (3) Routes on
the Commuter Transportation
Implementation Plan (CTIP)
(CA-03-0338)

Dear Ms. Hynes-Cherin:

This is in reply to the request from your office that the Department of Labor (Department) review the above-captioned application by the Los Angeles County Transportation Commission (LACTC) for a grant under the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. §1609(c) (Act).

In connection with a previous grant application, the City of Torrance, California (City) and American Federation of State, County and Municipal Employees (AFSCME) Local 1117 executed an agreement dated June 10, 1976, providing to the employees represented by that union certain protections. The Department thereafter issued a Section 13(c) certification with respect to that grant.

With regard to the instant application, City, AFSCME and LACTC had agreed, and, to the extent, if any, that they do not presently agree, the Department has determined, that the terms and conditions of the aforesaid agreement dated June 10, 1976, as modified by a letter dated March 24, 1989 (attached), shall be made applicable to the instant project (CTIP Project).

Further, LACTC, the Southern California Rapid Transit District (SCRTD), the Transportation Communications Union (TCU), and the United Transportation Union (UTU) have executed an agreement containing employee protections dated December 8, 1987, which is supplemented by a side letter dated December 10, 1987 (attached).

In addition, LACTC, SCRTD and the Amalgamated Transit Union (ATU) have executed an agreement containing employee protections dated September 11, 1987, which is supplemented by a side letter dated December 8, 1987 (attached).

The LACTC, SCRTD, ATU, TCU and UTU entered into extensive negotiations over certain additional issues relating to the CTIP project. After these negotiations and mediatory efforts of this Department, the parties were unable to resolve some of these issues, as discussed below. Thereafter, the Department requested and received written submissions (including attachments) from the parties, all of which the Department has carefully reviewed.[1/]

The final proposal by LACTC and SCRTD for supplemental arrangements to be made applicable to the above referenced project is contained in an April 18, 1989 letter to me signed by SCRTD's General Manager Pro Tempore, Suzanne Gifford, and by Neil Peterson, Executive Director of LACTC (the "April 18 side letter"). The provisions of this April 18 side letter[2/], the above-referenced agreements and side letters, and supplementary language to be included in the contract of assistance (see below), shall all be made applicable to the instant project funded by this grant. These agreements and supplemental arrangements provide to employees represented by the unions protections satisfying the requirements of Section 13(c) of the Act.[3/]

The labor protection arrangements required under Section 13(c) "shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to Section 5(2)(f) [of the Interstate Commerce Act, recodified as 49 U.S.C. §11347]." With regard to

---

1/ The Department notes that these submissions do not demonstrate any prior history of loss of jobs or other diminution of employees' rights to date resulting from prior changes in the transit systems involved herein, including those accomplished pursuant to the above-described 1987 agreements.

2/ The April 18 side letter states in pertinent part that "It is not the intention of the RTD or LACTC that any RTD employee will be dismissed or laid off as a result of the operation of CTIP Project services."

3/ By letter dated February 20, 1989, CTIP Policy Steering Committee Interim Chairperson Jackie Bacharach asked SCRTD General Manager Pegg for a "written statement from [SCRTD] finding that the CTIP service, as proposed does not duplicate or compete with District Services, therefore having no negative impact on the SCRTD or its employees." Pegg's February 21, 1989 response letter states in pertinent part that "the operation of [CTIP] services as limited [by certain stated restrictions] ... would not be expected to have any impact on District employment."

the instant situation and in light of the explanatory letter from Alan Pegg, General Manager of SCRTD, dated February 21, 1989 (attached), it is permissible under Section 13(c) and Section 5(2)(f) to allow the implementation of a transaction after the notice period has expired, but prior to the consummation of a negotiated or arbitrated agreement. Along with a provision to assure that all employees affected by the transaction during the pendency of the proceeding shall be made whole, which is in place here, this arrangement is consistent with the requirements of Section 5(2)(f). This arrangement is fair and equitable and consistent with the period and procedures set forth under paragraph (5) of the September 11, 1987 and December 8, 1987 Section 13(c) Agreements described above to which the parties previously agreed.

Section 13(c)(4) of the Act requires that "assurances of employment to employees of acquired mass transportation systems and priority of reemployment to employees terminated or laid off" be included as part of a fair and equitable labor protection arrangement. Therefore, under this standard LACTC must agree to ensure that the priority of reemployment of any employee terminated or laid off as a result of the project funded by this grant will not be affected.

With regard to the issues concerning fares, bus stops, headways and other service matters, the language contained in the paragraph numbered (3) of the April 18 side letter is sufficient to meet the requirements of the Act.

Accordingly, under the specific circumstances present here[4/], the Department of Labor makes the certification required by the Act with respect to the instant grant on the basis of the following:

1. This letter and, to the extent that they are not inconsistent with this letter, the terms and conditions of the above-described agreement dated June 10, 1976, as modified, by the aforesaid letter dated March 24, 1989, and of the above-described agreements dated December 8, 1987, and September 11, 1987, as supplemented, and as further supplemented by item three below, and by the April 18, 1989 side letter, shall be made applicable to the instant certification and made part of the contract of assistance, by specific reference;

4/ The Department renders each Section 13(c) certification on a case-by-case basis. This certification has been made in light of the specific facts and circumstances presented here. It should not be construed to apply to or affect any future request for Section 13(c) certification presenting different facts and circumstances -- including, but not limited to, a different actual or projected impact on employees -- which may or may not require consideration of different employee protections.

2. The term "project" as used in the aforesaid agreements of June 10, 1976, September 11, 1987, and December 8, 1987, shall be deemed to cover and refer to the CTIP project;

3. The contract of assistance shall include the following additional employee protective language:

> "LACTC shall insure that, during an employee's protective period, the project funded by this grant shall not diminish the current reemployment rights of any employee terminated or laid off as a result of that project"; and

4. Employees of urban mass transportation carriers in the service area of the CTIP project, other than those represented by the local unions that are signatories to the aforesaid executed agreements, shall be afforded substantially the same levels of protections as are afforded to the employees represented by the signatory unions under the June 10, 1976 agreement, as modified, the September 11, 1987, and December 8, 1987 agreements, as supplemented, and this certification. Should a dispute arise with respect to non-represented employees, after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

cc: Theodore Munter/UMTA
Earle Putnam/ATU
William Mahoney/Highsaw & Mahoney
Gerald McEntee/AFSCME
Alan Pegg/SCRTD
G. Kent Woodman/Eckert, Seamans, Cherin & Mellott
Suzanne Gifford/SCRTD
Arthur Horkay/Torrance
Neil Peterson/LACTC
Patricia McLaughlin/LACTC
Nina Phillips/LACTC

Enclosures

OSP:MA.MULLEN:tc:6-29-89:#12
Rm.N5416:357-0473

JUN 30 1989

Mr. Terry L. Ebersole
Regional Manager
Urban Mass Transportation Administration
Region X
Federal Bldg., 915 Second Avenue
Suite 3106
Seattle, Washington 98174

Re: UMTA Application
City of Boise, Idaho
Operating Assistance;
Purchase Bus Shelter, Bus
Activated Signal
Equipment, etc.
(ID-90-X017)

Dear Mr. Ebersole:

This is in reply to the request from your office that we review the above captioned project which includes both operating and capital assistance under the Urban Mass Transportation Act of 1964, as amended. UMTA has requested that the Department of Labor complete its certification of the above project by June 30, 1989, to enable the Department of Transportation to fund the project during the grant cycle ending on that date.

McDonald Transit Associates, Inc., by letter dated April 25, 1989, has agreed to become party to the Model Agreement executed on July 23, 1975 by the American Public Transit Association and transit employee labor organizations. The Amalgamated Transit Union is also a party to the Model Agreement. The terms and conditions of the July 23, 1975 agreement, together with "Clarifications" dated June 29, 1989, executed by the parties, provide protections to, employees represented by the union, satisfying the requirements of the Act for this general purpose operating assistance project.

Representatives of the City of Boise (City) and the Amalgamated Transit Union (ATU) have participated in good-faith negotiations over a protective agreement to be applied to the instant project. The parties, however, were unable to agree upon all the terms and conditions to be applied to the capital portion of the

Initials ►	J.C.						
Date ►	6/30/89		6/30/89				
Last Name ►	CHAPP	MULLEN	ANDREWS	SPRING			
Office Symbol ►	TYPIST	OSP	OSP	BLMRCP			

CONCURR

OFFICAL FILE COPY Return to: Room _____ Bldg. 340

DL 1-441, Rev. July 1976

*U.S. GPO: 1988-216-501

instant project. The Department has been advised of their positions with respect to the remaining issues in dispute. The determination of the appropriate terms and conditions for application to the grant is discussed below.

The ATU has requested that the Department of Labor address its reasons for not including preferential hiring language in its October 25, 1988 certification of operating assistance project (ID-90-X015). Such language was included in the previous capital project (ID-90-X013)#3, but the Department determined that it was not necessary to include the language in the operating assistance certification. The Department has agreed to provide the reasons for not including the preferential hiring language in the October 25, 1988 certification. A response to the union's inquiries on this issue will be provided to the parties shortly, under separate cover.

The ATU has proposed, with respect to the capital portion of the instant project, that the parties agree to the following language:

> Neither the employee protective arrangements applied to this Project nor any action taken by or on behalf of the Union in connection with the Section 13(c) processing of this Project shall be construed as a waiver of the right of ATU Local 398 to grieve any and all subcontracting of Project work by the Company or any contracting of such by the City to other than the Company which the Union believes to be in violation of its labor agreement and/or past practice.

The City has rejected the ATU's proposal, indicating that "Boise is not convinced of either the need for or appropriateness of such a provision." City's April 19, 1989 letter to ATU. Furthermore, the City has indicated that, "if such an ATU reservation of rights provision were to be included in the 13(c) protections, Boise would have to insist that it be accompanied by a separate provision stating that the ATU reservation could not be construed as a waiver of the right of Boise to subcontract work in accordance with applicable standards." Id.

This certification in no way diminishes or expands the rights of the union to bring grievances under its collective bargaining agreement and/or applicable law. Similarly, any existing rights of McDonald Transit, Inc. and the City of Boise with respect to contracting of work are neither diminished nor enhanced by this certification and the protective arrangements applied herein by the Department.

DISCUSSION OF THE ISSUES IN DISPUTE

While the parties were able to agree to most of the provisions to be included in the protective arrangement for application to this project, the Department has made a determination on the issues where no agreement was reached as follows.

Geographic and Experience Qualifications

The City has proposed language which places geographic and experience qualifications on the selection of a neutral factfinder, through the Federal Mediation and Conciliation Service (FMCS), by the parties. The ATU indicated its belief that such restrictions are not necessary because the FMCS, in processing a request to provide the parties with a listing of factfinders, will ask the parties to identify the nature of the dispute and provide names of individuals who have experience in handling similar disputes. As a matter of practice, FMCS identifies individuals within close geographic proximity to the area of the dispute in order to minimize transportation costs which are generally split between the parties.

The geographic and experience requirements of the procedure previously certified by the Department, however, resulted in a "pool" of only one available factfinder. The FMCS procedures will result in the effect desired by the City without creating difficulties in identifying an adequate number of qualified factfinders.

Factfinding Criteria

The parties are in dispute over the criteria to be included by a factfinder in items 2, 3 and 4 under paragraph 20(d) of the attached protective arrangements. On the first item, the City has proposed that the factfinder focus on the financial ability of the City of Boise; the ATU has proposed that the focus be on the financial ability of McDonald Transit, Inc. The language drafted by the Department and included in the attachment at paragraph 20(d)(2) meets the requirements of the Act and appropriately addresses the concerns of the parties.

The third criterion applied by the Department provides for a "comparison of the wages, hours, fringe benefits and other conditions of employment of employees in the bargaining unit with those of other public and private employees doing comparable work, giving consideration to factors peculiar to the community or area ...." The above language has been chosen because such a comparison must necessarily focus on the employees "in the bargaining unit" rather than "the Company's employees" which

would include supervisors and managers, among others. Also, because of the limited number of similarly situated transit companies in the state of Idaho, this procedure requires that the comparison to transit employees doing comparable work "give consideration" to factors peculiar to Boise rather than being limited to transit providers in Idaho.

With respect to criterion number 4 it appears that the parties agree in principle that the intent of this provision was to examine the "overall compensation" of employees. Boise's proposal has been modified to reflect this intent and the language has been modified to reflect that the factfinding procedure is designed to focus upon the employees in the bargaining unit represented by the Union.

Status Quo Language

The ATU's proposed language with respect to this issue was intended to enable the parties to mutually agree to implement modifications of the expired agreement's terms and conditions in advance of completion of the factfinding process, without potentially prejudicing their rights or position before the factfinder on issues relating to such contract provisions. There is nothing in the written or recorded record to indicate that Boise disagrees with the ATU's intent. The City has indicated its belief that the parties have the ability to mutually agree to implement changes under the City's proposed language, but the ATU's language is more precise and this language has been adopted.

The ATU also proposed language which recognizes that a successor collective bargaining agreement may be effective prior to publication of a factfinding report. A procedure such as that which Boise proposes, which would compel maintenance of the status quo language until publication of a factfinder's report, would be inappropriate after interest disputes have been resolved by the parties; therefore, the ATU language has been included.

Execution of Fact Finder's Recommendations

The ATU has proposed that, with respect to the factfinder's recommendations, language be included in the Department's certification which provides that, if neither party rejects the recommendations, "a collective bargaining agreement incorporating such recommendations and any mutually agreed upon modifications shall be executed." The language proposed by the ATU need not be applied here. If neither party rejects the recommendations,, such recommendations shall be deemed to be a final resolution of the matters in dispute.

Preference in Hiring Provision, Paragraph 25(b)

During negotiations, the City of Boise proposed that the preference in hiring language included in the Department of Labor's certification of (ID-90-X013)#3 be modified to clarify its intent. The Department provided the parties with language clarifying that provision in the certification as follows. "The obligations of the Company ... shall be assumed by any person, enterprise, body, or agency, whether publicly or privately owned, that employs such employees pursuant to the preference in hiring provisions of this paragraph." The ATU has proposed that this language be adopted. The Act supports the conclusion that 13(c)(1) and (2) requirements attach to the bargaining unit; therefore, the Department has adopted this language.

Upon careful consideration of all of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Section 13(c)(1) through (5) of the Act, we have concluded that the protective arrangements included in Attachment A, attached, are fair and equitable and in accordance with all requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated July 23, 1975, as supplemented by the June 29, 1989 "Clarifications," shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. This letter and the terms and conditions in Attachment A, attached hereto, shall be made applicable to the capital portions of the instant project and made part of the contract of assistance;

3. The term "Project" as used in the agreement of July 23, 1975, shall be deemed to cover and refer to the operating assistance portion of the instant project;

4. The term "Project" as used in the Attachment A shall be deemed to cover and refer to the capital portion of the instant project; and

5. Employees of urban mass transportation carriers in the service area of the project, other than those represented by ATU Local 398, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the July 23, 1975 Agreement, the July 29, 1989 "Clarifications," Attachment A and this certification. Should such a dispute arise, and absent any mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

Enclosure

cc: Theodore Munter/UMTA
Alec Andrus/City
Earle Putnam/ATU
Jane Starke/City

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

JUN 30 1989

Mr. Wilbur E. Hare
Regional Manager
Urban Mass Transportation Administration
Region IV
819 Taylor Street, Suite 9A32
Fort Worth, Texas 76102

Re: UMTA Applications
Central Oklahoma
Parking and Transit
Authority
Operating Assistance,
30 Passenger Transit
Coaches, Renovate Bus
Parking Lot, etc.
(OK-90-X028)
Purchase Four Converted
Minibuses, Two Converted
Para-transit Vehicles,
Purchase and Install Two
Fuel Centers, etc.
(OK-90-X029)

Dear Mr. Hare:

This is in reply to the request from your office that we review the above captioned applications for grants which include both operating and capital assistance under the Urban Mass Transportation Act of 1964, as amended.

The Central Oklahoma Parking and Transportation Authority (COTPA) and Amalgamated Transit Union Local Division 993 have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. Although the parties previously agreed to include paragraphs (5) and (8) of their April 24, 1973, Section 13(c) agreement, executed in connection with an earlier grant application, as the addendum to the July 23, 1975 agreement pursuant to paragraph (4) thereof, they are currently in dispute over whether to include those paragraphs. The terms and conditions of the July 23, 1975 agreement, as supplemented by a

side letter dated June 30, 1989, from the City to the Department of Labor, provide protections to employees represented by the union which satisfy the requirements of Section 13(c) of the Act in general purpose operating assistance project situations.

The parties, furthermore, are in agreement, except with respect to paragraphs (5) and (8), that the terms and conditions of their Section 13(c) Agreement dated April 24, 1973, shall be made applicable to the capital assistance portion of the instant project. This agreement, as supplemented by the side letter dated June 30, 1989, provides to employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

With respect to paragraphs (5) and (8), COTPA has requested that the parties amend their agreement of April 24, 1973, to eliminate the requirement for interest arbitration and to replace that interest dispute resolution procedure with a factfinding procedure. After numerous meetings between the parties, COTPA submitted a final amendment proposal to the ATU on June 27, 1989. The ATU rejected this proposal, indicating that they believe there is no reasoned justification for eliminating the interest arbitration requirement. It is COTPA's position that Section 13(c) of the UMT Act does not require interest arbitration, and that the factfinding procedure which they have proposed meets the 13(c)(2) requirements of the Act for an interest dispute resolution mechanism.

In the absence of the parties' mutual agreement to continue to utilize interest arbitration in the April 24, 1973 Section 13(c) Agreement, the Department will not here require that the interest arbitration provision previously certified be continued.

Although 13(c) does require some dispute resolution process that assures avoidance of unilateral control by the transit authority, it is clear from the legislative history and case law that interest arbitration is not specifically required by the Act. The Department has reviewed the factfinding procedure proposed by COTPA as an amendment to the parties' April 24, 1973 Section 13(c) Agreement and determined that it meets the requirements of the Act.

The procedure provides for factfinding at the request of either party. Should either party reject the factfinding panel's recommendations, this arrangement provides for their publication in appropriate news media along with the reasons for rejection by the rejecting party. This ensures that the parties will give serious consideration to the factfinders' recommendations. The proposal also contains a "status quo" provision which requires

that the terms and conditions of the expiring collective bargaining agreement shall remain in place following the expiration of such agreement until the effective date of a successor agreement or the completion of the impasse procedures. This ensures that the transit authority will not have unilateral control over mandatory subjects of collective bargaining and cannot change the terms of the parties' agreement before the dispute resolution process is completed.

In addition, some concern has been expressed over the impact that an interlocal agreement between COTPA and the City of Oklahoma City would have on Section 13(c) protections and obligations. The Department has examined a draft copy of that interlocal agreement, and has determined that the requirements of 13(c) can be met under the provisions of that draft agreement.

Upon careful consideration of all of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Section 13(c)(1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. This letter and the terms and conditions of the agreement dated July 23, 1975, as supplemented by the June 30, 1989 side letter and amendments to paragraphs (5) and (8) of the April 24, 1973 agreement (attached), shall be made applicable to the operating assistance portion of the instant projects and made part of the contract of assistance, by reference;

2. This letter and the terms and conditions of the agreement dated April 24, 1973, except for paragraphs (5) and (8) thereof, shall be made applicable to the capital portions of the instant projects and made part of the contracts of assistance, by reference. This agreement shall be supplemented by the June 30, 1989 side letter and amendments to paragraphs (5) and (8) which were proposed by COTPA (attached);

3. The term "project" as used in the agreements of July 23, 1975 and April 24, 1973, shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant projects; and

4. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the local union that is signatory to the executed agreement, shall be afforded the same levels of protection as are afforded to the employees represented by the signatory union under the July 23, 1975 and April 24, 1973 agreements and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

John R. Stepp

cc: Theodore Munter/UMTA
Earle Putnam/ATU
David M. Curtis/City

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington D C 20210

AUG 3 1989

Mr. Richard Doyle
Regional Manager
Urban Mass Transportation Administration
Kendall Square
55 Broadway
Cambridge, Massachusetts 02142

Re: UMTA Application
Pioneer Valley Transit
Authority
(MA-90-X079)
(MA-90-X091)
Correction

Dear Mr. Doyle:

This letter is to correct the Department of Labor's certification of the above referenced projects. In our July 19, 1988 and March 31, 1989 certifications for these projects, the Department inadvertently omitted language which was included in our April 24, 1987 certification for PVTA project (MA-90-X065) Revised. This language provided a procedure for prompt resolution of the question of an appropriate dispute resolution mechanism should the employees be denied the protections of the NLRA.

The ATU has indicated that the supplemental provision imposed by DOL in its April 24, 1987 letter was inappropriate because the procedure "is not itself a dispute resolution procedure, but only a procedure for arriving at such a procedure." However, that certification specifies that it is the right to strike which satisfies the requirements of 13(c)(2). The supplementary procedure merely provides an additional mechanism for choosing a substitute for an existing, valid dispute resolution procedure and thus does not share the shortcomings that the Court of Appeals found in other certifications.

The Department of Labor has modified the language to be applied to these projects to clarify that "in the event said right to take economic measures is lost by operation of law, the parties will renegotiate the applicability of paragraph (15) of their November 5, 1979 agreement or an alternative procedure to resolve interest disputes." The language in the April 24, 1987

letter indicated that the parties would renegotiate "... to resolve disputes other than those arising out of the 13(c) agreement." The 13(c) agreement, though, already contains a provision which provides for resolution of disputes other than interest disputes.

Accordingly, the Department herein applies the following language to projects (MA-90-X079) and (MA-90-X091) retroactive to the original certification dates of July 19, 1988 and March 31, 1989:

> Nothing in this certification shall be construed to enlarge or limit the right of the employees covered by this agreement or their employer, to utilize upon expiration of any collective bargaining agreement or otherwise any economic measures that are not inconsistent or in conflict with the collective bargaining agreement or applicable law; provided, however, that in the event said right to take economic measures is lost by operation of law, the parties will renegotiate the applicability of paragraph (15) of their November 5, 1979 agreement or an alternative procedure to resolve interest disputes. If no agreement is reached either party may invoke the jurisdiction of the Secretary of Labor for a determination of the issue and any appropriate action, remedy or relief, including the amendment of previously certified projects which would otherwise no longer have a dispute resolution procedure in place.

In addition, we herein correct the statement in our March 31, 1989 certification for project (MA-90-X091) that the parties agreed that their November 5, 1979 agreement would be applied to that project. The PVTA continued to object to the inclusion of interest arbitration and, for the reasons set forth in our letter of April 24, 1986, the Department did not include an interest arbitration provision for the grant.

Sincerely,

John R. Stepp

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Robert Manz/PVTA

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

AUG 23 1989

Ms. Brigid Hynes-Cherin
Regional Manager
Urban Mass Transportation Administration
Region IX
211 Main Street
Room 1160
San Francisco, California 94105

Re: UMTA Applications
San Diego Metropolitan Transit
Development Board
Operating Assistance for
San Diego Transit Corporation;
Purchase 24 Replacement Buses,
15 Expansion Buses, 20
Transmission Kits, etc. and
San Diego Trolley, Inc.
Capital Projects
(CA-90-X327) Revised
Alternative Fuels Demonstration
Project
(CA-03-0350)

Dear Ms. Hynes-Cherin:

This is in reply to the request from your office that we review the above captioned applications for grants which include both operating and capital assistance under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the Metropolitan Transit Development Board (MTDB) and Amalgamated Transit Union Local 1309 (ATU) executed an agreement dated June 20, 1985, which provides to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act for San Diego Trolley, Inc. (SDTI) capital projects.

The San Diego Transit Corporation (SDTC) and Amalgamated Transit Union Local 1309 (ATU) have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. The terms and conditions of the July 23, 1975 agreement, as

supplemented by a side letter dated June 15, 1989, from the MTDB, provide protections to the employees represented by the union which satisfy the requirements of Section 13(c) of the Act in general purpose operating assistance situations.

The SDTC and the ATU, furthermore, have agreed that the terms and conditions of their agreement dated June 1, 1973, with the exception of Paragraph (9) of that agreement, shall be made applicable to the SDTC capital assistance portion of the instant projects. For project (CA-03-0350), the June 1, 1973 agreement is supplemented by a side letter dated July 18, 1989, from SDTC to the Department of Labor and by two side letters dated June 15, 1989, and July 27, 1989 from MTDB. For project (CA-90-X327) Revised, the June 1, 1973 agreement is supplemented by a second side letter dated July 18, 1989, from SDTC to the Department of Labor and side letters dated June 15, 1989, and July 27, 1989, from MTDB.

The parties are in dispute over an amendment to Paragraph (9) of their June 1, 1973 agreement. This paragraph provides a procedure for the resolution of labor disputes by reference to the procedure in the parties' collective bargaining agreement. There is no guarantee that future procedures negotiated by the parties in their collective bargaining agreement will continue to meet the requirements of the Act. The SDTC proposed alternative arrangements and the parties have negotiated over a replacement paragraph. Although considerable progress was made during their discussions, the SDTC and the ATU were unable to reach an agreement on three areas to be addressed in the amendment. At the close of mediation at the Department of Labor, the parties were requested to brief the issues in dispute. The Department's determination of the language to be included in the amendment to Paragraph (9) of the June 1, 1973 agreement is attached hereto as Appendix 1.

DISCUSSION

The parties are in general agreement that the amended Paragraph (9) should include separate paragraphs to address rights disputes and interest disputes. The provision in the June 1, 1973 agreement provided for the final and binding resolution of all labor disputes by arbitration. The first issue in dispute between the parties concerns the terminology which will be used to identify the types of labor disputes which will be resolved under Paragraph (9)(a) of the proposed amendment. This paragraph clearly delineates a procedure for resolution of "any controversy arising out of or by virtue of any dispute with respect to the interpretation, application or enforcement of this agreement, and any disputes arising under or regarding the interpretation or

application of any existing or expired collective bargaining, pension, health and welfare or other agreement between the parties." The term "grievance" is used in Appendix 1 because we believe this term to more appropriately identify the scope of disputes to be resolved under this paragraph; the term "labor dispute" is more broad and would generally be understood to encompass both rights and interest disputes.

The parties have raised some concerns over the effect that use of the term "grievance," rather than "labor dispute," would have on Paragraph (3) of their agreement. The Department believes that the term "grievance" as defined in Paragraph 9(a), will have no effect on Paragraph (3) of the agreement and meets the requirements of the Act.

The ATU has proposed language which provides that arbitration awards for the resolution of 13(c) claims "may include full back-pay and allowances to employee-claimants and such other offsetting benefits and remedies to make the employee-claimant whole as may be determined to be appropriate in fairness and equity in the circumstances presented." Consistent with past determinations by the Department (see March 20, 1989 certification for Utah Transit Authority), we have included this language in Appendix 1 to ensure that appropriate remedies are available for any breach of the 13(c) agreement. Given the ATU's expressed interpretation of their proposal as referring to "employee-claimants," and in light of the fourth paragraph of (9)(a), which establishes the obligations of a "claiming employee," the application of this language by the arbitrator is limited to breaches of the 13(c) agreements.

The ATU has proposed that interest arbitration be included in its proposed Paragraph (9)(b). SDTC, however, has proposed language which indicates that "in the event of any interest dispute where collective bargaining does not result in an agreement, the Public Body agrees that the Union shall have the right to strike." Employees of San Diego Transit Corporation clearly have the right to strike.

Consistent with prior Departmental determinations we have concluded that it is not necessary for the parties to include an alternative dispute resolution procedure in their Section 13(c) agreement where the employees have the right to strike. The right to strike in and of itself is a sufficient dispute resolution procedure to ensure fulfillment of the Section 13(c)(2) requirement for continuation of collective bargaining rights.

The ATU has indicated its belief that the Department of Labor must include an interest arbitration provision in the instant certification because failure to do so would obviate the Union's existing arbitration rights under previous certifications. We do not believe it is necessary to address this issue at this time. The Department of Labor has determined that protective arrangements for this project need not include arbitration for interest disputes.

Therefore, upon careful consideration of all the circumstances, including consideration of the provisions satisfying each of the five matters specified in Sections 13(c)(1) through (5) of the Act, the Department has determined that the protective arrangements described below are fair and equitable and meet the requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. This letter and the terms and conditions of the agreement dated July 23, 1975, as supplemented by a side letter dated June 15, 1989, and by Appendix 1 pursuant to the addendum at Paragraph (4) of the Model Agreement, shall be made applicable to the operating assistance portion of the instant projects and made part of the contract of assistance, by reference;

2. This letter and the terms and conditions of the agreement dated June 20, 1985, shall be made applicable to the SDTI portion of the project and made part of the contract of assistance, by reference;

3. This letter and the terms and conditions of the agreement dated June 1, 1973, (as supplemented by two side letters dated June 15, 1989, and two side letters dated July 27, 1989, and by Appendix 1) shall be made applicable to the SDTC portions of the instant capital projects and made part of the contracts of assistance, by reference, except that paragraph (9) of the June 1, 1973 agreement shall not be applicable to these projects;

4. The term "project" as used in the agreements of July 23, 1975, June 20, 1985 and June 1, 1973, shall be deemed to cover and refer to the operating and capital portions of the instant projects as specified herein; and

5. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the local union that is signatory to the executed agreement, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the signatory union under the July 23, 1975, June 20, 1985 and June 1, 1973 agreements, as supplemented, and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) arrangements and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

cc: Theodore Munter/UMTA
Rod Betts/SDTC
Frank Shipman/SDTC
Earle Putnam/ATU

SEP 27 1989

Mr. Lee Waddleton
Regional Manager
Urban Mass Transportation Administration
Region VII
6301 Rock Hill Road,
Suite 303
Kansas City, Missouri 60603

Re: UMTA Applications
Rock Island County Metropolitan Mass Transit District
Purchase Communications Equipment
(IL-90-X105)#1
Purchase 3 Small Buses, Supervisory Van, Generator, etc.
(IL-90-X151)
Purchase 9 Small Buses and 12 Forty-Foot Coaches
(IL-03-0147)✓

Dear Mr. Waddleton:

This is in reply to the request from your office that we review the above captioned applications for grants under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the Rock Island County Metropolitan Mass Transit (MTD) and the Amalgamated Transit Union (ATU) Local 313 executed an agreement dated June 1, 1978, incorporating by reference their entire January 13, 1975 Section 13(c) agreement, which provided to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

MTD and the ATU are in disagreement over the inclusion of paragraph (9) of the June 1, 1978 agreement in the Department of [illegible]or's certification of the above captioned grants.

The MTD contends that interest arbitration is not a requirement for certification of UMTA projects. In addition, the MTD has stated that transit employees are afforded a dispute resolution mechanism by the Illinois Public Labor Relations Act (PLRA) (Ch. 48; Paragraph 1601 et seq.) which meets the requirements of Section 13(c).

The ATU, by letter dated August 28, 1989, has provided additional arguments for its position that an interest arbitration provision should be required as the basis for certification of the pending projects. The ATU has also argued that the Illinois Circuit Court upheld a Section 13(c) Agreement interest arbitration clause and found that under Illinois state law, such remained a valid and enforceable agreement to arbitrate interest disputes. See Local Division 1333 v. Rockford Mass Transit District, Case No. 84-MR-28 (Ill. Cir. Ct., September 17, 1984). The Department has taken no position on the interpretation or enforcement of the interest arbitration provision of that agreement as it was applied to previously certified projects. Rather, we have taken the position that, in the absence of mutual agreement by the parties, DOL would not require interest arbitration for new grants.

It is DOL's position that an interest arbitration provision in a Section 13(c) agreement is not automatically perpetuated in a succeeding agreement unless it is mutually agreed to by the parties. In this instance, where there is no mutual agreement to submit the disputed issues to final and binding arbitration, we believe that the PLRA provides MTD employees with the right to strike. The Department has determined that the right to strike, as provided in the PLRA, in and of itself is sufficient to meet the requirements for a dispute resolution procedure in fulfillment of the Section 13(c)(2) requirement for continuation of collective bargaining rights.

Under Section 18(a) of the PLRA (Ch. 48; Paragraph 1618 Ill. Rev. Statutes, July 1, 1984) the transit employees can be enjoined from striking for "health and safety" reasons, but the statute provides that an injunction can be secured only after petitioning the labor relations board and upon the board's investigation and finding of a clear and present danger to the "health and safety of the public"; the employer shall then petition the appropriate circuit court for an injunction which shall be granted only where the courts have found there is a "clear and present danger." The statute further provides that, if the court orders striking employees back to work, the employer is required to participate in the impasse arbitration procedures set forth in Section 14 of the PLRA. In part, the procedures provide that (1) the panel at the conclusion of the hearing shall make written findings of fact and promulgate a written opinion and deliver it to the parties

and the Board; (2) if the governing body rejects any term of the panel's decision, it must provide reasons for such rejection and the parties shall return to the arbitration panel for further proceedings and issuance of a supplemental decision. The procedures in Section 14 clearly ensure a full and fair airing of the parties' issues and prevent unilateral control by the employer thereby protecting the rights of the mass transit employees.

Upon careful consideration of all the circumstances, including consideration of the provisions satisfying each of the five matters specified in Sections 13(c)(1) through (5) of the Act, DOL has determined that the protective arrangement described below are fair and equitable and meet the requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. This letter and the terms and conditions of the agreement dated June 1, 1978, as supplemented by Illinois Public Labor Relations Act (Ch. 48; Paragraph 1601 et seq.), shall be made applicable to the instant projects and made part of the contracts of assistance by reference, provided, however, that paragraph (9) of the June 1, 1978 agreement shall be made applicable except to the extent that it provides for interest arbitration;

2. The term "project" as used in the agreement of June 1, 1978, shall be deemed to cover and refer to the instant projects; and

3. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the local union that is signatory to the executed agreement, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the signatory union under the June 1, 1978 agreement and this certification. Should a dispute arise, after exhausting any available remedies under the

13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Jeffery Nelson/MTD

MA.MULLEN:TC:9-26-89:DISK 15
kr..N5416:357-0473

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

SEP 28 1989

Ms. Brigid Hynes-Cherin
Regional Manager
Urban Mass Transportation Administration
Region IX
211 Main Street
Room 1160
San Francisco, California 94105

Re: UMTA Applications
City of Modesto
Operating Assistance;
Construction of Bus
Maintenance Facility, etc.
(CA-90-X265)
Operating Assistance; Funding
for Transportation Center
(CA-90-X351)

Dear Ms. Hynes-Cherin:

This is in reply to the request from your office that we review the above captioned applications for grants under the Urban Mass Transportation Act of 1964, as amended.

The City of Modesto and the International Brotherhood of Teamsters, Local 386 have executed an agreement dated July 11, 1989. This agreement, as supplemented by additional language set forth by the Department of Labor in item 2 below, pursuant to 29 C.F.R. Section 215.3(e), provides to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. This letter and the terms and conditions of the agreement dated July 11, 1989, and item 2 below, shall be made applicable to the instant projects and made part of the contracts of assistance, by reference;

2. The provisions of the agreement of July 11, 1989, with the exceptions noted below, shall be applied to the instant projects and supplemented as follows:

(a) The language of Paragraph (1) of the July 11, 1989 agreement shall have inserted in lieu of the first four lines of the first sentence, "All rights, privileges, and benefits (including pension rights and benefits) of employees covered by this agreement (including employees having already retired) under existing collective bargaining agreements or otherwise, or under any revision or renewal thereof, shall be preserved and continued; provided, however that such rights, ..."

(b) There shall be inserted after Paragraph 2 of the July 11, 1989 agreement the following:

2(B) The collective bargaining rights of employees covered by this agreement, including the right to arbitrate labor disputes and to maintain union security and checkoff arrangements, as provided by applicable laws, policies and/or existing collective bargaining agreements, shall be preserved and continued. Provided, however, that this provision shall not be interpreted so as to require the Public Body or the Operator to retain any such rights which exist by virtue of a collective bargaining agreement after such agreement is no longer in effect.

The Public Body agrees that it will bargain collectively with the union or otherwise arrange for the continuation of collective bargaining, and that it will enter into agreement with the union or arrange for such agreements to be entered into, relative to all subjects which are or may be proper subjects of collective bargaining. If, at any time, aplicable law or contracts permit or grant to employees covered by this agreement the right to utilize any economic measures, nothing in this agreement shall be deemed to foreclose the exercise of such right.

(c) The following language shall be inserted in Paragraph (4), lines 10-11 of the July 11, 1989 agreement which will then read:

"As a result of the Project" shall not include any effects resulting solely from a change of contractors providing service as a result of a competitive bid or negotiated contract unless such changes are as a result of Federal assistance.

3. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the local union that is signatory to the executed agreement, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the signatory union under the July 11, 1989 agreement and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

cc: Theodore Munter/UMTA
William J. McCarthy/IBT
Fred Cavanah/City

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

DEC 22 1989

Mr. Joel P. Ettinger
Regional Manager
Urban Mass Transportation Administration
Region V
55 East Monroe Street
Suite 1415
Chicago, Illinois 60603

Re: UMTA Applications
Transit Authority of
Northern Kentucky
(KY-90-X018)
(KY-90-X031)
(KY-90-X039)
Clarifications

Dear Mr. Ettinger:

The Department of Labor, by letters dated April 15, 1986, June 29, 1987, and June 30, 1988, certified the above captioned projects for assistance under the Urban Mass Transportation Act of 1964, as amended.

Certification action for another project (KY-90-X046) is currently pending. The Department has indicated its intent to certify the pending project on the same basis as that contained in previous certification letters for the Transit Authority of Northern Kentucky (TANK). However, before proceeding along those lines, clarifications to several points contained in prior certification letters are necessary. These clarifications are explained in more detail below.

With the understanding of these clarifications to previously certified projects, the proposed basis for certification of project (KY-90-X046) is stated as follows: The operating assistance portion of the project shall be certified on the basis of the Department's application of the July 23, 1975 Model Agreement, as supplemented by Appendix A to the April 15, 1986 certification and item 3 of the June 30, 1988 certification. The capital portion of the project shall be certified on the basis of the Department's application of the terms and conditions of the parties' September 20, 1973 Section 13c agreement, except for paragraph (9) to the extent that it provides for interest arbitration, as supplemented by Appendix A to the April 15, 1986 certification and item 3 of the June 30, 1988 certification.

This letter serves to inform all affected parties that the Department will certify the pending project on the basis of these arrangements unless the Department hears objections from the parties within 15 days of the date of this letter.

The first area of clarification concerns the June 30, 1988, certification letter. In that letter, the Department indicated that the Amalgamated Transit Union (ATU) had questioned the Department's propriety in 'modification' of the definition of labor dispute in paragraph (9) of the parties' September 20, 1973 13(c) agreement. The Department intended to excise language specifically related to interest arbitration, not to delete independent rights of the parties to arbitrate over disputes, as provided for under their Section 13(c) agreement. Item 2 on page 3 of the June 30, 1988 certification, therefore, properly reads as follows:

> The terms and conditions of the agreement dated September 20, 1973, as supplemented by the appendix in our certification of April 15, 1986 and by item 3 below, shall be made applicable to the capital portion of the instant project and made part of the contract of assistance, by reference <u>provided, however, that paragraph (9) of the September 20, 1973 agreement shall be made applicable except to the extent that it provides for interest arbitration</u>; (additional language is underlined).

As you are aware, imposed arrangements may be based wholly on agreements between the parties, or may include arrangements which contain only selected paragraphs or portions of paragraphs of the parties' agreements. Thus, references to the "modification" of the September 20, 1973 agreement in our three prior certifications were intended to convey that the Department had imposed terms and conditions which differed from the agreement negotiated by the parties.

Further, on page 2 of the June 30, 1988, certification letter, the Department clarified its June 29, 1987 certification by indicating that such certification "included Appendix A to supplement the July 23, 1975 agreement." It was not intended that item 3, which was included in the June 29, 1987 certification, be omitted by the June 30, 1988 clarification. Thus, both Appendix A and item 3 of the June 29, 1987 certification would be applied to supplement, as opposed to modify, the July 23, 1975 Model Agreement. Thus, in applying the

terms and conditions for the operating portion of project (KY-90-X039), item 1 at page 3 of the June 30, 1988 certification properly reads as follows:

> The terms and conditions of the National Agreement of July 23, 1975, as supplemented by the Appendix in the Department's certification of April 15, 1986, and by item 3 below, will be made applicable to the operating assistance portion of the instant project and made a part of the contract of assistance, by reference; (additional language is underlined).

The second area of clarification concerns the Department's June 30, 1988 certification letter. In that letter, the word "modified" was dropped from the second line of the third-numbered paragraph on page 3 due to a typographical error. It should be clear that the procedures which were modified by the Department were those which were imposed in Appendix A. The sentence properly reads as follows:

> The procedures in Appendix A to the Department's certification of April 15, 1986 shall be modified as follows: (additional language is underlined).

In addition, the Department stated in paragraph 4 of page 2 of the June 30 letter that it "did not intend to modify its April 15, 1986 certification." In fact the Department had modified that certification both in June 1987 and June 1988 to apply changes to the imposed factfinding procedure which were necessary to meet the requirements of the Act.

The last area of clarification concerns the final numbered item of the Department's certifications. This item was included to ensure that mass transit employees in the service area of the project are provided substantially the same protections as those which are applied by the Department for the protection of employees represented by the ATU in this instance. It should be understood that the Department's certifications require that such employees be afforded substantially the same levels of protection as those under the July 23, 1975 agreement, as supplemented, and the arrangements applied for the capital portions of the projects.

Again, certification of the pending project will occur on the basis stated in the beginning of this letter unless, within fifteen days of the date of this letter, an objection is filed with the Department.

We regret the confusion this may have caused the parties. Any questions should be directed to MaryAnn Mullen of my staff on (202) 357-0473.

Sincerely,

John R. Stepp

cc: Theodore Munter, UMTA
Carole Beach/TANK
Jim Seibert/TANK
Jim LaSala/ATU
Leo Wetzel/ATU

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

DEC 29 1989

Mr. Peter N. Stowell
Regional Manager
Urban Mass Transportation Administration
Region III
841 Chestnut Street
Suite 714
Philadelphia, Pennsylvania 19107

Re: UMTA Application
Chattanooga Area Regional
Transportation Authority
(CARTA)
Operating Assistance;
Rehabilitate 2 Buses,
Incline Station A/E &
Renovations, Replace 5
Service Autos and 1 Truck,
Upgrade Underground Storage
Tanks, Tire Lease, etc.
(TN-90-X077)

Dear Mr. Stowell:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended. In connection with previous certifications, the Department of Labor has noted that the Chattanooga Area Regional Transportation Authority (CARTA) and the Amalgamated Transit Union (ATU) have been in disagreement since 1979 over the force and effect of paragraph (9) of their May 30, 1975 Section 13(c) agreement. This paragraph contains an interest arbitration provision which the parties had originally agreed to in 1972 and which had been included in protective arrangements for all UMTA applications prior to August 19, 1981.

In January 1986 the parties undertook negotiations over an alternative dispute procedure at the direction of the Department and were able to agree upon a mediation and fact-finding procedure which, the ATU asserted, "is an appropriate prelude to an interest arbitration requirement" and which, CARTA suggested,

"meet(s) the statutory requirements," and is an appropriate basis for continued certification of UMTA projects. The Department determined, in its certification of March 7, 1986, that this procedure would be substituted for the interest dispute precedures in paragraph (9) of the May 30, 1975 agreement.

With respect to the instant project, the ATU, by letter dated October 27, 1989, has objected to certification for several reasons. First, the ATU continues to object to any certification which does not include among the applicable terms and conditions Paragraph (9) of the parties' May 30, 1975, Section 13(c) Agreement. The Department of Labor, for the reasons set forth in our certifications of March 7, 1986 and February 27, 1987, will continue to apply the fact-finding procedures attached to CARTA's January 30, 1987 letter to the Department in lieu of the interest arbitration procedures in paragraph (9) of the May 30, 1975 agreement.

The ATU also asserts that the proposed certification action would "actively and affirmatively impact upon employee rights under previously issued certifications of CARTA grants" because a recent Tennessee state court decision held that new 13(c) arrangements would supersede previous arrangements. CARTA indicates that the court decision holds only that "a later certification adopting terms and conditions some of which are inconsistent with prior terms and conditions must be given effect," or there would be no point in negotiating new protective arrangements. The ATU has applied to the Tennessee Supreme Court for permission to appeal from the Tennessee Court of Appeals' decision in Local 1235 v. Metropolitan Transit Authority. Pending a final detemination of the issues in the Tennessee courts, we do not believe that the Department need address this issue.

Upon careful consideration of all of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Section 13(c) (1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirements of Section of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated July 23, 1975, as supplemented by Appendix A to the Departments' March 7, 1986 certification letter, shall be made applicable to the operating assistance portion of the instant project and made part of the contract of assistance, by reference;

2. This letter and the terms and conditions of the agreement dated May 30, 1975, as supplemented by Appendix A, shall be made applicable to the capital portion of the instant project and made part of the contract of assistance, by reference, provided, however, that paragraph (9) of the May 30, 1975 Agreement shall be made applicable except to the extent that it provides for interest arbitration;

3. The term "project" as used in the agreements of July 23, 1975 and May 30, 1975, shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant project; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union that is signatory to the executed agreements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the signatory union under the July 23, 1975 and May 30, 1975 agreements and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement

and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

cc: Theodore Munter/UMTA
Earle Putnam/ATU
George Derryberry/Miller & Martin
David Miree/CARTA

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington D C 20210

JAN 17 1990

1990

Mr. Douglas H. Barton
Hanson, Bridgett, Marcus,
Vlahos & Rudy
333 Market Street, Suite 2300
San Francisco, California 94105-3200

Mr. Leo E. Wetzel
Associate Counsel
Amalgamated Transit Union
5025 Wisconsin Avenue, N.W.
Washington, D.C. 20016

Re: UMTA Application
Livermore-Amador Valley
Transit Authority
(CA-03-0334)
(CA-90-X368) – C, 8/22/90

Gentlemen:

In response to a request from representatives of the Livermore-Amador Valley Transit Authority (the Applicant), the Department of Labor, by letters dated August 22 and November 3, 1989, requested that the Amalgamated Transit Union (ATU) provide us with information to determine whether the union represented potentially affected employees in the service area of project (CA-03-0334).

In requesting that the ATU respond to the issues raised by the applicant, the Department did not alter the presumption that any employees in the service area of a project are potentially affected. Our inquiry was intended to focus on the question of whether the ATU actually represented employees "in the service area of the project."

In this situation, the ATU has clearly demonstrated that the employees of ATU Locals 1612 and 1225 are in the service area. It is the Department's view that they are potentially affected by LAVTA projects (CA-03-0334) and (CA-90-X368). The information provided by both the parties confirms that segments of the BART and Greyhound service serve the same population as is served by the Applicant's projects. However, it does not appear that

employees represented by ATU Local 1555 are in the service area of these projects as currently described. Should the extension of the BART system from the Bay Fair Station to Dublin become a reality, the Department will reconsider its determination with respect to this local union for future grants.

The Department of Labor is directing the Applicant and the ATU to resume negotiations over a Section 13(c) protective agreement. We understand that the ATU, by letter dated June 19, 1989, has withdrawn its August 9, 1988 proposal to the Applicant on behalf of Locals 192 and 1555. The parties should consider protections which will be appropriate for employees represented by Locals 1225 and 1612. Negotiations should address protective arrangements for both pending projects. (The BART service provided by LU 192 is now operated by LU 1612 employees of Laidlaw, Inc. and LU 1225 represents Greyhound employees).

If you need any technical assistance to complete negotiations, you may contract Mr. G. Jay Flanagan in the Office of Statutory Programs. He can be reached at (202) 357-0473 or by writing to the Office of Statutory Programs, Bureau of Labor-Management Relations, U.S. Department of Labor, Room N-5416, 200 Constitutuion Avenue, N.W., Washington, D.C. 20210.

Sincerely,

Kelley Andrews
Director, Office of
Statutory Programs

cc: Virendra K. Sood
Geoffrey Piller

U.S. Department of Labor

Bureau of Labor-Management
Relations and Cooperative Programs
Washington DC 20210

FEB 23 1990

Douglas Barton, Esq.
Hanson, Bridgett, Marcus,
Vlahos & Rudy
333 Market Street
Suite 2300
San Francisco, California 94105-2173

Dear Mr. Barton:

This is in response to your letter regarding a Section 13(c) certification for an UMTA grant to the Livermore-Amador Valley Transit Authority (LAVTA). Your letter presents several very complex issues, and the Department welcomes the opportunity to provide guidance which may facilitate your efforts to obtain the needed labor protection certification.

Let me begin by clarifying your interpretation of the Department of Labor's September 29, 1989 certification for Modesto, California. That certification does not require that the bid specifications compel the successful bidder to employ a majority of its employees from the predecessor workforce or to recognize a particular union as its employees' bargaining representative. Nor does that certification require that bid specifications stipulate that future bidders pay the same wages and benefits set forth in the present collective bargaining agreement.

At the same time, there may be a Section 13(c) liability on the part of an applicant regardless of whether or not such provisions are included in the bid specifications. Section 13(c) protections apply to all Federal assistance grants whether the funds are used to provide transit services directly or indirectly through a contractor.

As applied to a competitive bidding situation such as the one before LAVTA, all potentially adversely affected employees must be afforded the full protection of Section 13(c) including assurances of employment, where appropriate, and preservation of employee rights and benefits. Thus, there may be Section 13(c) liability on the part of the applicant regardless of whether or not the above protections are reflected in the bid specifications. The key to 13(c) liability would be a determination of whether the impact is as a result of the project.

To determine such impact, the focus rests on the circumstances prior to the introduction of Federal funds. The rights which employees enjoyed at the time of the initial influx of Federal funds is the starting point for the analysis of what provisions must be made to assure the continuation of those rights. If at that time the employer was operating under a contract for service* with a known expiration date, then employees usually would have no reasonable expectation of employment beyond that date. Section 13(c) would provide protection during the term of the service contract and, depending on the circumstances, would also provide protection from actions taken in anticipation of the Federal funding, or subsequent to the funding. At the end of the service contract, successor obligations would be the product of any specific provisions in the collective bargaining agreement which may exist, or any obligations required under the National Labor Relations Act. (Note also that under Section 13(c), the parties themselves remain free to negotiate changes in the collective bargaining agreement.)

On a related matter, you assert that in the September 29, 1989 certification for the City of Modesto, the Department has changed the definition of "as a result of the project," in a manner inconsistent with the July 23, 1985 "Modesto letter." The Department's position has been, and remains, that impacts which occur solely as a result of the expiration of a bid contract are not considered to be "as a result of the Federal grant," and by themselves would not trigger benefits to employees. The anticipated termination of a service contract and its replacement by one with a subsequent bidder does not, in and of itself, give rise to Section 13(c) liabilities.

Irrespective of what has been outlined above, a determination of Section 13(c) liability will be the product of a given fact situation and the decision of an arbitrator or the courts.

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* Although this may or may not apply, a contract for service should not be confused with a contract for management services under what is commonly referred to as a "Memphis Plan." Generally, under such a plan, public employers who may be able to afford only limited collective bargaining rights, contract with a management company to act as the employer thus affording private sector rights to employees.

The Department encourages grant applicants seeking a Section 13(c) certification to negotiate protective arrangements addressing the impact of contracting decisions in order to clarify their potential liabilities.

I hope this information is useful for your efforts.

Sincerely,

Kelley Andrews
Director, Office of
Statutory Programs

cc: Theodore Munter/UMTA
Fred Cavanah/City
Vic Sood/Livermore
Geoffrey Piller/IBT L.70
John Souza/IBT L.386
Leo Wetzel/ATU

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

MAR 20 1990

Mr. Joel P. Ettinger
Regional Manager
Urban Mass Transportation Administration
Region V
55 East Monroe Street
Suite 1415
Chicago, Illinois 60603

Re: UMTA Applications
Suburban Mobility Authority
for Regional Transportation
Purchase Buses
(MI-90-X115)
Rehabilitate Facility,
Purchase Buses, Purchase
Shop Equipment, Office
Equipment, etc.
(MI-90-X117)
Transfer Buses, Replace Wheel
Chair Lifts, Capital Maint.
Equipment, etc.
(MI-90-X100)#2
Purchase Expansion, Linehaul and
Replacement Buses
(MI-03-0117) Revised

Dear Mr. Ettinger:

This is in reply to the requests from your office that we review the above captioned applications for grants under the Urban Mass Transportation Act of 1964, as amended.

In connection with previous grant applications the Southeastern Michigan Transportation Authority (SEMTA) executed agreements dated November 29, 1984, December 6, 1984, and July 11, 1980, with the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), the International Brotherhood of Teamsters (IBT) and the Amalgamated Transit Union (ATU), respectively. In January

1989, SEMTA was reorganized by the Michigan State legislature and the Board of Directors changed its name to the Suburban Mobility Authority for Regional Transportation (SMART).

The IBT and the UAW agreed to application of their 1984 protective agreements to the above captioned projects, and SMART did not seek to renegotiate these agreements. However, in the course of discussions over protections to be applied to the projects, the Department of Labor (Department) determined that the agreements for the IBT and UAW did not meet the requirements of the Act in several respects. In order to ensure that the requisite protections are in place, and to facilitate approval of the above grants, the Department, in this instance, has provided supplementary arrangements in Attachment A for application to the projects. The Attachment will be incorporated into this certification, and any dispute over the application, interpretation, or enforcement of the Attachment may be resolved in accordance with the dispute resolution procedures of paragraphs (4) of the November 29, 1984 and December 6, 1984 Agreements.

At the request of SMART, the July 11, 1980 Section 13(c) agreement between SEMTA and the ATU has not been applied to the above captioned projects. SMART and the ATU undertook negotiations over protective arrangements for these grants. The parties were unable to reach agreement on the terms and conditions applicable to the projects. Therefore, after mediation by the Department and the submission of position papers on issues in dispute, it has been determined that the attached Arrangements shall be applied.

DISCUSSION

Material Changes to Project Application

With respect to the language applied by the Department at paragraph 2 of the attached arrangement, it is not necessary to include in the Section 13(c) arrangement a provision specifying that the project shall be carried out "substantially as described in its application." The Department of Transportation (DOT) requires "the grantee to undertake and complete activities defined by the scope and budget as incorporated in the grant agreement" (emphasis added). See UMTA Circular 5010.1A, dated September 18, 1987 at Chapter 1, paragraph 6(a). A new certification would be required if, for example, there is a change in the scope or purpose of the grants, a change in a budget line item for the projects or a budget revision deemed by the Department to be material (cf. 29 CFR Section 215.5). Under such circumstances, the Urban Mass Transportation Administration must seek an additional certification. Therefore, DOT's procedures and the statute's requirements will ensure that the ATU will have an opportunity to negotiate over protective arrangements.

Preservation of Rights Under 13(c)(1)

The Arrangement includes the standard language, providing for the continuation of "(a)ll rights, privileges and benefits ... of employees ... under existing collective bargaining agreements or otherwise." As in the past, in the event of a disagreement over the interpretation of this provision, arbitrators may consider such factors as established practices, policies and work rules in determinations of disputes under collective bargaining agreements.

The proposed language requiring the preservation of existing agreements, "notwithstanding any potentially conflicting provisions of any agreements between the Recipient and any other entity" is unnecessary. This issue was raised in the context of the transit authority's obligations under existing collective bargaining agreements with the ATU and IBT which may affect the use of small buses on linehaul routes. However, the Recipient's obligation to comply with the terms of existing collective bargaining agreements is adequately addressed in the standard language.

The remaining issue raised in this paragraph focuses on a proposal providing that "rights, privileges and benefits not previously vested may be modified or altered by collective bargaining and agreement of the parties to substitute rights privileges, and benefits of equal or greater economic value." Since Section 13(c) was not intended to create a floor for wages and benefits such language will not be included in this Section 13(c) certification. See ATU v. Donovan, 767 F.2d 939, 953 (D.C. Cir. 1985).

Notice and Negotiation Procedures

The provision for notice and negotiation over implementing arrangements need not be more stringent for the Section 3 project than the provision agreed to by the parties in paragraph 6 for application to the Section 9 projects. Paragraph 6 of the Arrangement provides for notice and negotiation whenever a change is contemplated "which may result in the dismissal or displacement of employees or rearrangement of the working forces." Both parties agree that, at a minimum, a rearrangement of the working forces will result from implementation of the new suburban service. Accordingly, the procedures of paragraph 6 will be triggered by the new service, and, therefore, notice must be provided to the unions at least forty-five days prior to implementation of the service.

Grievance Arbitration Under the 13(c) Arrangement

It is unnecessary to include the language proposed providing for arbitration of grievances under the collective bargaining agreement, following expiration of that agreement.

Interest Dispute Resolution Procedure

The ATU has proposed binding arbitration to meet the Section 13(c)(2) requirement for an interest dispute resolution procedure. The transit authority asserts that the dispute resolution procedures set forth in the Michigan Public Employment Relations Act, Mich. Stat. Ann. Sections 423.201-423.216, as supplemented by its proposal, adequately meet the requirements of Section 13(c). Although Section 13(c) does require some dispute resolution process, it is clear from the legislative history and case law that interest arbitration is not specifically required by the Act. In the absence of the parties' mutual agreement to continue to utilize interest arbitration, the Department will not apply interest arbitration in this instance.

The factfinding procedure included at paragraph 18 of the Arrangement is essentially the Michigan State law factfinding procedure, supplemented to ensure compliance with the requirements of Section 13(c). As supplemented, this dispute resolution procedure ensures a full and fair airing of the issues, permits either party to initiate the factfinding process and ensures fully informed and fair recommendations for settlement. Appropriate criteria are included for consideration by the factfinder. The procedure is fair and equitable and gives equal consideration to the positions of both sides in the collective bargaining dispute.

Offsetting/Make Whole Benefits

The Department has included language at paragraph 17(c) of the Arrangement providing that arbitration awards for the resolution of 13(c) claims "may include full back-pay and allowances to employee-claimants and such other offsetting benefits and remedies to make the employee-claimant whole as may be determined to be appropriate in fairness and equity in the circumstances presented." This language is consistent with past determinations by the Department (see March 20, 1989 certification for Utah Transit Authority and September 23, 1989 certification for San Diego Metropolitan Transit Development Board). Arbitrators' awards must wholly compensate employees for the harm they suffer, but this does not always require the restitution of the precise benefit lost. Attempts should be made to provide such restitution, but alternative remedies may be acceptable where the harm does have an ascertainable economic value or where payment of damages would result in a fair and equitable substitute.

No Duplication/No Pyramiding

To avoid the potential for misinterpretation, the Department has included language in paragraph 19 of the Arrangement which is intended to be construed consistent with the Hodgson Affidavit and the Federal Court's interpretation of the concept of "pyramiding" in New York Dock Railway v. U.S., 609 F.2d 83, 99-101 (2d Cir. 1979).

Reemployment Rights

The parties have reached agreement with regard to the appropriate language to apply to the instant projects. The Department, therefore, has determined that it is not necessary to include the proposed additional language.

Successor Clause

SMART has proposed a successorship provision which extends Section 13(c) obligations to a "successor or assignee of the Recipient," but does not ensure that all subrecipients of Federal assistance will be bound by the terms of the protective arrangements. The language proposed by SMART may have the effect of passing along Federal assistance without also passing along the corresponding obligations to a subrecipient of the applicant. SMART also argues that subcontractors should not bear the burden of assuming Section 13(c) obligations for capital projects unless they use capital assets acquired under the project. A subcontractor is an agent of the transit system and is performing in accordance with a contract with the Recipient. SMART, as the guarantor of Section 13(c) protections, assumes the major role of ensuring that employee protections are provided. However, the transit system's subcontractors also must comply with the obligations which the transit system has assumed. The standard successor language would not impact upon agents of the transit system in any manner that is not intended by the Act. Therefore, the Department is applying the standard language at paragraph 23 of the Arrangement.

Paratransit Provisions

By letter dated October 23, 1989, SMART has confirmed that "the buses to be acquired by SMART with funds from the aforementioned grants will be used in linehaul service, and will not be used in paratransit services." The Department, therefore, need not apply paratransit language in its certification of the instant projects. SMART's letter of October 23 will be incorporated into this certification, and any dispute over the application, interpretation, or enforcement of the letter may be resolved in accordance with the dispute resolution procedures of paragraph 17 of the attached Arrangement.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. This letter and the terms and conditions of the agreements dated November 29, 1984, and December 6, 1984, as supplemented by Attachment A, shall be made applicable to the instant projects and made part of the contracts of assistance, by reference;

2. This letter and the terms and conditions of the Arrangement dated March 20, 1990, as supplemented by the letter of October 23, 1989, shall be made applicable to the instant projects and made part of the contracts of assistance, by reference;

3. The term "project" as used in the agreements of November 29, 1984, and December 6, 1984, and in the Arrangement of March 20, 1990, shall be deemed to cover and refer to the instant projects;

4. The terms and conditions of the aforementioned protective arrangements are intended for the primary and direct benefit of transit employees in the service area of the projects. These employees are the intended third-party beneficiaries of the employee protective arrangements of the grant contracts between the Department of Transportation and SMART and the parties to the grant contracts have so signified in executing the contracts. The employees' representative may assert claims on their behalf; and

5. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the local unions covered by the November 29, 1984, December 6, 1984, and March 20, 1990, agreements and arrangement, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the unions under these agreements, this arrangement and this certification. Should a dispute arise, after exhausting any available remedies under the Section 13(c) agreements or arrangement and

absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

John R. Stepp

cc: Theodore Munter/UMTA
Albert A. Martin/SMART
Kent Woodman/SMART
Earle Putnam/ATU
Gerald McEntee/AFSCME
Mark Stepp/ UAW
William J. McCarthy/IBT

U.S. Department of Labor

Bureau of Labor-Management
Relations and Cooperative Programs
Washington, D.C. 20210

JUN 21 1990

Ms. Jane Sutter Starke
Eckert Seamans Cherin &
Mellott
1818 N Street, N.W.
Washington, D.C. 20036

Mr. Leo E. Wetzel
Associate Counsel
Amalgamated Transit Union
5025 Wisconsin Avenue, N.W.
Washington, D.C. 20016

Re: UMTA Applications
Central Arkansas Transit
Authority
(AR-90-X021)
(AR-90-X018)#1

Dear Ms. Starke and Mr. Wetzel:

The Department of Labor has reviewed the information presented to it by the parties to determine whether Central Arkansas Transit Authority (CATA) has the ability to provide for the continuation of collective bargaining rights as required under Section 13(c) of the Urban Mass Transportation Act of 1964, as amended. The continuation of collective bargaining rights, as defined under Section 13(c)(2), requires that collective bargaining agreements, Section 13(c) agreements, the duty to bargain, and other benefits determined under the National Labor Relations Act (NLRA) or other appropriate law, must be legally enforceable.

The question before the Department is whether CATA, since assuming direct operation of transit services, can provide for the continuation of collective bargaining rights as defined under Section 13(c)(2).

While the Department believes that CATA has demonstrated that it has the ability to voluntarily enter into collective bargaining agreements, after extensive review of the material submitted, the Department does not believe that CATA has adequately demonstrated that there is a legally enforceable duty to bargain collectively.

The employees of CATA, when employed by Mass Transit Management, Inc., a private company, were afforded full private sector collective bargaining rights under the NLRA. Since the employees are no longer employed by the management company, they are no longer covered under the NLRA. Under these circumstances, the Department was asked to determine whether the necessary protections can be developed to satisfy Section 13(c).

CATA argues that it has the legal authority to agree to and accept the duty to bargain collectively with the Amalgamated Transit Union (ATU). CATA states that there is support for its position in the Arkansas State statutes, case law, and resolutions of the CATA Board of Directors attesting to its intent and ability to satisfy Section 13(c). CATA further represents that it has an implied power to act as a "city or town" under the Arkansas State Code (Section 14-54-108) as a result of the Interlocal Cooperation Act (ICA) (Section 25-20-108), and the agreement entered into pursuant to the ICA and the Public Transit System Act (Sections 14-334-101 et seq.). Thus, CATA maintains that it would be able to apply for and accept assistance in the form of Federal funds consistent with the restrictions placed on it by the Federal government.

The Department finds the agreement entered into under the ICA to be deficient in that it does not enable CATA to take actions as a "city or town" pursuant to Arkansas Statute Section 14-54-108. Therefore, the Department is unable to certify that CATA has the authority to comply fully with the requirements of Section 13(c)(2) as defined above.

If the municipalities were to amend the agreement to allow CATA to exercise the necessary authority as a "city or town", CATA may be legally empowered to accept Federal assistance under the provisions of the Arkansas State Code (Section 14-54-108). That authority, when combined with CATA's stated willingness to afford full collective bargaining rights under Section 13(c)(2), and with the support offered by the Arkansas case, City of Benton v. James L. Power, may create the necessary obligations to bargain required under Section 13(c)(2).

Additionally, we note that CATA might also have the authority to act as a "city or town" if an improvement district is created with the necessary and independent authority flowing from Improvement District Commissioners as provided for under Section 14-334-108(8)(A).

While the Department cannot predict how a state court would rule on these matters, such actions and considerations as outlined above may provide sufficient basis for a state court to obligate CATA to bargain.

If you do not agree that implementing one of these options would adequately resolve problems you are experiencing in negotiating a Section 13(c) agreement, please notify the Department of your concerns in writing by close of business, Friday, June 29, 1990.

Sincerely,

Kelley Andrews
Director, Office of
Statutory Programs

cc: Keith Jones/CATA

73

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

JUL 12 1990

Mr. Joel P. Ettinger
Regional Manager
Urban Mass Transportation Administration
Region V
55 East Monroe Street
Suite 1415
Chicago, Illinois 60603

Re: UMTA Applications
Suburban Mobility Authority
for Regional Transportation
Purchase Buses
(MI-90-X115)
Rehabilitate Facility,
Purchase Buses, Purchase
Shop Equipment, Office
Equipment, etc.
(MI-90-X117)
Transfer Buses, Replace Wheel
Chair Lifts, Capital Maint.
Equipment, etc.
(MI-90-X100)#2
Purchase Expansion, Linehaul and
Replacement Buses
(MI-03-0117) Revised
Clarifications to March 20, 1990
Certification

Dear Mr. Ettinger:

By letter dated March 20, 1990, the Department of Labor certified the above captioned projects under the Urban Mass Transportation Act of 1964, as amended. The Suburban Mobility Authority for Regional Transportation (SMART) and the Amalgamated Transit Union (ATU) by letters dated April 4, 1990, provided the Department of Labor (the Department) with their views on that certification and identified a number of items which they believed required some clarification. The Department has determined the following:

DISCUSSION

Notice and Negotiation Procedures

The Department's conclusion remains unchanged, and we do not doubt that SMART will comply with the terms of the certification.

Interest Dispute Resolution Procedure

Given the Department's expressed desire to rely on Michigan State law to the extent possible, the criteria at paragraph (18)(d)(7), reads as follows:

> (6) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties in the public service or in private employment.

Duty to Minimize Effects on Employees

The Department has indicated in certifications for other applicants that there is a duty to minimize adverse effects upon employees under Section 13(c). The language of the Act itself provides for protection of the interests of employees who may be affected by Federal assistance and does not limit protections to monetary reimbursement.

The terms and conditions for certification of the above projects, were included in the Department's certification of March 20, 1990, except for the clarified language to be included in paragraph (18)(d)(7). To the extent that the March 20, 1990 document may be inconsistent with the instant document, the instant document is controlling.

Sincerely,

H. Charles Spring
Acting Deputy Under Secretary

cc: Theodore Munter/UMTA
Albert A. Martin/SMART
Kent Woodman/SMART
Earle Putnam/ATU
Gerald McEntee/AFSCME
Mark Stepp/ UAW
William J. McCarthy/IBT

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

JUL 13 1990

Mr. Joel P. Ettinger
Regional Manager
Urban Mass Transportation Administration
Region V
55 East Monroe Street
Suite 1415
Chicago, Illinois 60603

Re: UMTA Applications
Suburban Mobility Authority
for Regional Transportation
Operating Assistance for
July 1, 1989 - June 30, 1990,
Replacement Bus, Yard
Improvements, Maintenance
Equipment, etc.
(MI-90-X121)
Operating Assistance for
July 1, 1989 - June 30, 1990,
Linehaul Replacement Buses,
Contingency Projects
(MI-90-X122)

Dear Mr. Ettinger:

This is in reply to the request from your office that we review the above captioned applications for grants under the Urban Mass Transportation Act of 1964, as amended.

The Suburban Mobility Authority for Regional Transportation (SMART) and the Amalgamated Transit Union (ATU) have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. Consistent with paragraph (4) of the July 23, 1975 agreement, the Department of Labor is also supplementing the July 23, 1975 agreement by including paragraph (18) of the capital protective arrangements dated March 20, 1990, as clarified by our letter of July 12, 1990, in this certification. The terms and conditions of the July 23, 1975 agreement provide protections to employees represented by the union satisfying the requirements of Section 13(c) of the Act.

By letter dated May 26, 1989, SMART informed the ATU and the Department of its withdrawal from the Model Agreement effective October 1, 1990. The Department, therefore, has determined that

the Model Agreement will be applied only for those portions of the above projects funding operating assistance for the period from July 1, 1989 to September 30, 1989.

Subsequent to the withdrawal of SMART from the Model Agreement, the transit authority and the ATU undertook negotiations over protective arrangements to be applied to operating assistance grants. The parties were unable to agree upon such arrangements, and after mediation by the Department, a briefing schedule was established for determination of issues in dispute. The Department has determined that the enclosed Operating Assistance Arrangement dated July 13, 1990 shall be made applicable to the operating assistance portion of the projects.

The Department of Labor, in a March 20, 1990 certification letter, applied a protective Arrangement to capital grants of assistance to SMART. This Arrangement was clarified by the Department in a July 12, 1990 letter. The Capital Assistance Arrangement of July 13, 1990, attached to this certification, incorporates additional language at paragraphs (2), (17)(c), and (19) with respect to the proper interpretation of certain provisions. This interpretive language was applied to the most recent SMART capital grants in the text of the Department's letters. Because both parties have indicated a preference for including clarifying language in the Arrangement in order to avoid misinterpretation, the language is included in the Capital Assistance Arrangement itself for these grants. The July 13, 1990 Capital Assistance Arrangement, as supplemented by an October 23, 1989 letter from SMART to the Department of Labor, shall be applied to the capital assistance portion of the instant projects. In addition, SMART and the International Brotherhood of Teamsters (IBT) have executed an agreement dated May 16, 1990, for application to both capital and operating assistance grants, which, as supplemented below, provides to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

Also, SMART and the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) executed an agreement, dated May 30, 1990, for application to both capital and operating assistance grants, which, as supplemented below, provides to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

The negotiations between SMART and the IBT and between SMART and the UAW were based in large part upon the Arrangement applied by the Department on March 20, 1990, which covered employees represented by the ATU. The parties did not have the benefit of the clarifications contained in the Department's July 12 letter. The Department, therefore, is supplementing the May 16, 1990 and May 30, 1990 agreements to include the clarifications in Attachment A hereto. Although agreements containing language similar to that in the parties' agreements has been certified by the Department

in the parties' agreements has been certified by the Department elsewhere, in this situation SMART's expressed understanding of the requirements of the Act requires the Department to incorporate such clarifications. The Department requests that SMART and the IBT and SMART and the UAW incorporate the terms referenced above into newly executed agreements for future grants.

The ATU and SMART were in disagreement over a broad range of issues at the culmination of their negotiations and mediation by the Department. In making its determination of the protective arrangements to be applied with respect to employees represented by the ATU, the Department, in each instance, has selected the position which best reflects the requirements of Section 13(c) in the fact situation presented for these applications.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. This letter and the terms and conditions of the agreement dated July 23, 1975, as supplemented by paragraph (18) of the March 20, 1990 Arrangement (as clarified on July 12, 1990), shall be made applicable to the operating assistance portion of the instant projects for July 1, 1989 through September 30, 1989, and made part of the contracts of assistance, by reference;

2. This letter and the terms and conditions of the July 13, 1990 Operating Assistance Arrangement shall be made applicable to the operating assistance portion of the instant projects for October 1, 1989 through June 30, 1990, and made part of the contracts of assistance, by reference;

3. This letter and the terms and conditions of the July 13, 1990 Capital Assistance Arrangement, as supplemented by the October 23, 1989 letter from SMART to the Department of Labor, shall be made applicable to the capital portion of the instant project and made part of the contract of assistance, by reference;

4. This letter and the terms and conditions of the agreements dated May 16, 1990, and May 30, 1990, as supplemented by Attachment A, shall be made applicable to the instant projects and made part of the contracts of assistance, by reference;

5. The term "project" as used in the agreements and arrangements dated May 16, 1990, May 30, 1990, July 23, 1975, July 13, 1990 (Operating Assistance Arrangement), July 13, 1990 (Capital Assistance Arrangement), and

October 23, 1989, shall be deemed to cover and refer to the operating and capital portions, as specified above, of the instant projects;

6. The terms of the aforementioned protective arrangements are intended for the primary and direct benefit of transit employees in the service area of the projects. These employees are the intended third-party beneficiaries of the employee protective arrangements of the grant contracts between the Department of Transportation and SMART and the parties to the grant contracts have so signified in executing the contracts. The employees' representatives may assert claims on their behalf; and

7. Employees of urban mass transportation carriers in the service area of the projects, other that those represented by the local unions covered by the May 16, 1990, and May 30, 1990 agreements, as supplemented, by the July 23, 1975 agreement, as supplemented, by the July 13, 1990 Operating Assistance Arrangement, and by the July 13, 1990, Capital Assistance Arrangement, as supplemented, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the unions under these agreements, these arrangements and this certification. Should a dispute arise, after exhausting any available remedies under the Section 13(c) agreements or arrangements and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

H. Charles Spring
Acting Deputy Under Secretary

cc: Theodore Munter/UMTA
Albert A. Martin/SMART
Kent Woodman/SMART
Earle Putnam/ATU
William J. McCarthy/IBT
Mark Stepp/UAW
Gerald McEntee/AFSCME

Attachments

Mr. Lou Mraz
Regional Manager
Urban Mass Transportation Administration
Region VIII
Federal Office Building
1961 Stout Street
Room 520
Denver, Colorado 80294

JUL 27 1990

Re: UMTA Applications
City of Phoenix
Operating Assistance; Purchase Buses, Vans, Support Vehicles, Final Design for Scottsdale Center, Design Glendale Operation Center, Etc.
(AZ-90-X022)
Purchase Alternative Fuel Buses, Fueling Stations, Expansion of Phoenix Transit South Division Maintenance Facility, Etc.
(AZ-03-0014)
Operating Assistance; Purchase Buses and Related Equipment, Wheelchair Containment System, New Vans, Shop Equipment, Etc.
(AZ-90-X025)

Dear Mr. Mraz:

This is in reply to the requests from your office that we review the above captioned applications for grants which include both operating and capital assistance under the Urban Mass Transportation Act of 1964, as amended.

The Phoenix Transit Division of the American Transit Corporation (ATC), Amalgamated Transit Union Local 1433 (ATU), the International Brotherhood of Teamsters (IBT) and the International Union of Operating Engineers (IUOE) have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. The Valley Coach Division of ATC

and Arnett Cab, by endorsements dated July 26, 1990, have also agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. The City has provided a letter to the Department of Labor (the Department), dated July 26, 1990, supplementing the agreements of Valley Coach and Arnett Cab.

In addition, the ATC and the ATU have agreed that paragraph (9) of their September 8, 1976 Section 13(c) agreement, shall be included as the addendum to the July 23, 1975 agreement pursuant to paragraph (4) thereof and supplemented by a side letter from the City to the Department dated September 14, 1976. Valley Coach and the ATU, and Arnett Cab and the ATU have agreed that paragraph (16) of each of their July 26, 1990 Section 13(c) agreements, shall be included as the addendum to the July 23, 1975 agreement pursuant to paragraph (4) thereof. The terms and conditions of the July 23, 1975 agreement, as supplemented by the September 8, 1976, and July 26, 1990 letters to the Department, provide protections to employees represented by the unions which satisfy the requirements of Section 13(c) of the Act in general purpose operating assistance project situations.

The ATC and ATU, furthermore, have agreed that the terms and conditions of their September 8, 1976 agreement, as supplemented by the letter of September 14, 1976, shall be made applicable to the capital assistance portions of the instant projects. The ATC and IBT and the ATC and IUOE, have agreed that the terms and conditions of their agreements dated September 15, 1980 and September 23, 1980, respectively, shall be made applicable to the capital assistance portions of the instant projects. These agreements, executed in connection with previous grant applications, provide to employees represented by the unions protections satisfying the requirements of Section 13(c) of the Act.

In addition, Valley Coach and the ATU have executed an agreement, dated July 26, 1990, which, as supplemented by the July 26, 1990 side letter from the City to the Department, provides to employees represented by the union protections satisfying the requirements of Section 13(c) of the Act. Arnett Cab and the ATU have also executed an agreement dated July 26, 1990, which, as supplemented by the July 26, 1990 side letter provides to employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

Language addressing the resolution of disputes over the interpretation, application, and enforcement of protective agreements, including side letters such as the July 26, 1990 letter from the City, is required under Section 13(c). Therefore, the Department has applied the appropriate language for these projects in item 4 below.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. This letter and the terms and conditions of the agreement dated July 23, 1975, as supplemented by side letters from the City to the Department dated September 14, 1976, and July 26, 1990, shall be made applicable to the operating assistance portions of the instant projects and made part of the contracts of assistance, by reference;

2. This letter and the terms and conditions of the agreements dated September 8, 1976, September 15, 1980, September 23, 1980, and the two agreements of July 26, 1990, as supplemented by side letters dated September 14, 1976 and July 26, 1990, shall be made applicable to the capital portions of the instant projects and made part of the contracts of assistance, by reference;

3. The term "project" as used in the agreements of July 23, 1975, September 8, 1976, September 15, 1980, September 23, 1980 and the two agreements of July 26, 1990, and the September 14, 1976 and July 26, 1990 side letters, shall be deemed to cover and refer to the operating and capital portions, as specified above, of the instant projects;

4. Any dispute or controversy regarding the interpretation or application of the letter of July 26, 1990 from the City to the Department which cannot be settled twenty (20) days after such dispute first arises may be submitted at the written request of either the City or the Union to any mutually acceptable final and binding disputes procedure, or in the event the City and the Union cannot agree upon such procedure within ten (10) days after such request, to the Secretary of Labor, or her designee, for purposes of final and binding determination of any and all matters in dispute; and

5. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the local unions that are signatory to the executed agreements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the signatory

unions under the agreements of July 23, 1975, September 8, 1976, September 15, 1980, September 23, 1980, and the two agreements of July 26, 1990, as supplemented by side letters dated September 14, 1976 and July 26, 1990, and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreements and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

H. Charles Spring
Acting Deputy Under Secretary

cc: Theodore Munter/UMTA
Earle Putnam/ATU
William McCarthy/IBT
Larry Dugan/IUOE
Richard Thomas/City

TRCP:[redacted]:ys:8-9-90
[illegible]:Room N5416

AUG -9 1990

Mr. Terry Ebersole
Regional Manager
Urban Mass Transportation Administration
Region X
915 Second Avenue
Federal Building
Suite 3106
Seattle, Washington 98174

Re: UMTA Application
Spokane Transit Authority
Operating Assistance for 1990;
Purchase 10 Buses, etc.
(WA-90-X104)

Dear Mr. Ebersole:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, the Spokane Transit Authority (STA) and Amalgamated Transit Union Local 1598 (ATU) executed an agreement dated July 2, 1981, which provides to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

In addition, the STA and ATU Locals 1598 and 1015 executed a "Prospective Amendment to Agreement Pursuant to Section 13(c)" dated July 16, 1990, which in conjunction with the July 2, 1981 agreement satisfies the requirements of Section 13(c) of the Act.

The parties have agreed that the terms and conditions of the July 2, 1981 and July 16, 1990 agreements shall be made applicable to the instant project, except for paragraph (15) of the July 2, 1981 agreement.

With respect to paragraph (15), the STA has indicated that it does not agree to the continued application of this paragraph (which provides, in part, for interest arbitration) to the pending grant. STA has proposed, as an alternative, a fact-finding interest dispute procedure based on its belief that "a third party's impact on negotiations should be persuasive instead of final and binding." The ATU has proposed an interest arbitration provision similar to that in paragraph (15) of the 1981 Agreement. After reviewing briefs by the parties, the

CONCURRENCE								
Initials ►		[illegible]	[illegible]	KA	SJV			
Date ►		8/8/90	8/10/90	8:15	8/16			
Last Name ►	[redacted]	MULLEN	ANDREWS					
Office Symbol ►	OSP	OSP	OSP					

Department has determined that, in this instance where STA and the ATU are unable to agree upon a dispute resolution process, factfinding is an appropriate procedure.

The Department will apply Attachment A to the pending STA grant to ensure that the requirements of Section 13(c)(2)are satisfied. This procedure is patterned after the STA's proposal. However, it does not contain STA's proposal for the establishment of a schedule for the exchange of documentary evidence, etc. in the factfinding process. After due consideration, the Department has determined that the parties must only "submit to each other and the fact-finder all unresolved issues and the parties' current position on each issue" in order to ensure a full and fair airing of the issues. STA's proposal is not a necessary component to ensure that a fair and equitable procedure is in place.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreements dated July 2, 1981 and July 16, 1990, and of the August 9, 1990 Attachment A, shall be made applicable to the instant project and made part of the contract of assistance, by reference, provided however, that the July 2, 1981 agreement shall be made applicable except for paragraph (15);

2. The term "project" as used in the agreements of July 2, 1981 and July 16, 1990, shall be deemed to cover and refer to the instant project; and

3. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local unions that are signatory to the executed agreements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the signatory unions under the July 2, 1981 and July 16, 1990 agreements and the August 9, 1990 Attachment A and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of

Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

H. Charles Spring
Acting Deputy Under Secretary

cc: Theodore Munter/UMTA
Tom Kingen/STA
Earle Putnam/ATU
Christine Fueston/STA

AUG 20 1990

Mr. Henry Nejako
Deputy Regional Manager
Urban Mass Transportation Administration
Region IX
211 Main Street, Room 1160
San Francisco, California 94105

Re: UMTA Application
Livermore/Amador Valley
Transit Authority
Design and Construction of New
Maintenance, Operations and
Administration Facility
(CA-03-0334)
Purchase Eight 40-Foot Buses,
Fifteen 35-Foot Buses,
Eleven 30-Foot Buses and
Spare Engine/Transmission
Packages
(CA-90-X368)

Dear Mr. Nejako:

This is in reply to the requests from your office that we review the above captioned applications for grants under the Urban Mass Transportation Act of 1964, as amended.

The Livermore/Amador Valley Transit Authority (LAVTA) and the Amalgamated Transit Union (ATU) and ATU Local 1225 have executed an agreement, dated July 20, 1990, which provides to employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

LAVTA and the Brotherhood of Teamsters and Auto Truck Drivers (IBT) Local 70 have executed an agreement dated March 23, 1990. This agreement, as supplemented by additional language set forth by the Department of Labor in item 2 below, pursuant to 29 C.F.R. Section 215.3(e), provides to employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

Initials								
Date	8/13	8/15	8/16					
Last Name	FLANAGAN	ANDREWS						
Office Symbol	OSP	OSP						

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated July 20, 1990 and the agreement dated March 23, 1990, as supplemented by item two below, shall be made applicable to the instant projects and shall be made part of the contract of assistance, by reference;

2. The following language shall be inserted in Paragraph (4), lines 7-9 of the March 23, 1990 agreement which will then read:

   "As a result of the Project" shall not include any effects resulting solely from a change of contractors providing service as a result of a competitive bid or negotiated contract unless such changes are as a result of federal assistance.

3. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the local unions that are signatory to the executed agreements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the signatory unions under the July 20, 1990 and March 23, 1990 agreements and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for

resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

H. Charles Spring
Acting Deputy Under Secretary

cc: Theodore Munter/UMTA
Earle Putnam/ATU
William McCarthy/IBT
Virendra Sood/LAVTA
Doug Barton/Hanson, Bridgett, Marcus, Vlahos & Rudy
Geoffrey Piller/Beeson, Tayer, Silbert, Bodine & Livingston

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations
Washington, D C 20210

NOV 14 1990

Mr. Wilbur E. Hare
Regional Manager
Urban Mass Transportation Administration
Region VI
819 Taylor Street
Suite 9A32
Fort Worth, Texas 76102

Re: UMTA Applications
Central Arkansas Transit
Authority
Operating Assistance (CY
1990); Purchase Lift
Equipped Transit Coach,
Service Vehicle, Computer
Equipment, Radio System, Bus
Shelters, Install Covered
Bus Parking, etc.
(AR-90-X021)
Delete Repower of 16 Buses;
Add Purchase of Bus Engine
Components and Spare Parts,
Additional Funding for
Purchase of Bus Stop Signs
(AR-90-X018)#1

Dear Mr. Hare:

This is in reply to the request from your office that we review the above captioned applications for grants which include both operating and capital assistance under the Urban Mass Transportation Act of 1964, as amended.

The Central Arkansas Transit Authority and the Amalgamated Transit Union (ATU) Local 704 have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. In addition, the parties have agreed that paragraph (16) of their October 29, 1990 Section 13(c) agreement shall be included as the addendum to the July 23, 1975 agreement

pursuant to paragraph (4) thereof. This agreement is supplemented by the July 31, 1990, "Second Amendment to Interlocal Agreement Chartering the Central Arkansas Transit Authority" as approved by the Arkansas Attorney General on September 12, 1990, in Opinion No. 90-246. The terms and conditions of the July 23, 1975 agreement, as supplemented, provide protections to employees represented by the union which satisfy the requirements of Section 13(c) of the Act in general purpose operating assistance project situations.

The parties, furthermore, have agreed that the terms and conditions of their agreement dated October 29, 1990, shall be made applicable to the capital assistance portion of the instant project. This agreement, as supplemented by the July 31, 1990, "Second Amendment to Interlocal Agreement Chartering the Central Arkansas Transit Authority" as approved by the Arkansas Attorney General on September 12, 1990, in Opinion No. 90-246, provides to employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. This letter and the terms and conditions of the agreement dated July 23, 1975, as supplemented, shall be made applicable to the operating assistance portion of the instant project and made part of the contract of assistance, by reference;

2. The terms and conditions of the agreement dated October 29, 1990, as supplemented, shall be made applicable to the capital portion of the instant projects and made part of the contracts of assistance, by reference;

3. The term "project" as used in the agreements of July 23, 1975 and October 29, 1990, as supplemented, shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant projects; and

4. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the local union that is signatory to the executed agreements, shall be afforded the same levels of protection as are afforded to the employees represented by the signatory union

under the July 23, 1975 and October 29, 1990 agreements, as supplemented, and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

H. Charles Spring
Acting Deputy Under Secretary

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Keith Jones/CATA

U.S. Department of Labor

Bureau of Labor-Management
Relations and Cooperative Programs
Washington, D.C. 20210

MAY 29 1991

Mr. Steven A. Diaz
General Counsel
Urban Mass Transportation Administration
Department of Transportation
400 7th Street, S.W.
Washington, D.C. 20590

Dear Steve:

This is in response to our discussions about the Labor Department's certification under Section 13(c) of the Urban Mass Transportation Act (UMTA or Act), 49 U.S.C. App. Section 1609(c), for the City of Boise, Idaho. That certification requires that subsequent contractors in the Boise system provide a hiring preference for employees of prior contractors. Specifically, you have asked that we address the implications of this hiring preference for other UMTA grantees who wish to procure transit services competitively, and that we distinguish the Boise provisions from certification provisions for certain other transit systems, for example, Modesto, and Livermore-Amador Valley, California, and Snohomish County, Washington.

Let me say at the outset that Section 13(c) of the Act does not preclude applicants for UMTA grants from contracting with private operators to provide transit services to the public. Indeed, Section 13(c) and its legislative history actually encourage such arrangements, which represent one way to provide "the continuation of collective bargaining rights" required by Section 13(c)(2).

However, when a transit authority does contract out existing services, whether because of Federal third-party contracting guidelines or UMTA private sector participation guidelines, or for any other reason, Section 13(c) mandates specific protections which may include assurances of employment and priority of reemployment for mass transit employees who are potentially affected by Federal assistance. Furthermore, if a mass transit applicant were to choose to let a contract which would result in displacing existing employees, Section 13(c) dismissal allowances or other employee protections might be triggered.

As you know, the Department of Labor reviews the required protective provisions for each UMTA grant applicant and project on a case-by-case basis. In the Boise case, it may be useful to identify applicable concepts because arrangements such as the preferential hiring provision applied in our April 4, 1988 letter will continue to be required in situations similar to Boise.

With specific regard to Boise, the Department determined that the collective bargaining agreement must be honored by subsequent contractors in accordance with Section 13(c)(1) of the Act, which requires the "preservation of rights privileges and benefits under existing collective bargaining agreements or otherwise." Generally such would not be the case in a typical contracting out situation in the private sector.

In Boise, at the time the system was taken over, employees were hired by a management company under a contract with the City and these employees continued to be hired by all subsequent management companies. Of course, the City is free to change contractors, as it has done, but Section 13(c) obligations continue to apply.

Such an arrangement is commonly referred to as a "Memphis Plan," wherein a management company or succession of different management companies is the employer of a protected group of mass transit employees. This ensures the continuation of existing collective bargaining rights when otherwise prohibited, enabling the City and/or public entity to meet its Section 13(c) obligations and qualify for Federal funds.[1] In such a situation employees continue to be entitled to employment, various rights, privileges and benefits, and the continuation of existing collective bargaining rights and other protections afforded under Section 13(c) of the Act. This "Memphis Plan" arrangement and its corresponding obligations may exist whether the Federal funds are used to acquire assets or simply to take over the operation of an existing private or public transit system.

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[1]During the debate prior to enactment of the Urban Mass Transportation Act, Senator Wayne Morse indicated that a city or county could simultaneously comply with State law and Section 13(c) by contracting out the transit service to a private corporation, as had been done in Memphis, Tennessee. Under such an arrangement, which has come to be known as a "Memphis Plan," the transit workers are employed by the private corporation, not the public body, and the workers have collective bargaining rights under the National Labor Relations Act.

As originally suggested by the legislative history of the Act, and as administered by the Department, a "Memphis Plan" is not established if bids are solicited from independent contractors to manage and operate a new system or new routes. In a situation where there has been no private to public transfer of operations or assets and where services clearly have been subject to automatic rebid since their inception, the required protection would not necessarily be as broad as was required in Boise. (See enclosed letters of May 1, 1987 concerning Snohomish County and February 23, 1990 concerning Modesto, California and the Livermore-Amador Valley Transit Authority.)

The legislative history of the Act also indicates that Congress believed maintenance of the status quo was of paramount importance. For example, if there are employees of a private contractor operating an existing system under a fixed term contract with a public entity when Federal dollars are first sought, and these employees have a reasonable expectation of continued employment, they must be afforded the full protections of Section 13(c). This conclusion is reached even though they work under a fixed term contact because there is existing service in place at the time of the initial influx of Federal funds. Hence, public entities which begin "contracting out" services in anticipation of seeking Federal assistance must still afford employees the full protections of Section 13(c).

The Department's certification for Boise is wholly consistent with the advice given in Modesto and Snohomish. Protections would apply to employees of contractors under a "Memphis Plan," even upon expiration of a contract, and also to contractors' employees retained as a result of protective arrangements which specifically provide for continued employment. In certain other circumstances employees of contractors may not have Section 13(c) protections beyond the term of the contract. If adverse effects occur which are solely the result of the expiration of a bid contract and not a result of Federal assistance, benefits to employees affected only by the expiration of the contract would not be triggered. For example, where new service is initiated with Federal funds and is subsequently renewed under competitive bid, employees dismissed as a result of the bid process would not receive protections. On the other hand, employees of such contractors do have protections which extend beyond the term of a contract when the employees are affected by Federal assistance. For instance, if a change to larger buses during the term of a contract results in layoffs, employees may be entitled to dismissal allowances under Section 13(c) arrangements.

The situation addressed in the Department's May 1, 1987 Snohomish certification was clearly an instance where periodic rebids had been required since the inception of service. A similar situation arose in Livermore-Amador Valley and was addressed in the enclosed February 23, 1990 letter to that applicant's attorney. This situation is distinguishable, however, from that of Boise, where the employees were hired by a management company at the time the system was taken over and continued to be hired by all subsequent management companies.

With regard to the situation addressed in the July 23, 1985 Modesto letter, also enclosed, the Department indicated that nothing in Section 13(c) would require language in the bid specifications that the employees of one contractor be hired by the subsequent contractor. This letter did not abrogate Section 13(c) protections or conclude that displaced employees could not file claims under the Section 13(c) protective arrangements included in the Department's certification. Employees are entitled to monetary and other benefits under Section 13(c) if they were displace or dismissed as a result of Federal assistance. The July 23, 1985 Modesto letter did not address the requirement for continuation of collective bargaining rights and agreements because the employees of the Modesto transit system had not been organized by a labor union at the time.

I reiterate that nothing in Section 13(c) of the Act, nor in our administration of it, precludes applicants from contracting for services with private operators or otherwise arranging for private sector participation in providing transit services. It is the Department of Labor's statutory responsibility, however, to ensure that arrangements are in place to protect all potentially affected employees in the service area of a project.

An UMTA grantee must comply with many Federal requirements as a condition of receiving funds. These requirements, including the labor protection provisions in Section 13(c), undoubtedly affect decisions concerning the management and operation of the transit system. It is our goal to clarify these obligations so that decisions affecting the management and operation of transit systems may be made in the best interests of the transit worker, the transit system, and the public.

I hope this has been responsive to your request. I look forward to continuing the improved communications between our two agencies.

Sincerely,

Kelley Andrews
Director, Office of
Statutory Programs

Enclosures

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations
Washington, D.C. 20210

JUN 21 1991

Mr. Lee Waddleton
Regional Manager
Urban Mass Transportation Administration
Region VII
6301 Rock Hill Road
Suite 303
Kansas City, Missouri 64131

Re: UMTA Application
Bi-State Development Agency
Continued Funding for the
St. Louis Metro Link LRT
System, Segment I
(MO-03-0027)#2

Dear Mr. Waddleton:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

The Bi-State Development Agency and Amalgamated Transit Union (ATU) Locals 788 and 1307 have executed an agreement, dated October 14, 1988. The terms and conditions of the October 14, 1988 agreement do not include any provision for the resolution of interest disputes, and therefore, are not sufficient to meet all the requirements of Section 13(c) of the Act.

The parties, in negotiating the October 14, 1988 agreement, made an affirmative decision not to address the subject of interest dispute resolution. The parties have reserved and preserved their positions with regard to interest dispute resolution as previously established before the Department of Labor.

The Department of Labor determined that an appropriate dispute resolution procedure for application to Bi-State projects was that contained in Appendix B of the Department's certification of project (MO-90-X047). Subsequently, minor modifications were made to correct some technical deficiencies and typographical errors, and a revised impasse resolution procedure for application to Bi-State grants was applied in Appendix C, first included in the Department's certification of October 25, 1988. Appendix D, attached, makes further changes to address substantive developments in the program since the Department issued Appendix C.

Consistent with the Department's decisions elsewhere we have included a requirement that negotiations commence at least ninety days prior to contract expiration. With respect to procedures to be followed by the mediator, no modification of provision (2) from Appendix C is necessary to meet the requirements of Section 13(c). Section 13(c) can be satisfied by a procedure which requires mediation prior to factfinding. Therefore, mediation is included in Appendix D. The parties, however, may proceed to factfinding without mediation and may mutually agree under provision 10 to commence proceedings prior to forty-five days before contract expiration. The timetables in this procedure have been revised to ensure that each step of the process will be initiated in a timely manner.

With respect to use of a tripartite panel, it should be noted that provision 10 from Appendix C states that "the parties may, by mutual agreement, alter the procedures and time limits set forth herein."

Should either party desire to have counsel present for factfinding procedures they may elect to do so. The Department, however, has concluded it would not be fair and equitable to restrict either party in their choice of representatives.

The Department has not elsewhere required that the parties participate in mediation under the auspices of a factfinder. The provision addressing mediation by the factfinding panel is not included because it's not necessary to meet the requirements of the Act. The parties, however, may mutually agree under provision 10 to alter theses procedures and permit the panel to attempt to mediate.

With these changes the procedure in Appendix D provides a satisfactory dispute resolution procedure. Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. The agreement executed October 14, 1988, as supplemented by Appendix D, shall be made applicable to the instant project and made part of the contract of assistance, by reference; and

2. The term "project" as used in the agreement of October 14, 1988, shall be deemed to cover and refer to instant project; and

3. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union that is signatory to the executed agreement, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the signatory union under the October 14, 1988 agreement, as supplemented by Appendix D, and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final a and binding determination.

Sincerely,

H. Charles Spring
Acting Deputy Under Secretary

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Eugene Leung/Bi-State
John Barry/IBEW

Attachment

BLMRCP:HUSSELMANN:ilm:9-30-91
OSP:Room N5411:357-0473

SEP 30 1991

Mr. Wilbur E. Hare
Urban Mass Transportation Administration
Region VI
819 Taylor Street
Suite 9A32
Fort Worth, Texas 76102

Re: UMTA Applications
Dallas Area Rapid Transit Authority
South Oak Cliff Operating/Training Academy
(TX-03-0142)
Transit Centers
(TX-90-X103) Amendment #3
Purchase Buses, Vans, Bus Retrofit, Purchase Land for Garland Center, etc.
(TX-90-X193) Revised

Dear Mr. Hare:

This is in reply to the request from your office that we review the above captioned applications for grants under the Urban Mass Transportation Act of 1964, as amended.

The Dallas Area Rapid Transit Authority (DART) and the Amalgamated Transit Union (ATU) Local 1338 had previously agreed that the terms and conditions contained in a Resolution of DART's Board of Directors dated September 28, 1988, should be made applicable to certain projects. However, because the parties were unable to reach an agreement with respect to the application and interpretation of that Resolution, they have failed to agree that the Resolution should be applied to the instant projects. After the Department met with the parties and determined that further mediatory efforts would not be productive, the Department asked the parties to submit position papers concerning the issues in dispute. The following is a discussion of the issues which concludes with the Department's certification of the instant projects.

DISCUSSION

"As a Result of the Project" Definition

The Department has ruled previously on this issue and its determination with respect to the pending projects is consistent with those earlier rulings. Therefore, paragraph (1)(b) of the

CONCURREN	Initials ►								
	Date ►								
	Last Name ►	HUSSELMA	FLANAGAN	ANDREWS					
	Office Symbol ►	OSP	OSP	OSP					

Section 13(c) Arrangement shall include the phrase "events and actions which are as a result of Federal assistance under the Act." Also, the word "solely" shall be included in that paragraph. The revised version of the paragraph (1)(b) reads as follows:

> (b) The phrase "as a result of the Project" includes events occurring in anticipation of, during, and subsequent to the Project and any program of efficiencies or economies related thereto and shall also include events and actions which are as a result of Federal assistance under the Act; provided, however, that volume rises and falls or business, or changes in volume and character of employment brought about solely by causes other than the Project (including any economies or efficiencies unrelated to the Project), are not within the purview of this Arrangement.

Format of the Protections

For the sake of simplicity and ease of expressing the content of these protections, the Department has chosen to use the existing format.

Duty to Minimize Effects

The Department has also previously made a determination regarding the interpretation of the phrase "Duty to Minimize Effects." With respect to the instant projects, the Department finds no compelling reason to change its interpretation of that phrase. Consistent with our previous interpretation of the subject phrase, the Department has developed the following language for inclusion in the protections:

> The Project shall be performed and carried out in full compliance with the protective conditions described in this Arrangement and in such a manner and upon such terms and conditions as will not adversely affect employees covered by this Arrangement. The duty to minimize effects is not intended to preclude all actions which would adversely affect employees, but to balance such actions in favor of the interest of employees.

If the parties wish any additional guidance regarding this matter, they should consult pages 5 and 6 of the Rural Transportation Employee Protection Guidebook for a discussion of the Department's interpretation of this language.

"Departmental Rules" v. "Personnel Policies"

Consistent with the Department's November 15, 1990 letter, the term "Departmental Rules" is used to refer to the personnel policies of DART, exclusive of the General Grievance Procedure.

Preservation of Existing Rights, Privileges, and Benefits

The Department's repeated objective when making determinations during the process of certifying employee protective arrangements for DART, pursuant to Section 13(c), has been an attempt to preserve what was in existence at the Dallas Transit System (DTS) without diminishing or increasing the level of employee protections. Consistent with this objective, the Department will draw upon the language found in the previous DTS Section 13(c) Arrangement for this certification.

Fact Finding for All Modifications

While the Department will apply the principles contained in the existing Modifications procedure to the instant arrangements, the Department will add to the protective Arrangement a provision that will assure that DART cannot unilaterally alter the Modification procedure or the General Grievance procedure. By assuring that DART cannot unilaterally alter the Modification procedure or General Grievance procedure (currently contained in Sections 8.10 and 8.11 of DART's Personnel Policies and Employee Benefits Manual), the Department is ensuring that the existing collective bargaining process available to DART employees shall be preserved.

ATU's Paragraph (3)(c) Arbitration Provision

With the existing collective bargaining process applicable to DART employees preserved, it is not necessary to provide an additional arbitration procedure for claims of violations of the protections contained in the Section 13(c) arrangements beyond that already existing in paragraph (16) of the Arrangement.

Standard for Triggering Notice

Although the parties have engaged in good faith discussions on the instant projects, they remain in disagreement concerning the language which addresses the standard for triggering notice of changes. Although the language concerning "major" changes which "will" affect a "significant" number of employees was the product of good faith discussions and was applied to previous grants, the parties are now unable to reach an agreement with respect to the interpretation of the language. Accordingly, the Department will impose a provision which is similar to that contained in the "Model" 13(c) Agreement dated June 23, 1975.

Employees Worsened and Make Whole Benefits

The Department has included language in Paragraph (7)(c) of the protective Arrangement which provides that an employee who is worsened as a result of the project shall be made whole. This language is consistent with what the Department has determined to be fair and equitable in the past. Arbitrators' awards must wholly compensate employees for the harm they suffer, but this does not always require the restitution of the precise benefit lost. Attempts should be made to provide such restitution, but alternative remedies may be acceptable when this is not possible and where the harm has an ascertainable economic value or where payment of damages would result in a fair and equitable substitute. The Department is confident that, notwithstanding Texas State law limiting labor negotiations to a "meet and confer" process, DART can meet the requirements set forth in the above referenced paragraph.

Burden of Proof Requirement

This is another case where the parties are in disagreement over language previously agreed to through good faith discussions. The Department has chosen to impose language which is a widely accepted standard in most Section 13(c) arrangements.

Arrangements To Be Imposed

It is not necessary for the parties to execute a formal agreement prior to certification of this project by the Department. However, the parties are encouraged to execute such an agreement prior to the approval of any subsequent DART grants of assistance.

Language in item three below indicates that employees represented by the ATU are intended third-party beneficiaries of the employee protection provisions of the grant contract. By executing the grant contract with the Department of Transportation (DOT), DART acknowledges that it assents to the terms therein. Agreement to the terms and conditions certified by the Department is a binding prerequisite to DOT's release of Federal assistance to DART.

This letter, which is applicable to the instant project, is also a part of the certified protective arrangements. If a dispute arises concerning the terms and conditions set forth in any part of the protective arrangements, this letter shall be used under paragraph (16) of the protective arrangement (Attachment A) to assist in the interpretation of the arrangements.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on the condition that:

1. This letter, the terms and conditions of the Arrangement in Attachment A, and the Grievance procedure and Modification provision in Attachment B, shall be applied to the instant project and shall be made part of the contract of assistance by reference;

2. The term "project" as used in the Arrangement in Attachment A, shall be deemed to cover and refer to the instant project; and

3. The contract of assistance shall include the following language:

   "The terms and conditions of the aforementioned protective arrangements are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements of the grant contract between the Department of Transportation and the DART, and the parties to the contract so signify by executing that contract. The employees' representative may assert claims on their behalf."

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by Amalgamated Transit Union Local 1338, shall be afforded substantially the same levels of protection as are afforded to the employees represented by ATU Local 1338 under the attached Arrangement and this certification. Should a dispute arise, after exhausting any available remedies under the Section 13(c) Arrangement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

H. Charles Spring
Acting Deputy Under Secretary

cc: Theodore Munter/UMTA
Earle Putnam/ATU
John Hoeft/DART
Anthony Anderson/ESC&M
Hal Gillespie/Gillespie & Rosen

Attachments

Labor-Management Relations
and Cooperative Programs
Washington, D.C. 20210

NOV 27 1991

Mr. Stewart Taylor
Regional Manager
Urban Mass Transportation Administration
Region IX
211 Main Street
Room 1160
San Francisco, California 94105

Dear Mr. Taylor:

This is in response to the request from your office that the Department of Labor (the Department) review Los Angeles County Transportation Commission (LACTC) project (CA-03-0340) Revised under Section 13(c) of the Urban Mass Transportation Act of 1964, as amended (the Act). This is a determination of the issues. Certification will be made by the Department and notice of that certification will be given by separate letter upon confirmation that the Southern California Rapid Transit District (SCRTD) will honor and abide by these protective arrangements as required in the third paragraph of this page and in the paragragh titled "Arrangements to be Imposed" on page five.

LACTC and the Amalgamated Transit Union (ATU) Local 1277 have been unable to agree to protective terms and conditions for application to the pending grant. In addition, the LACTC, the SCRTD, the United Transportation Union (UTU) and the Transportation Communications Union (TCU) have been unable to agree upon amendments to the December 8, 1987 Section 13(c) Agreement for application to the pending project. The Department, therefore, requested that these parties submit position papers on a number of the issues in dispute. The following discussion concludes with two attachments which, together with this letter, provide the protective arrangements which will be applied for the above parties in this certification.

Also, in connection with a previous grant application, SCRTD and International Brotherhood of Teamsters Local 911 (IBT) executed an agreement dated June 26, 1984, which is supplemented by a mileage formula agreement of the same date. Similarly, in connection with a previous grant application, SCRTD and the Southern California Transit Police Officers Association (TPOA) executed an agreement dated April 12, 1984, which is supplemented by a mileage formula agreement of the same date. These agreements, as supplemented, provide protections satisfying the requirements of Section 13(c) of the Act to the employees represented by the IBT and TPOA. LACTC must provide the Department with assurances that SCRTD will comply with these arrangements for application to the pending project.

DISCUSSION

Scope of the Definition of "As a Result of the Project"

The Department has previously ruled on this issue. The statute itself specifies that protections will apply as a "condition of any assistance" under the Act. To ensure fair and equitable protections as provided for under the Act, the arrangement with the ATU shall include the phrase "and shall also include events and actions which are a result of Federal assistance under the Act."

Section 13(c) Obligation to Carry Out the Project as Described in the Project Application

To ensure that fair and equitable arrangements are in place, the Department has included language in the fourth enumerated condition of this certification letter to address this issue.

Duty to Minimize Effects

The Department has previously made determinations regarding the interpretation of the phrase "duty to minimize effects." In spite of earlier decisions on this matter, there is still confusion regarding the requirement to "minimize effects" upon transit employees who may be affected by a Federally funded project. Therefore, the Department has included language in paragraph 2 (a) of the arrangements at Attachment 1 and Attachment 2 which should clarify the applicant's obligations. This language tracks the guidance provided in the Department's Rural Transportation Employee Protection Guidebook, which specifies that the applicant "must consider the effects a Project may have on employees and attempt to minimize any adverse effects. If objectives can be met without adversely affecting employees it is expected that adverse effects will be avoided." Clearly, this would not prohibit an applicant from undertaking a project. However, the applicant may have to demonstrate that it made a good faith effort to minimize effects on employees and that the objectives of the project could not be accomplished without harming employees.

Performance of Annual Evaluations

The Department will not, in this instance, impose the proposed provision requiring annual rider checks by the LACTC of SCRTD lines which may be impacted by project services. The provisions of paragraph 5 provide adequate notice of contemplated changes which may result in the dismissal or displacement of employees as a result of the project, thus protecting employees as required by Section 13(c) of the Act.

Duty to Guarantee Noninterference with the Preservation and Continuation of Collective Bargaining Rights Under Section 13(c)(1) and 13(c)(2) of the Act

The Department has not utilized the exact language proposed by LACTC for inclusion in the arrangement for the ATU because LACTC, not SCRTD, is the signatory to the grant contract with UMTA. However, the language proposed by LACTC is otherwise acceptable and provides appropriate and sufficient protections mandated by the Act for employees represented by the unions.

Burden of Proof in Arbitration of Preconsummation Issue and Stay of Proposed Change Pending Arbitration Decision

There has been an issue raised with respect to the protections of Section 13(c) of the Act concerning the initial burden of proof in preconsummation cases. Because the applicant has greater access to relevant information to support its position concerning the potential for a project to impact upon employees, it would not be fair and equitable to place the initial burden of proof on the union. Accordingly, to ensure compliance with Section 13(c) of the Act, the Department places the initial burden of proof on the applicant. This determination also is consistent with the handling of cases by the Interstate Commerce Commission (ICC).

In addition, the Department has included a provision which stays the proposed change during the pendency of a fast track arbitration proceeding, which also is consistent with ICC procedures. This will prohibit certain proposed actions from taking place until an implementing agreement or an arbitration decision permitting the action to proceed is in place.

Provisions for "Change in Residence"

The "change in residence" provision of the National Agreement is fair and equitable, and thus has been applied by the Department. There has not been sufficient justification for the Department to apply an alternative procedure, such as that which the SCRTD and the ATU have agreed to elsewhere.

Remedial Authority in Section 13(c) Arbitrations

The parties have agreed on language addressing the arbitrator's authority with respect to remedies providing for "make whole" or "offsetting" benefits under paragraph 6(g). However, they have been unable to agree upon appropriate language addressing remedies for other violations of the Section 13(c) arrangement. Employee protections under Section 13(c) go beyond the provisions of paragraph 6(g); therefore, an arbitrator must have the ability to provide an appropriate and equitable remedy for Section 13(c) violations other than those arising from individual claims that the employee has been placed in a worse position. So as to avoid

assertions that the remedies language agreed to by the parties is limited to the protections under paragraph 6(g), the Department has included the union's proposal in paragraph 15 (a) to clarify that other remedies are available. While the arbitrator's authority encompasses the ability to make determinations concerning any dispute arising out of the interpretation, application or operation of the provisions of the entire Section 13(c) arrangement, the arbitrator's remedy must be confined to ensuring Section 13(c) protections. If any party believes an arbitrator has exceeded the scope of his authority, judicial review is available.

Priority of Reemployment Under Section 13(c)(4)

The Department has thoroughly reviewed the positions of the parties with respect to the Section 13(c)(4) issue of priority of reemployment. Under the Act, the reemployment provisions apply to transit employees in the service area and employees of the grant recipient. Employees in the service area are intended to be provided the same levels of protections as employees of grant recipients benefitting from the Federal assistance.

LACTC maintains that Section 13(c)(4) reemployment does not extend to third party contractors with which the unions have no employment relationship. In order to ensure that the requirements of the Act are satisfied, the Department requires LACTC to ensure that a reemployment right is provided for laid-off SCRTD employees with both the contractor, which is also a beneficiary of Federal assistance though not a direct recipient of the grant, and with LACTC itself. Section 13(c)(4) cannot be satisfied if reemployment rights rest only with SCRTD, and the Department will require that LACTC ensure that it and any Project Contractor provide for reemployment rights of SCRTD employees.

Section 13(c) Responsibilities of the Project Contractor and the City -- Obligations of Successors and Other Beneficiaries of Federal Assistance

Consistent with its duty to provide protections under Section 13(c), LACTC must ensure that the City and any Project Contractor, which benefit from the receipt of Federal assistance, share LACTC's obligations. This does not mean, as LACTC has suggested, that the City and any Project Contractor must, for example, hear claims or pay displacement allowances. Rather, in the ATU arrangement, LACTC assumes administrative responsibilities under the Section 13(c) protective arrangements and any violation of these arrangements by the City or Project Contractor should be resolved by a claim against LACTC through the dispute procedure in the arrangement. Thus, under paragraph 20 of the arrangement in Attachment 1, LACTC must ensure that other responsible parties comply with the arrangements which it has agreed to on behalf of all beneficiaries of the assistance in

order to meet its Section 13(c) obligations. In the arrangement with the TCU and UTU, SCRTD may assume administrative responsibilities.

LACTC also has proposed a standard Section 13(c) "successorship" provision. However, the provision proposed by the ATU, included at paragraph 20 of Attachment 1, more accurately sets forth the obligations of the parties and generally reflects the Department's reading of the original intent of the standard language. This language is apropriate to ensure compliance with Section 13(c) of the Act.

Separability and Renegotiation of Provisions Held Legally Invalid by a "Court of Competent Jurisdiction"

A separability clause is a standard and equitable provision of Section 13(c) agreements. The Department, however, will not assume the judicial role of determining whether provisions of previously certified Section 13(c) agreements are legally invalid. The appropriate forum for such a determination is the state court.

Arrangements to be Imposed

Unlike the City and the Project Contractor, which will benefit from the federal assistance applied for herein, the SCRTD has no obligation to provide protections under the Act for this project. At the request of LACTC, SCRTD has elected to accept these obligations in conjunction with the UTU and TCU, TPOA and IBT protections. SCRTD must confirm that it will accept the obligations set forth in the April 12, 1984 and June 26, 1984 agreements with the TPOA and IBT, the arrangements based upon the December 7, 1987 agreement with the TCU and UTU, and the arrangements contained herein and in Attachment 2 to this letter. LACTC must obtain SCRTD's written confirmation of its agreement to apply these terms and conditions to the pending grant and submit such confirmation to the Department prior to certification.

Accordingly, the Department has determined that the Act requires the following with respect to the instant project:

1. This letter and the terms and conditions of the arrangement at Attachment 1 dated November 27, 1991, shall be made applicable to the instant project, as it is described in the grant aplication received by the Department on November 9, 1988, as revised by the transmittal received May 8, 1990, and shall be made part of the contract of assistance, by reference; and

2. This letter, the terms and conditions of the arrangement at Attachment 2 dated November 27, 1991, and the terms and conditions of the Section 13(c) agreement dated December 8, 1987, to the extent it is not modified by this letter or Attachment 2, shall be made applicable to the instant project, as it is described in the grant application received by the Department on November 9, 1988, as revised by the transmittal received on May 8, 1990, and shall be made part of the contract of assistance, by reference; and

3. This letter and the terms and conditions of the agreements dated June 26, 1984, and April 12, 1984, each of which is supplemented by a mileage formula agreement, shall be made applicable to the instant project, as it is described in the grant application received by the Department on November 9, 1988, as revised by the transmittal received on May 8, 1990, and shall be made part of the contract of assistance, by reference; and

4. The term project, as used in the arrangement at Attachment 1 dated November 27, 1991, and as used in the agreements dated December 8, 1987, June 26, 1984, and April 12, 1984, shall be deemed to cover and refer to the instant project as described in the grant application received by the Department of Labor on November 9, 1988, as revised by the transmittal received on May 8, 1990, and incorporated into the grant agreement with UMTA. This certification is limited to the activities the grantee will undertake and complete pursuant to the scope and budget of that grant application; and

5. Disputes over the terms and conditions of this certification letter and the referenced protective arrangements made applicable to the instant project shall be resolved in accordance with the provisions of the arrangement at Attachment 1, and the agreements dated December 8, 1987, June 26, 1984, and April 12, 1984; and

6. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local unions that are party to the above agreements or covered by the above arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the unions under the arrangements in Attachment 1 and Attachment 2, and under the agreements dated December 8, 1987, June 26, 1984, and April 12, 1984, and this certification. Should a dispute arise with

respect to these employees regarding the application or interpretation of these protective arrangements, after exhausting any available remedies under the Section 13(c) arrangements and any other neutral, final, and binding procedures agreed to by the parties (or claimant not represented by a union), the Secretary of Labor may designate a member of her staff or appoint a neutral third party to serve as arbitrator to render a final and binding determination regarding such matters.

Sincerely,

H. Charles Spring
Acting Deputy Under Secretary

cc: Patricia V. McLaughlin/LACTC
Earle Putnam/ATU
Kenneth R. Moore/UTU
Mitchell Kraus/TCU
Elizabeth Nadeau/Highsaw, Mahoney and Clark
Lambertus Becker/SCRTD
William J. McCarthy/IBT
Luke Fuller/TPOA

Enclosures

Labor-Management Relations
and Cooperative Programs
Washington, D.C. 20210

DEC 6 1991

Mr. Lee Waddleton
Regional Manager
Urban Mass Transportation Administration
Region VII
6301 Rockhill Road
Suite 303
Kansas City, Missouri 64131

Re: UMTA Application
City Utilities of
Springfield, MO
Operating Assistance
(MO-90-X074)

Dear Mr. Waddleton:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

In connection with a previous grant application, City Utilities (CU) adopted a resolution dated October 28, 1976, which provides to the employees represented by the Amalgamated Transit Union (ATU) protections satisfying the requirements of Section 13(c) of the Act.

At the time of the referral for the instant project, neither ATU nor CU objected to the application of the terms and conditions of the resolution dated October 28, 1976. Therefore, the terms and conditions of the resolution dated October 28, 1976 shall be made applicable to the instant project for the ATU.

The International Brotherhood of Electrical Workers (IBEW), which represents other CU mass transit employees, reached agreement with CU on a Section 13(c) arrangement for application to the instant project, except for the provisions in paragraphs 3, 4, and 22 of that arrangement. The terms and conditions that have been agreed to by IBEW and CU, and the conditions determined by the Department in paragraphs 3, 4, and 22, are set forth in Appendix "A". Appendix "A" constitutes the terms and conditions to be applied to this certification for CU and IBEW.

Following is a discussion of the Department's determinations with regard to paragraphs 3, 4, and 22.

DISCUSSION

Paragraph 4 - Continuation of Collective Bargaining Rights

The general purpose of Section 13(c) is to require that local governments which receive UMTA funding make fair and equitable arrangements to protect the interests of affected transit workers. Section 13(c)(2) requires governing bodies to continue "collective bargaining rights" that existed before the receipt of federal assistance. See Jackson Transit Authority v. Local Division 1285, Amalgamated Transit Union, 102 S.Ct. 2202, 2203 (1982).

In its position papers submitted to the Department, IBEW proposed in paragraph 4 to limit the "meet, confer and discuss" process by including protections for certain substantive rights, privileges and benefits. As the parties are aware, for purposes of Section 13(c)(2), the provision concerning "collective bargaining rights" is intended to cover the right of public employee labor organizations in Missouri to "meet, confer, and discuss" with representatives of the governing body concerning proposals on wages, hours and working conditions. Mo. Rev. Stat. Section 105.520 (1978 Supp.). The results from this process do not, however, amount to a collective bargaining contract. See Sumpter v. City of Moberly, 645 SW.d359 (1982).

This "meet, confer, and discuss" process was in place when City Utilities began receiving UMTA funding in 1976. CU's ability to change the terms and conditions of employment after it has "met, conferred, and discussed" the substance of the proposed changes with the union also was in place before 1976. Thus, the union's right to "meet, confer, and discuss" and CU's ability to make these changes after conferring with the union remain unchanged. This is what is intended to be "continued", under Section 13(c)(2) of the Act.

With regard to the pending application, the ability of CU to alter the terms and conditions of employment after "meeting, conferring, and discussing" with the union does not, in and of itself, frustrate the rights protected under Section 13(c)(2), of the Act, in these circumstances.

Therefore, the Department of Labor has determined that the following language, which will be included at paragraph 4 of Appendix "A", provides "fair and equitable" protective

arrangements mandated by the Act. Paragraph 4 shall read:

> **The existing "meet and confer" rights of employees covered by these arrangements shall be preserved and continued. Provided, however, that this provision shall not be interpreted as to require the Recipient to retain any such rights which exist by virtue of a Joint Statement of Intent after such Joint Statement of Intent is no longer in effect, except as may otherwise be required by applicable law.**

Paragraph 3 - Preservation of rights, privileges and benefits.

Section 13(c)(1) mandates the "preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise." Thus the provisions of the Joint Statement of Intent could be changed only if CU follows the meet, confer and discuss process, and, in order to comply with Section 13(c)(1), ensures there is no denial of accrued rights, privileges and benefits, as a result of the project.

Also addressed in the parties' position statements is the issue of whether a "floor" is established under Section 13(c)(1). As is indicated by the decision in ATU v. Donovan, 767 F.2d 939, 953 (D.C. Cir. 1985), Section 13(c) was not intended to create a floor for wages and benefits. If employees believe that, as a result of the Federally funded project, their positions were worsened due to a change to existing rights, privileges and benefits, such employees could seek remedies under Paragraph 15 of Appendix "A".

Therefore, the Department of Labor has determined that the following language, which will be included at paragraph 3 of Appendix "A", provides fair and equitable protective arrangements mandated by the Act. Paragraph 3 shall read:

> **All rights, privileges, and benefits (including pension rights and benefits) of employees having already retired) under existing retirement systems and under the Joint Statement of Intent between City Utilities of Springfield, Missouri and the Union ("Joint Statement of Intent") or under any revisions or renewal thereof, and under any other established practices or policies shall be preserved and continued, provided that any such rights, benefits and privileges may be modified pursuant to paragraph (4) to substitute other rights, privileges and benefits so long as there is not denial of accrued rights, privileges and benefits, as a result of the project.**

Paragraph 22 - Legal Standard for Determining the Validity and Enforceability of Section 13(c)

The first issue in dispute with regard to paragraph 22 was the question of whether provisions of the Section 13(c) arrangement are subordinate to present and later enacted Federal, State or municipal laws to the extent there is a conflict. Section 13(c) does not override state law. However, where a state law conflicts with the requirements of Section 13(c), it is clear, as indicated in the decision in ATU v. Donovan, 767 F.2d at 948 n.9, that the applicant would not be eligible for federal assistance.

Second, the parties are in disagreement over the inclusion of language in paragraph 22 concerning the appropriate forum for determining the validity and enforceability of Section 13(c) provisions. The IBEW's position is that "a court of competent jurisdiction" is the appropriate forum for these determinations. CU's position is that the Department of Labor, as well as State and local entities, are legally authorized to make such determinations. The Department of Labor will not assume the judicial role of determining whether provisions of previously certified Section 13(c) agreements are legally invalid. The appropriate forum for such a determination is the state court in which the provision would otherwise be challenged. See Jackson Transit Authority.

Therefore, the DOL has determined that the following language shall be applied for paragraph 22. Paragraph 22 shall read:

> **In the event any of these terms and conditions is held by a court of competent jurisdiction to be invalid or otherwise unenforceable under Federal, State or local law, the remaining provisions of these arrangements shall not be affected and the invalid or unenforceable provision shall be re-negotiated by the Recipient and the Union for the purpose of adequate replacement under Section 13(c) of the Act. If such negotiation shall not result in mutually satisfactory agreement, the Secretary of Labor shall, after consultation with the Recipient and the Union, determine fair and equitable employee protection arrangements, which shall be incorporated in the contract of assistance, or take other appropriate action.**

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the resolution dated October 23, 1976 and Appendix "A", shall be made applicable to the instant project as it is described in the grant application received by the Department September 26, 1990, and made part of the contract of assistance, by reference;

2. The term "project" as used in the resolution of October 28, 1976, and Appendix "A", shall be deemed to cover and refer to the instant project as described in the grant application received by the Department of Labor on September 26, 1990. The grantee will undertake and complete activities pursuant to the scope and budget of that grant application; and

3. Disputes over the terms and conditions of this certification letter and the referenced protective arrangements made applicable to the instant project shall be resolved in accordance with the provisions in the resolution of October 28, 1976 and Appendix "A"; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local unions, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the ATU under the October 28, 1976 resolution, and the IBEW under Appendix "A" and this certification. Should a dispute arise with respect to these employees regarding the application or interpretation of these protective

arrangements, after exhausting any available remedies under the Section 13(c) arrangements, and if the parties are unable to agree on any other neutral, final and binding procedure, either party may refer the matter to the Secretary of Labor for final and binding determination.

Sincerely,

H. Charles Spring
Acting Deputy Under Secretary

cc: Theodore Munter/UMTA
John L. Barry/IBEW
Earle Putnam/ATU
Alan E. Bailey/City Utilities
Jane Sutter Starke/Eckert Seamans Cherin & Mellott
Terry Yellig/Sherman, Dunn, Cohen, Leifer & Yellig, P. C.

Enclosures

BLR:MCP:J. FLANAGAN:ilm:1-15-92

JAN 15 1992

Mr. Terry L. Ebersole
Regional Manager
Federal Transit Administration
Region X
Jackson Federal Building
915 Second Avenue
Suite 3142
Seattle, Washington 98174

Re: FTA Applications
Whatcom Transportation
Authority
Operating Assistance (1/1/90-
12/31/90) for Fixed Route
and Specialized Transit
(WA-90-X108)
Purchase 10 Small Buses
(WA-90-X119)
Purchase Replacement Buses,
Spare Engine/Transmission
Cradle Assembly
(WA-03-0069)

Dear Mr. Ebersole:

This is in reply to the request from your office that we review the above captioned applications for grants under the Urban Mass Transportation Act of 1964, as amended.

Over the past several months, the Whatcom Transportation Authority (WTA) and the Whatcom County Council on Aging (WCOA) have been in negotiations with Amalgamated Transit Union (ATU) Local 843 over the terms and conditions of the employee protective arrangements which should be made applicable to the above referenced projects. After extensive efforts by the parties and with some assistance from the Department of Labor (Department) the parties were able to reach agreement on all but a few issues. In order to expedite the issuance of this certification and at the fervent request of both parties, the Department agreed that the parties could orally brief the few outstanding issues on January 2, 1992.

CONCURRENCES									
Initials ►	OD 1-15								
Date ►	1/15/92								
Last Name ►	FLANAGAN	HUSSELM.							
Office Symbol ►	OSP	OSP							

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DL 1-441, Rev. July 1976

• U.S. GPO 1987-0

The major issue between the WCOA and the ATU was whether the selection process for the board of arbitrators, for disputes regarding the application, interpretation or enforcement or the 13(c) Arrangement, in paragraph 15(a), should reference that which is contained in the parties' collective bargaining agreement. Since there is no guarantee that the procedures negotiated by the parties in future collective bargaining agreements will meet the necessary requirements of the Act, the Department could not certify a 13(c) arrangement with that reference.

The WTA and the ATU have the same issue in paragraph 16(a) of their arrangement which the Department thinks should be handled in the same manner. In paragraph (17) of their proposals the WTA and the ATU continue to disagree over the interest dispute provision to be included in their 13(c) arrangement. The Department has determined that interest arbitration is not a requirement for certification of WTA project applications, therefore will be imposing a fact-finding procedure which meets the requirements of the Act. The Department has determined that the method for selecting the neutral which is consistent with the method which the parties found acceptable elsewhere in the arrangement is appropriate here. The Department has established timetables in this procedure to ensure that each step of the process will be initiated in a timely manner. Under the factors to be considered by the fact-finder in determining his or her recommendations, the adjustments the Department made will allow the parties to be free to argue over the weight of comparisons to other groups of employees. The Department has determined that in this case it would be less fair and equitable to limit those comparisons to only other mass transit employees doing comparable work.

It is not necessary for the parties to execute a formal agreement prior to certification of this project by the Department. However, the parties are encouraged to execute such an agreement prior to the approval of any subsequent WTA grants of assistance.

Language in item three below indicates that employees represented by the ATU are intended third-party beneficiaries of the employee protection provisions of the grant contract. By executing the grant contract with the Department of Transportation (DOT), WTA acknowledges that it assents to the terms therein. Agreement to the terms and conditions certified by the Department is a binding prerequisite to DOT's release of Federal assistance to WTA.

This letter, which is applicable to the instant project, is also a part of the certified protective arrangements. If a dispute arises concerning the terms and conditions set forth in any part of the protective arrangements, this letter shall be used under

paragraph (15) of the protective arrangements for projects concerning WCOA (Attachment A) and under paragraph (16) of the protective arrangement for projects concerning WTA (Attachment B) to assist in the interpretation of the arrangements.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the Arrangements in Attachments A and B, shall be applied to the instant projects and made part of the contracts of assistance, by reference;

2. The term "project" as used in the Arrangements in Attachments A and B, shall be deemed to cover and refer to the instant projects; and

3. The contract of assistance shall include the following language:

   "The terms and conditions of the aforementioned protective arrangements are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements of the grant contract between the Department of Transportation and the WTA, and the parties to the contract so signify by executing that contract. The employees' representative may assert claims on their behalf."

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by Amalgamated Transit Union Local 843, shall be afforded substantially the same levels of protection as are afforded to the employees represented by ATU Local 843 under the attached Arrangements and this certification. Should a dispute arise, after exhausting any available remedies under the Section 13(c) Arrangement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral

third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

H. Charles Spring
Acting Deputy Under Secretary

cc: Theodore Munter/FTA
Earle Putnam/ATU
Thomas F. Kingen/Perkins Coie
Deborah Babel/WTA

Enclosure

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations
Washington, D C 20210

JAN 24 1992

Mr. Lee Waddleton
Regional Manager
Federal Transit Administration
Region VII
6301 Rockhill Road
Suite 303
Kansas City, Missouri 64131

Re: FTA Application
City Utilities of Springfield, MO
Operating Assistance
(MO-90-X074) Clarification

Dear Mr. Waddleton:

This is in regard to our December 6, 1991 certification of the arrangement for employee protections for the above captioned grant application under the Federal Transit Act (the "Act"), formerly the Urban Mass Transportation Act of 1964, as amended. On page 3 of the certification letter, the Department of Labor adopted the language proposed by City Utilities for Paragraph 3 of the protective arrangement. The Department also included the phrase "as a result of the project" as the last six words of this paragraph. Concerns have been raised regarding possible uses and interpretations of this phrase which may result in ramifications in this or other jurisdictions that the Department did not intend.

The requirements of Section 13(c) of the Act are satisfied without the inclusion of the phrase "as a result of the project" in Paragraph 3. Thus, due to the unique circumstances of this case, the phrase "as a result of the project" in Paragraph 3 of the protective arrangement is deleted from the certified terms and conditions on page 3 of our December 6 letter. A corresponding deletion of the same words is made at the end of Paragraph 3 on page 3 of the protective arrangement certified for the project and appended to our December 6 letter. This deletion will result in language that is identical to City Utilities' proposal for Paragraph 3 of the protective arrangement.

Accordingly, the date of December 6, 1991 shall remain the official certification date. Attached, are the revisions to "Paragraph 3" as a new page 3 of the December 6 letter and a new page 3 of the Appendix.

Sincerely,

H. Charles Spring
Acting Deputy Under Secretary

cc: Theodore Munter/FTA
Earle Putnam/ATU
John L. Barry/IBEW
Terry Yellig/Sherman, Dunn, Cohen Leifer & Yellig, P.C.
Jane Sutter Starke/Eckert, Seamans, Cherin & Mellott
Rex McCall/City Utilities

Attachment

FEB 5 1992

Mr. Stewart Taylor
Regional Manager
Federal Transit Administration
Region IX
211 Main Street
Room 1160
San Francisco, California 94105

Re: FTA Application
Los Angeles County (LACTC)
Transportation Commission
Suburb-to-Suburb Commuter
Service Project
(CA-03-0340) Revised

Dear Mr. Taylor:

This is in further response to the request from your office that the Department of Labor (the Department) review the above captioned grant application under the Federal Transit Act, (the Act) formerly the Urban Mass Transportation Act of 1964, as amended.

By letter dated November 27, 1991, the Department set forth the requirements under Section 13(c) of the Act for certification of the above project. In that letter, the Department required that the Southern California Rapid Transit District (SCRTD) agree to apply certain terms and conditions for the protection of employees on behalf of LACTC. The SCRTD, by letter dated January 10, 1992, indicated its agreement to abide by and honor the terms of the 13(c) agreements identified in the Department's November 27, 1991 letter.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

> This letter and the terms and conditions of the Department's letter of November 27, 1991 and the January 10, 1992 letter from the SCRTD, shall be made applicable to the instant project, and shall be made part of the contract of assistance, by reference.

This is the Department's certification with respect to project (CA-03-0340) Revised.

Sincerely,

H. Charles Spring
Acting Deputy Under Secretary

cc: Theodore Munter/FTA
Patricia V. McLaughlin/LACTC
Earle Putnam/ATU
Mitchell Kraus/TCU
Elizabeth Nadeau/Highsaw, Mahoney and Clark
Lambertus Becker/SCRTD
William J. McCarthy/IBT
Mark Weissman/SCTPOA

Washington, DC 20210

MAR 4 1992

Mr. Joel P. Ettinger
Regional Manager
Federal Transit Administration
Region V
55 East Monroe Street
Suite 1415
Chicago, Illinois 60603

Re: FTA Application
Miami Valley Regional
Transit Authority
Operating Assistance (CY 1992)
(OH-90-X159) Revised

Dear Mr. Ettinger:

This is in reply to the request from your office that we review the application for the above project under the Federal Transit Act, formerly the Urban Mass Transportation Act of 1964, as amended.

The Miami Valley Transit Authority and Amalgamated Transit Union (ATU) Local 1385 have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. The parties had agreed that paragraph (15) of their October 22, 1975 Section 13(c) agreement would be included as the addendum to the July 23, 1975 agreement pursuant to paragraph (4) thereof for previous operating grants.

Since July 29, 1986, the Department of Labor has not applied Paragraph (15) of the October 22, 1975 Section 13(c) Agreement to the extent that it provides for interest arbitration. The parties' Section 13(c) Agreement has been supplemented by Section 4117 of the Ohio Revised Code and by item three below.

The ATU has objected to certification of the instant grant citing "special circumstances" which would require supplementary language addressing the potential for material changes in the project application based on the history of Miami Valley projects. Pursuant to our guidelines at 29 C.F.R. 215.6, the Department has determined that such "special circumstances" are not present here. The Department, instead has applied language in the following terms and conditions which adequately address the treatment of potential future material changes in the project.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated July 23, 1975, shall be made applicable to the instant project as it is described in the grant application transmitted to the Department of Labor on September 30, 1991, as revised by the FTA transmittal of January 31, 1992 (which deleted capital assistance) and shall be made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement dated July 23, 1975, shall be deemed to cover and refer to the instant project as described in the grant application transmitted to the Department of Labor on September 30, 1991, as revised by the FTA transmittal of January 31, 1992. The project activities defined by the scope and budget as incorporated in the contract of assistance between the Department of Transportation and the Recipient shall be undertaken, carried out and completed substantially as described in the grant application, as revised, received by the Department and/or any budget revision or amendment which 1) the Secretary of Labor affirmatively determines, in an administrative action pursuant to 29 C.F.R. Section 215.5, does not alter the scope or purpose of the project or otherwise revise or amend the project in immaterial respects, or 2) is the subject of a Section 13(c) certification action pursuant to the procedures established by Section 29 C.F.R. Section 215.3. The grantee will use project assets and equipment in the manner described in such grant application or such budget revision or grant amendment;

3. The contract of assistance shall include the following language:

"Absent written mutual agreement by the parties to the contrary, the terms and conditions of any expiring collective bargaining agreement shall remain in place following the expiration of such agreement until the effective date of a successor agreement between the parties, or the publication of the fact-finding report, and recommendations as provided for herein, whichever is earlier."

In addition:

"If either of the parties were to reject the recommendations of the fact-finding panel, the rejecting party shall state its reasons for such rejection and such statement shall be published in the local media along with the finding of facts and recommendations of the panel. The other party has the opportunity to make its position statement public at its own expense."

4. Disputes over the terms and conditions of these protective arrangements, including this certification letter, shall be resolved in accordance with the provisions in the agreement dated July 23, 1975;

5. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union that is signatory to the executed agreement, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the July 23, 1975 agreement and this certification. Should a dispute arise regarding the application or interpretation of these protective arrangements, after

exhausting any available remedies under the Section 13(c) arrangements, and if the parties are unable to agree on any other neutral, final and binding procedure, either party may refer the matter to the Secretary of Labor for final and binding determination.

Sincerely,

H. Charles Spring
Acting Deputy Under Secretary

cc: Theodore Munter/FTA
Earle Putnam/ATU
Hank Sokolnicki/MVRTA

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations
Washington, D.C. 20210

APR 2 1992

Mr. Joel P. Ettinger
Regional Manager
Federal Transit Administration
Region V
55 East Monroe Street Suite 1415
Chicago, Illinois 60603

Re: FTA Applications
Suburban Mobility Authority
for Regional Transportation
Operating Assistance: Purchase
Buses and Related Equipment,
Bus Wash Rack, Shelters,
Micro Computers and Upgrade
Existing Computer Hardware,
Stop Signs, Service Vehicle,
Shop Equipment, etc.
(MI-90-X150)
Purchase Up to 58 Forty-Foot
Buses and Related Equipment
(MI-03-0124) Revised

Dear Mr. Ettinger:

This is in reply to the request from your office that we review the above captioned applications for grants under the Federal Transit Act (formerly the Urban Mass Transportation Act of 1964, as amended).

In connection with a previous grant application, the Suburban Mobility Authority for Regional Transportation (SMART) and the International Brotherhood of Teamsters (IBT) executed an agreement dated May 16, 1990, which, as supplemented by Attachment A to the Department's July 13, 1990 certification for SMART, provides to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

Also, SMART and the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) executed an agreement, dated May 30, 1990, for application to both capital and operating assistance grants, which, as supplemented by Attachment A to the Department's July 13, 1990 certification for SMART, provides to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

Also, SMART and the United Steelworkers of America (USWA) executed an agreement dated July 18, 1991, which provides to the employees represented by the union protections satisfying the requirement of Section 13(c) of the Act.

The above parties have agreed that the terms and conditions of the agreements dated May 16, 1990, as supplemented, May 30, 1990, as supplemented, and July 18, 1991, shall be made applicable to the instant projects.

In addition, the above project applications were referred to the American Federation of State County and Municipal Employees (AFSCME), affording it the opportunity to negotiate protective arrangements on behalf of employees which it represents. AFSCME has not elected to negotiate protective arrangements for this grant, but is afforded the protections under the sixth enumerated condition of this certification.

SMART and the Amalgamated Transit Union (ATU) Locals 26 and 1564 have negotiated over protective arrangements to be made applicable to the above grants. The ATU represents both linehaul operators and clerical employees of SMART (Local 1564), employees of Detroit Department of Transportation (D-DOT) which are in the service area (Local 26), and employees of the subcontractor ATE Management & Service Company, Inc. (ATE) (Local 1564). The Department of Labor met with the parties on December 18, 1991, and January 15, 21 and 30, 1992, in an effort to assist them in reaching agreement. At the end of these meetings, the Department established a briefing schedule and requested that the parties submit their final positions for determination of the appropriate protective arrangements. The capital and operating arrangements attached hereto are the Department's determination of arrangements which satisfy the requirements of Section 13(c) of the Act for employees represented by ATU Locals 1564 and 26. The ATU has proposed that ATE employees represented by Local 1564 be provided "substantially the same level of protection" in the Department's standard certification terms and conditions. Further discussion of the arrangements which cover these ATE employees is included below.

The Department has completed its determination of a number of issues which remained in dispute following the parties' submissions. In addition to the issues addressed below, SMART has included language in its final proposal which reflects its position, subsequent to negotiations, on a number of other issues. Where appropriate, the SMART proposed language which meets the requirements of Section 13(c) has generally been incorporated into the Department's determination, for those issues which are not listed and discussed below.

ISSUES IN DISPUTE FOLLOWING RECEIPT OF FINAL POSITIONS:

CERTIFICATION OF CAPITAL ASSISTANCE

The ATU has suggested that the Department should not certify the capital projects referenced above because "FTA currently has no intent to award the capital assistance sought in the pending Section 9 application, nor to otherwise fund SMART's request for Section 3 assistance". The Department has been advised by FTA that this is not an accurate description of the status of this case. Since both capital and operating assistance were the subject of the Department's referrals and of negotiations between the parties, the Department will certify the capital assistance portions of these grants.

DEFINITION OF "AS A RESULT OF THE PROJECT"

The Department has included language which makes it clear that employees are protected from project impacts which result indirectly from a federally funded project. In addition, the word "solely" has been inserted in line six of Paragraph (1)(b) of the Capital Section 13(c) Arrangement and line 13 of Paragraph (1) of the Operating Assistance Section 13(c) Arrangement, to clarify that impacts which arise partially as a result of a project will trigger Section 13(c) protections. This is consistent with the standard burden of proof which requires that "the claiming employee shall prevail if it is established that the Project had an effect upon the employee even if other factors may also have affected the employee." (Hodgson's Affidavit in Civil Action No. 825-71, U.S. Dist. Court, D.C.)

MATERIAL MODIFICATION PROVISION

The Department of Labor has included language in the third enumerated condition of this certification which addresses the need for appropriate certification procedures to be followed each time a federally funded grant is amended or revised. While this issue has previously been addressed in the context of earlier SMART certifications, the language included here by the Department is intended to ensure that employees have an enforceable right to require that project activities be carried out as indicated in the grant application.

TRANSFER OF TITLE LANGUAGE

The Department of Labor also has included language in the third enumerated condition of this certification to ensure that Section 13(c) protections are appropriately applied should there be a change in the ownership or title for the project assets which SMART is acquiring under these grants. Because this certification applies to protections for the transit employees

who may be affected by the instant projects, the language addresses transfers of title to successors, recipients, subrecipients or other mass transit providers which operate in the service area.

PROTECTION OF ATE EMPLOYEES

In its submission to the Department of Labor, the ATU advised the Department that:

> "Local 1564 is prepared to waive its right to negotiate arrangements protecting the ATE workers it represents on the conditions that: 1) consistent with established DOL policies, the certification will mandate that ATE employees represented by Local 1564 be afforded 'substantially the same level of protection' otherwise afforded to those directly protected under the 13(c) arrangements and agreements certified by DOL ... and, 2) DOL will specify that the protections thus afforded include those which might be characterized by third parties as 'procedural' rights or remedies (exclusive of the right to invoke certification provisions to resolve any disputes, which the 'standard' closing certification condition otherwise specifically addresses.)"

SMART has proposed that protections be provided for ATE employees represented by the ATU by adding a Paragraph (27) to its operating assistance proposal and a corresponding Paragraph (30) to its capital proposal. Because the SMART language does not meet the requirements of Section 13(c), the ATE employees are covered in accordance with the ATU's proposal. SMART had suggested that extension of the Section 13(c) protections beyond ATE's contract term is outside the scope of the statute. On the contrary, protections are intended to cover adverse effects as a result of a project which occur in anticipation of, during, and subsequent to receipt of Federal assistance. Protections cannot be denied to affected ATE employees simply because ATE is not operating transit services on the date funds are obligated. Further, SMART's proposal for reemployment rights of ATE employees resulting from dismissal, displacement or rearrangement of the working forces as a result of a project improperly limits ATE employees to positions with their former employer. Affected employees are entitled to consideration for all positions within the jurisdiction and control of SMART. As indicated in the Department's March 20, 1990 certification, "the transit system's subcontractors also must comply with the obligations which the transit system has assumed", including the obligation to place affected employees in available jobs.

The ATU has requested that the Department specify that the protections in the Department's closing paragraph include the "procedural" rights and remedies in the Section 13(c)

arrangements and agreements. This is, indeed, the intent of the language applied by the Department in its standard certification. Thus, for example, the notice and negotiation provisions at Paragraph (6) of the Capital Section 13(c) Arrangement attached hereto would apply to the employees of ATE represented by the ATU and to employees represented by AFSCME as well as to the SMART and D-DOT bargaining units.

OFFSETTING/MAKE-WHOLE BENEFITS AND REMEDIES CLAUSE

The Department has included language at Paragraph (6)(e) of the Operating Arrangement and Paragraph 7(g) of the Capital Arrangement, as proposed by SMART, to clarify that an award of offsetting benefits, as an alternative to a make whole remedy, is governed by Paragraphs (15)(c) and 17(c), respectively. Further, the Department has revised the language in Paragraphs (15)(c) and 17(c) to address the circumstances under which an alternative to the precise benefit or right lost may be awarded. The Department here requires that "an alternative remedy awarding offsetting benefits or compensatory damages may be acceptable where 1) the harm has an ascertainable economic value and such an alternative remedy is fair and equitable or 2) such an award would result in a fair and equitable substitute." The Department also has revised these paragraphs to address the scope of the arbitrator's authority in remedying claims under Section 13(c).

DISPUTE RESOLUTION PROCEDURE AND FACT-FINDING CRITERIA

The fact-finding procedure previously included in the Department's July 13, 1990 certification of SMART grants has been proposed by SMART for application to the instant projects. This procedure meets the requirements of Section 13(c), and the ATU has not presented persuasive arguments which would require the Department to change the procedure other than the addition of a comma in the second-enumerated criteria. Contrary to the ATU's interpretation, the Department's January 15, 1992 certification for the Whatcom Transportation Authority does not establish "that the third-numbered criteria improperly restricts the comparison factor." Rather, the Whatcom certification stands for the proposition that certifications reflect the specific facts and circumstances surrounding each case. In addition, the Department's indicating its intent to "rely on Michigan State law to the extent possible" does not require that such law be duplicated when not appropriate.

FINANCIAL CAPABILITY/RESPONSIBILITY PROVISION

The Department has not included language proposed by the ATU which would require SMART to provide evidence of financial responsibility as a precondition to the expenditure of Project funds. Such a requirement is not necessary in this case given

that the Federal Transit Administration is already required to ensure that a recipient is financially capable prior to its approval of federal assistance.

PARATRANSIT LANGUAGE

The Department has determined that the paratransit language contained in Paragraph (25) of the July 13, 1990 Operating Arrangement certified by the Department of Labor will be required for the operating assistance portion of the instant projects. As the Department has indicated elsewhere, special language addressing non-traditional transportation services can be required in instances such as this, where SMART has not agreed to the language as it did in 1990. The Department is not persuaded that such protections are no longer necessary for SMART grants which provide assistance for paratransit operations.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects, which are described in the grant applications transmitted by FTA to the Department of Labor on April 17, and October 1, 1991, (MI-03-0124 Revised) and on September 10, 1991 (MI-90-X150) and which, thereafter, the Department of Labor referred to the unions, on condition that:

1. This letter and the terms and conditions of the agreements dated May 16, 1990, as supplemented, and May 30, 1990, as supplemented, and July 18, 1991, and the attached April 2, 1992 Operating Assistance Arrangement, shall be the protective arrangements made applicable to the operating assistance portion of the instant projects and shall be made part of the contract of assistance, by reference;

2. This letter and the terms and conditions of the agreements dated May 16, 1990, as supplemented, and May 30, 1990, as supplemented, and July 18, 1991, and the attached April 2, 1992 Capital Assistance Arrangement, shall be the protective arrangements made applicable to the capital portions of the instant projects and shall be made part of the contracts of assistance, by reference;

3. The term "project" as used in the agreements of May 16, 1990, as supplemented, May 30, 1990, as supplemented, July 18, 1992, and the two arrangements of April 2, 1992, shall be deemed to cover and refer to the instant projects. The instant project activities defined by the scope and budget as incorporated in the contracts of assistance between the Department of Transportation and the Recipient shall be undertaken, carried out and completed substantially as described in the grant

applications received and referred by the Department and/or in any budget revision or amendment. Any such budget revision or amendment 1) must be reviewed by the Secretary of Labor to affirmatively determine, in an administrative action pursuant to 29 C.F.R. 215.5, that it revises or amends the project in immaterial respects, or otherwise does not alter the scope or purpose of the project, or 2) must be the subject of a subsequent Section 13(c) certification review pursuant to the procedures established by 29 C.F.R. 215.3. The grantee will use project assets and equipment in the manner described in such grant application, budget revision or grant amendment.

Any subsequent action by which the grantee may transfer any title, rights, and/or interest in project equipment or assets to any other entity, person, enterprise, body or agency, including any subrecipient or subgrantee which operates in the service area, for purposes eligible for assistance under the Federal Transit Act, shall require a review of the Section 13(c) certification action by the Secretary of Labor;

4. Disputes over the terms and conditions of these protective arrangements, which include this certification letter, shall be resolved in accordance with the provisions in the aforementioned arrangements for the resolution of disputes over the interpretation, application, and enforcement of the Section 13(c) agreements and arrangements.

5. The grantee shall act as guarantor of these protective arrangements and shall be bound by such as if it were signatory thereto, and shall ensure that any subrecipients are bound by the terms and conditions of this certification; and

6. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the local unions covered by the above referenced protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the unions under the agreements of May 16, 1990, as supplemented, May 30, 1990, as supplemented, and July 18, 1990, and under the two arrangements of April 2, 1992, and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the projects. Should a dispute arise, after exhausting any available remedies under the Section 13(c) arrangements, and absent mutual agreement by the parties to utilize any

final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party to serve as arbitrator and render a final and binding determination.

Sincerely,

H. Charles Spring
Acting Deputy Under Secretary

Enclosures

cc: Dan Harrant/FTA
Brenda Malone/SMART
G. Kent Woodman/Eckert, Seamans Cherin & Mellott
Earle Putnam/ATU
Ron Carey/IBT
Stan Marshall/UAW
Gerald McEntee/AFSCME
Clint Parrott/UWSA

Washington, DC 20210

OCT 30 1992

Mr. Stewart Taylor
Regional Manager
Federal Transit Administration
Region IX
211 Main Street
Room 1160
San Francisco, California 94105

Re: FTA Application
Bay Area Rapid Transit
District
Dublin/Pleasanton Station
Parking Area
(CA-03-0384)

Dear Mr. Taylor:

This is in reply to the request from your office that we review the above captioned application for a grant under the Federal Transit Act (formerly the Urban Mass Transportation Act of 1964 as amended).

In connection with a previous grant application, the San Francisco Bay Area Rapid Transit District, the Amalgamated Transit Union (ATU) Locals 1555, 1225, 192 and 265, and the Service Employees International Union (SEIU) Local 390 executed an agreement dated June 16, 1976, which, together with an Addendum of Clarification of the same date, provides to the employees represented by the unions protections satisfying the requirements of Section 13(c) of the Act.

In addition, in letters dated August 13 and October 28, 1992, the District has accepted ATU Local 1617 as a party to the 1976 Agreement and to the Addendum of Clarification, waiving the technical requirements of Paragraph (14) of the Agreement.

All employees are protected under Section 13(c) of the Act from impacts which result directly or indirectly "as a result of the Project." The Department would be unable to certify an agreement which contradicted this requirement. Therefore, in executing the grant contract with the Department of Transportation, which references this certification, BART signifies its understanding that the June 16, 1976 Section 13(c) Agreement protects employees from impacts which result directly or indirectly "as a result of the Project."

FILE COPY

The parties have agreed that the terms and conditions of the agreement dated June 16, 1976, and the Addendum of Clarification, shall be made applicable to the instant project.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated June 16, 1976, and the Addendum of Clarification, as supplemented by the August 13 and October 28, 1992 letters, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement of June 16, 1976, shall be deemed to cover and refer to the instant project;

3. Disputes over the terms and conditions of these protective arrangements, which include this certification letter, shall be resolved in accordance with the provisions in the aforementioned agreements and arrangements for the resolution of disputes over the interpretation, application, and enforcement of the Section 13(c) agreements and arrangements; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local unions that are party to the executed agreement, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the unions under the June 16, 1976 agreement, the Addendum of Clarification, and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedures for resolution of the dispute, the Secretary of Labor may designate

a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

ROBERT A. SCHAERFL
Director
United States Employment Service

cc: Arthur Lopez/FTA
Earle Putnam/ATU
John Sweeney/SEIU
Mitch Stogner/BART

Mr. Louis F. Mraz
Regional Manager
Federal Transit Administration
Region VIII
Federal Office Building
216 16th Street
Suite 650
Denver, Colorado 80202

DEC 9 1992

Re: FTA Application
Regional Transit Commission
of Clark County, Nevada
Purchase Elderly & Handicapped
Buses, CNG Compressor
Station Improvements,
Automated Vehicle Washing
Station, etc.
(NV-90-X018) Amendment #1

Dear Mr. Mraz:

This is in reply to the request from your office that we review the above captioned application for a grant under the Federal Transit Act (formerly the Urban Mass Transportation Act of 1964, as amended).

The Regional Transportation Commission (RTC) and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers (IBT) Local 631 have executed an agreement dated November 12, 1992, which provides to employees represented by the unions protections satisfying the requirements of Section 13(c) of the Act.

During its review of the November 12, 1992 agreement, the Department requested and received clarifications of two provisions of the agreement. With regard to paragraph (14)(b), the parties have agreed that the language concerning the remedial authority of the independent arbitrator was meant to include examples of the arbitrator's authority and not to limit it to those powers listed in that paragraph. Further, concerning the priority of employment addressed in paragraph (17), it is the Department's understanding that the only entity currently providing service under contract with the RTC is providing fixed route service, therefore, the language in paragraph (17) is sufficient to meet the requirements of Section 13(c)(4) of the Act, at this time. However, if that should change in the future, the parties may wish to revisit this arrangement.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. The agreements executed November 12, 1992, shall be made part of the contract of assistance, by reference; and

2. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local unions that are signatory to the executed agreements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the signatory union under the November 12, 1992 agreements and this certification. Should a dispute arise, after exhausting any available remedies under the 13(c) agreements and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

Robert A. Schaerfl
Director, United States
Employment Service

cc: Arthur Lopez/FTA
Ron Carey/IBT
David Peace/RTC
G. Kent Woodman/ESC&M
Dennis A. Kist/Leeds & Kist

Washington DC 20210

DEC 10 1992

Mr. Lee Waddleton
Regional Manager
Federal Transit Administration
Region VII
6301 Rockhill Road
Suite 303
Kansas City, Missouri 64131

Re: FTA Application
City Utilities of
Springfield
Operating Assistance
(MO-90-X079)

Dear Mr. Waddleton:

This is in reply to the request from your office that the Department of Labor (DOL) review the above captioned application for a grant under the Federal Transit Act (Act).

In connection with a previous grant application, DOL determined that the terms and conditions of Appendix "A" (attached) provide protections that satisfy the requirements of Section 13(c) of the Act to employees of City Utilities (CU) who are represented by the International Brotherhood of Electrical Workers (IBEW).

The Amalgamated Transit Union (ATU) represents other CU mass transit employees. ATU and CU were unable to reach full agreement over the terms and conditions of a Section 13(c) arrangement with regard to the above captioned application. On June 9, 1992, ATU and CU met with DOL for mediatory assistance. At this meeting the parties agreed on all but the following addressed provisions. After the meeting, DOL determined that further mediatory assistance would not be productive. DOL, therefore, asked the parties to submit position papers concerning the issues in dispute. The following discussion of the issues concludes DOL's certification of the instant project.

DISCUSSION

Paragraph 1 - "As a Result of the Project"

With reference to other projects, both parties have previously agreed to include defining language for the phrase "as a result of the project" without the proposed addition of "and related to the Project." DOL has determined that the language included in paragraph (1) of Appendix "B" is fair and equitable under Section 13(c) of the Act.

Paragraph 2 - Duty to Minimize

The parties disagree over the interpretation of the phrase "duty to minimize effects." If objectives can be met without adversely affecting employees, it is expected that adverse effects will be avoided. However, the legislative history clearly indicates that adverse effects were deemed a possibility. This is the reason behind the development of Sections 13(c)(3) and (4) under the Act.

Therefore, DOL has included the language as it appears in Paragraph 2 in Appendix "B". This language indicates that adverse impacts be avoided if a viable alternative were possible and, if not, then that employees be compensated.

Paragraph 2(b) - Project Changes

In the past there have been incidents where, inconsistent with Section 13(c) guidelines, material modifications, amendments, etc. have been funded without prior DOL approval. Although this has not been an issue specific to CU, DOL recognizes there can be potential problems with regard to project changes. Thus, DOL has included language of its own to address this issue in condition (3) of this certification.

Paragraph 3 - Preservation of Rights, Privileges and Benefits

DOL has determined, as discussed below, that paragraph 3(a) shall read:

> All rights, privileges and benefits (including pension rights and benefits) of employees represented by the Union (including employees having already retired) under existing retirement systems and under the Joint Statement of Intent between the Union and the Recipient ("Joint Statement of Intent") or under any revisions or renewal thereof, and under any other established practices or policies shall be preserved and continued, **provided that any such rights, privileges and benefits which are not foreclosed from further modification under applicable law, policies, or the Joint Statement of Intent may be modified pursuant to paragraph (4) to substitute other rights, privileges and benefits so long as there is no denial of accrued rights, privileges, and benefits.**

(i) - Mid-term Modifications of the Joint Statement of Intent

Section 13(c)(1) requires the "preservation of rights, privileges and benefits . . . under existing collective bargaining agreements or otherwise." (Emphasis added.) Based on this language, DOL has determined that here fair and equitable arrangements should include that the terms and conditions of employment, as set forth in the Joint Statement of Intent, be preserved during any stated term. However, the parties can be allowed some leeway to modify the rights preserved under Section 13(c)(1) to substitute other rights, privileges and benefits. In this instance, tracking the language of the "Model Agreement" provides such leeway to the extent appropriate.

(ii) - Seniority

It is unnecessary for the arrangement to list all the rights and privileges protected under Section 13(c)(1) of the Act. Although not listed, DOL has determined that here seniority is a right which would be preserved and continued under Section 13(c)(1).

Paragraph 3(b) and 4(b) - Claims, Causal Connection and Tangible Harm

It is not necessary to include the language proposed for Paragraphs 3(b) and 4(b). Although, Section 13(c) agreements do typically specify that provisions addressing Sections 13(c)(3), (4) and (5) are triggered "as a result of the project," such language has not been included with respect to 13(c)(1) and (2) rights. This is because the legislative history of the Act supports that, independent of a causal nexus with the project or tangible harm to individual claimants, Section 13(c)(1) requires the preservation of collective bargaining agreements and Section 13(c)(2) requires the continuation of collective bargaining rights when these rights could be affected by Federal assistance. It is determined that such rights as they exist in CU are similarly protected. Thus, so long as CU continues to receive Federal assistance, the rights under Sections 13(c)(1) and (2) must be preserved.

Paragraph 4 - Continuation of Collective Bargaining Rights

Section 13(c)(2) requires governing bodies to continue "collective bargaining rights" that existed at the time of the initial influx of Federal assistance. The "collective bargaining rights" in existence at the time CU received Federal funds include the meet, confer and discuss process under State law and any policies in effect at that time. The ATU proposes to include

two clauses in paragraph (4). The first clause provides the right to arbitrate labor disputes and maintain union checkoff. The second clause specifies that meet and confer rights are those provided by "laws or policies in effect as of the date of the initial influx of Federal funds under the Act."

Although the first clause appears in the "Model Agreement", the language generally refers to a traditional collective bargaining process. The process in Missouri is less than full private sector collective bargaining in that it does not result in a binding collective bargaining contract. Therefore, the language regarding arbitration of labor disputes and dues checkoff would only be appropriate if these rights existed at the time of the influx of Federal funds. To clarify this point, DOL has included the proposed language in Appendix "B" with the addition of the phrase "(if such rights exist)" after the words "union checkoff". An arbitrator can then determine, if necessary, whether such rights are protected. The language regarding laws and policies at the time of the initial influx of Federal funds is a proper statement of the requirements of Section 13(c)(2) and also is included in the Section 13(c) arrangement.

DOL has determined that the phrase ". . . by its terms," in paragraph (4) is unnecessary because it is redundant. CU must continue the Joint Statement of Intent for any specified term under paragraph (3); DOL has determined that here the duration of the Joint Statement is an existing right, privilege or benefit that must be preserved under Section 13(c)(1) in the same way that a set wage for a fixed time period is a right, privilege or benefit under Section 13(c)(1). This is equally applicable to IBEW and CU Joint Statement of Intent if it specifies a set term.

In addition, Paragraph (4) of Appendix "B" specifies that Section 13(c) shall be included as "applicable law." This clarifies that the exercise of some permissible right under State law could violate Section 13(c) and thus render the Recipient ineligible for assistance.

Paragraph 16(b) - Remedies Clause

It was proposed that paragraph 16(b) include that "Awards made pursuant to said arbitration shall draw their essence from these arrangements or Section 13(c) of the Act . . . ." DOL has determined that it is not necessary to include the above proposed language. Instead, DOL has included language to address this issue, which is added to the language agreed to by the parties in paragraph 16(b) of Appendix "B". This language reads:

"The authority of the arbitrator shall be limited to the determination of the dispute arising out of the interpretation, application, or operation of the provisions this Arrangement and any remedy must be confined to ensuring Section 13(c) protections."

Accordingly, any remedy should ensure the full range of Section 13(c) protections. This does not limit the arbitrator's decision to the five enumerated provisions of the Act.

In addition, it was proposed that paragraph 16(b) incorporate language specifying that the "Awards made pursuant to arbitration may include ... such other remedies as may be deemed appropriate and equitable." DOL has included this language in paragraph 16(b) of Appendix "B" which allows an arbitrator to provide an appropriate and equitable remedy for any Section 13(c) violations. If any party believes an arbitrator has exceeded the scope of this authority, State law will govern.

Paragraph 17 - Pyramiding of Benefits

It has been noted that DOL included language in its determination of March 20, 1989, pertaining to the Utah Transit Authority, that addressed only the duplication of benefits and did not limit pyramiding of benefits. As CU noted, "the Utah matter involved a transit agency which was willing to provide benefits in pyramiding situations." On that basis, the subject language in that case was included, having satisfied the requirements of the Act.

In this instance, CU is not willing to provide pyramiding of benefits. DOL has determined that language prohibiting the duplication or pyramiding of benefits is appropriate here. To avoid misinterpretation, DOL has included language in paragraph 17 of the arrangement which is to be construed consistently with the Hodgson Affidavit and the Federal court's interpretation of the concept of "pyramiding" in New York Dock Railway v. U.S., 609 F.2d 83 (2d Cir. 1979).

Paragraph 27 - Unilateral Changes to Section 13(c) Arrangement and Unilateral Changes Mid-Term to Joint Statement of Intent

Language was proposed to prohibit the Recipient from unilaterally altering the terms of the Section 13(c) arrangement. DOL does not allow any party to unilaterally alter a Section 13(c) agreement/arrangement that is the basis of its certification. A new Section 13(c) arrangement, however, may be negotiated in connection with a pending grant.

DOL acknowledges that generally, under Missouri law, a Resolution may be altered through the meet, confer and discuss process. However, the Resolution in this case adopts the terms and conditions of the a Section 13(c) arrangement, which in turn is a condition of Federal assistance. Therefore, any exercise of this right under State law may contravene Section 13(c). Accordingly, DOL has determined that it is appropriate to include paragraph (27) in Appendix "B".

Language also was proposed which would prohibit the Recipient from altering the terms and conditions of the Joint Statement of Intent before the expiration of the term. As discussed earlier, the Joint Statement of Intent is not a binding contract under Missouri law. In addition, as indicated in paragraph (3), it is clear that provisions of the Joint Statement of Intent could be changed only if CU were to follow the meet, confer and discuss process and also were to comply with Section 13(c)(1). Therefore, DOL has not included such language.

Accordingly, DOL makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the attached Appendices "A" and "B", shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the attached Appendices "A" and "B", shall be deemed to cover and refer to the instant project;

3. The contract of assistance shall include the following language:

   The term "project" as used in Appendices "A" and "B", shall be deemed to cover and refer to the instant project. The project activities defined by the scope and budget as incorporated in the contract(s) of assistance between the U.S. Department of Transportation and the grantee shall be undertaken, carried out and completed substantially as described in the 1) the grant application submitted to the FTA and subsequently referred to the union by the DOL, and/or 2) in any budget revision or amendment. Such revision or amendment 1) must be reviewed by the Secretary of Labor to affirmatively determine, in an administrative action pursuant to 29 C.F.R.

Section 215.5, that it revises or amends the application in immaterial respects, or otherwise does not alter the scope of subsequent Section 13(c) certification action pursuant to the procedures established by 29 C.F.R. Section 215.3. The Secretary's action shall be undertaken prior to any FTA final approval or award. The grantee will use project assets and equipment in the manner described in such grant application, budget revision or grant amendment; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union shall be afforded substantially the same levels of protection as are afforded to the employees represented by the applicable unions under Appendices "A" and "B" and this certification. Should a dispute arise, after exhausting any available remedies under the Section 13(c) arrangement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

Robert A. Schaerfl
Director, United States Employment
Services

cc: Arthur Lopez/FTA
Earle Putnam/ATU
John L. Barry/IBEW
Sherman, Dunn, Cohen,
Leifer & Yellig, P.C.
Eckert, Seamans, Cherin & Mellott
Alan E. Bailey/CU

MAR 29 1993

Mr. Joel Ettinger
Regional Manager
Federal Transit Administration
Region V
55 East Monroe Street
Suite 1415
Chicago, Illinois 60603

Re: FTA Application
South Bend Public Transportation Corporation (Transpo)
Operating Assistance (CY 1992)
Purchase 5 Replacement Vans, Replacement Coin Counter, 10 Rebuilt Engines, etc.
(IN-90-X166)

Dear Mr. Ettinger:

This is in reply to the request from your office that we review the above captioned application for a grant under the Federal Transit Act (formerly the Urban Mass Transportation Act of 1964, as amended).

The South Bend Public Transportation Corporation (PTC) and the Amalgamated Transit Union (ATU) Local 1070 have negotiated over protective arrangements to be made applicable to both the capital and operating assistance portions of the above grant.

The Department of Labor met with the parties on June 11, July 30, July 31, and October 26, 1992, in an effort to assist them in reaching agreement. At the end of these meetings, the Department established a briefing schedule to address selected issues from among those remaining in dispute. The parties were requested to submit their final positions for determination of the appropriate protective arrangements. The Department has completed its review of the issues that remained in dispute following mediation, including several that were not briefed. Below is the Department's determination:

TRANSFER OF TITLE/MATERIAL MODIFICATION LANGUAGE

The Department of Labor will include language in the second enumerated condition of this certification to ensure that Section 13(c) protections are appropriately applied should there be a transfer of the ownership or title of project assets that PTC is acquiring under this grant. In addition, the Department has included language addressing material modifications to ensure that the project is carried out as specified in the grant

JOBS WITH THE CONTRACTOR

The Department has determined that affected employees are entitled to consideration for all positions within the jurisdiction and control of the applicant, including those in the employment of any system subcontractor. As the Department has previously indicated, a grant recipient that subcontracts work must ensure that a contractor which benefits from Federal assistance complies with the requirements of Section 13(c)(4) by extending employment rights to employees affected by the Project. Such language is included in Paragraphs (5) and (18) of the attached determination.

SELECTION OF FORCES

Selection of forces language is required to provide employees with protections to which they are entitled under Section 5(2)(f) of the Interstate Commerce Act. While the union cannot negotiate on behalf of employees of other urban mass transportation providers in the service area of this Project, such employees are, nevertheless, entitled to the PTC's consideration if they are impacted by the Project. The union's proposal, which is included in Paragraph (5) of the attached determination, makes it clear, however, that any negotiated agreement with the ATU is limited to the assignment of employees that it represents.

PREFERENCE IN HIRING

Section 13(c) clearly requires assurances of continued employment in the event of an acquisition of a transportation system with Federal assistance. Since the assets of South Bend PTC were acquired with federal assistance, language requiring continued employment is appropriate for PTC certifications. There is no "sunsetting" of the requirements of Section 13(c) such that the passage of time would relieve PTC of its obligations under the Act. Consequently, the Department is including language at Paragraph (25) of the attached determination which provides an absolute preference in hiring upon any change in system operators. This preference does not preclude PTC from contracting out portions of the system. It does, however, require that employees be given the requisite benefits of Section 13(c)(1) through (5) on all portions of the system.

Similarly, PTC may contract out <u>new</u> service from its inception without providing the preference at Paragraph (25).

DISPUTE RESOLUTION PROCEDURE AND FACT-FINDING CRITERIA

Section 13(c)(1) mandates that the provisions contained in a collective bargaining contract be preserved and continued during its term, or, as in this case, in accordance with an arbitrator's award. Therefore, as long as it is applicable, the interest dispute resolution procedure included at Article 63 of the collective bargaining agreement must be utilized by the parties.

In addition, the Department's independent investigation, including discussions with a representative of the Indiana Public Service Commision, confirms that Indiana Code Section 22-6-2, which includes an interest dispute resolution procedure, is still a valid statute and is applicable in this situation. Consequently, in the event that the interest dispute procedure contained in the collective bargaining agreement is no longer applicable, the above cited state law provides a procedure meeting the requirements of Section 13(c) of the Act.

FIXED GUIDEWAY JOBS

This project does not include any request for funds for "Fixed Guideway" elements; therefore, inclusion of proposed provisions addressing such service is not necessary in this arrangement. In the event that PTC applies for federal assistance for a "Fixed Guideway" in the future, the parties may enter into negotiations over appropriate protective arrangements.

SOLE PROVIDER

Section 13(c) of the Act does not dictate whether or not service can be contracted out. Rather, it preserves existing collective bargaining rights during the term of a contract without precluding the parties from negotiating subsequent agreements. Therefore, the Department will not include the union's proposed language with respect to subcontracting.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the attached arrangement dated March 29, 1993, as supplemented by Indiana Code Section 22-6-2, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the arrangement of March 29, 1993, shall be deemed to cover and refer to the instant project. The project activities defined by the scope and budget as incorportated in the contract of assistance between the U. S. Department of Transportation and the grantee shall be undertaken, carried out and completed substantially as described in 1) the grant application submitted to the FTA and subsequently referred to the union by the Department, and/or 2) in any budget revision or amendment. Such budget revision or amendment 1) must be reviewed by the Secretary of Labor to affirmatively determine, in an administrative action pursuant to 29 C.F.R. Section 215.5, that it revises or amends the application in immaterial respects, or otherwise does not alter the scope or purpose of the project, or 2) must be the subject of a subsequent Section 13(c) certification action pursuant to the procedures established by 29 C.F.R. Section 215.3. The Secretary's action shall be undertaken prior to any FTA final approval or award. The grantee will use project assets and equipment in the manner described in such grant application, budget revision or grant amendment;

   Any subsequent action by which the grantee may transfer, convey, or grant title, rights, and/or interest in project equipment and assets to any subrecipient or subgrantee while itself remaining the project recipient and/or grantee shall require a review and Section 13(c) certification action by the Secretary of Labor prior to, and as a precondition of, the grant amendment or title transfer;

3. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of disputes over the interpretation, application, and enforcement of the Section 13(c) agreements and/or arrangements; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union which is referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union

under the March 25, 1993 arrangement and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute remain, after exhausting any available remedies under the Section 13(c) arrangement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Robert A. Schaerfl
Director, United States
Employment Service

cc: Arthur Lopez/FTA
Joan Baker/South Bend
Earle Putnam/ATU
Richard L. Rohde/South Bend

200 Constitution Avenue, N.W.
Washington, DC 20210

MAR 29 1993

Mr. Joel Ettinger
Regional Administrator
Federal Transit Administration
Region V
55 East Monroe Street
Suite 1415
Chicago, Illinois 60603

Re: FTA Application
Suburban Mobility Authority for Regional Transportation
Additional Operating Assistance for SMART; One Support Vehicle for Port Huron; One Paratransit Bus for Monroe
(MI-90-X150) #1
Operating Assistance (FY'93) for SMART; Operating Assistance and One Support Vehicle for Port Huron; Operating Assistance and One Paratransit Bus for Monroe
(MI-90-X167) Revised

Dear Mr. Ettinger:

This is in reply to the request from your office that we review the above captioned applications for grants under the Federal Transit Act (formerly the Urban Mass Transportation Act of 1964, as amended).

In connection with a previous grant application, the Suburban Mobility Authority for Regional Transportation (SMART) and the International Brotherhood of Teamsters (IBT) executed an agreement dated May 16, 1990, which, as supplemented by Attachment A to the Department's July 13, 1990 certification for SMART, provides to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

Also, SMART and the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) executed an agreement, dated May 30, 1990, which, as supplemented by Attachment A to the Department's July 13, 1990 certification for SMART, provides to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

Also, SMART and the United Steelworkers of America (USWA) executed an agreement dated July 18, 1991, which provides to the employees represented by the union protections satisfying the requirement of Section 13(c) of the Act.

The above parties have agreed that the terms and conditions of the agreements dated May 16, 1990, as supplemented, May 30, 1990, as supplemented, and July 18, 1991, shall be made applicable to the instant projects.

In addition, the above project applications were referred to the American Federation of State, County and Municipal Employees (AFSCME), affording it the opportunity to negotiate protective arrangements on behalf of employees which it represents. AFSCME has not elected to negotiate protective arrangements for this grant, but is afforded the protections under the fourth enumerated condition of this certification.

SMART and Amalgamated Transit Union (ATU) Locals 26 and 1564 have negotiated over protective arrangements to be made applicable to the above grants. The ATU represents both linehaul operators and clerical employees of SMART (Local 1564), employees of the Detroit Department of Transportation (D-DOT) who are in the service area of the projects (Local 26), and employees of the subcontractor, ATE Management & Service Company, Inc. (Local 1564). The Department of Labor met with the parties on February 11, 1993, in an effort to assist them in reaching agreement.

The parties have agreed to the following changes in the Section 13(c) arrangements applicable to SMART projects. These changes are incorporated into the March 29, 1993 Section 13(c) Arrangements attached hereto.

OFFSETTING BENEFITS/COMPENSATORY DAMAGES

The sentence from Paragraph 17(c) of the April 2, 1992 Capital Arrangement and Paragraph 15(c) of the April 2, 1992 Operating Arrangement which begins with the words "If such attempts are unsuccessful or unsuitable," will be replaced with the following language:

> "If such attempts are unsuccessful or unsuitable, an alternative remedy either awarding (1) offsetting benefits where such an award would result in a fair and equitable substitute or (2) compensatory damages where the harm has a readily ascertainable economic value and such an alternative remedy is fair and equitable, may be acceptable."

FACT FINDING CRITERIA

The dispute resolution procedure from the April 2, 1992 Capital Arrangement at Paragraph (18)(d)(3) will be revised for the instant projects to read as follows in the March 29, 1993 Capital Arrangement, and the addendum for the March 29, 1992 Operating Arrangement will be revised accordingly.

> "(3) A comparison of the wages, hours and terms and conditions of employment of the Public Body's employees with other public and private employees doing comparable work, taking into consideration any factors peculiar to the community and classification involved;"

DEFINITION OF "AS A RESULT OF THE PROJECT"

At Paragraph (1)(b) of the April 2, 1992, Capital Arrangement, immediately following the words "directly and indirectly related thereto" the words "and shall also include events and actions which are as a result of Federal assistance under the Act" shall be inserted.

ISSUES IN DISPUTE

In addition to the above issues, the Department has included its determination of the remaining unresolved issues in the March 29, 1993 Arrangements. The ATU continues to object to the interest dispute resolution applied by the Department in recent certifications. However, the Department has determined that the factfinding procedure set forth in the attached arrangements meets the requirements of the Act and will be made applicable to the instant projects. Other issues are addressed below.

PROTECTION OF ATE EMPLOYEES

Two alternative approaches have been discussed to ensure Section 13(c) coverage for employees of ATE Management & Service Company, Inc. who are represented by ATU Local 1564. The effect of either approach would be the same. Therefore, the Department has decided to include the following language in Paragraph (30) of the March 29, 1993 Capital Arrangement and Paragraph (27) of the March 29, 1993 Operating Arrangement providing protections for ATE employees. This decision is based on a preference for including specific protective provisions in the parties' agreements or arrangements to reduce the potential for inadvertently omitting it from subsequent certifications.

"The protections of this Arrangement shall be applicable to the employees represented by ATU Local 1564 who are employed by ATE Management & Service Company, Inc. (the Company) in connection with the Company's operation of transit services under contractual arrangements with the Recipient."

TRANSFER OF TITLE

The Department has included language in the second enumerated condition of this certification to ensure that Section 13(c) protections are appropriately applied should there be a change in ownership or title of project assets. This language differs from that in the Department's April 2, 1992 certification in that it is limited to subrecipients or subgrantees and it requires that Section 13(c) review be completed prior to any transfer of assets.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. This letter and the terms and conditions of the agreements dated May 16, 1990, as supplemented, May 30, 1990, as supplemented, July 18, 1991, and the March 29, 1993 Capital Arrangement and March 29, 1993 Operating Arrangement, shall be made applicable to the instant projects and made part of the contracts of assistance, by reference;

2. The term "project" as used in the above agreements and arrangements, shall be deemed to cover and refer to the instant projects. The project activities defined by the scope and budget as incorporated in the contracts of assistance between the U.S. Department of Transportation and the grantee shall be undertaken, carried out and completed substantially as described in 1) the grant applications submitted to the FTA and subsequently referred to the unions by the Department, and/or 2) any budget revision or amendment. Such budget revision or amendment 1) must be reviewed by the Secretary of Labor to affirmatively determine, in an administrative action pursuant to 29 C.F.R. Section 215.5, that it revises or amends the application in immaterial respects, or otherwise does not alter the scope or purpose of the project, or 2) must be the subject of

a subsequent Section 13(c) certification action pursuant to the procedures established by 29 C.F.R. Section 215.3. The Secretary's action shall be undertaken prior to any FTA final approval or award. The grantee will use project assets and equipment in the manner described in such grant application, budget revision or grant amendment;

Any subsequent action by which the grantee may transfer, convey, or grant any title, rights, and/or interest in project equipment and assets to any subrecipient or subgrantee while itself remaining the project recipient and/or grantee shall require a review and Section 13(c) certification action by the Secretary of Labor prior to, and as a precondition of, the grant amendment or title transfer;

3. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of disputes over the interpretation, application, and enforcement of the Section 13(c) agreements and/or arrangements; and

4. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the local unions which are a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the unions under the above agreements and arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the projects.

Should a dispute remain, after exhausting any available remedies under the Section 13(c) arrangements and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the

Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Robert A. Schaerfl
Director, United States
Employment Service

cc: Arthur Lopez/FTA
Brenda Malone/SMART
Anthony Anderson/Eckert, Seamans, Cherin & Mellott
Earle Putnam/ATU
Ron Carey/IBT
Stan Marshall/UAW
John Prior/USWA
Gerald McEntee/AFSCME

U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue NW
Washington DC 20210

MAR 29 1993

Mr. Lee O. Waddleton
Regional Administrator
Federal Transit Administration
Region VII
6301 Rock Hill Road
Suite 303
Kansas City, Missouri 64131

Re: FTA Application
City Utilities of
Springfield
Operating Assistance;
Purchase CNG Lift
Equipped 30' Bus, Refurbish
Vaults and Replace Counters,
etc.
(MO-90-X086)
CLARIFICATION
(MO-90-X079)

Dear Mr. Mraz:

This is in reply to the request from your office that we review the above captioned application for a grant under the Federal Transit Act (formerly the Urban Mass Transportation Act of 1964, as amended).

In connection with a previous grant application, the Department of Labor (DOL) determined that the terms and conditions of Appendix "A" contained in its December 6, 1991 certification, provide to the employees represented by the International Brotherhood of Electrical Workers protections satisfying the requirements of Section 13(c) of the Act.

City Utilities of Springfield and the IBEW have agreed that the terms and conditions of Appendix "A" contained in the December 6, 1991 certification, shall be made applicable to the instant project.

In addition, in connection with a previous grant application, DOL determined that the terms and conditions of Appendix "B" contained in its certification of December 10, 1992, provided to the employees represented by the Amalgamated Transit Union (ATU) protections satisfying the requirements of Section 13(c) of the Act. However, City Utilities and the ATU, by letters dated January 12, 1993 and December 16, 1992, respectively have suggested the need for certain technical corrections to the certification of December 10, 1992.

City Utilities has requested that the Department clarify its reference to pyramiding of benefits included in the Department's certification letter of December 10, 1992. The Department acknowledges that City Utilities no longer takes the position that "the Utah matter involved a transit agency which was willing to provide benefits in pyramiding situations." DOL's determination with respect to this issue is not altered by City Utilities' revised position.

The proviso at the bottom of page two of the Department's certification letter of December 10, 1992, refers to rights, privileges and benefits which are not foreclosed from further modification "under applicable law, **policies,** or the Joint Statement of Intent...". The highlighted material should also have been included in Appendix "B". It is included in the corrected Appendix "B", dated March 29, 1993, and attached to this letter.

The next issue concerns DOL's decision not to include language addressing "project changes" in Appendix "B". DOL has determined that, in this instance, it was appropriate to include the language as part of its certification letter and not to include it in Appendix "B". The enforceability of this right is addressed in item #3 below.

In addition, the union has requested that DOL clarify the langage in item 4 of Appendix "B". The language included in the parenthetical, "if such rights exist", refers to such rights as existed at the date of the initial influx of federal funds. In addition, the parenthetical phrase was inadvertently inserted in the middle rather than at the end of the phrase "union checkoff arrangements." Therefore, DOL is clarifing item 4 of Appendix "B" to read:

> The existing "meet and confer" rights of employees represented by the Union, including the right to arbitrate labor disputes and to maintain union checkoff arrangements, if and as such rights were provided by laws or policies in effect as of the date of the initial influx of Federal funds under the Act to the Recipient, shall be preserved and continued . . . "

The above clarifications are also applicable to the December 10, 1992 certification of project (MO-90-X079). Please place this letter in the official file folder for the project.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the attached Appendix "A" dated December 6, 1991 and the corrected Appendix "B" dated March 29, 1993, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in Appendix "A" and Appendix "B" shall be deemed to cover and refer to the instant project;

3. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of disputes over the interpretation, application, and enforcement of the Section 13(c) agreements and/or arrangements;

4. The term "project" as used in the arrangements of December 6, 1991, and March 29, 1993, shall be deemed to cover and refer to the instant project. The project activities defined by the scope and budget as incorporated in the contract of assistance between the U.S. Department of Transportation and the grantee shall be undertaken, carried out and completed substantially as described in 1) the grant application submitted to the FTA and subsequently referred to the union by the Department, and/or 2) in any budget revision or amendment. Such budget revision or amendment 1) must be reviewed by the Secretary of Labor to affirmatively determine, in an administrative action pursuant to 29 C.F.R. Section 215.5, that it revised or amends the application in immaterial respects, or otherwise does not alter the scope or purpose of the project, or 2) must be the subject of a subsequent Section 13(c) certification action pursuant to the procedures established by 29 C.F.R. Section 215.3. The Secretary's action shall be undertaken prior to any FTA final approval

or award. The grantee will use project assets and equipment in the manner described in such grant application, budget revision or grant amendment; and

5. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local unions which are a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the unions under Appendix "A" dated December 6, 1991 and Appendix "B" dated March 29, 1993, and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

   Should a dispute remain, after exhausting any available remedies under the Section 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Robert A. Schaerfl
Director, United States
Employment Service

Attachments

cc: Arthur Lopez/FTA
Earle Putnam/ATU
John L. Barry/IBEW
Alan E. Bailey/CU

MAR 29 1993

Ms. Letitia Thompson
Acting Regional Manager
Federal Transit Administration
Region II
26 Federal Plaza
Suite 2940
New York, New York 10278

Re: FTA Application
New Jersey Transit
Corporation
Operating Assistance;
Bus Program and Rolling
Stock, Rail Rolling
Stock, Rail Infrastructure
Improvements, etc.
(NJ-90-X037)
Construction of Secaucus
Transfer Complex
(NJ-03-0088)
Purchase Equipment to be Used
in New Kearny Connection
Rail Service
(NJ-03-0089)
Rail Infrastructure
Improvements and Equipment
Purchases
(NJ-03-0096)
Statewide Bus Radio System
Enhancements
(NJ-03-0098)

Dear Ms. Thompson:

This is in reply to the request from your office that we review the above captioned applications for grants under the Federal Transit Act (formerly the Urban Mass Transportation Act of 1964, as amended).

In connection with a previous grant application, the New Jersey Transit Corporation (NJTRANSIT), the Railway Labor Executives' Association (RLEA), the United Transportation Union (UTU), the Transportation-Communications International Union (TCU), and the Transport Workers Union (TWU) executed an agreement dated September 15, 1980, which provides to the employees represented by the unions protections satisfying the requirements of Section 13(c) of the Act.

The NJTRANSIT, RLEA, UTU, TCU, and the IWU have agreed that the terms and conditions of the agreement dated September 15, 1980, as supplemented by a November 15, 1980 side letter, NJTRANSIT and RLEA side letters of understanding dated January 12, 1984 and April 15, 1988, a side letter of November 6, 1992 between the UTU and NJTRANSIT, a side letter of agreement between NJTRANSIT and the UTU dated March 29, 1993 for projects NJ-90-X037 and NJ-03-0096, and certain language to be included in the contract of assistance, under item #3, shall be made applicable to the instant project.

The Amalgamated Transit Union and NJTRANSIT were unable to reach full agreement over the terms and conditions of Section 13(c) arrangements to be applied to the above captioned applications. The parties met on March 9 and 18, 1993 with Department of Labor (DOL/Department) representatives for mediatory assistance. The parties agreed to apply the September 15, 1980 Section 13(c) agreement and two side letters dated March 17, 1993 (for project NJ-03-0088) and March 17, 1993 (for project NJ-03-0089). The parties were unable to agree upon all aspects of a third side letter for application to the pending NJTRANSIT projects. Agreement was reached on all but the issues discussed below. At the end of the last meeting, DOL determined that further mediatory assistance would not be productive and DOL would issue a determination on the remaining issues in dispute. The parties were given the opportunity to submit supplemental information regarding their previously stated positions. The following discussion of the issues concludes DOL's certification of the instant project.

DISCUSSION

Project Nexus

It has been proposed that language be included in the certification that, with regard to a dispute over a claimed violation of Paragraphs (4) or (5) of the September 15, 1980 agreement, the claimant shall not be required to show a project causal nexus. DOL has determined that it is not necessary to include such language, because the existing language in Paragraphs (4) and (5) of the parties agreement cannot be read to incorporate the phrase "as a result of the project." The legislative history of the Act supports that, independent of a causal nexus with the project or tangible harm to individual claimants, Section 13(c)(1) requires the preservation of collective bargaining agreements, and Section 13(c)(2) requires the continuation of collective rights when Federal assistance has been received or is continued to be received.

Physical Requirement

Both parties have included language that addresses the requirement of a physical examination for employees of the new operator. In this instance and based on the facts presented to DOL, Section 13(c) does not require a physical as a condition of continued employment with the new contractor. However, the Department does not preclude the parties from agreeing to an employment physical in the future. Therefore, DOL will include such language in item (B) of the attachment dated March 29, 1993.

Employees Protected

The parties are in dispute as to the contractor to contractor employment rights of the employees of TCT and PABCO. The Department has assessed the situation based on, **but not limited to**, such criteria as the history of the provision of service by NJTRANSIT through noncompetitively bid contracts, and the similarity to a Memphis situation. Based on this review, DOL has determined that the TCT and PABCO employees do have the right to preferential hiring when NJTRANSIT chooses to subsidize a new operator in the provision of service which was previously provided by their employer. This language addresses only the contractor-to-contractor rights of the employees represented by ATU Local 819. The Department, therefore, will include the language which appears in items (A) and (D) of the attachment dated March 29, 1993.

The Department of Labor has determined that the agreement of September 15, 1980, as supplemented by two side letters dated March 17, 1993 and the attachment dated March 29, 1993, provides to employees represented by the ATU protections satisfying Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated September 15, 1980, as supplemented by the side letters referenced in this letter and by the determination in the March 29, 1993 attachment, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement of September 15, 1980, as supplemented by the side letters referenced in this letter and by the determination in the March 29, 1993 attachment, shall be deemed to cover and refer to the instant projects;

3. The contract of assistance shall include the following language:

"As a condition to the award of funding for this project, New Jersey Transit Corporation agrees that it will bargain in good faith, to impasse if necessary, over all subjects deemed mandatory subjects of collective bargaining as measured against the requirements articulated in Amalgamated Transit Union v. Donovan, 767 F.2d 939 (D.C. Cir. 1985). Any dispute or controversy regarding the application or enforcement of this provision shall be resolved through utilization of the dispute resolution procedures set forth in paragraph 19(a) or 19(b), as appropriate, of the September 15, 1980, as supplemented, Section 13(c) Agreement between the parties;"

4. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of disputes over the interpretation, application, and enforcement of the Section 13(c) agreements and/or arrangements; and

5. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local unions which are a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the unions under the September 15, 1980 agreement, as supplemented, and this certification. Such

protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute remain, after exhausting any available remedies under the Section 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Robert A. Schaerfl
Director, United States
Employment Service

cc: Arthur Lopez/FTA
Earle Putnam/ATU
Robert Irvin/RLEA
Highsaw, Mahoney & Clarke
Robert Scardelletti/TCU
Kenneth Moore/UTU
Guerrieri, Edmond & James
George Leitz/TWU
Malcolm Goldstein/O'Donnell & Schwartz
Albert Hasbrouck/NJTRANSIT

FTA:USES:DSP:ROBICHAUD:ys:5-28-93

Mr. Louis Mraz
Regional Manager
Federal Transit Administration
Region VIII
Columbine Place
216 16th Street, Suite 650
Denver, Colorado 80202

JUN 2 1993

Re: FTA Application
Utah Transit Authority
Operating Assistance (CY '92);
Purchase (17) 40-ft Replacement Buses, (8) Small Replacement Buses, (12) 40-ft Expansion Buses, (7) Expansion ADA Vans, (12) Fareboxes, (37) Lifts, (12) Two-way Radios, and Support Services
(UT-90-X018)

Dear Mr. Mraz:

This is in reply to the request from your office that we review the above captioned application for a grant which includes both operating and capital assistance under the Federal Transit Act (the Act).

The Utah Transit Authority (UTA) and Amalgamated Transit Union Local 382 (ATU) have been unable to agree on appropriate Section 13(c) protective arrangements to apply to the instant project. After mediatory assistance by the Department of Labor (Department), the parties were directed, on February 9, 1993, to submit briefs regarding the remaining disputed issues. They were further afforded an opportunity to submit reply briefs by March 16, 1993.

The UTA and ATU have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. In previous determinations by the Department, the factfinding procedure in paragraph (9) of Appendix B was included to supplement the Model Agreement. For the instant grant, paragraph (9) of Appendix C will supplement the Model Agreement in lieu of paragraph (9) of the former Appendix B.

Initials	DMR	ac for	KH					
Date	5/28/93	5/28/93	5.28.93					
Last Name	ROBICHAUD	MULLEN	ANDREWS	GODDARD				
Office Symbol	DSP	DSP	DSP	DSP	USES			

CONCURRENCES: OFFICIAL FILE COPY Return to Room _____ Bldg. _____

The terms and conditions of the July 23, 1975 agreement, as supplemented by Appendix C, provide protections to employees represented by the union which satisfy the requirements of Section 13(c) of the Act in general purpose operating assistance project situations.

Many of the terms and conditions of the attached capital arrangement, designated as Appendix C, have been agreed to by the parties. The remaining disputed issues are herein determined by the Department and are included in Appendix C for application to the instant grant application.

Paragraph (7): Standard for Triggering Notice

The parties were unable to agree on whether notice to negotiate an implementing agreement should be triggered whenever a contemplated change may or will result in dismissal or displacement of employees or working force rearrangements.

Paragraph (5) of the Model Agreement, which the parties have agreed to for operating assistance projects, stipulates that the Recipient shall give at least sixty days notice when contemplating any changes which may result in adverse affects on employees. The term may is also used in the New York Dock conditions imposed by the Interstate Commerce Commission pursuant to Section 5 (2)(f) of the Interstate Commerce Act. See 360 ICC 60, 85 (1979).

The Department has based its decision to include the term may as the triggering standard in paragraph (7) of Appendix C on the New York Dock conditions and the guidance provided by the Model Agreement. The procedure imposed by the Department also includes industry standard language which specifies that an implementing agreement will be negotiated "at the request of either party." Thus, an implementing agreement will not necessarily be needed for every noticed change.

Paragraph (7): Issues to be Addressed in Implementing Agreements

The UTA and ATU continue to disagree over the language included in the Department's March 20, 1989 certification which distinguished interest issues from other issues to be addressed during the negotiation of implementing agreements. As noted in that certification, "the term 'implementing agreement' presupposes that there is authority in an existing Agreement for further development by the parties or for application and interpretation by a neutral arbitrator." Because of arguments provided by the parties subsequent to the Department's earlier certification, the Department here further clarifies the role of

the arbitrator regarding implementing agreement disputes. The arbitrator for an implementing agreement must be concerned only with the application of the existing protective agreement and cannot impose new collective bargaining agreement terms upon the parties because those issues are interest issues. Should either party believe that the authority or jurisdiction of the arbitrator has been exceeded, the party may seek judicial review of any contested portions of the arbitration award.

It is not necessary to include language in paragraph (7) of the Section 13(c) arrangement which specifies that interest issues must be resolved through the factfinding process, because, as specified above, the arbitrator should only be addressing rights issues. Further, an implementing agreement must be the product of a final and binding procedure, whether attained through agreement or arbitration, to satisfy the requirements of Section 13(c).

Paragraph (8): Section 13(c) Claims Arbitration

The ATU has proposed that the final and binding arbitration under Utah Code Ann. §17A-2-1032 (1991) be used to settle disputes regarding the application, interpretation, or enforcement of Appendix C. The UTA proposal is the same as that contained in Appendix B of the Department's 1989 determination.

While recognizing the separability of interest and grievance arbitration under Utah law, the Department finds it appropriate to apply procedures which are contained in the Section 13(c) agreement rather than those referenced in State law. The Department, therefore, has included the UTA proposal with the revision noted below.

The ATU has objected to UTA's proposal to use the American Arbitration Association (AAA) to arbitrate Section 13(c) claims, since other disputes under the capital arrangement are submitted to the Federal Mediation and Conciliation Service (FMCS). The ATU, however, has agreed to AAA for Section 13(c) claims resolution under the Model Agreement. The AAA, therefore, will continue to be included for the capital arrangement.

The UTA has also proposed that the board of arbitration shall render its decision within 45 days after the date of the appointment of the neutral member. Both AAA procedures and the Model Agreement specify that the arbitrator shall render a decision within 45-days from the close of the hearing rather than 45 days from the appointment of the neutral member. This revision is reflected at paragraph 8(c) of Appendix C.

Paragraph (9): Factfinding of Interest Disputes

The Department has considered the ATU proposal that the Utah state law be imposed for interest dispute resolution with inclusion of a factfinding procedure as a "back up" alternative procedure. However, because the appropriate procedure to be put in place is one which clearly can sustain a legal challenge and provide an enforceable dispute resolution procedure, the Department continues to include a factfinding procedure in Appendix C. Nothing in the Department's certification precludes the ATU from exercising whatever rights it has under Section 32 of the Utah state law.

Paragraph (9)(b): Factfinder Qualifications

The parties experienced some difficulty with the procedures included in the Department's earlier certifications for the resolution of interest disputes through factfinding. The imposition of a factfinding procedure is appropriate for the instant UTA projects. However, the previously certified procedure is in need of some refinement.

The "experience" requirement contained in the Department's 1989 determination was intended to "provide for a neutral with experience pertinent to the issues to be addressed." The advantages of relying on a neutral with experience in matters of transportation and public sector interest disputes are clear. Unfortunately, the Appendix B procedure resulted in considerable delay and may have resulted in the exclusion of qualified neutrals in the one factfinding process which the ATU and UTA undertook.

UTA has made an effort to address this delay by proposing a verification process for factfinder qualifications. This added procedure, however, may also be subject to delay through second-guessing of FMCS panel selections. Accordingly, the Department has modified paragraph (9)(b) of Appendix B to provide that the request to FMCS "shall specify a preference for neutral factfinders experienced in matters of transportation and public sector interest disputes, and having a place of business in one of the following States...".

The parties, then, must rely on FMCS to provide them with a panel which includes as many members as FMCS deems possible with the requested experience. This is only a preference, however, and FMCS may act in accordance with its procedural guidelines in conforming to the parties' request. The panel has also been increased to seven (7) members, as proposed by UTA, and to conform to FMCS procedures.

Paragraph (9)(b): Exchange of Factual Information

The issue of information exchange was also raised in connection with the factfinding process initiated in 1991. To ensure a full and fair airing of the issues in dispute as required under ATU v. Donovan, 767 F.2d 939, 955 (D.C. Cir. 1985), all relevant information must be shared between the parties. UTA's proposal confirms this concept, but does not provide assurances that will ensure a neutral determination when the parties are in dispute about whether information is deemed "relevant." The Department, therefore, has added a sentence to the UTA proposal included at paragraph (9)(c) which authorizes the factfinder to issue a binding determination with respect to the non-interest issue of "relevant" information to be shared by the parties and permits the factfinder to adjust the timeframes set forth in the factfinding procedure accordingly. This sentence is derived from the last sentence of paragraph (5)(b) of Appendix B which addresses similar issues in that dispute resolution procedure. Paragraph (9)(c) shall read as follows:

> (c) In connection with a factfinding proceeding under this paragraph, the Public Body and the Union shall exchange such factual information as may be available to them, reasonable in nature and scope, and relevant to the issues presented. The parties agree that no such relevant information shall be withheld. In conjunction with such proceedings, the neutral factfinder shall have the power to compel the production of documents and other information denied in the pre-factfinding period which is relevant to the disposition of the issues, and to adjust the time frames for this factfinding procedure to allow for the receipt and review of such information.

While the court did not find the lack of a binding determination of substantive issues to be a fatal flaw in ATU v. Donovan, 767 F.2d at 955, the court did find that procedural steps to achieve a recommendation on these issues must be binding. Donovan does require a procedure which is mandatory at the request of either party and provides for a full and fair airing of the parties' issues, thus ensuring that the parties will give serious consideration to the factfinder's recommendations. Id. The absence of a procedure to resolve information disputes in factfinding procedures elsewhere demonstrates only that information sharing was not an issue in those cases.

Paragraph (10): Pyramiding of Benefits

The Department has included the "no duplication or pyramiding" of benefits language proposed by the UTA at paragraph (10) of Appendix C, with the addition of the following sentence: This paragraph is intended to be construed consistent with the Hodgson Affidavit in Congress of Railway Unions v. Hodgson, 326 F. Supp. 68 (D.D.C. 1971) and the Federal court's interpretation of the concept of "pyramiding" in New York Dock Railway v. U.S., 609 F.2d 83, 100-101 (2d Cir. 1979).

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated July 23, 1975, as supplemented by paragraph (9) of Appendix C, shall be made applicable to the operating assistance portion of the instant project and made part of the contract of assistance, by reference;

2. This letter and the terms and conditions of the Appendix C dated May 28, 1993, shall be made applicable to the capital portion of the instant project and made part of the contract of assistance, by reference;

3. The term "project" as used in the agreement of July 23, 1975 and Appendix C dated May 28, 1993, shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant project;

4. Disputes over the interpretation, application and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of disputes over the interpretation, application and enforcement of the Section 13(c) agreements and/or arrangements; and

5. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union which is a party to, or otherwise

referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the July 23, 1975 agreement and Appendix C dated May 28, 1993 and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project. Should a dispute remain, after exhausting any available remedies under the Section 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Robert A. Schaerfl
Director, United States
Employment Service

cc: Arthur Lopez/FTA
Jerry Benson/UTA
Jane Sutter Starke/Eckert, Seamans
Cherin & Mellott
Earle Putnam/ATU

U.S.Department of Labor

Office of the American Workplace
Office of Labor-Management Programs
Washington, D.C. 20210

Mr. Joel P. Ettinger
Regional Manager
Federal Transit Administration
Region V
55 East Monroe Street
Suite 1415
Chicago, Illinois 60603

SEP 2 1993

Re: FTA Applications
Miami Valley Regional Transit Authority
Purchase Up To 26 Electric Trolley Buses (ETBs); Purchase and Install Trolley Infrastructure
(OH-90-X172)#1
Purchase Up to 50 ETBs
(OH-03-0124)
Purchase Bus Electrification/ Power Distribution; Purchase Up to 2 ETBs
(OH-03-0126)Revised

Dear Mr. Ettinger:

This is in reply to the request from your office that we review the above captioned applications for grants under the Federal Transit Act.

In connection with a previous grant application, the Miami Valley Regional Transit Authority (MVRTA) and the Amalgamated Transit Union (ATU) Local 382 executed an agreement dated October 22, 1975. The MVRTA and the ATU continue to disagree over the inclusion of the Paragraph (15) interest arbitration provision among the terms and conditions for certification of MVRTA projects. However, since July 29, 1986, the Department has not applied Paragraph (15) of the October 22, 1975 Section 13(c) Agreement to the extent that it provides for interest arbitration. In addition, to satisfy the requirements of the Act, the Department continues to supplement the October 22, 1975 agreement with Section 4117 of the Ohio Revised Code and item four of the enumerated conditions below.

The MVRTA and the ATU also disagree over the inclusion of certain language in Paragraph (5) of their October 22, 1975 agreement. During mediatory assistance by the Department of Labor on April 15, 1993, MVRTA disclosed its concern over subparagraphs (5)(b)

and (5)(c) of language proposed by the ATU, and both parties requested a determination on the issues at impasse for application to the instant projects.

The Department of Labor has reviewed and researched the issues raised by the parties in their discussions regarding this paragraph. The attached "Appendix A" contains the Department's determination of the terms and conditions which will be applied to the above captioned projects in lieu of paragraph (5) of the October 22, 1975 agreement.

The October 22, 1975, agreement, exclusive of paragraph (5), and as supplemented by Appendix A, Section 4117 of the Ohio Revised Code, and item four below, provides to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

DISCUSSION

Paragraph (5): "Notice, Negotiation, and Preconsummation"

The parties have agreed that notice and negotiation language will be included in paragraph (5) and that, in the event that a decision is made to terminate the MVRTA's electric trolley bus service, the change will not occur until an implementing agreement is reached or a final decision is rendered by an arbitrator. MVRTA has proposed that all other intended changes may be made prior to reaching an implementing agreement and that employees would be made whole if affected. The ATU proposal differentiates between types of intended changes based upon their similarity to transactions which the Interstate Commerce Commission (ICC) has addressed under section 5(2)(f) of the Interstate Commerce Act (ICA). Intended changes could be made prior to completion of an implementing agreement except in the case of a merger, acquisition, consolidation or other similar transaction.

The proposal of the ATU is based on section 5(2)(f) labor protections, currently codified at 49 U.S.C. § 11347, which allow for differing implementation requirements based on the type of transaction involved. See New York Dock Ry.-Control-Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979) (mergers, consolidations, and acquisitions); Norfolk and Western Ry.-Trackage Rights-Burlington Northern, Inc., 354 I.C.C. 605 (1978), modified by Mendocino Coast Ry.-Lease and Operate-California Western RR., 360 I.C.C. 653 (1980), aff'd sub nom. Railway Labor Executives' Ass'n v. United States, 675 F.2d 1248 (D.C. Cir. 1982) (trackage rights and leases).

In New York Dock Railway v. United States, 609 F.2d 83 (2d Cir. 1979), the United States Court of Appeals for the Second Circuit confirmed the ICC opinion, that in merger proceedings, the following requirements under the Interstate Commerce Act are appropriate: advance notice, binding arbitration for disputes involving implementing agreements, and the requirement of an implementing agreement as a precondition to the initiation of an action.

The rationale for differing requirements was expressed by the D.C. Circuit court in Brotherhood of Locomotive Engineers v. I.C.C., 808 F.2d 1570, 1573 n.20 (D.C. Cir. 1987), noted that:

> [t]he reason for the difference in the levels of employee protection is the Commission's belief that since transactions other than corporate mergers, consolidations and acquisitions of control -- for example, trackage rights and leases -- are less disruptive and have less significant impact on employee rights, the public interest is better served by postponing vindication for ultimately victorious employees than [by] delaying improvements and efficiencies in rail service.

The application of section 5(2)(f), 49 U.S.C. 11347, by the ICC and supporting case law support the position that, subject to an obligation on the railroad to thereafter make employees whole, a final agreement is not necessary before implementation of a transaction where the impact on employee's rights may be minor. However, situations where there is potential for major impact on employee rights, such as mergers and acquisitions, require an implementing agreement prior to instituting any intended changes.

In administering section 13(c) of the Federal Transit Act, 49 U.S.C. app. 1609(c), the Department of Labor gives considerable weight to interpretations under section 5(2)(f) of the ICA. Section 13(c) requires that "... arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of the Act of February 4, 1887 ..." [the Interstate Commerce Act].

The Department's determination in Appendix A sets forth a procedure for expedited arbitration in the event of a dispute as to whether an intended change may be instituted at the end of the notice period if an implementing agreement is not in place. This procedure requires the parties, in any such expedited arbitration proceedings, to rely upon the standards and criteria utilized by the ICC in similar cases in the rail industry. This approach permits the Department to apply the procedure in Appendix A to MVRTA grants without making an ICC- type determination of the potential impact of the project in each instance.

the ICC in similar cases in the rail industry. This approach permits the Department to apply the procedure in Appendix A to MVRTA grants without making an ICC-type determination of the potential impact of the project in each instance.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects, as described in the above captioned grant applications which were transmitted by FTA to the Department of Labor, and which, thereafter, the Department of Labor referred to the unions on January 22, October 16, and October 30, 1993, respectively, on condition that:

1. This letter and the terms and conditions of the agreement dated October 22, 1975, exclusive of paragraph (5), as supplemented by Appendix A, Section 4117 of the Ohio Revised Code and item five below, shall be the protective arrangements made applicable to the instant projects and shall be made part of the contracts of assistance, by reference, provided, however that paragraph (15) of the October 22, 1975 agreement shall be made applicable except to the extent that it provides for interest arbitration;

2. The term "project", as used in the agreement of October 22, 1975, shall be deemed to cover and refer to the instant projects. The project activities defined by the scope and budgets of the grant applications, as incorporated in the contracts of assistance between the U.S. Department of Transportation and the Public Body, shall be undertaken, carried out and completed substantially as described in (1) the grant applications submitted to the Federal Transit Administration and subsequently referred to the Union by the Department of Labor and/or (2) in any budget revision or amendment. Such budget revision or amendment must be (1) reviewed by the Secretary of Labor to affirmatively determine, in an administrative action pursuant to 29 C.F.R. 215.5, that it revises or amends the application in immaterial respects, or otherwise does not alter the scope or purpose of the project, or must be (2) the subject of a subsequent Section 13(c) certification action pursuant to the procedures established by 29 C.F.R. 215.3. The Secretary's action shall be undertaken prior to any FTA final approval or award. The Public Body will use project assets and equipment in the manner described in such grant applications, budget revision or grant amendment;

3. Any subsequent action by which the Public Body may transfer, convey, or grant any title, rights, and/or interest in project equipment and assets to any subrecipient or subgrantee while itself remaining the project recipient and/or grantee shall require a review and Section 13(c) certification action by the Secretary of Labor prior to, and as a precondition of, the grant amendment or title transfer;

4. The contract of assistance shall include the following language, by reference:

"Absent written mutual agreement by the parties to the contrary, the terms and conditions of any expiring collective bargaining agreement shall remain in place following expiration of such agreement until the effective date of a successor agreement between the parties, or the publication of the fact-finding report, and recommendations as provided for herein, which is earlier."

In addition:

"If either of the parties were to reject the recommendations of the fact-finding panel, the rejecting party shall state its reasons for such rejection and such statement shall be published in the local media along with the findings of facts and recommendations of the panel. The other party has the opportunity to make its position statement public at its own expense;"

5. Disputes over the interpretation, application and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of disputes over the interpretation, application and enforcement of the Section 13(c) agreements and/or arrangements; and

6. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the local union which is a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented

by the union under the above specified arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the projects.

Should a dispute remain, after exhausting any available remedies under the Section 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

cc: Arthur Lopez/FTA
Hank Sokolnicki/MVRTA
John Lombard/MVRTA
Earle Putnam/ATU

U.S.Department of Labor

Office of the American Workplace
Office of Labor-Management Programs
Washington, D C 20210

SEP 23 1993

Mr. Joel P. Ettinger
Regional Manager
Federal Transit Administration
Region IV
55 East Monroe Street
Suite 1415
Chicago, Illinois 60603

Re: FTA Applications
Grand Rapids Area Transit Authority
Add Purchase of Two Replacement Vans, Tire Lease, Capital Cost of Contracting for Demand-Responsive Service, etc.
(MI-90-X164)#1
Purchase Six Replacement Buses, Purchase or Lease Land for up to 12 Park and Ride Lots
(MI-90-X187) **Capital Only**
Purchase Five Replacement Buses
(MI-90-X185)

Dear Mr. Ettinger:

This is in reply to the requests from your office that we review the above captioned applications for grants under the Federal Transit Act (the Act).

The Grand Rapids Area Transit Authority (GRATA or transit authority) and the Amalgamated Transit Union Local 836 (ATU or Union) had entered into negotiations over a Section 13(c) agreement to be applied to the above captioned capital assistance projects. The impetus for the parties' negotiation of new Section 13(c) protective arrangements was the employees' change from private to public sector status effective October 1, 1992. Following negotiations between the parties and mediation by the Department of Labor (Department), the parties submitted position papers. The Department's determination of the applicable arrangements is contained at Appendix A, and the issues in dispute are discussed below.

DISCUSSION

Interest Dispute Resolution Procedures

The Union has not included an interest dispute resolution procedure in its proposal for the instant projects. Rather, it has indicated that interest disputes would be resolved through the utilization of "economic measures that are not inconsistent or in conflict with the collective bargaining agreement or applicable law." While the Union proposal does not specifically include an interest arbitration provision, the Union suggests that the language in paragraph (9) of the parties' July 17, 1979 Section 13(c) agreement, which specifically provides for interest arbitration following a change in employment status, would be applicable law in the event of an interest dispute.

The transit authority has proposed that the dispute resolution procedures set forth in the Michigan Public Employment Relations Act, Mich. Stat. Ann., Sections 423.201-423.216, as supplemented by certain language in its proposal, satisfy the requirements of Section 13(c) of the Act and should be applied by the Department to these grants. (See Amalgamated Transit Union v. Donovan, 767 F.2d 939 (D.C. Cir. 1985).) GRATA also asserts that, "to the extent the Union proposal lacks an effective dispute resolution mechanism within the four corners of the proposed agreement, the Union's proposal is insufficient and should not be certified."

Although the ATU stated that the Department had certified previous GRATA projects without addressing the Section 13(c)(2) dispute resolution procedure, an appropriate interest dispute resolution procedure was in place at the time of each cited certification. For the one capital project to which the parties' 1991 Section 13(c) agreement was applied, the Department did not require an alternative dispute resolution procedure to replace the right to strike because employees still had private sector collective bargaining rights. In subsequent certifications of operating assistance projects, to assure compliance with Section 13(c)(2) of the Act, the Department relied on paragraph (4) of the the National Agreement which provides, in pertinent part, that "there shall be attached where applicable ... dispute settlement procedures ... provided for in ... existing agreements between the Recipient and the Union ... ". Paragraph (9) of the 1979 Section 13(c) agreement provides this dispute settlement procedure. This is consistent with policy which the Department has established elsewhere for the application of a dispute resolution procedure pursuant to paragraph (4) of the National Agreement.

GRATA is correct that in order to satisfy the requirements of Section 13(c) of the Act the Department must ensure that all the enumerated requirements are provided for before making its certification. However, Section 13(c) does not require interest arbitration over the terms and conditions of a collective bargaining agreement. (ATU v. Donovan.) Therefore, in the absence of the parties' mutual agreement to utilize interest arbitration, the Department will not certify the instant projects based on the Union's proposal which may result in the application of interest arbitration. The Department will include, in Appendix A to this certification, the GRATA factfinding procedure, which fully satisfies the requirements of Section 13(c)(2) of the Act. As has been indicated in numerous prior Departmental certifications, the continued effectiveness of specific terms and conditions of Section 13(c) protections applied to previously certified projects remains a matter for determination by State courts or by an arbitrator. (See Jackson Transit, 457 U.S. 15, 102 S. Ct. 2202 (1982).)

Material Modification and Transfer of Title Language

The parties are in dispute over the Union's proposed paragraph 2(b) and (c). This language governs the conduct of project activities in the face of revisions or modifications by the applicant and Section 13(c) responsibilities subsequent to the transfer of title of assets funded with Federal grant funds. GRATA is opposed to the inclusion of provisions addressing these issues in the Department's certification.

To ensure that Section 13(c) protections are appropriately applied should there be a change in the scope of the projects or a transfer of assets, the Department has included language in the second enumerated condition of this certification which is similar to that which was proposed by the Union.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. This letter and the terms and conditions of Appendix A dated September 23, 1993, shall be made applicable to the instant projects and made part of the contracts of assistance, by reference;

2. The term "project" as used in Appendix A dated September 23, 1993, shall be deemed to cover and refer to the instant projects. The project activities defined by the scope and budget of the grant as incorporated in the contracts of assistance between the U.S. Department of Transportation and the grantee shall be undertaken, carried out and completed substantially as described in:

a) the grant applications submitted to the Federal Transit Administration and subsequently referred to the Union by the Department of Labor; and/or

b) any budget revision or amendment referred to the Department by FTA which, (1) the Secretary of Labor affirmatively determines, in an administrative action pursuant to 29 C.F.R. Section 215.5, does not alter the scope or purpose of the project, or otherwise revises or amends the application in immaterial respects, or (2) is the subject of a Section 13(c) certification action pursuant to the procedures established by 29 C.F.R. Section 215.3.

The Secretary's action shall be undertaken prior to any FTA final approval or award. The grantee will use project assets and equipment in a manner substantially as described in such grant application, budget revision or grant amendment;

Any subsequent action by which the grantee may transfer, convey, or grant title, rights, and/or interest in project equipment and assets to any subrecipient or subgrantee while itself remaining the project recipient and/or grantee shall require a review and Section 13(c) certification action by the Secretary of Labor prior to, and as a precondition of, the grant amendment or title transfer;

3. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of disputes over the interpretation, application, and enforcement of the Section 13(c) agreements and/or arrangements; and

4. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the local union which is a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under Appendix A dated September 23, 1993 agreement and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the projects.

   Should a dispute remain, after exhausting any available remedies under the Section 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

Enclosures

cc: Arthur Lopez/FTA
Linda LeFebre/GRATA
Earle Putnam/ATU
Tony Anderson/Eckert, Seamans,
Cherin & Mellott

U.S.Department of Labor

Office of the American Workplace
Office of Labor-Management Programs
Washington, D.C. 20210

SEP 30 1993

Mr. Peter N. Stowell
Regional Manager
Federal Transit Administration
Region IV
1720 Peachtree Road, N.W.
Suite 400
Atlanta, Georgia 30309

Re: FTA Application
City of Spartanburg
Operating Assistance
(SC-90-X065)

Dear Mr. Stowell:

This is in reply to the request from your office that we review the above captioned application for a grant under the Federal Transit Act (Act).

In connection with a previous grant application, the Transit Management of Spartanburg and United Transportation Union (UTU) Local 1814 executed an agreement dated September 15, 1992, which is supplemented by a Resolution adopted by the City Council of Spartanburg on September 14, 1992. Upon reviewing this agreement for application to the instant project, the Department of Labor (Department) has determined that some of the language contained in Paragraph (5) of the agreement was overly broad in scope and would result in a 13(c) arrangement which does not meet the requirements of Section 13(c) of the Act.

Specifically, the first sentence in Paragraph (5)(c) of the agreement provides that "The Public Body or the Contractor may proceed with the proposed change after the sixty (60) day notice period has elapsed." This language would have the effect of permitting the Public Body or the Contractor to proceed with any proposed change in the organization or operation of the transit system regardless of the likelihood or the size of dismissals, displacements or rearrangement of the working forces represented by the union. Such is not permitted under Section 13(c) because it must include benefits no less than those established pursuant to 5(2)(f) of the Interstate Commerce Act.

In administering Section 13(c) of the Act, the Department gives considerable weight to interpretations under 5(2)(f) of the Interstate Commerce Act. In New York Dock Ry.-Control-Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979), the Interstate Commerce Commission (ICC) found that in situations where there is potential for major impacts on employee rights, such as mergers and acquisitions, then, advance notice, binding arbitration, and the requirement of an implementing agreement as a precondition to the initiation of an action are appropriate requirements. For the Department to certify the September 15, 1992 agreement, as signed by the parties, would be permitting the UTU to waive its right to insist on preconsummation of an implementing agreement in all cases. This is not something that the Department can, or will, do. Just as the Department would not permit a union to waive its rights to dismissal or displacement allowances. Further, it should be noted that the Department reads the last sentence of Paragraph (5)(b) to incorporate the standards and criteria utilized by the ICC to address the "preconsummation" issue in cases involving employee protection pursuant to Section 5(2)(f).

The Department has the authority to apply or impose appropriate arrangements, including arrangements which contain only selected paragraphs or portions of paragraphs of the parties' agreements. Therefore, the Department is imposing the terms and conditions of the agreement executed by the parties on September 15, 1992, less the first sentence contained in Paragraph 5(c).

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated September 15, 1992, less the first sentence in Paragraph 5(c), and as supplemented by the City Council Resolution, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement of September 15, 1992, as supplemented, shall be deemed to cover and refer to the instant project;

3. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or

arrangements for the resolution of disputes over the interpretation, application, and enforcement of the Section 13(c) agreements and/or arrangements; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union which is a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the September 15, 1992 agreement, as supplemented, less the first sentence in Paragraph 5(c) and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

   Should a dispute remain, after exhausting any available remedies under the Section 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

cc: Arthur Lopez/FTA
Gertraud Weber/UTU
Holly Fechner/Guerrieri, Edmond & James
Wayne Bowers/City of Spartanburg
Jane Sutter Starke/Eckert Seaman Cherin & Mellott

U.S. Department of Labor

Office of the American Workplace
Office of Labor-Management Programs
Washington, D.C. 20210

DEC 23 1993

Mr. Louis Mraz
Regional Manager
Federal Transit Administration
Region VIII
Columbine Place
216 16th Street, Suite 650
Denver, Colorado 80202

Re: FTA Applications
Regional Transportation District
Purchase 65 Replacement Buses and 9 Replacement Intercity Buses
(CO-03-0053)
Purchase 12 Replacement Buses, Rehabilitation of Market Street and Civic Center Bus Stations
(CO-90-X075)

Dear Mr. Mraz:

This is in reply to the request from your office that we review the above captioned applications for grants under the Federal Transit Act.

In response to requests from Amalgamated Transit Union (ATU) Local 1001 dated June 26, 1992 and May 19, 1993, the Department of Labor (the Department) has undertaken a complete review of the terms and conditions to be applied to certifications for the Regional Transit District (RTD) as a result of a May 26, 1992 decision by the Colorado Supreme Court.

Although the ATU has objected to the Department's proposed certification of the above projects on the same basis as the terms and conditions applied for previous RTD projects, the union did not request an opportunity to negotiate protective arrangements for application to these grants. Thus, the Department may now appropriately certify the above captioned grants.

BACKGROUND

Beginning with its May 27, 1986 certification, the Department did not include the interest arbitration requirement of paragraph (15) of the parties April 7, 1976 Section 13(c) Agreement among the terms and conditions applied to RTD projects. The basis for the Department's decision, in part, was as follows:

> RTD feels that the CLPA provides a sufficient dispute resolution procedure to satisfy the continuation of collective bargaining rights requirement of Section 13(c)(2) of the Act.
>
> . . . were the ATU denied the right to strike by order of the Director, he is required pursuant to Section 8-3-112(2) of the CLPA to order the parties to arbitration, the results of which would be binding.

Upon further review, the Department concluded on March 19, 1987, that, "given that interest arbitration (under Paragraph (15) of the April 7, 1976 Agreement) may not be unconstitutional," and because of certain language at Article I, Section 7 of the parties' collective bargaining agreement, Paragraph (15) had to be included in the Department's certification to satisfy the requirements of Section 13(c)(1). However, this paragraph was supplemented with the CLPA as a backup in the event paragraph (15) was unenforceable, and status quo language was put in place to avoid unilateral control over employment conditions during the CLPA process.

In a letter dated September 29, 1987, the Department modified the conclusions reached in its March 19, 1987 certification, citing the "res judicata implications of the Division 1001 case" on enforcement of the Paragraph (15) interest arbitration provision. The Department noted that it "appeared" that the interest provisions of the 1976 agreement were "unenforceable since at least April 24, 1985, when the decision of RTD v. ATU Division 1001 became final." The Department also deleted the status quo language from our March 19, 1987 certification, deeming such language "unnecessary."

DISCUSSION

Interest arbitration: As a result of the Colorado Supreme Court's May 26, 1992 decision, the ATU has suggested that the appropriate basis for certification of these projects would be the terms and conditions of the Department's March 19, 1987 certification for RTD projects. For the reasons set forth below, the conclusions reached by the Department in our September 29, 1987 letter are not altered by the Colorado Supreme Court

decision. Therefore, the Department will not apply the interest arbitration procedure of paragraph (15) of the April 7, 1976 agreement to the above projects.

While the Colorado Supreme Court upheld the constitutionality of the interest arbitration provisions included in the Colorado Labor Peace Act (CLPA) as those provisions apply to RTD, the Department is not convinced that the Court's decision refutes our prior assessment as to the enforceability of the procedure in paragraph (15) of the parties' April 7, 1976 Section 13(c) agreement.

The requirements of Section 13(c)(2) continue to be satisfied by application of the interest dispute resolution procedures under the CLPA. This is consistent with the Department's certifications for RTD projects since May 27, 1986. Even if there were no question concerning enforceability, the Department would not apply the procedures at paragraph (15) of the April 7, 1976 Section 13(c) Agreement <u>in the absence of the parties' agreement</u> to do so.

Upon reconsideration, the Department is not convinced that Article I, Section 7 of the parties' collective bargaining agreement requires that the April 7, 1976 agreement be continued in perpetuity without modification. Thus the requirements of Section 13(c)(1) are not violated if paragraph (15) is not applied in its entirety. As the parties are no doubt aware, the terms and conditions in their current collective bargaining agreement are protected under 13(c)(1) as stated in paragraph (2) of the April 7, 1976 Section 13(c) agreement. The ATU, however, must resort to the State courts or to grievance procedures contained in the collective bargaining agreement or Section 13(c) agreement for interpretation and enforcement of Article I, Section 7 of the collective bargaining agreement during the term of that agreement.

<u>Status quo language</u>: The Department acknowledges that the status quo language, included in the Department's April 27, 1988 certification was inadvertently omitted from our most recent certification. In the 1988 certification the Department concluded that under the procedures of the CLPA "the RTD could conceivably unilaterally alter the terms and conditions of employment ... ." Therefore, language was included which "provides for retention of the <u>status quo</u> until impasse procedures are completed if the right to strike is denied." RTD did not object to the inclusion of this language. The Department will send a clarification letter to the Federal Transit Administration which supplements our June 30, 1992 certification to include status quo language.

CONCLUSION

The Department of Labor has determined that the following Section 13(c) protective arrangements shall apply for the RTD and the ATU. The instant certification is based on the terms and conditions of the parties' April 7, 1976 agreement, except for Paragraph (15) to the extent that it provides for interest arbitration, and is supplemented by the dispute resolution provisions of the CLPA and status quo language included at item 3 below. These terms and conditions provide to the employees represented by the union protections satisfying the requirements of Section 13(c) of the Act and shall be made applicable to the instant projects.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. This letter and the terms and conditions of the April 7, 1976 agreement, as supplemented by the Colorado Labor Peace Act, C.R.S. 8-3-101 et seq., shall be made applicable to the instant projects and made part of the contracts of assistance, by reference, provided, however, that Paragraph (15) of the April 7, 1976 agreement shall be made applicable except to the extent that it provides for interest arbitration,;

2. The term "project" as used in the April 7, 1976 agreement shall be deemed to cover and refer to the instant projects;

3. The contract of assistance shall include the following language:

   "Should the right to strike be denied employees of the RTD, then, in the absence of written mutual agreement by the parties to the contrary, such agreement not prejudicing either party's rights or positions under the impasse procedures herein, the terms and conditions of any expiring collective bargaining agreement shall remain in place following the expiration of such agreement until the effective date of a successor agreement between the parties, or the completion of the impasse procedures provided for herein, whichever is earlier." and

4. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of disputes over the interpretation, application, and enforcement of the Section 13(c) agreements and/or arrangements; and

5. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the local union which is a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the April 7, 1976 agreement and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the projects.

   Should a dispute remain, after exhausting any available remedies under the Section 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

cc: Arthur Lopez/FTA
Earle Putnam/ATU
Joanne Goldcamp/RTD

OAW:OSP:FLANAGAN:ys:4-29-94

APR 29 1994

Mr. Roger Chapin
Foothill Transit Zone
100 N. Barranca Avenue
Suite #480
Los Angeles, CA 91791-1600

Mr. Robert Scardelletti
International President
Transportation-Communications
International Union
3 Research Place
Rockville, MD 20850

Mr. Ron Carey
International President
International Brotherhood
of Teamsters
25 Louisiana Avenue, N.W.
Washington, D.C. 20001

Sgt. Lee Tainter
President
Transit Police Officers'
Association
P.O. Box 875084
Los Angeles, CA 90087

Re: FTA Application
Foothill Transit Zone
(CA-90-X531)

Gentlemen:

The purpose of this letter is to identify statutory deficiencies in the three arrangements negotiated between the Foothill Transit Zone (FTZ) and the International Brotherhood of Teamsters (IBT), the Transportation Communications International Union (TCU), and the Transit Police Officers' Association (TPOA) for the above referenced project.

Due to an emergency situation, the above project was certified on March 1, 1994 by the Department of Labor (Department) using language other than that which the parties had negotiated. As you are aware the agreements which were negotiated by the parties did not meet the requirements of Section 13(c) of the Federal Transit Act (49 U.S.C. app. Section 1609(c)) (Act).

Following discussion with the parties, the Department agreed to review the negotiated agreements and, as promised in my letter of March 21, 1994 (copy enclosed), the Department has reviewed the parties' arrangements and has identified those sections which are not in compliance with the requirements of Section 13(c). In several of these instances, the Department has suggested language to be included in the parties' arrangements which would bring those sections into compliance.

The parties may decide either to accept the Department's proposed language or may wish to negotiate alternative language. Of course, the Department will then review for statutory sufficiency.

ISSUES

Definition of "Project"

IBT Agreement, Paragraph 1(a)
TPOA Agreement, Paragraph 1(a)

Definition of "As a result of the Project"

IBT Agreement, Paragraph 1(b)
TPOA Agreement, Paragraph 1(b)

These agreements state in paragraph 1(a) that "the term 'Project', ... shall include any changes, whether organizational, operational, technological, or otherwise, which are a direct result of the assistance provided." (Emphasis added.) In addition, paragraph 1(b) defines the phrase "as a result of the Project" as including only those events which are directly related to the Project. Section 13(c), in requiring that fair and equitable arrangements be put in place "to protect the interests of employees affected by such assistance," does not limit employees protections to only those adverse affects which are a direct result of federal assistance. Pursuant to Section 13(c), employees are protected under Section 13(c) from impacts which result either directly or indirectly from the project. The Department is unable to certify an agreement which contradicts this requirement. By letter dated February 18, 1994, FTZ indicated that this issue was one of "certain modifications in the Teamsters' and TPOA Arrangements which would be acceptable to Foothill in the certification of the pending Foothill grants."

Make whole benefits

IBT Agreement
TPOA Agreement
TCU Arrangement

Duty to minimize adverse effects

IBT Agreement
TPOA Agreement

Section 13(c) requires that if the objectives of a project can be met without adversely affecting employees, adverse effects will be avoided. The above agreements contain no language addressing the duty to minimize adverse effects upon employees or to provide

make whole benefits in the event that employees are affected. Although many older Section 13(c) agreements also do not contain such language, the Department requires that it be included where, as here, the applicant has taken the position in negotiations that there is no duty to minimize adverse effects on employees or that compensation of employees can rectify all harms. Therefore, the Department would propose adding the following language to Paragraph 2 of each arrangement:

> "and in such a manner as will satisfy the duty to minimize adverse effects upon employees represented by the union. This paragraph is intended to express the general requirement that the rights and interests of employees represented by the union be protected from effects of the Project. Initially, this means that in designing and implementing the Project the Public Body shall consider the effects the Project may have on employees and attempt to minimize any adverse effects. If objectives can be met without adversely effecting the employees, it is expected that adverse effects will be avoided. The duty to minimize adverse effects is not intended to preclude all actions which would adversely affect employees, but to balance such actions in favor of the interests of employees. In the context of particular Projects events, this paragraph is to be read in conjunction with other provisions of these arrangements. It is thereby intended to emphasize the specific statutory requirement that employees be protected against a worsening of their employment conditions, and that employees receive offsetting benefits to make them whole when unavoidable impacts occur."

Management rights clause

IBT Agreement, Paragraph 4(c)
TPOA Agreement, Paragraph 4(c)

The language contained in paragraph 4(c), often referred to as a management rights clause, specifies that "Nothing in this Arrangement shall be construed to limit any rights the Public Body may have to manage its overall transit system . . ." While other management rights provisions have been approved and certified by the Department, these generally specify that "Unless otherwise provided, nothing in this agreement shall be deemed to restrict any rights the Recipient may otherwise have to direct the working forces and to manage its business as it deems best, in accordance with the applicable collective bargaining agreement." (Emphasis added.) This language from the Model Agreement ensures that the requirements of the Act are satisfied and management's actions are appropriately limited as set forth in the Section 13(c) protective terms and conditions. Without

this language, the agreements might be misinterpreted to permit the Public Body or Contractor to take any action it deemed best regardless of any other language in these agreements.

Standard for Triggering Notice of Changes in Operations

IBT Agreement, Paragraph 5(a)
TPOA Agreement, Paragraph 5(a)

Paragraph 5(a) of these agreements states that written notice shall be given of "any change which **will** result in the dismissal or displacement of employees." (emphasis added.)

Although the term "will" has been used in other Section 13(c) agreements, in this instance the Department has determined that it is not sufficient because it would limit the opportunity for the parties to discuss appropriate implementing agreements and to minimize effects on employees where they may be impacted by a project. The term may is used as the "trigger" for implementing agreements in the New York Dock conditions imposed by the Interstate Commerce Commission pursuant to Section 5(2)(f) of the Interstate Commerce Act(ICA). 49 U.S.C. Section 11347. In addition, paragraph (5) of the Model Agreement, which is an industry standard for operating assistance grants in the country, stipulates that the Recipient shall give at least sixty days notice when contemplating any changes which may result in adverse affects on employees.

The Department has based its decision to require the term may as the triggering standard in paragraph 5(a) of these agreements on the New York Dock conditions and the guidance provided by the Model Agreement.

Preconsummation of Implementing Agreement

IBT Agreement, Paragraph 5(a)
TPOA Agreement, Paragraph 5(a)

Paragraphs 5(a) of the above agreements permit implementation of any intended change in the organization or operations of the transit system which may result in the dismissal or displacement of employees to proceed at the end of the sixty day notice period, without regard to the completion of an implementing agreement, and regardless of the potential for impact upon the employees.

Section 13(c) requires that "... arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of the Act of February 4, 1887 ..." (ICA). Thus,

in administering section 13(c) of the Act, the Department of Labor gives considerable weight to precedents established under section 5(2)(f) of the ICA.

The application of section 5(2)(f), by the Interstate Commerce Commission (ICC) and supporting case law support the position that, subject to an obligation on the railroad to thereafter make employees whole, a final agreement is not necessary before implementation of a transaction where the impact on employee's rights may be minor. However, situations where there is potential for major impact on employee rights, such as mergers and acquisitions, require an implementing agreement prior to instituting any intended changes.

To address the absence of language satisfactorily addressing this issue, the parties may develop an expedited arbitration procedure to determine whether or not the intended change can proceed after the expiration of the notice period. Alternatively, inclusion of a provision requiring completion of an implementing agreement prior to the institution of the intended change also meets the requirements of the Act.

Notice of Rearrangements of the Working Force

IBT Agreement, Paragraph 5(a)
TPOA Agreement, Paragraph 5(a)

Appendix C-1, which establishes the minimum level of many of the required protections under Section 13(c), provides for notice and negotiation of implementing arrangements for changes which result in the rearrangement of forces. Paragraph 5(a) of these agreements does not provide such notice. It only provides for notice of changes which shall "result in the dismissal or displacement of employees represented by the Union." Therefore, appropriate language which provides that notice should be added to the agreements.

Worsened Employee

IBT Agreement
TPOA Agreement
TCU Arrangement

Section 13(c)(3) provides that, "... protective arrangements shall include ... such provisions as may be necessary for ... the protection of individual employees against a worsening of their positions with respect to their employment." This language does not limit the protections against worsening to employees receiving a dismissal or displacement allowance as does paragraph (10) in each of the above arrangements. Numerous earlier Section 13(c) agreements have been certified by the Department without language which specifically addresses "worsening."

However, as counsel for FTZ is aware, the Department has clarified this "worsening" concept in a series of certifications which clearly recognizes that such worsening can occur separately and distinctly from displacement or dismissal and must be remedied. In the current case, because the applicant has argued that employees who are not receiving dismissal or displacement allowances are not otherwise entitled to protections against a worsening of their positions with respect to their employment, the Department requires language that addresses the "worsening" concept. The parties can either adopt the language used in the arrangement imposed by the Department for the protection of the employees represented by the ATU and UTU, use the language in the Department's determination in SMART(copy enclosed), or develop their own language, which of course would be subject to the review of this Department.

Moving Allowance

IBT Agreement, Paragraph 11(b)
TPOA Agreement, Paragraph 11(b)

The language in Paragraph 11(b) of these agreements, by referring to Paragraph (12), appears to restrict the moving allowance of an employee who is laid off following an initial move, pursuant to these protections, and who wishes to return to the location where he was originally employed. Such a restriction is not reflected in Appendix C-1. The language in Paragraph 11(b) should state that "If any such employee is laid off within three (3) years after changing the employee's point of employment in accordance with Paragraph (a) hereof," rather than "in accordance with Paragraph (12)," which would cover only those employees who are retained in the service of the employer, or receiving a dismissal allowance.

Burden of Proof

IBT Agreement, Paragraph 16(c)
TPOA Agreement, Paragraph 16(c)
TCU Arrangement, Paragraph 16(c)

The last sentence of Paragraph 16(c) of the arrangements must be modified to conform to the required burden of proof set forth in Appendix C-1. It shall be the employee's burden to identify the Project and the pertinent facts relied upon, not to "... establish how the project adversely affected the employee," as is contained in these three arrangements. Also, under paragraph 11(e) of Appendix C-1, it is the recipient's burden to prove that "factors other than a transaction (or Project) affected the

employee." (Emphasis added.) It is not sufficient for the recipient to establish that the project "was the predominant cause of the adverse effect" as proposed by FTZ. This position has been clearly refuted in Hodgson's Affidavit in Civil Action No. 825-71.

Time for Filing Claims

IBT Agreement, Paragraph 18(a)
TPOA Agreement, Paragraph 18(a)

Paragraph 18(a) of these agreements contain a twelve (12) month limitation on the time period for the filing of claims. Appendix C-1 contains no limitation on the time period for the filing of claims for effects other than termination or lay off. The industry standard established in the Model Agreement and most other 13(c) arrangements is eighteen (18) months. In his letter of February 18, Mr. Woodman indicated that a change to eighteen (18) months in the IBT and TPOA agreements would be acceptable.

Priority of Reemployment

IBT Agreement, Paragraph 19
TCU Arrangement, Paragraph 19
TPOA Agreement, Paragraph 19

The IBT agreement and the TCU arrangement provide for "priority of employment to fill any vacant position on the transit system in the employment of the Contractor." The TPOA agreement provides for "priority of employment to fill any vacant position on the transit system in the employment of any contractor providing fixed route services for the Public Body."

The Department cannot approve language that specifically limits priority of reemployment to only certain jobs within the jurisdiction and control of the Public Body. FTZ's obligation under Section 13(c)(4) extends to any project contractor which is within its jurisdiction and control and not merely to the current contractor which employs IBT or TCU represented employees or to just those contractors providing fixed route service.

Successorship Clause

IBT Agreement, Paragraph 22
TPOA Agreement, Paragraph 20

The above agreements do not contain language addressing the obligations of an entity which undertakes the management or operation of the system to be bound by these arrangements. Consistent with its duty to provide protections under Section 13(c), FTZ must ensure that any Project Contractor, which

benefits from the receipt of Federal assistance, shares FTZ's obligations. Thus, under the Successorship Clause, FTZ must ensure that other responsible parties comply with the arrangements which it has agreed to on behalf of all beneficiaries of the assistance in order to meet its Section 13(c) obligations. Therefore, the successorship clauses must contain a second paragraph which should contain language such as:

> "Any person, enterprise, body, or agency, whether publicly or privately owned, which shall undertake the management, provision and/or operation of the Project services, or any part or portion thereof, under contractual arrangements of any form with the Public Body, or its successors or assigns, shall agree, and as a condition precedent to such contractual arrangements, the Public Body, its successors or assigns shall require such person, enterprise, body, or agency to agree, to be bound by the terms of this arrangement and accept the responsibility for full performance of these conditions."

With the foregoing modifications, the Department of Labor should be able to approve the above Section 13(c) Arrangements. If you have any further questions concerning our comments, please contact Mr. G. Jay Flanagan of my staff on (202) 219-4473.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

Enclosures

cc: Arthur Lopez/FTA
Stewart Taylor/FTA Region IX
Earle Putnam/ATU
Gertraud Weber/UTU
G. Kent Woodman/ESC&M
Holly Fechner/GE&J
Larry Pruden/TCU

U.S.Department of Labor

Assistant Secretary
for the American Workplace
Washington, D.C. 20210

JUL 26 1994

Mr. G. Kent Woodman
Eckert Seamans Cherin & Mellott
2100 Pennsylvania Avenue, N.W.
Suite 600
Washington, DC 20037

Mr. Leo Wetzel
Associate Counsel
Amalgamated Transit Union
5025 Wisconsin Ave., N.W.
Washington, DC 20016

Re: FTA Application
Foothill Transit Zone
Annual Lease Payments for
Existing Bus Fleet of 192
Buses, Bus Leasing Cost for
17 New Expansion Buses to be
Purchased in FY 1994
(CA-90-X608)

Gentlemen:

In connection with the development of labor protective terms and conditions for the instant project, the issue of the Foothill Transit Zone (FTZ) providing transit service substantially similar to service currently or previously provided by the Los Angeles County Metropolitan Transportation Authority (LAMTA) was raised. The Amalgamated Transit Union (ATU) Local 1277, representing maintenance employees of LAMTA, proposed that FTZ provide ATU represented employees an absolute preference in hiring for comparable positions with retention of their LAMTA terms of employment (e.g., wages, hours, working conditions, etc.).

There are certain circumstances in which such protections might be appropriate and necessary to satisfy the requirements of Section 13(c) of the Federal Transit Act. The instant project, however, provides only for the continuation of the current service in the FTZ service area and contemplates no acquisition, takeover, or replacement of LAMTA routes. In this current situation, the Department has determined that the provision proposed by the ATU is not necessary to satisfy the requirements of the Act.

If future FTZ applications, individually or considered in their cumulative effect, involve or otherwise support the effective acquisition or replacement of LAMTA or other existing service, the appropriate protective terms and conditions to satisfy the specifics of that situation which carry out the intent and requirements of Section 13(c) will have to be in place.

The Department stands ready to certify this project as soon as FTZ and the other labor organizations representing employees in the service area satisfactorily respond to the modifications called for by the Department in its letter of April 29, 1994, and conclude any other negotiations necessary for agreements which meet the requirements of Section 13(c).

With regard to those employees represented by the United Transportation Union (UTU), their representative previously agreed that they would be afforded protections under the same terms and conditions to be made applicable to the ATU. Therefore, for the purposes of protecting the employees represented by the ATU and the UTU, the Department will certify the instant project on the same terms and conditions contained in the Department's final certification of project (CA-90-X531) dated March 1, 1994.

If you have any further questions concerning this project, please contact Mr. G. Jay Flanagan, of my staff, at (202) 219-4473.

Sincerely,

Charles L. Smith
Special Assistant

cc: Donald Durkee/FTA
Roger Chapin/FTZ
Ron Carey/IBT
Robert Scardelletti/TCU
Gertraud Weber/UTU
Lee Tainter/TPOA
Holly Fechner/GE&J

Washington, D.C. 20210

AUG 12 1994

Mr. Sheldon Kinbar
Regional Manager
Federal Transit Administration
Region III
1760 Market Street
Suite 500
Philadelphia, Pennsylvania 19103

Re: FTA Application
Luzerne County Transportation Authority
Purchase 14 35-Foot Buses with Lifts, Associated Capital Maintenance Items, Capital Lease for Tires, and Purchase 4 Service Vehicles
CAPITAL ASSISTANCE PORTION
(PA-90-X274) B

Dear Mr. Kinbar:

This is in reply to the request from your office that we review the above captioned application for a grant under the Federal Transit Act.

The Luzerne County Transportation Authority (LCTA) and the Amalgamated Transit Union Local 164 (ATU) were unable to agree upon the protective arrangements to be applied to the above project. Therefore, representatives of the Department met with LCTA and ATU and provided the opportunity for the submission of briefs on the issues. This is the Department's determination of protective arrangements with respect to the pending capital portion of the project. The operating assistance portion of the project was certified by the Department by letter dated March 22, 1994. Please note that the issue concerning arbitration of specified Section 13(c) claims and the possible need for an escrow account raised in the parties' briefs was addressed in the certification of the operating assistance portion of the project.

In connection with a previous grant application, LCTA and ATU executed an agreement dated October 26, 1973. As explained below, the Department has determined that the terms and conditions of the October 26, 1973 agreement satisfy the requirements of Section 13(c) of the Act for application to the instant project.

FILE

BACKGROUND

In 1974 LCTA acquired two private bus companies, Wilkes Barre Transit Company and White Transit Company, which had been operating in the Wilkes Barre area. The ATU represented employees of the two acquired companies. In connection with the grant application to carry out this acquisition, LCTA and ATU executed the agreement dated October 26, 1973, which was certified by the Secretary of Labor as meeting the requirements of Section 13(c). This agreement contains provisions at paragraphs (4) and (5) which address the carryover obligations of LCTA upon its acquisition. The agreement also identifies at paragraph (14) certain obligations of a successor to LCTA should it cease operations. As a result of financial difficulties which it is currently experiencing, LCTA is exploring a number of options for provision of transit services in Luzerne County.

In its proposal, ATU has included language setting forth specific obligations for any new operator and/or replacement provider in the event of a change in LCTA or its operations. The union's language seeks to provide for the protection/preservation of employee rights in a variety of circumstances in which transit service would be provided in Luzerne County. Thus, ATU proposes that a "new operator" must provide assurances of employment to LCTA's employees and must continue collective bargaining rights. A "new operator" is defined as any entity which undertakes the operation or provision of mass transit services within the County of Luzerne using equipment or facilities previously acquired with Federal assistance. The ATU further proposes that a "replacement provider" must also ensure such employee rights. A "replacement provider" is defined as any subsequently designated recipient, which could include LCTA, using Federal assistance to provide service directly or indirectly in Luzerne County.

For its part, LCTA suggests that the language proposed by the ATU is unnecessary because it is premised on a relationship between the Authority and a subsequent operator which LCTA believes is addressed by paragraph (14) of the parties' 1973 agreement.

DISCUSSION

Paragraph (14) is broadly and appropriately interpreted to define successors and assigns as "(a)ny person, enterprise, body, or agency, whether publicly or privately owned, which shall undertake the management and operation of the transit system." Paragraph (14) further specifies that such entities "shall agree to be bound by the terms of this Agreement and accept the responsibility for full performance of these conditions."

To satisfy Section 13(c), the term "successor" must mean any new operator or replacement provider "which shall undertake the management and operation of the transit system," including LCTA itself. A successor must extend to employees the same collective bargaining arrangements and conditions of employment that existed under the predecessor.

Whereas LCTA interprets the successors and assigns language using only the principles set forth under the National Labor Relations Act (NLRA), the NLRA definition will not satisfy the requirements of Section 13(c). The Department of Labor applies the successorship obligations to a wide range of subsequent providers and requires a successor to do more than merely bargain over the terms and conditions of employment. This broad interpretation satisfies the requirements of the Act and, in this instance, the additional language proposed by the ATU is not necessary.

Because of the circumstances of its initial acquisition, and in the presence of a continuous infusion of Federal assistance, the employees of LCTA must be afforded continued employment and continuation of their collective bargaining rights wherever a "successor", as construed above, undertakes the operation of the system.

Acquisition of the Federally-funded assets of LCTA would obligate a successor to meet all of the requirements in the 1973 Section 13(c) Agreement, including continued assurances of employment pursuant to paragraphs (4) and (5) of the October 26, 1973 Agreement and continuation of existing collective bargaining agreements and collective bargaining rights pursuant to paragraphs (2) and (3) of the Agreement.

Further, paragraph (17) provides that "... this Agreement shall not merge into the contract of assistance, but shall be independently binding and enforceable by and upon the parties hereto ...". Therefore, the successor provisions may be enforceable by the parties pursuant to the terms of the October 26, 1973 Section 13(c) agreement, even if the Federal share is repaid.

Should a replacement provider start service without using the Federally-funded assets of LCTA and without direct or indirect contractual arrangements with the transit authority, that provider will not be bound to the existing obligations of Section 13(c) as set forth for LCTA. However, a replacement provider which is a new designated recipient of Federal funds will have to satisfy the requirements of Section 13(c) in order to qualify for Federal assistance under the Federal Transit Act. These requirements include Section 13(c)(4) which requires "assurances of employment to employees of acquired mass transportation system."

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated October 26, 1973, shall be made applicable to the capital portion of the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement of October 26, 1973, shall be deemed to cover and refer to the capital portion of the instant project;

3. Disputes over the interpretation, application and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of disputes over the interpretation, application and enforcement of the Section 13(c) agreements and/or arrangements; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union which is a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the October 26, 1973 agreement and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

   Should a dispute remain, after exhausting any available remedies under the Section 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding

procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

cc: Donald Durkee/FTA
Earle Putnam/ATU
Harold E. Edwards/LCTA
Anthony Anderson/Eckert Seamans Cherin & Mellott

U.S. Department of Labor

Office of the American Workplace
Washington, D.C. 20210

SEP 2 1994

Mr. Lee O. Waddleton
Regional Manager
Federal Transit Administration
Region VII
6301 Rockhill Road
Suite 303
Kansas City, Missouri 64131

Re: FTA Application
Kansas City Area
Transportation Authority
Capital Assistance: Purchase
Rolling Stock, Spare Parts,etc.
KCATA (50 Buses)
Wyandotte County (6 Vans)
Excelsior Springs (Vans)
Liberty (Vans)
(MO-03-0040) Revised

Dear Mr. Waddleton:

This is in reply to the request from your office that the Department of Labor (DOL or Department) review the above captioned application for a grant under the Federal Transit Act (FTA or Act). This grant application is made by the Kansas City Area Transportation Authority (KCATA or Authority) and includes funds for various recipients in the Kansas City Metropolitan Area.

By letter dated June 21st, the Department issued a partial certification for the Johnson County, Kansas portion of this grant. In addition, the Department was notified by your office that the North Kansas City portion of the application was deleted. This certification, therefore, applies only to the remainder of the grant as captioned above.

During the Section 13(c) processing of this and other grant applications made by the KCATA, the KCATA and the Amalgamated Transit Union (ATU), which represents employees of KCATA and other transit providers in the area, were engaged in a protracted dispute in the Missouri state courts. The matter in dispute, which centered on actions taken by KCATA to terminate the parties' 1973 Section 13(c) agreement, raised questions about the ability of DOL to issue its certification.

In July 1986, KCATA first notified the ATU that it had terminated the parties' 1973 Section 13(c) agreement. Absent a resolution of this matter by the state court,[1] the Department continued to

[1] See Jackson Transit Authority v. Local Division 1285, ATU, 457 U.S. 15, 29 n.13 (1982)

certify pending grants for KCATA using the 1973 agreement as the basis for those certifications. In November 1991, KCATA again notified ATU that it had terminated the 1973 Section 13(c) agreement. However, following discussions with DOL representatives, the KCATA withdrew its November notice to the ATU and assured DOL in writing that it was not the Authority's view that it could cancel Section 13(c) agreements at will. Accordingly, the Department issued subsequent certifications which incorporated the Authority's letter of assurance. Thereafter, through documents filed in state court, the Department learned that KCATA had again asserted its termination of the 1973 agreement. DOL then encouraged the parties to seek alternative solutions through consultation and negotiation. Thereafter, the state court upheld KCATA's termination of the 1973 Section 13(c) agreement and no certifications for KCATA were issued.

The Department recognizes KACTA's rights under state law. However, the legislative history of the Act is clear that in the face of state law conflicts which would not permit the certification of fair and equitable protections as mandated by the statute, the Secretary of Labor may deny certification, and the applicant by its own action will have chosen to forego the Federal assistance.[2]

The Section 13(c) agreement, which is the product of negotiations between an employer or applicant and the labor organization representing affected employees, is the vehicle by which the Secretary expects the protections to be delivered to affected employees.[3] Regardless of what may be permitted by state law, unilateral action which curtails the protections provided by the terms of the agreement and the Department's certification breaches the basis of the Secretary's certification.

---

[2] See Amalgamated Transit Union v. Donovan, 767 F.2d 939, 946-47, 948 n.9 (D.C. Cir. 1985) ("where a state, through its laws or otherwise, fails to satisfy the requirements of § 13(c), the Secretary must cut off funds by denying certification.")

[3] See, e.g., Local Division 519, ATU v. LaCrosse Municipal Transit, 585 F.2d 1340, 1346 (7th Cir. 1978) ("The approval of the Secretary stamps the 13(c) agreement as something more than a mere private contract formulated under the aegis of a federal statute. Instead, the contract is infused with statutory prerequisites."); Local Division No. 714 v. Greater Portland, 589 F.2d 1, 15 (1st Cir. 1978) ("The Section 13(c) protective arrangements are not merely the product of private contracts, freely negotiated, but are vehicles for carrying forward the substantive labor policies set forth in the federal statute.")

ne situation presented by KCATA, where the possibility
isted that the protective agreement may at any time be
rminated by one party, the potential existed that no
rtification could be issued. When KCATA prevailed in state
urt, a question also was raised whether revocation of past
rtifications and recovery of Federal assistance would be
quired. Fortunately, this situation was rendered moot by an
reement of the parties and the August 10, 1994, order of the
rcuit Court of Jackson County, Missouri granting a joint motion
the parties to vacate its decision approving the termination
the 1973 agreement.

e KCATA and the ATU have now agreed "to take all appropriate
eps to obtain...Department of Labor certifications" of pending
ants, and the Department is providing such certification.
wever, should this issue again be raised, the parties are
vised that under the circumstances described above, the
cretary may not be able to issue a certification.

w therefore, with regard to the certification of the instant
ant application, the KCATA and ATU Local 1287 executed an
reement dated April 24, 1973, which was certified for previous
ant applications. That agreement provides to employees
presented by the union protections satisfying the requirements
Section 13(c) of the Act. However, KCATA and the ATU continue
gree over the inclusion of certain language in paragraph
, of the April 24th agreement for certification by the
artment. It is the Department's determination that paragraph
) of the April 24, 1973 agreement shall be made applicable
ept to the extent that it provides for interest arbitration.
h provisions shall be substituted by provisions set forth
ow pursuant to the requirements of Section 13(c)(1).

ddition, the KCATA and ATU Local 1287 executed an agreement
d August 8, 1994, for application to the Wyandotte County
ion of the instant grant which provides to employees
esented by the union protections satisfying the requirements
ection 13(c) of the Act. Mass transit employees in the
ice area of the Excelsior Springs and Liberty portions of the
ant grant shall be afforded protections pursuant to paragraph
of this certification as provided below.

dingly, the Department of Labor makes the certification
d for in the Act with respect to the instant project on
tion that:

1. This letter and the terms and conditions of the above referenced agreements shall be made applicable to the instant project and made part of the contract of assistance, by

reference, provided however, that paragraph (17) of the April 24, 1973 agreement shall be made applicable except to the extent that it provides for interest arbitration;

2. The term "project" as used in the agreement of April 24, 1973, shall be deemed to cover and refer to the instant project;

3. The interest arbitration procedures contained in Sections 1.7 and 1.14 of the parties' November 15, 1986 collective bargaining agreement, or as such appears in the current collective bargaining agreement, shall be preserved pursuant to Section 13(c)(1) of the Federal Transit Act. In the event that the dispute resolution procedures contained in the parties' current collective bargaining agreement are determined not to be applicable to any interest dispute, the procedures contained in Appendix "A" of the Department of Labor's certification for project MO-90-X033, dated December 29, 1986, shall be used as a substitute for (in lieu of) the inapplicable collective bargaining agreement procedures.

4. The protective agreement/arrangement hereby certified by the Secretary of Labor shall be effective and in full force according to its terms and shall continue in effect from year to year during the period of the Federal Contract of Assistance and/or, therefor, for as long as necessary to satisfy its intended purpose to protect potentially affected employees from the impact of Federal assistance.

5. The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements of the grant contract between the Department of Transportation, and the KCATA and the parties to the contract so signify by executing that contract. Employees, or their representative on their behalf, may assert claims solely against the

applicant. This clause creates no independent cause of action against the United States Government.

6. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of such disputes; and

7. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union which is a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the above referenced arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

   Should a dispute remain after exhausting any available remedies under the Section 13(c) agreements, and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

cc: Donald Durkee/FTA
Earle Putnam/ATU
Richard F. Davis/KCATA
James R. Willard, Esq./Spencer Fane Britt & Browne
Brad Scott/Senator Bond's Office

U.S. Department of Labor

Office of the American Workplace
Washington, D.C. 20210

SEP 13 1994

Mr. Stewart Taylor
Regional Administrator
Federal Transit Administration
Region IX
211 Main Street
Room 1160
San Francisco, California 94105

Re: FTA Applications
North San Diego County
Transit District
Purchase Seven Forty-foot Buses,
Construct San Marcos Transfer
Center at Palomar College
(CA-90-X513)
Replacement Bus Components, Bus
Tires, Bus Driver Seats, Expand
Transit Center, Administrative
Office Building, etc.
(CA-90-X564)

Dear Mr. Taylor:

This is in reply to the request from your office that we review the above captioned applications for grants under the Federal Transit Act.

The United Transportation Union (UTU) which represents employees of North San Diego County Transit District (NCTD) requested the opportunity to negotiate a protective agreement in conjunction with the above grants. In addition, the Amalgamated Transit Union (ATU) which represents potentially affected employees of San Diego Transit, another provider in the service area of the project, requested negotiations over an appropriate employee protective agreement. Separate employee protective agreements were negotiated with each of the two unions. Negotiations proceeded through mediation by the Department of Labor and culminated in a briefing process to resolve the remaining issues in dispute. The Department of Labor's determination of the remaining issues follows.

The arrangements at Attachment A will be applied to the above projects on behalf of employees represented by the UTU. The arrangements at Attachment B will be applied to the above projects on behalf of employees represented by the ATU.

DETERMINATION OF ISSUES IN DISPUTE BETWEEN NCTD AND UTU

Terms of Collective Bargaining Agreement Which Survive Expiration of Contract

Both NCTD and the UTU acknowledge that some portions of a collective bargaining agreement may survive its expiration, depending upon the requirements of "applicable law." The UTU has proposed that additional language be included which specifies that, in preserving collective bargaining agreements, NCTD need not "retain any rights which exist by virtue of a collective bargaining agreement after such agreement is no longer in effect, except as may be required under applicable law and federal labor policy, including, but not limited to, Section 13(c) of the Act". (Emphasis added.) The Department regards the phrase "applicable law" as sufficiently inclusive in this instance and has not included the phrase "and federal labor policy" in its determination.

IMPLEMENTING AGREEMENT ISSUES

Application of Protections to NCTD Transit Operations

The parties are in dispute over whether to identify the NCTD operations at paragraph 5(a) as "the District's transit system" (UTU proposal) or "the District's transit bus system" (NCTD proposal). Notice and negotiation language is required whenever a "change ... as a result of the Project ... may result in the dismissal or displacement of employees or the rearrangement of the working forces represented by the Union." This is true whether such a change is made in a grantee's bus operations or to vanpools, paratransit vehicles, or rail operations. The broader language thus more accurately reflects the required scope of Section 13(c) protections and will be included in paragraph 5(a) of Attachment A.

Identification of Existence of a Preconsummation Dispute

The parties are in disagreement over the effect of a failure on the part of NCTD to properly identify in its notice whether it intends to institute a noticed change at the end of the 60-day period. NCTD proposes that the UTU address such a failure through the existing dispute resolution process. The UTU

proposes including language to prohibit NCTD from instituting any change in the absence of a noticed intent to do so. The Department has not included the language proposed by the UTU. The arrangement already contains sufficient provisions at paragraphs (5) and (15) to address any potential failure on NCTD's part to abide by the provisions therein

Time Period for Expedited Arbitration in Preconsummation Disputes

The parties have proposed expedited arbitration procedures to ensure prompt resolution of disputes over whether NCTD may proceed with an intended change for which notice is provided under paragraph (5)(a). NCTD's proposal requires that an arbitration award pursuant to paragraph (5)(b) be rendered "within 30 days from the date the neutral member is appointed." The UTU proposes that the arbitration board render its final decision "within thirty (30) days from the date of the close of the record on the preconsummation issue." The Department has included language whereby the arbitration award is to be rendered within 30 days from the date of the appointment of the neutral member. This language was included by the Department in its determinations of November 27, 1991 for LACTC and September 2, 1993 for Miami Valley. The alternative time period proposed is unnecessarily long for an expedited arbitration procedure.

Burden of Proof in Preconsummation Disputes

The Department relies on the burden of proof standards and criteria used by the Interstate Commerce Commission (ICC) to address the preconsummation issue in cases under Section 5(2)(f) of the Interstate Commerce Act, as amended, currently codified at 49 U.S.C. Section 11347. See September 3, 1993 Miami Valley certification and the November 27, 1991 LACTC determination.

The Department has included language consistent with that standard in paragraph (5)(b) of Attachment A.

Protection of Employees Against a "Worsening"

Although NCTD and the UTU agree that a "worsened employee" is one who is "placed in a worse position with respect to hours, working conditions, fringe benefits or rights and privileges pertaining thereto at any time during the employee's employment as a result of the Project" they disagree on including the term itself in the arrangement. While a formulation with or without this term satisfies the requirements of the Act, the UTU language which contains the term "worsened employee" is included in paragraph (7) of Attachment A because it accurately describes the status of such employees without repeating the definition itself.

The Department also has included in paragraph (7) the explanatory language proposed by NCTD to ensure that arbitrators are aware that, while efforts should be made to restore the precise benefit lost or adversely affected, restitution of the exact benefit is not always possible, and, in such circumstances, alternative remedies can be provided.

Length of Service for Calculation of Protective Period

NCTD and the UTU have proposed differing language to calculate an employee's length of service to determine the employee's protective period. In general, the protections established in Appendix C-1 under Section 405 of the Rail Passenger Service Act set forth standards for Section 13(c) protections. Appendix C-1, at Article I, paragraph 1.(d), provides:

> "Protective period" means that period of time which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of 6 years therefrom, provided, however, that the protective period for any employee shall not continue for a longer period following the date he was displaced or dismissed than the period during which such employee was in the employ of the Railroad prior to the date of his displacement or his dismissal. For purposes of this Appendix, an employee's length of service shall be determined in accordance with the provisions of section 7(b) of the Washington Job Protection Agreement of May, 1936.

Thus, paragraph 7(b) of the WJPA provides the proper basis for calculating an employee's length of service. The language included by the Department at paragraph (14) of Attachment A confirms the Department's determination that paragraph 7(b) of the WJPA establishes the appropriate computation for an employee's length of service for displacement and dismissal allowances and make whole benefits as well as for the lump sum calculation.

Trigger for Invoking Rights Arbitration Procedure

NCTD proposes standard language for the arbitration of disputes between the parties. NCTD, however, interprets the language to mean that a dispute does not arise until after the transit authority responds to a claim; so that the parties may not proceed to arbitration until 30 days after the transit authority responds regardless of when the controversy is first raised.

NCTD's interpretation is inconsistent with the Department's interpretation and applicable law. The Department interprets the language "(a)ny dispute regarding the application, interpretation, or enforcement of any of the provisions of this Agreement, [or Arrangement] which cannot be settled within ... days after such dispute or controversy first arises ..." to mean that a dispute or controversy "arises" when relief is sought against NCTD or the UTU by the other party with respect to this arrangement. The requirements of the Act would not be met without such an interpretation because the applicant could never be compelled to arbitration under the numerous procedures which do not contain a claims process; other controversies which are not individual claims would never have to be answered by the respondent, so they would never require arbitration. Under the procedures in Appendix C-1, as well as those in the Section 18 Warranty and the standard non-union language used by the Department, a dispute may be filed with the Secretary of Labor 30 days after it arises. In each instance, the Department permits claims to be filed in the absence of a response to the claim from the Respondent.

Further, Section 113(b) of the Norris-LaGuardia Act, 29 U.S.C. Section 113(b), provides that "a person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade ... ." (Emphasis added.) Section 2(9) of the National Labor Relations Act, as amended, 29 U.S.C. section 141 et seq, defines "labor dispute" in the same manner. The Department has included the standard Section 13(c) language for invoking rights arbitration in paragraph (15) with the understanding that such is to be interpreted consistent with the Department's interpretation that a dispute or controversy arises when relief is sought.

Remedial Authority of the Arbitrator

NCTD has proposed that the remedial authority of the arbitrator be "confined to ensuring the protections of this Section 13(c) Agreement." The UTU has proposed that "any remedy must be confined to ensuring Section 13(c) protections." The remedial authority of an arbitrator is delineated by the Supreme Court in the landmark case of United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597 (1960):

> "When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgement to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting

> a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency. Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement: he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement."

A Section 13(c) arbitrator must be permitted the same degree of authority in fashioning remedies as that set forth in the above decision. Section 13(c) arrangements are required to specify certain remedies for certain harms; however, such do not represent an exhaustive or limiting list of potential remedies.

The parties here have attempted to delineate the scope of the arbitrator's authority in resolving disputes. While the Supreme Court in the United Paperworkers v. Misco decision provides that the parties may limit the discretion of the arbitrator in this respect, the Department does not believe that it is appropriate to do so in this instance. 108 S.Ct. 364 at 372. Consistent with the Department's November 27, 1991 determination for LACTC and December 10, 1992 certification for City Utilities, Attachments A and B specify that "any remedy must be confined to ensuring Section 13(c) protections." This "confined to ensuring" language is not intended to establish a new standard for review by the courts. The Department intends that the phrase "any remedy must be confined to ensuring Section 13(c) protections," will be interpreted consistent with the Steelworkers Supreme Court case cited above.

Right to Interest Arbitration

The Department has included the language proposed by NCTD which clarifies that the language of this agreement does not provide for the resolution of "interest disputes." While such language would not normally be necessary, it has been addressed in this determination because it was an important issue in the parties' negotiations.

Pyramiding of Benefits

The Department has included at paragraph (16) the language proposed by NCTD relating to pyramiding of benefits which is consistent with that in the November 27, 1991, determination for

LACTC. Language proposed by the UTU on this matter is not a complete explanation of the pyramiding concepts discussed in the New York Dock case. Reference to the New York Dock decision and to Hodgson's Affidavit remains the appropriate means to address this issue.

Timing of Response to Section 13(c) Claims

While a claims handling procedure is not a requirement under Section 13(c), NCTD and the UTU have agreed to such a procedure. However, the parties differ on whether the NCTD should be required to answer a claim within sixty days or within forty-five days. The Department has determined that the forty-five days proposed by the UTU provides adequate time given that the claims procedure is only the initial step for resolving disputes under the parties' arrangement.

Use of Arbitration Procedure for Resolution of Unresolved Claims

As indicated above, rights arbitration may be invoked forty-five days after a dispute arises, and need not await a response under the separate claims procedure. In addition, the Department has included language in paragraph (17) which specifies that "[i]n the event the claim is so rejected by the District, the claim may be processed to arbitration as hereinabove provided by paragraph (15)." This language, while not required, does clarify that the claims procedure is only the first step in handling such a grievance, and that the parties may proceed to arbitration in the face of a negative response to a claim.

Objective of Protective Arrangements

Language is included in Article V, paragraph 1 of Appendix C-1 stating the Department of Labor's intent in setting forth those arrangements. Given the inclusion of such language in Appendix C-1 and the negotiation history in this particular instance, language which specifies the "intent" of the protective arrangements in general terms is appropriate. The Department has specified in paragraph (21) of Attachment A language which sets forth its intent in certifying these arrangements.

DETERMINATION OF ISSUES IN DISPUTE BETWEEN NCTD AND ATU

Protection of Employees Against a "Worsening"

The NCTD is in dispute with the ATU over the specific language which will apply for the protection of employees against a worsening of their positions with respect to their employment. Both parties have included separate paragraphs covering worsened

employees in their proposals. NCTD has proposed that "(a)ny employee placed in a worse position with respect to hours, working conditions, fringe benefits or rights and privileges pertaining thereto at any time during the employee's employment as a result of the Project shall be made whole." The NCTD proposal differs from the ATU's in that the union specifically identifies such employees as "worsened employees" and uses the term "worsened" elsewhere [see paragraphs (9), (10), and (15)] to refer to such employees in those provisions.

In the view of this Department, use of the term "worsened employee" is merely shorthand for the agreed upon phrase "employee placed in a worse position with respect to hours, working conditions, fringe benefits or rights and privileges pertaining thereto at any time during the employee's employment as a result of the Project." While either formulation satisfies the requirements of the Act, the proposal made by the ATU is more succinct and is included at Attachment B.

An additional language difference is presented by NCTD's use of the phrase, "(a)rbitrator's awards must wholly compensate employees for the harm they suffer ... ." The ATU suggests that this language implies that employees are not entitled to make whole remedies except as the result of an arbitrator's award. NCTD indicates that its proposal is derived from language developed by the Department and "is not expressly limited to arbitration awards." The parties' briefs indicate that they agree in principle that the intent of the language is to wholly compensate employees for the harm they suffer, whether in response to an arbitrator's award or in NCTD's response to a dispute. The language included by the Department more accurately reflects the parties's intent for this provision.

The ATU and NCTD agree that protections for worsened employees are triggered "as a result of the Project." The ATU has used this phrase in its proposed paragraph (7) in a number of instances where such does not appear necessary after the initial specification. The Department has included the phrase only where it has been included in the proposals of both the parties.

Finally, the Department has included language in paragraph (7)(b) of Attachment B which specifies that "Any make whole remedy shall cease ..." rather than that "The make whole remedy shall cease ...," because the former formulation more clearly recognizes that more than one make whole remedy may be received by an employee at one time under paragraph (7)(a). Either formulation, however, would satisfy the requirements of the Act.

Length of Service for Calculation of Protective Period

For paragraph (15), both the NCTD and the ATU have proposed that "the protective period ... shall not continue for a longer period ... than the employee's length of service as shown by the records and labor agreements applicable to the employee's employment prior to the date of the employee's displacement, dismissal, or worsening." This language is derived from paragraph (14) of the Model Agreement. The ATU, however, has added in its proposal a final sentence which reads: "For purposes of determining the protective period of a particular employee, the employee's length of service shall be computed as provided in Section 7(b) of the Washington Job Protection Agreement."

In general, the protections established in Appendix C-1 under Section 405 of the Rail Passenger Service Act set forth standards for Section 13(c) protections. Appendix C-1, at Article I, paragraph 1.(d), provides that "... length of service shall be determined in accordance with the provisions of section 7(b) of the Washington Job Protection Agreement of May, 1936." The Department, therefore, will include the additional sentence at the end of paragraph (15).

Trigger for Invocation of Rights Arbitration Procedures

The NCTD and the ATU proposals for paragraph (16) arose out of a controversy over the trigger which permits employees to proceed to arbitration of disputes regarding the application, interpretation and enforcement of the provisions of a Section 13(c) agreement. Although NCTD proposes standard language in providing for the arbitration of disputes and filing of claims, it interprets this standard Section 13(c) language to mean that a dispute does not arise until after the transit authority responds to a claim. Thus, the parties may not proceed to arbitration until the prescribed number of days after the transit authority responds regardless of when the controversy is first raised. The ATU, to address NCTD's interpretation, has proposed new language to address this issue.

For the reasons set forth in our discussion of the UTU arrangements, the Department has included the standard language proposed by NCTD in paragraph (16) of Attachment B without accepting the NCTD interpretation of such. The Department has also modified the time period prior to invocation of arbitration from thirty days to forty-five days which will permit sufficient time for the resolution of disputes through an informal process before resorting to arbitration, as both parties intended. In addition, the Department has incorporated the subpoena power language proposed by the ATU and included in NCTD's proposal at paragraph (18).

Inclusion of Section 13(c) Claims Handling Procedure

The Department of Labor strongly encourages parties to include a claims handling procedure to provide additional opportunities for the resolution of such disputes during a grievance procedure prior to arbitration. However, such a procedure is not included in Appendix C-1 and, therefore, the Department will not require such a procedure in the absence of an agreement by the parties. Thus paragraph (18) of Attachment B includes only the common elements of the NCTD and ATU proposals with respect to filing of claims. The Department recommends that NCTD and the ATU undertake informal efforts to resolve any claim prior to invocation of arbitration.

Remedial Authority of the Arbitrator

The parties have attempted to delineate the scope of the arbitrator's authority in resolving disputes. NCTD has proposed that any award "be confined to ensuring the protections of this Section 13(c) Agreement." ATU has proposed that "any award must draw its essence from this Agreement and/or section 13(c) of the Act."

As indicated in the earlier discussion concerning UTU arrangements, the remedial authority of an arbitrator is delineated by the Supreme Court in the landmark case of United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597 (1960). A Section 13(c) arbitrator must be permitted the same degree of authority in fashioning remedies as that set forth in the above decision. Section 13(c) arrangements are required to specify certain remedies for certain harms; however, such do not represent an exhaustive or limiting list of potential remedies.

While the Supreme Court in the United Paperworkers v. Misco decision provides that the parties may limit the discretion of the arbitrator in this respect, the Department does not believe that it is appropriate to do so in this instance. 108 S.Ct. 364 at 372. Consistent with the Department's November 27, 1991 determination for LACTC and December 10, 1992 certification for City Utilities, Attachments A and B specify that "any remedy must be confined to ensuring Section 13(c) protections." This "confined to ensuring" language is not intended to establish a new standard for review by the courts. The Department intends that the phrase "any remedy must be confined to ensuring Section 13(c) protections," will be interpreted consistent with the Steelworkers Supreme Court case cited above.

Objective of Protective Arrangements

Language is included in Article V, paragraph 1 of Appendix C-1 stating the Department of Labor's intent in setting forth those arrangements. Given the inclusion of such language in Appendix C-1 and the negotiation history in this particular instance, language which specifies the "intent" of the protective arrangements in general terms is appropriate. The Department included in paragraph (24) of Attachment B sufficient language to clarify, in conjunction with the "Whereas" clauses, the intent of the protective arrangement.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. This letter and the terms and conditions of Attachments A and B, attached hereto, shall be made applicable to the instant projects and made part of the contracts of assistance, by reference;

2. The term "project" as used in Attachments A and B shall be deemed to cover and refer to the instant projects;

3. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of disputes over the interpretation, application, and enforcement of the Section 13(c) agreements and/or arrangements;

4. The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements of the grant contract between the Department of Transportation and NCTD and the parties to the contract so signify by executing that contract. Employees, or their representative on their behalf, may assert claims solely against the applicant. This clause creates no independent cause of action against the United States Government; and

5. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the local unions which are party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protections as are afforded to the employees represented by the unions under Attachments A and B and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the projects.

Should a dispute remain, after exhausting any of the remedies under the Section 13(c) arrangements and absent mutual agreement by the parties to utilize any final and binding procedure for the resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

cc: Donald Durkee/FTA
Robert Mullins/NCTD
Jane Starke/Eckert Seamans Cherin & Mellott
Gertraud Weber/UTU
Holly Fechner/Guerrieri, Edmond & James
Earle Putnam/ATU
Leo Wetzel/ATU

U.S. Department of Labor

Office of the American Workplace
Washington, D.C. 20210

SEP 15 1994

Mr. Stewart F. Taylor
Regional Manager
Federal Transit Administration
Region IX
211 Main Street, Room 1160
San Francisco, California 94105

Dear Mr. Taylor:

This is in response to the requests from your office that the Department of Labor (Department) review several grant applications submitted by the Joint Powers Board (JPB) to fund the Peninsula Commute Service (PCS). The JPB, a regional transportation organization created by a joint agreement under California's enabling legislation, is made up of the Santa Clara County Transit District (SCCTD), the San Mateo County Transit District (SMCTD) and the Public Utilities Commission of the City and County of San Francisco (PUC).

The JPB and various rail unions (Transportation Communications International Union, Brotherhood of Locomotive Engineers, Sheet Metal Workers International Union, and United Transportation Union) have agreed to protective terms and conditions for application to the pending grants with one exception. The parties remain at impasse over the rights of the employees should the company or entity managing and/or operating the system change. The parties submitted final positions on that issue to the Department. This is a determination of that issue.

A certification will be made by the Department and notice of that certification will be given by separate letter once protective arrangements are reached between the JPB and the Amalgamated Transit Union.

The Facts

For decades, the Southern Pacific (SP) owned and operated the Peninsula Commute Service (PCS) between San Jose and San Francisco. In 1980, the California Department of Transportation, (Caltrans), with support from the SCCTD, the SMCTD and the PUC, arranged for the continuation of this service through a noncompetitive 10-year subsidy arrangement with SP. During this 10-year period, Caltrans acquired the capital assets of SP using Federal assistance. Federal operating assistance was also used to support the subsidy to SP.

In the late 1980's, Caltrans advised the SCCTD, the SMCTD and the PUC that it intended to withdraw its administrative and financial support of this service. In response, the three organizations created the Joint Powers Board as the policy-making body which would operate the PCS. Then, in the early 1990's, the JPB paid $209 million to acquire title to the right-of-way from SP, and was given title to the rolling stock, stations, and parking facilities by Caltrans.

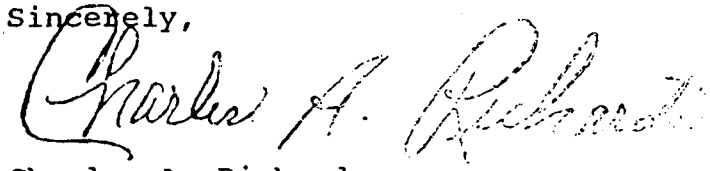
On July 1, 1992, JPB assumed the administrative responsibilities for PCS. The JPB continued the service via contract with Amtrak and the employees represented by the rail unions transferred from SP to Amtrak. On June 30, 1993, when Caltrans ceased financial participation, the JPB assumed full responsibility for the PCS.

Determination

The Department has assessed the situation based on the history of the provision of service by Caltrans through the noncompetitive subsidy contracts with SP and Caltrans' purchase of rolling stock, stations, and parking facilities, with Federal assistance. Caltrans, through the 10-year subsidy arrangement and purchase of the assets necessary to continue this service, effectively acquired the previously private operation of the PCS. This service acquired with Federal funds while under Caltrans is now under the control of the JPB and the employees are entitled to a continuation of the rights they enjoyed at the initial influx of the Federal funds. Both the JPB and the rail unions recognized in exchanges during negotiations that any employee working on the PCS represented by the rail unions should be granted a preference in hiring, that there should be recognition of the bargaining agent, and a requirement that a subsequent contractor enter into collective bargaining agreements. In addition, the Department has determined that in order for the arrangements to be fair and equitable, where, as here, there has been an acquisition, Section 13(c)(1) requires "the preservation of rights, privileges, and benefits ... under existing collective bargaining agreements or otherwise." Accordingly, the arrangement here will require that Amtrak's obligations, with regard to rights, privileges and benefits under an existing collective bargaining agreement should be assumed by any subsequent contractor. Further, pursuant to Section 13(c)(3), no employee of Amtrak on the PCS should suffer a worsening of employment, as a result of the project, provided that rights, privileges, and benefits may be modified by collective bargaining.

With regard to other rail unions which were not represented at the last mediation session at the Department, the parties have agreed that all rail unions representing employees on the PCS shall enjoy the same protections contained in the attached terms and conditions.

Sincerely,



Charles A. Richards
Deputy Assistant Secretary

Enclosure

cc: Donald Durkee/FTA
Larry Steuck/JPB
Gertraud Weber/UTU
Geurrieri, Edmond & James
Robert Irvin/RLEA
Highsaw, Mahoney & Clarke
Gerald Haugh/JPB
Robert Scardelletti/TCU
Earle Putnam/ATU
George Kourpias/IAM
John Barry/IBEW
John Sweeney/SEIU
George Leitz/TWU
Mac Fleming/BWME
Douglas Barton/Hanson, Bridgett, Macus, Vlahos & Rudy
Lee Ann La France/Hanson, Bridgett, Macus, Vlahos & Rudy
G. Kent Woodman/Eckert, Seamans Cherin & Mellott

U.S. Department of Labor
Office of the American Workplace
Washington, D.C. 20210

SEP 21 1994

Mr. Louis F. Mraz
Regional Manager
Federal Transit Administration
Region VIII
Federal Office Building
1961 Stout Street
Room 520
Denver, Colorado 80294

Re: FTA Application
Regional Transportation
Commission of Clark County,
(Las Vegas) Nevada
Operating Assistance: FY 1994
Capital Assistance: 15 ADA 40'
Buses; 54 ADA Vans; 5
Articulated ADA Buses;
Fareboxes; Radios; Support
Vehicles
(NV-90-X021)

Dear Mr. Mraz:

This is in reply to the request from your office that we review the above captioned application for a grant under the Federal Transit Act (Act).

The Service Employees International Union (SEIU) Local Union 1107, the International Brotherhood of Teamsters (IBT) Local Union 631, and the Amalgamated Transit Union (ATU) Local Union 1637 have negotiated separately with the Regional Transportation Commission of Clark County, Nevada (RTC) over protective arrangements to be made applicable to both the capital and operating portions of the above grant.

In regard to the RTC and the SEIU, the parties executed a Section 13(c) agreement dated January 13, 1994, which provides to employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

In regard to the RTC and the IBT, the parties, on August 22, 1994, agreed that the terms and conditions of their previous Section 13(c) Agreement, dated November 12, 1992, should be made applicable to the above captioned grant application. During the Department's initial review of the November 12, 1992 Agreement, the Department requested and received clarifications pertaining to certain provisions of that Agreement. With regard to paragraph (14)(b), the parties have agreed that the language concerning the remedial authority of the independent arbitrator was meant to include examples of the arbitrator's authority and not meant to limit it to those powers listed in that paragraph.

Further, with regard to the priority of employment addressed in paragraph (17), this paragraph calls for a "... priority of employment to fill any vacant position with any entity providing fixed route service under contract with the Public Body which is reasonably comparable... ." In the past, this language was deemed acceptable because the Department had been assured that fixed route service was the only service being provided under contract with the Public Body. The Department has since been advised that other service, including demand-response paratransit service, is now being provided. The Department, pursuant to its guidelines at 29 C.F.R. 215.3(e), has reviewed the protections and determined that, in order to satisfy the requirements of the Act, the relevant parts of Paragraph (17) shall instead read, "... priority of employment to fill any vacant position within the jurisdiction and control of the Public Body which is reasonably comparable... ." With this supplemental language, the November 12, 1992 Agreement provides to employees represented by the union protections satisfying the requirements of Section 13(c) of the Act.

In regard to the RTC and the ATU, the Department provided technical and mediatory assistance to the parties by correspondence, telephone discussions, and meetings. At the end of those meetings, the parties had resolved all but five issues. Therefore, as to these remaining issues, the Department has now completed its review and, as discussed below, has determined the protections to be made applicable to the instant grant. All other provisions are applied as agreed to by the parties.

The attached document, entitled "Arrangement Pursuant to Section 13(c) of the Federal Transit Act ... September 21, 1994," (Arrangement) contains the Department's determination of the terms and conditions which are applied to the above project on behalf of employees represented by the ATU and which satisfy the requirements of Section 13(c) of the Act.

DISCUSSION

Second "Whereas" Clause

The RTC has proposed a "whereas" clause which states that "the Public Body recently established the Citizens Area Transit System to provide new fixed route and paratransit services to the Las Vegas Valley." (Emphasis added.)

While many Section 13(c) agreements include information to identify the grantee as a provider of transit service to a particular geographic area, the RTC proposal added the modifiers "recently established" and "new". The ATU seeks to omit these modifiers and has proposed that the Citizens Area Transit system (CAT) be identified only as the "transit system." The phrase "transit system" is used by both the parties, thus the Department has included only that language.

Paragraph (5): Trigger for the Notice and Negotiation Provision

The RTC has proposed in paragraph 5(a) that the notice and negotiation provision be triggered "... in a rearrangement of the workforce that adversely affects employees represented by the Union ... ." (Emphasis added.) The ATU proposes language used in many arrangements which requires notice and negotiation in the event of a rearrangement of the workforce without regard to any judgment as to whether such would be "adverse".

The RTC believes its proposal is appropriate since the objective of Section 13(c) is to protect employees from the adverse consequences of federal projects, and the RTC is required to provide advance notice and assure early and continuous public involvement regarding federally funded projects and activities.

The RTC also believes that the public disclosure process is sufficient to ensure that the union "will have known of the project or activity for months or even years" before it is implemented. Knowledge of the project, however, cannot replace the opportunity provided under Section 13(c) to negotiate over the application of the protective arrangement. Neither the Washington Job Protection Agreement nor Appendix C-1 includes the language proposed by the RTC. Therefore, the Department of Labor will not include the proposed language in its certification.

Paragraph (14): Trigger for Invoking Rights Arbitration

The RTC and the ATU proposals for paragraph (14) arose out of a controversy over the proper interpretation of the phrase "after such dispute first arises." The RTC has proposed language used in many arrangements to provide for the arbitration of disputes. In the RTC view, a determination of when a dispute arises depends

upon the individual case and is "similar to the concept of when an impasse occurs in collective bargaining under the NLRA." The ATU interprets this same language to mean that a dispute arises when there is "an allegation the [Arrangement] has been violated or a grievance questioning its interpretation or application." The ATU, to counter the RTC's interpretation, has proposed new language to address this issue.

The RTC's interpretation is inconsistent with the Department's interpretation and applicable law. The Department interprets the language, "... any dispute ... regarding the application, interpretation, or enforcement of any of this [Arrangement] ... which cannot be settled within ... days after such dispute first arises ..." to mean that a dispute "arises" when relief is first sought under an arrangement. This is consistent with Section 113(b) of the Norris LaGuardia Act, 29 U.S.C. Section 113(b), and Section 2(9) of the National Labor Relations Act, as amended, 29 U.S.C. Section 152(9).

Although the Department has included in this certification the language proposed by the RTC for paragraph (14), it is with the caveat that it is to be interpreted consistent with the Department's interpretation as referenced above. Also, the Department has specified that arbitration may be invoked forty-five (45) days after a dispute arises rather than thirty days. This will allow the RTC sufficient time to respond in accordance with the procedures included at paragraph (17) prior to arbitration being invoked.

Proposed Paragraph (15): Carryover of Employees and Labor Contract

The parties disagree over whether to include language in the proposed Section 13(c) arrangement which would guarantee a preference in hiring for employees represented by the ATU if the RTC contracts with a new entity to provide the existing Citizens Area Transit service. Such a preference, assurance, or guarantee of employment for existing employees at a time of transition in ownership, operation, or management of transit services is sometimes referred to as "carryover obligations" or "contractor-to-contractor rights." The ATU has proposed a new paragraph (15) to provide such rights, while the RTC maintains that a hiring preference is not required by Section 13(c) in this case. The Department has not included the ATU language, for the reasons discussed below.

Section 13(c), at (c)(4), does, in fact, require "assurances of employment to employees of acquired mass transportation systems." (Emphasis added.) And, while the ATU did argue that an acquisition or takeover occurred, it relied principally on Section 13(c)(1) and (2) for the protections it sought. Section 13(c)(1) and (2), which require the preservation of rights,

privileges, and benefits and the continuation of collective bargaining rights, are not, in and of themselves, sufficient to ensure a right to jobs. In other words, no exclusive job right or preference is derived solely from (c)(1) and (2) absent the protections afforded by Section 13(c)(4) under an acquisition. This is not to say that Section 13(c)(1) and (2) only apply in the context of acquisitions. They remain as required protections as do all other provisions of Section 13(c).

The RTC correctly captures this point when it states that neither Section 13(c)(1) nor (c)(2) provide guaranteed jobs, but rather ensure that rights achieved through collective bargaining with an employer are preserved and that the process for negotiating labor contracts is continued with the employing entity. These provisions standing alone do not operate to create new employment relationships with a third party, nor do they require the hiring of a predetermined workforce.

Employees of the transit system would be entitled to assurances of employment if it were determined that Federal assistance was used to acquire the LVTS transit system. Section 13(c)(4) ensures such protections to affected employees in the context of an acquisition. In addition, the Act provides further guidance at Section 3(e), which calls for the Secretary's certification of protections as a condition for "... directly or indirectly acquiring any interest in, or purchasing any facilities or other property of a private mass transportation company ...." (Emphasis added.) Clearly the Congress envisioned the possibility of situations other than the simple and direct purchase of a local bus company.

In support of their respective positions, the parties presented voluminous information and numerous arguments relating to the question of whether or not the service provided by LVTS was acquired by the RTC[1].

To determine whether an acquisition occurs for purposes of Section 13(c), and thus to certify that the protection of employees is "fair and equitable," the Department weighs various considerations as it conducts its review of the issue. The review and analysis considers not only the purchase of assets, but also factors affecting the extent of control exercised over transit operations. These factors include, but are not limited to: control or operation of assets through lease, contract, or

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[1]The RTC submitted an approximately 675-page appendix to its reply brief. After the Office of the Solicitor of Labor made a determination that all but one document in the submission was clearly appropriate within the page limitations set, the remaining materials were included as part of the record.

other arrangement; subsidies for the purchase or operation of assets (without which service would not be provided); direct or indirect control or authority over operations by the granting of exclusive license, franchise, or charter from a government authority; the ability to determine or influence routes, schedules, headways, and equipment to be employed; and the ability to determine or influence internal management decisions, such as the allocation of financial/capital or human resources. These considerations or criteria are not independently determinative, but they must be considered to ascertain whether an acquisition has occurred which would require Section 13(c)(4) assurances.

Following a review of the information presented in this case, the Department has determined that no acquisition took place (see Sections (3)(e) and 13(c)) and, therefore, the language proposed by the ATU is not appropriate. The facts presented do not indicate that the RTC directly purchased the assets of LVTS or that it exercised sufficient control over LVTS to support a determination that the LVTS system was acquired with Federal assistance. Among the determinative factors considered were that LVTS was operated independently of the RTC; although LVTS leased certain assets from the RTC, it was not dependent upon the RTC to conduct its operations; LVTS was chartered through the state and did not lose the right to continue to provide service upon the establishment of the RTC service; and LVTS continued to operate in competition with the RTC for a period of time before it ceased its operations. Accordingly, the Department has determined in this instance that neither a direct nor indirect acquisition has occurred which would require continued assurances of employment under Section 13(c)(4).

References also were made to using "Memphis Plan" arguments to ensure the continuation of collective bargaining and the preservation of rights in order to secure the argued for job rights. The application of a Memphis formula, as envisioned by the Congress, was specifically intended to address a public sector prohibition on collective bargaining in the context of an acquisition. Any broad reference to a Memphis "type" situation which focuses on the use of a contractor and omits the critical factor of an acquisition is not an accurate characterization of a Memphis formula. Here the protections being sought cannot be derived from the application of the Memphis formula.

Paragraph (16)(b): Claims Handling Procedure

Paragraph (16)(b) includes language, agreed to by the parties, providing that the RTC will respond to a claim "not later than forty-five (45) days after the date of the filing of the claim." The parties also agree that "[i]n the event the claim is so rejected by the Public Body," the claim may be processed to arbitration pursuant to paragraph (14).

The RTC has also proposed and the ATU has agreed to a procedure for further joint investigation of the claim which may be invoked by the union. This agreement is dependent on the Department including language which would clarify that a claim may be processed to arbitration, pursuant to paragraph (14), forty-five days after being filed, notwithstanding the union's invocation of the procedures for further joint investigation set forth in paragraph (16)(b).

The Department will not include this procedure for further joint investigation absent language which insures neither party is impeded from invoking arbitration. Therefore, the Department has included the language proposed by the ATU which, consistent with the Department's interpretation of paragraph (14), as described above, permits the union to proceed to arbitration forty-five days after the filing of the claim.

With the issues so determined, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreements dated January 13, 1994, and November 12, 1992, as interpreted and supplemented in the above references, along with the attached Arrangement dated September 21, 1994, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the November 12, 1992 agreement shall be deemed to cover and refer to the instant project;

3. Disputes over the interpretation, application and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned arrangements which cover such disputes;

4. The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements of the grant contract between the Department of Transportation and the RTC,

and the parties to the contract so signify by executing that contract. Employees, or their representative on their behalf, may assert claims solely against the applicant. This clause creates no independent cause of action against the United States Government; and

5. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union which is a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the unions under the above referenced arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

   Should a dispute remain after exhausting any available remedies under the Section 13(c) arrangements, and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards
Deputy Assistant Secretary

cc: Donald Durkee/FTA
Earle Putnam/ATU
John Sweeney/SEIU
Ron Carey/IBT
Dennis Kist/Kist & Associates
Kurt Weinrich/RTC
G. Kent Woodman/Eckert Seamans Cherin & Mellott

U.S. Department of Labor
Office of the American Workplace
Washington, D.C. 20210

SEP 28 1994

Mr. Stewart Taylor
Regional Manager
Federal Transit Administration
Region IX
211 Main Street, Room 1160
San Francisco, CA 94105

Re: FTA Application
Peninsula Corridor
Joint Powers Board
(CA-03-0411)
(CA-23-9009)
(CA-90-X544)
(CA-90-X581)
(CA-90-X605)

Dear Mr. Taylor:

This is in reply to the requests from your office that we review the above captioned applications for grants under the Federal Transit Act.

With regard to the employees represented by the rail unions, either working on the Peninsula Commute Service or in the service area of the Peninsula Corridor Joint Powers Board (JPB), the Department issued a determination on September 15, 1994, which included as an attachment the protective arrangement (copy enclosed). The terms and conditions contained in that determination and the arrangement shall be made applicable to the instant projects.

In addition, JPB executed an arrangement dated September 22, 1994, which provides to employees represented by the Amalgamated Transit Union (ATU) Locals 265, 1225, 1574, and 1700 protections satisfying the requirements of Section 13(c) of the Act. The JPB and the ATU have agreed that the terms and conditions of the arrangement dated September 22, 1994, shall be made applicable to the instant projects.

At the end of the meeting which resulted in the September 22, 1994 arrangement, the parties were still in disagreement over language concerning transfers of title and material modifications to grants. To address these issues the Department of Labor is including language in the second enumerated condition of this certification to ensure that Section 13(c) protections are appropriately applied should there be a transfer of the ownership or title of project assets that JPB is acquiring under this grant. In addition, the Department has included language addressing material modifications to ensure that the project is carried out as specified in the grant.

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Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant projects on condition that:

1. This letter and the terms and conditions of arrangement dated September 22, 1994, and the Department's letter of determination dated September 15, 1994, with its attached arrangement, shall be made part of the contracts of assistance, by reference;

2. The term "project" as used in the arrangements of September 22, 1994, and September 15, 1994, shall be deemed to cover and refer to the instant projects. The instant project activities defined by the scope and budget as incorporated in the contracts of assistance between the Department of Transportation and the Recipient shall be undertaken, carried out and completed substantially as described in the grant applications received and referred by the Department and/or in any budget revision or amendment. Any such budget revision or amendment 1) must be reviewed by the Secretary of Labor to affirmatively determine, in an administrative action pursuant to 29 C.F.R. 215.5, that it revises or amends the project in immaterial respects, or otherwise does not alter the scope or purpose of the project, or 2) must be the subject of a subsequent Section 13(c) certification review pursuant to the procedures established by 29 C.F.R. 215.3. The grantee will use project assets and equipment in the manner described in such grant application, budget revision or grant amendment.

   Any subsequent action by which the grantee may transfer and title, rights and/or interest in project equipment or assets to any other entity, person, enterprise, body or agency, including any subrecipient or subgrantee which operates in the service area, for purposes eligible for assistance under the Federal Transit Act, shall require a review of the Section 13(c) certification action by the Secretary of Labor;

3. Disputes over the interpretation, application and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this certification letter, shall be resolved in accordance with the provisions in the aforementioned agreements and arrangements for the resolution of disputes over the interpretation, application, and enforcement of the Section 13(c) agreements;

4. The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements of the grant contract between the Department of Transportation and JPB and the parties to the contract so signify by executing that contract. Employees, or their representative on their behalf, may assert claims solely against the applicant. This clause creates no independent cause of action against the United States Government; and

5. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the local union which is a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the above referenced arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the projects.

   Should a dispute remain, after exhausting any available remedies under the Section 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the

Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards
Deputy Assistant Secretary

cc: Donald Durkee/FTA
Larry Steuck/JPB
Gertraud Weber/UTU
Geurrieri, Edmond & James
Robert Irvin/RLEA
Highsaw, Mahoney & Clarke
Gerald Haugh/JPB
Robert Scardelletti/TCU
Earle Putnam/ATU
George Kourpias/IAM
John Barry/IBEW
John Sweeney/SEIU
George Leitz/TWU
Mac Fleming/BWME
Douglas Barton/Hanson, Bridgett, Marcus, Vlahos & Rudy
Lee Ann La France/Hanson, Bridgett, Marcus, Vlahos & Rudy
G. Kent Woodman/Eckert, Seamans Cherin & Mellott

U.S. Department of Labor
Office of the American Workplace
Washington, D.C. 20210

SEP 28 1994

Mr. Stewart Taylor
Regional Administrator
Federal Transit Administration
Region IX
211 Main Street
Room 1160
San Francisco, California 94105

Re: FTA Applications
North San Diego County
Transit District
(CA-90-X513)
(CA-90-X564)
CLARIFICATION

Dear Mr. Taylor:

This is in reference to the above captioned applications for grants under the Federal Transit Act which were certified by the Department of Labor (the Department) on September 13, 1994.

The Department provides this clarification based upon its further review and discussion with the parties of the terms and conditions to be applied to the above captioned grants.

The Department's certification is revised as follows:

1) The Department had determined that transfer of title and material modification language would be included in our certification for the above grants. This language was inadvertently overlooked in the final certification and will be included at item 4, in addition to the language previously included at item 4, which will now read:

4. The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements of the grant contract between the Department of Transportation and NCTD and the parties to the contract so signify by executing that contract. Employees, or their representative on their behalf, may assert claims solely against the applicant. This clause creates no independent cause of action against the United States Government; and

The project activities defined by the scope and budget as incorporated in the contract of assistance between the U. S. Department of Transportation and NCTD, shall be undertaken, carried out and completed substantially as described in (1) the grant application submitted to the FTA and subsequently referred to the unions by the Department of Labor and/or (2) any budget revision or grant amendment which a) the Secretary of Labor affirmatively determines, in an administrative action pursuant to 29 C.F.R. 215.5, does not alter the scope or purpose of the Project or otherwise revises or amends the application in immaterial respects, or b) is the subject of a Section 13(c) certification action pursuant to the procedures established by 29 C.F.R. 215.3. The Secretary's action shall be undertaken prior to any FTA final approval or award. Project equipment and assets shall be used only in the manner described in such grant application and/or budget revision or grant amendment;

Any subsequent action by which NCTD may transfer, convey, or grant any title, rights, and/or interest in project equipment and assets to any subrecipient or subgrantee while itself remaining the project recipient and/or grantee shall require a review and Section 13(c) certification action by the Secretary of Labor prior to, and as a precondition of, the grant amendment or title transfer;

2) At paragraph (7)(a) of Attachment B, the word "benefits" in the second sentence should read "benefit."

3) At paragraph (7)(b) of Attachment B, the Department will substitute the word "any" for the word "the" in reference to "any make whole remedy," as indicated in the September 13, 1994 certification letter at the bottom of page 8.

4) At paragraph (16)(a) of Attachment B, the sentence beginning "The decision by majority vote to the arbitration board ..." shall read "The decision by majority vote of the arbitration board ... ."

5) At paragraph (16)(a) of Attachment B, the sentence beginning "Authority of the arbitration board ... " shall be replaced by the sentence "Authority of the arbitration board shall be limited to the determination of the dispute or controversy regarding the interpretation, application, or enforcement of the provisions of this Arrangement, not otherwise governed by Paragraph 13(c) of this Arrangement."

6) At paragraph (16) of Attachment B, the last subparagraph should be designated "(b)" rather than "(c)."

7) The second sentence in paragraph (18)(a) of Attachment B shall not be included, as was indicated in the September 13, 1994 certification letter at the top of page 10.

This clarification letter is applicable retroactive to the September 13, 1994 certification date and should be placed in the official file folder for the projects.

Sincerely,

Charles A. Richards
Deputy Assistant Secretary

cc: Donald Durkee/FTA
Robert Mullins/NCTD
Jane Starke/Eckert Seamans Cherin & Mellott
Gertraud Weber/UTU
Holly Fechner/Guerrieri, Edmond & James
Earle Putnam/ATU
Leo Wetzel/ATU

U.S.Department of Labor

Assistant Secretary
for the American Workplace
Washington, D.C. 20210

November 7, 1994

Mr. Louis F. Mraz
Regional Manager
Federal Transit Administration
Region VIII
Federal Office Building
1961 Stout Street
Room 520
Denver, Colorado 80294

RE: FTA Application
Regional Transportation
Commission of Clark County,
(Las Vegas) Nevada
Operating Assistance: FY 1994
Capital Assistance: 15 ADA 40'
Buses; 54 ADA Vans; 5
Articulated ADA Buses;
Fareboxes; Radios; Support
Vehicles
(NV-90-X021)

Dear Mr. Mraz:

This is in reference to the letter of certification dated September 21, 1994 concerning the above captioned matter. That letter contained the Department of Labor's determination that the Regional Transportation Commission (RTC) of Clark County had not acquired the Las Vegas Transit System (LVTS) and, therefore, that certain terms and conditions proposed by the Amalgamated Transit Union (ATU) were not necessary to assure a fair and equitable employee protective arrangement as required by Section 13(c) of the Federal Transit Act.

To avoid a misunderstanding with regard to the intended breadth of this certification, it should be made clear that, as has always been the case, the Department's determinations in matters under Section 13(c) turn on the specific facts in each case. The certification letter was intended to address the unique facts and the arguments raised by the parties regarding the then-pending RTC application and was not intended to be construed as determinative with respect to other situations.

By letter dated September 28, 1994, within one week after the certification had issued, the ATU requested reconsideration of

the certification based on concerns regarding its intended scope and meaning. The Department, on October 7, granted the request, indicating that the reconsideration would be based on the existing record. Accordingly, this reconsideration has been based exclusively on the record that was the basis of the initial certification. Although neither the statute nor regulations address the issue of reconsideration, the Department exercised its inherent authority because these concerns raised issues of fact and law which, if correct and challenged in court, might have resulted in a finding that the certification was erroneous. See, e.g., Albertson v. FCC, 182 F.2d 397 (D.C. Cir. 1950).

After reconsideration, the Department affirms its finding that there was no acquisition in this matter that would give rise to assurances of employment due under Section 13(c)(4) of the Act. LVTS continued to operate after the initiation of the Citizens Area Transit (CAT) system in 1992. Although the RTC and LVTS eventually entered into a settlement agreement pursuant to which the LVTS ceased to compete with RTC-provided service, the terms of that settlement agreement did not provide sufficient bases for finding the acquisition of a "mass transportation system[]" contemplated by the statute. Generally, one competitor's agreement not to compete for a period of years is not an acquisition or successorship. There was no transfer of assets, and the RTC did not continue LVTS' business operations. The RTC obtained no routes or licenses, no pension liabilities and no control over LVTS employees or their working conditions. Moreover, the RTC-LVTS settlement did not result in the RTC stepping into the shoes of the LVTS; rather, the settlement merely resolved certain claims between the two competitors. LVTS remained a separate entity able to bid on providing future mass transportation services to the RTC. Further, although not necessarily dispositive, the agreement itself expressly stated that the parties did not intend the transaction to be an acquisition.

With respect to job rights, the original determination states that subsections 13(c)(1) and (2) "are not, in and of themselves, sufficient to ensure a right to jobs." The statement that "no exclusive job right or preference is derived solely from (c)(1) and (2) absent protections afforded by Section 13(c)(4) under an acquisition" (emphasis added) reiterates this interpretation. This language was developed in the context of this case where first, an issue was raised as to whether an acquisition had occurred which would give rise to the statutory rights under subsection (c)(4), and second, where the argument was made that subsections (c)(1) and (2), apparently standing alone, could provide the assurances of employment set forth in subsection (c)(4). Accordingly, the RTC certification, focusing on the operation of the statute in this context in a case where no acquisition was found, reflects the Department's determination

that subsections (c)(1) and (2) do not automatically create a right to a job.

The original certification, in responding to arguments raised by the ATU, did not provide a full statement of the Department's interpretation of subsections (c)(1) and (2). However, in developing its analysis, the Department recognized that these subsections can provide the bases for providing assurances of employment under the language of subsection 13(c)(1), which requires preservation of rights, privileges and benefits "under existing collective bargaining agreements or otherwise." (Emphasis added.) Examples of where assurances may be mandated would include not only cases where other laws or personnel manuals may provide that right to a job but also where "assurances of employment" are due pursuant to collective bargaining agreements or protective agreements or arrangements or past practice.

The role of the Secretary in this matter was to resolve the issues remaining in dispute between the parties negotiating protective arrangements under Section 13(c). The process is not an adjudication; and, therefore, treating these determinations as binding, precedent-setting decisions does not accurately reflect the nature of the process. As stated above, the resolution of these disputes is confined to the particular circumstances of each project under review.

Finally, this certification was not intended to limit or alter prior Departmental, fact-specific determinations in this area. Any interpretation that would lead to a contrary conclusion either misinterprets this or the earlier determinations.

Sincerely,

Charles L. Smith
Special Assistant

cc: Donald Durkee/FTA
Earle Putnam/ATU
John Sweeney/SEIU
Ron Carey/IBT
Dennis Kist/Kist & Associates
Kurt Weinrich/RTC
G. Kent Woodman/Eckert Seamans Cherin & Mellott

U.S. Department of Labor

Office of the American Workplace
Washington, D.C. 20210

NOV 10 1994

Ms. Helen M. Knoll
Acting Regional Administrator
Federal Transit Administration
Region IV
1720 Peachtree Road, N.W.
Suite 400
Atlanta, Georgia 30309

Dear Ms. Knoll:

This is in response to the request from your office that the Department of Labor (the Department) review Research Triangle Regional Public Transportation Authority (TTA) project (NC-03-0031) under Section 13(c) of the Federal Transit Act (the Act). This is a determination of the issues. Certification will be made by the Department and notice of that certification will be given by separate letter upon receipt of a signed Warranty Arrangement from TTA as discussed further below.

TTA and Amalgamated Transit Union Locals 1328, 1493, 1700 and 1565 (ATU) have been unable to agree on the employee protections to be applied to the above referenced project. The Department provided mediation for the parties and requested that they brief the issues remaining in dispute. The following constitutes the Department's determination of the terms and conditions to be applied to the instant project.

DISCUSSION

Form of Protective Arrangements

The parties have been in dispute over whether the final protective arrangements for application to this project should take the form of a jointly signed agreement, a resolution or a warranty arrangement. On September 16, 1994, TTA transmitted an Attorney General's opinion to the Department which suggests that North Carolina General Statute, Article 12, Section 95-98 would prohibit TTA from entering into an agreement with the ATU to provide employee protections under Section 13(c) of the Federal Transit Act. The Department determined that, in view of the Attorney General's Advisory Opinion, the parties would not be required to execute protective arrangements in the form of a jointly executed agreement. Based on further information received by the Department, it has been decided that a warranty arrangement, rather than a resolution adopted by the TTA board, is the appropriate format for protections for application to this

project. This will satisfy the requirements of the Act by ensuring that the applicable protective arrangements are independently enforceable. TTA is requested to execute the Warranty Arrangement at Attachment A prior to the Department's certification of the instant project.

The ATU has proposed separate protective arrangements for application to ATU Local 1565 which represents employees of Chapel Hill Transit and for ATU Locals 1328, 1493, and 1700 which represent other service area employees. The Department, however, has not considered such separate protective arrangements necessary in this instance. The Warranty Arrangement at Attachment A covers employees of each of the above ATU locals.

Definition of "Project" and "As a Result of the Project"

The parties are in disagreement over the precise language to be included in the definitions of the terms "Project" and "As a Result of the Project." The phrase "directly or indirectly" relates to the definition of "as a result of the Project" and is not included in the definition of the term "Project." In addition, the Department does not believe that the phrase "which are a result of Federal assistance" can be misconstrued to impose liability on TTA for events occurring as a result of Federal assistance to other entities. Thus, we have included this language consistent with recent determinations.

Also, consistent with the Department's determination of April 2, 1992 for SMART, the term "solely" has been included in this paragraph. Finally, it is the role of the arbitrator to determine whether changes funded with local assistance were made "in anticipation of the Project." Thus, language is not included here which would predetermine this issue.

Formulation of Section 13(c)(1) and Section 13(c)(2) Protections

TTA has proposed that "noninterference" language be included to provide the requisite preservation of collective bargaining agreement and continuation of collective bargaining rights under Section 13(c)(1) and (2) for employees represented by ATU Locals 1328, 1493, and 1700. The ATU proposes standard language which has been used in both situations where the union represents employees of the recipient and where the union represents employees of other mass transportation providers. The Department has never imposed the proposed "noninterference" language, and is not persuaded that such would be appropriate in this instance where TTA's enabling legislation specifies that it has the authority "[t]o enter into and perform contracts and agreements with other public transportation authorities or units of local government . . . [and] [t]o operate public transportation systems

extending service into any political subdivision of the State of North Carolina ....." N.C. Gen. Stat. Section 160A-610 (19), (20).

Burden of Proof in Preconsummation Disputes

The Department relies on the burden of proof standards and criteria used by the Interstate Commerce Commission to address the preconsummation issue in cases under 5(2)(f) of the Interstate Commerce Act, as amended, currently codified at 49 U.S.C. Section 11347. Consistent with that standard, the Department has included the common elements of TTA and ATU Local 1565's proposals in Attachment A.

Protection of Employees Against a "Worsening"

TTA has suggested that worsening language is not necessary because such language has not been included in prior Section 13(c) arrangements certified by the Department as meeting the requirements of Section 13(c) of the Act. The Department, however, has included specific provisions providing for the protection of employees against a "worsening" in situations where they are not concurrently dismissed or displaced. This language will clarify that employees are entitled to such protections in accordance with Section 13(c)(3) which specifies that "[s]uch protective arrangements shall include, without being limited to, . . . (3) the protection of individual employees against a worsening of their employment."

Trigger for Invoking Rights Arbitration Procedure

The parties' proposals for paragraph (14) arose out of a controversy over the proper interpretation of the phrase "after such dispute first arises." TTA's second alternative proposal includes the language used in many arrangements to provide for the arbitration of disputes. In the TTA view, however, a determination of when a dispute arises "will depend upon the facts of each particular case" and is "similar to the concept of when impasse occurs in collective bargaining under the NLRA."

The TTA's interpretation is inconsistent with the Department's interpretation and applicable law. The Department interprets the standard language "any dispute with respect to the . . . interpretation, application, or enforcement of the provisions of this Arrangement . . . which cannot be settled by the parties thereto within . . . days after the dispute or controversy arises," to mean that a dispute "arises" when relief is sought by TTA or the ATU against the other party with respect to this arrangement. This is consistent with Section 113(b) of the

Norris LaGuardia Act, 29 U.S.C. Section 113(b) and Section 2(9) of the National Labor Relations Act, as amended, 29 U.S.C. section 141 et seq.

The Department, therefore, has included in its certification the standard language proposed by the TTA (Alternative 2) for paragraph (15) with the understanding that such language is to be interpreted consistent with the Department's interpretation that a dispute arises when relief is sought.

Remedial Authority of the Arbitrator

The parties have attempted to delineate the scope of the arbitrator's authority in resolving disputes. TTA has proposed that the arbitrator's award must "draw its essence from this Arrangement and Section 13(c) of the Act." The ATU has proposed that the arbitrator's award must "draw its essence from this Agreement and/or Section 13(c) of the Act."

The remedial authority of an arbitrator is delineated by the Supreme Court in the landmark case of United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597 (1960):

> When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency. Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement: he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. (Emphasis added.)

363 U.S. at 597.

Similarly, a Section 13(c) arbitrator must be permitted the same degree of authority while fashioning remedies to resolve disputes arising under Section 13(c) arrangements. While Section 13(c)

arrangements are required to specify certain remedies for certain harms, such remedies, however, do not represent an exhaustive or limiting list of potential remedies.

As indicated above, the parties here have attempted to delineate the scope of the arbitrator's authority in resolving disputes. While the Supreme Court in the 1987 United Paperworkers v. Misco, decision provides that the parties may limit the discretion of the arbitrator in this respect, the Department does not believe that it is appropriate to do so in this instance. 108 S.Ct. 364, 372. Neither is it appropriate to broaden the scope of the arbitrator's authority beyond that indicated in the Steelworkers case cited above. Therefore, the Department has specified that "any award must draw its essence from this Arrangement and Section 13(c) of the Act." This language is not intended to establish a new standard of review by the courts and is to be interpreted consistent with the Steelworkers case.

Section 13(c) Claims Handling Procedure

Paragraph (17) includes language, agreed to by the parties, which specifies that the Public Body will make the necessary arrangements so that any employee may file a claim if the arrangements are violated.

The Department strongly encourages parties to include a claims handling procedure to provide additional opportunities for the resolution of such disputes during a grievance procedure prior to arbitration. However, such a procedure is not included in Appendix C-1 and, therefore, the Department will not require such a procedure in the absence of an agreement by the parties. Thus paragraph (17) of Attachment A includes only the common elements of the TTA and ATU proposals with respect to filing of claims. The Department recommends that TTA and the ATU undertake informal efforts to resolve any claim prior to invocation of arbitration.

Contractor-to-Contractor

The ATU has proposed that the Department include language in this certification which specifies that, in the event TTA undertakes direct operation or contracts with any other entity to provide service comparable or substantially similar to that provided by Chapel Hill, employees of Chapel Hill will have an absolute preference in hiring over all others into operator positions attributable to such service.

There are certain circumstances in which such protections might be appropriate and necessary to satisfy the requirements of Section 13(c) of the Federal Transit Act. The instant project, however, provides for the purchase of buses to provide expanded

TTA service, and contemplates no acquisition of Chapel Hill Transit routes. Based on this situation as it currently stands, the Department has determined that the provision proposed by the ATU is not necessary to satisfy the requirements of the Act.

If future TTA applications, considered individually or in their cumulative effect, involve or otherwise support a finding that an acquisition of Chapel Hill or other existing transit service by TTA has occurred, appropriate protective terms and conditions will have to be in place to satisfy the requirements of Section 13(c).

Execution of Section 13(c) Warranty Arrangement

TTA is requested to execute the Warranty Arrangement at Attachment A. Upon receipt of the properly executed arrangements, the Department will issue its certification for the instant project.

Sincerely,

Charles A. Richards
Deputy Assistant Secretary

cc: Donald Durkee/FTA
James M. Ritchey/TTA
Anthony Anderson/Eckert, Seamans, Cherin & Mellott
Earle Putnam/ATU

Phil

OAW:SP:COMER:ys:12-23-94

DEC 23 1994

Mr. Sheldon Kinbar
Regional Manager
Federal Transit Administration
Region III
1760 Market Street
Suite 500
Philadelphia, Pennsylvania 19103

Re: FTA Applications
Southeastern Pennsylvania
Transportation Authority
(PA-03-0242) Revised
(PA-03-0251)#1
(PA-03-0253)
(PA-03-0255)
(PA-03-0254)
(PA-90-X272)#1
(PA-90-X280)
(PA-90-X281)
(PA-90-X285)
Supplementary Certification

Dear Mr. Kinbar:

This is in reference to the above captioned grant applications for assistance under the Federal Transit Act. The above projects were originally certified by the Department of Labor (Department) on August 8, 1994. The Southeastern Pennsylvania Transportation Authority (SEPTA) and the United Transportation Union (UTU) have requested that the Department substitute the following terms and conditions for those applied in our letter of August 8, 1994, on behalf of the employees represented by the UTU. Therefore, we are requesting that the Federal Transit Administration supplement the certification of August 8, 1994 with this letter.

BACKGROUND

In March 1994 the UTU objected to certification of then pending grants based on the terms and conditions of the parties' June 14, 1974 Agreement[1] and three side letters dated June 17, 1994, and a side letter dated March 13, 1984. After negotiations proved unsuccessful, the parties met under the Department's auspices and

[1] The June 14, 1974 Section 13(c) Agreement incorporates and continues the Section 13(c) agreements of June 12, 1969, and April 30, 1969.

entered into a Statement of Understanding which enabled the Department to certify the above grants and established a negotiation process to address the parties unresolved Section 13(c) issues. In addition, the parties agreed to retroactively apply the terms and conditions which resulted from the agreed upon proceedings.

The Department provided mediation for the parties on October 13, 1994, and requested that they brief the issues remaining in dispute. The following constitutes the Department's determination of the terms and conditions to be applied to the above captioned projects on behalf of employees represented by the UTU.

DEFINITION OF AS A RESULT OF THE PROJECT/TRANSACTION
Article I, Section 1

The language proposed by the parties differs in two respects. SEPTA has proposed using the phrase "as a result of the Transaction" while UTU proposes using "as a result of the Project." Initially, however, UTU defines only the term "Transaction," which is used consistently throughout the 1974 Agreement and remains the term used for the other SEPTA unions. Because both the phrase "as a result of the Project" and "as a result of the Transaction" are defined in the same way by the Department, the phrase including the term "Transaction" is being applied to provide consistency throughout the arrangements.

In addition, SEPTA has proposed language that excludes "actions taken in accordance with a collective bargaining agreement" from the purview of the phrase "as a result of the Transaction." To the extent that actions taken in accordance with a collective bargaining agreement constitute changes in volume or character of employment brought about solely by causes other than the Transaction, such are already excluded from the purview of these arrangements through the language agreed to by the parties. It would appear, however, that there are some actions that could occur "as a result of the Transaction" (e.g., layoffs) which would then be undertaken "in accordance with the collective bargaining agreement." The Department is not including this language is necessary to meet the requirements of the Act.

The Department is including language which revises Article III, Section 2, Subsection (b) to replace "as a proximate consequence of the transaction" with "as a result of the transaction."

SCOPE OF VACANT POSITIONS, MAKE WHOLE REMEDIES, AND EXERCISE OF EMPLOYMENT RIGHTS IN ACCORDANCE WITH THE COLLECTIVE BARGAINING AGREEMENT
Article III, Section 2

The UTU proposes that dismissed employees be granted priority of employment to fill any vacant position within the "jurisdiction and control of SEPTA." SEPTA proposes that vacant positions within the "employ of SEPTA" be made available. Affected employees are entitled to consideration for all positions within the jurisdiction and control of the applicant, including those in the employment of any system subcontractor.

In addition, for the reasons discussed under "Worsening" below, the Department is including language providing that an employee be paid a "make whole remedy" to which he may otherwise be entitled during training or retraining.

SEPTA has proposed additional language to be included in this provision which specifies that "[r]ights under this subsection shall be exercised in accordance with, and be subject to, applicable collective bargaining agreements." The parties have agreed to include the phrase "not, however, in contravention of collective bargaining agreements relating thereto" in Article III, Section (2)(k). This language is sufficient to avoid creating a conflict between Section 13(c) and the collective bargaining agreements. Therefore, the Department is not including the additional language proposed by SEPTA.

NOTICE AND IMPLEMENTING
Article III, Section 5

The language proposed by the parties clarifies the procedures which are to be followed in the event of a noticed change under Article III, Section 5, subsection (b). Although the language proposed by SEPTA directs the arbitrator to rely upon ICC standards to address the preconsummation issue, it also specifically requires an assessment of only one criteria, the likely impact upon employees, to the possible exclusion of other criteria. Also, although SEPTA indicates that its proposal "is completely consistent with DOL's November 10, 1994 pre-certification of [Triangle Transit Authority project (NC-03-0031)] TTA," its proposed language lacks some of the critical elements of the TTA determination (e.g., burden of proof). The Department, therefore, is including in Attachment A the language proposed by the UTU, which is consistent with previous Departmental determinations.

PROTECTION OF EMPLOYEES AGAINST A "WORSENING"
Article III

The UTU has proposed language to address protections for "worsened" employees. SEPTA indicates that Article III, Section 1 of the 1974 Agreement "specifically addresses the worsening of an employee's position as a result of a transaction." Language that addresses a "worsened employee" is also contained in the paragraph 5 of the June 12, 1969 Agreement which is incorporated into the June 14, 1974 Agreement by reference. The language proposed by the UTU better reflects the Department's position with regard to worsened employees by clarifying that protections for "worsened" employees are not limited to compensation for loss of earnings. Therefore, the Department is including the language proposed by the UTU.

PYRAMIDING OF BENEFITS
Article III, Section 6

The parties have agreed to include language on "pyramiding of benefits" which is included in Article III, Section 6. The Department is adding the word "other" to the SEPTA proposal to modify the term "arrangement" in the eighth line of the paragraph.

SUCCESSOR LANGUAGE
Article I, Section 2
Article V, Section 5 and 6

SEPTA believes that the language contained in the June 14, 1974 Agreement, at Article I, Section 2, and Article V, Sections 5 and 6, satisfies the requirements of the Act. The UTU has proposed that Article V, Section 5 be amended to include additional language specifying that "no provisions, terms, or obligations herein contained shall be affected ... by reason of the arrangements made by or for SEPTA to manage and operate the system." UTU's proposal also ensures that any entity which manages or operates any part of the system agrees to be bound by the terms of the Section 13(c) protections. The language proposed by the UTU more fully sets forth the obligations of the parties and generally reflects the Department's interpretation of the requirements of the Act. Therefore, in this instance where SEPTA and the UTU do not agree upon appropriate language to be included in the protective arrangements, the Department is including in Attachment A the clarifying language proposed by the UTU.

CONTINUATION AND PRESERVATION OF PENSION OR RETIREMENT RIGHTS

The UTU has proposed that additional language be included in Article V, Section 5 of the 1974 Agreement which specifies that "[m]embers and beneficiaries or [sic] any pension or retirement systems shall continue to have rights, privileges, benefits, obligations and status with respect to such established systems as provided in the applicable labor contract." This proposal duplicates the requirements set forth by the parties in the agreed upon language with respect to Section 13(c)(1) protections and the provision at paragraph (3) of the June 12, 1969 Agreement. Therefore, the Department is not including the proposed language.

SUBCONTRACTING

The UTU has proposed language regarding the disposition of subcontracting issues to be included in Article V, Section 5. Section 13(c)(1) requires the preservation of existing collective bargaining rights. To the extent the collective bargaining agreement addresses subcontracting, the provisions of the agreement are protected under the Act. The additional language proposed by the UTU is not necessary to meet the requirements of Section 13(c) in the presence of the agreed upon language with respect to Section 13(c)(1) protections and the provision at paragraph (3) of the June 12, 1969 Agreement. Therefore, the Department is not including the union's proposed language with respect to subcontracting.

SECTION 13(c)(2) PROTECTIONS
Article V, Section 6

SEPTA and the UTU have agreed to the language included in Attachment A addressing Section 13(c)(1) and (2) that meets the requirements of the Act. The UTU, however, has proposed that an additional paragraph be included. The Department is including only the agreed upon language at Attachment A.

CARRYOVER LANGUAGE

UTU's original proposal included language to address carryover rights of employees and their labor contract. The UTU withdrew this language in its reply brief of December 5, 1994. Therefore, the Department is not addressing this issue.

Accordingly, the Department of Labor supplements the August 8, 1994 certification for the instant projects with respect to the protections afforded employees represented by the UTU, and requests that the Federal Transit Administration make the following terms and conditions applicable through an administrative amendment.

1. This letter and the terms and conditions of the agreement dated June 14, 1974, as supplemented by side letters dated June 17, 1974 and March 13, 1984, and Attachment A dated December 23, 1994, shall be made applicable to the instant projects and made part of the contracts of assistance, by reference;

2. The terms "project" and "transaction" as used in the agreement of June 14, 1974, as supplemented, and Attachment A dated December 23, 1994, shall be deemed to cover and refer to the instant projects;

3. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of disputes over the interpretation, application, and enforcement of the Section 13(c) agreements and/or arrangements; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union which is a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the UTU under the June 14, 1974 agreement, as supplemented, Attachment A dated December 23, 1994, and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

   Should a dispute remain, after exhausting any available remedies under the Section 13(c) agreement and absent mutual agreement by the parties to utilize any final

and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

cc: Donald Durkee/FTA
Gertraud Weber/UTU
Robert Scardelletti/TCU
Guerrieri, Edmond & James
Robert Irvin/RLEA
George Leitz/TWU
Malcolm Goldstein/O'Donnell & Schwartz
Ron Carey/IBT
Highsaw, Mahoney & Clarke
Carol Lavoritano/SEPTA

FYI

U.S. Department of Labor

Office of the American Workplace
Washington, D.C. 20210

JAN 31 1995

Mr. Wilbur E. Hare
Regional Manager
Federal Transit Administration
Region VI
524 Lamar Boulevard
Suite 175
Arlington, Texas 76011

Re: FTA Applications
Central Oklahoma Transportation and Parking Authority
Purchase Buses, Vans, Computer Equipment, etc.
(OK-90-X047) Part B

Dear Mr. Hare:

This is in reply to the request from your office that we review the above captioned application for a grant which includes operating and capital assistance under the Federal Transit Act. By letter dated June 30, 1994, the Department of Labor (Department) issued a partial certification for the operating assistance portion of this grant, identified as Part A. This Part B certification is for the remaining capital portion.

In the course of processing this application a question arose with respect to whether certain employees represented by the Transportation Communications International Union (TCU) were to be considered mass transit employees within the meaning of the Act and would, therefore, be covered by Section 13(c). The employees in question are employed by Union Bus Station of Oklahoma City, Inc. To address the question the Department requested the views of the parties and the Federal Transit Administration.

Following a review of this situation and the submissions of the parties, the Department has concluded that TCU represented employees in this case are not presently in the employ of a mass transit provider and are not presently engaged in mass transit services. Therefore, these employees are not covered under Section 13(c) and the Department's referral of the grant application to the TCU, dated April 12 1994, is withdrawn.

With regard to the remaining certification for the outstanding portion of this grant application, the Central Oklahoma Transportation and Parking Authority (COTPA) and the Amalgamated Transit Union, Local 993, (ATU) executed an agreement dated April 24, 1973, which has been applied to previous grants. With the exception of paragraphs (5) and (8), the parties are in agreement

that the terms and conditions of that agreement shall be made applicable to the capital assistance portion of the instant project. The April 24, 1973 agreement, as supplemented below, provides to employees represented by the union protections satisfying the requirements of Section 13(c) of the Act. Accordingly, the Department of Labor makes the certification called for in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement between COTPA and the ATU dated April 24, 1973, except for paragraphs (5) and (8), shall be made applicable to the capital portion of the instant project and made part of the contract of assistance, by reference. The April 24, 1973 agreement shall be supplemented by the amendments to paragraphs (5) and (8) proposed by COTPA on June 27, 1989, and by a letter of assurance to the Department from COTPA counsel dated June 30, 1989;

2. The term "project" as used in the agreement of April 24, 1973, as supplemented, shall be deemed to cover and refer to the capital portion of the instant project;

3. Disputes over the interpretation, application and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of disputes over the interpretation, application and enforcement of the Section 13(c) agreements and/or arrangements; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union which is a party to or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to employees represented by the union under the April 24, 1974 agreement, as supplemented, and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute remain after exhausting any available remedies under the Section 13(c) agreement, and absent mutual agreement by the parties to utilize any other final and binding procedure for the resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator to render a final and binding determination.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

cc: Donald R.Durkee/FTA
Terry L. Armentrout/COTPA
Earle Putnam/ATU
Larry R. Pruden/TCU

U.S. Department of Labor

Office of the American Workplace
Washington, D.C. 20210

MAR [illegible] 1995

Mr. Stewart F. Taylor
Regional Manager
Federal Transit Administration
Region IX
201 Mission Street
Suite 2210
San Francisco, CA 94105

Re: FTA Application
Los Angeles County Metropolitan
Transportation Authority
Operating Assistance Only
(CA-90-X664) B

Dear Mr. Taylor:

This is in reply to the request from your office that we review the above captioned application for a grant under the Federal Transit Act (Act).

The Southern California Rapid Transit District (SCRTD), a predecessor to the Los Angeles County Metropolitan Transportation Authority (LACMTA), the Amalgamated Transit Union (ATU) Local 1277, the United Transportation Union (UTU) and the Brotherhood of Railway and Airline Clerks, the predecessor to the Transportation-Communications International Union (TCU), have previously agreed to become party to the Model Agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. In addition, paragraph (15) of the December 13, 1994 Section 13(c) agreement between the LACMTA and the ATU and paragraph (17) of the April 20, 1981 Section 13(c) agreement between the SCRTD and the UTU and BRAC, shall be included as the addendum to the July 23, 1975 agreement pursuant to paragraph (4) thereof.

In addition, the SCRTD and the Southern California Transit Police Officers' Association (TPOA) executed an agreement dated April 12, 1984, as supplemented by the mileage formula agreement of the same date. The SCRTD and the International Brotherhood of Teamsters (IBT) Local 911 executed an agreement dated June 26, 1984, as supplemented by the mileage formula agreement of the same date. These arrangements provide to the employees represented by the unions protections satisfying the requirements of Section 13(c) of the Act.

The Department has determined that the terms and conditions of the above referenced arrangements shall be made applicable to the instant project.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. This letter and the terms and conditions of the arrangements dated July 23, 1975, April 12, 1984, and June 26, 1984, as supplemented, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the above referenced arrangements shall be deemed to cover and refer to the instant project;

3. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of disputes over the interpretation, application, and enforcement of the Section 13(c) agreements and/or arrangements; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union which is a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the above referenced arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

   Should a dispute remain, after exhausting any available remedies under the Section 13(c) agreement and absent mutual agreement by the parties to utilize any final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral

third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

cc: Donald Durkee/FTA
Earle Putnam/ATU
Robert Scardelletti/TCU
Gertraud K. Weber/UTU
Ron Carey/IBT
Lee Tainter/TPOA
Patrick Thistle/TPOA
Holly Fechner/GE&J
Kent Woodman/ESC&M
Dennis Newjahr/LAMTA

U.S. Department of Labor

Office of the American Workplace
Washington, D.C. 20210

MAR 8 1995

Mr. G. Kent Woodman
Eckert Seamans Cherin & Mellott
2100 Pennsylvania Avenue, N.W.
Suite 600
Washington, D.C. 20037

Re: FTA Application
Los Angeles County Metropolitan
Transportation Authority
Operating Assistance
(CA-90-X664) B

Dear Mr. Woodman:

This will respond to your letter of February 7, 1995 regarding the application of the Section 13(c) National Model Agreement to the Los Angeles County Metropolitan Transportation Authority (MTA). As you will recall, the Department had requested that MTA provide information establishing reasons that the MTA should not be considered to be a party to the Model. I appreciate your providing for our review the detailed analysis in your February 7 letter.

The Department has concluded, as outlined below, that MTA is a party to the Model Agreement and that it will be applied to CA-90-X664 for the protection of the employees represented by the ATU, UTU and TCU. Should MTA wish to withdraw from the Model Agreement for future grants, the procedures for doing so are clearly set out in the terms of the Agreement itself.

In order to reach its determination that the Model Agreement is appropriately applied to CA-90-X664, the Department reviewed the Los Angeles County Metropolitan Transportation Authority Reform Act of 1992 (Merger Act)(Cal. Pub. Util. Code §130050.2 et seq.), the April 6, 1993 Opinion of Counsel submitted on behalf of MTA, the language of the Model Agreement itself (including the Gill Memorandum), the Guidelines under which the Department administers this program, and the negotiation history between the parties involved in CA-90-X664. The obligations identified in these documents, particularly in Section 18 of the Merger Act(Cal. Pub. Util. Code §130051.16), persuade the Department that MTA is in fact a legal successor to SCRTD and to its duties, obligations and liabilities under Section 13(c).

Furthermore, whereas you indicate that MTA is not a party to the Model because it did not follow the procedures in its Paragraph 26 to become a party, please be advised that a new transit organization replacing an old transit organization would not be

required to serve written notice of its desire to become a party to the Model Agreement since it would, in fact, be deemed to be a successor pursuant to Paragraph (19), thereof.

Finally, the Department is not persuaded that the "uncertainty and confusion that exist regarding the applicability of the Model Agreement," and the MTA's strong objection to Paragraph (23) (the Sole Provider clause) represent "special circumstances," as contemplated pursuant to the Model, which would require changes in the Model or supplemental arrangements. Had the Department identified such "special circumstances," the Department, following its well-established Guidelines, would have directed the parties to negotiate arrangements necessary to resolve the special circumstances presented by the project. (See 29 CFR §215.6 of the Guidelines.)

In any event, as you have indicated in your letter, the provisions of the collective bargaining agreement between LACMTA and ATU include language relating to contracting out. Paragraph (23) of the National Model Agreement also addresses contracting out and states that "... the designated Recipient ... shall be the sole provider of mass transportation services ... in accordance with this agreement and any applicable collective bargaining agreement." Any inconsistency between the language of the collective bargaining agreement and the Model Agreement would be resolved under the dispute resolution provision in the Model Agreement.

Under separate cover the Department is issuing its certification for CA-90-X664, based on the Model Agreement. A copy is enclosed for your reference. If you have any further questions, please contact Mr. G. Jay Flanagan, of my staff.

Sincerely,

Kelley Andrews

Kelley Andrews
Director, Statutory Programs

cc: Donald Durkee/FTA
Earle Putnam/ATU
Robert Scardelletti/TCU
Gertraud K. Weber/UTU
Ron Carey/IBT
Lee Tainter/TPOA
Patrick Thistle/TPOA
Holly Fechner/GE&J
Dennis Newjahr/LAMTA
Stewart Taylor/FTA

U.S. Department of Labor

Office of the American Workplace
Washington, D.C. 20210

MAR 2 0 1995

Mr. John P. Bartosiewicz
General Manager
Fort Worth Transportation Authority
1813 E. Lancaster
Fort Worth, Texas 76101

Re: FTA Applications
Fort Worth Transportation
Authority
(TX-90-X326)
(TX-03-0168)#1
(TX-03-0153)#1

Dear Mr. Bartosiewicz:

The Department of Labor (the Department), by copy of this letter is withdrawing its referral of the above captioned projects to the rail unions representing employees of AMTRAK. These include the Rail Labor Executives' Association, the United Transportation Union, the Transportation-Communications International Union and the International Association of Machinists. The Department's referrals with respect to the International Brotherhood of Teamsters (IBT) and the Amalgamated Transit Union (ATU) are not affected by this action.

The Department has withdrawn its referral to the rail unions because we have concluded, in consultation with the Federal Transit Administration (FTA), that AMTRAK is not a mass transportation provider in its capacity as a service provider between Dallas and Fort Worth. FTA has indicated to us that the only intercity rail which it recognizes as within the definition of mass transit is intercity rail which provides a commuter service.

Fort Worth and the IBT have agreed to use their existing March 23, 1992 Section 13(c) arrangements to cover employees of Fort Worth which are represented by the IBT. In addition, the ATU represents employees of Greyhound and employees of DART, ATE and CTS in Dallas. These employees are in the transportation service area of the Intermodal Facility and the RAILTRAN service funded under the above-captioned projects. The Department remains available to provide Fort Worth and the ATU with any assistance which you may need to develop appropriate protective arrangements for these employees.

If we can be of assistance, please contact MaryAnn Mullen of my staff at (202) 219-4473.

Sincerely,

Kelley Andrews
Director, Statutory Programs

cc: Donald Durkee/FTA
LaVerna Mitchell/Fort Worth
Robert Irvin/RLEA
Richard Edelman/Highsaw, Mahoney & Clarke
George Kourpias/IAM
Robert Reynolds/IAM
Robert A. Scardelletti/TCU
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Ron Carey/IBT
James La Sala/ATU
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U.S. Department of Labor

Office of the American Workplace
Washington, D.C. 20210

JUL 19 1995

Mr. Kent Woodman
Eckert Seamans Cherin & Mellott
Attorneys at Law
2100 Pennsylvania Avenue, N.W.
Washington, DC 20037

Re: Section 5333(b) Certification
Foothill Transit Zone
(CA-90-X531)

Dear Mr. Woodman:

This is in reply to your letter of October 28, 1994, addressed to the Solicitor of Labor Thomas Williamson. Your letter requested further justification for the conclusions the Department of Labor (Department) reached in its letter of April 29, 1994, relating to the certification of the above-referenced project under section 13(c) of the Federal Transit Act [recently recodified at 49 U.S.C. section 5333(b) and hereinafter referred to as section 5333(b)].

In response to your inquiry, we have undertaken a review of the bases for the Department's most recent certifications of Foothill projects. This review focused principally upon the five issue areas for which Foothill requested additional justification in its October 28, 1994 letter.

As a threshold matter, the Department has reconsidered the emphasis which it placed on Foothill's locally negotiated protections. Typically, the Department does not override an agreement reached by the parties where there is not a legal obligation to do so. The Department, however, could not and does not simply defer to the parties by certifying any agreement which they choose to execute. Pursuant to its guidelines at 29 C.F.R. 215.3(e), the Department conducts a review of the terms and conditions of agreed upon arrangements to assure that they meet the requirements of section 5333(b). If the Department determines that a negotiated arrangement fails to meet the requirements of section 5333(b), the Department may revise such arrangements to ensure that the requirements are met or may direct the parties to resume negotiations addressing specific provisions.

Particular section 5333(b) employee protection language can be considered fair and equitable in one circumstance and found to be statutorily deficient in another. As I'm sure you can appreciate, the facts and circumstances can vary significantly

from one transit system to another, and even from project to project for the same transit system. Thus, the use of different employee protection provisions to accommodate different needs is entirely appropriate.[1]

The Secretary of Labor (Secretary) is vested with broad discretion in determining the terms and conditions upon which certifications are based. Section 5333(b) provides in pertinent part:

> As a condition of financial assistance . . . the interests of employees affected by the assistance shall be protected under arrangements the Secretary of Labor concludes are fair and equitable. 49 U.S.C. section 5333(b) (Emphasis added).

In addition to the clear language of the statute cited above, the legislative history supports the view that the Congress fully intended to vest the Secretary with broad discretion to determine the measures necessary to protect employees' rights.[2] Thus, the Secretary can legally establish standards that are not specifically spelled out in the law, if such standards are deemed necessary to ensure fair and equitable worker protection.[3]

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[1] In the context of railway labor employee protections, use of different protective provisions for different types of transactions has been approved by the courts. See Railway Labor Executives Ass'n v. United States, 675 F.2d 1248, 1254-56 (D.C. Cir. 1982); Chicago, Milwaukee, St. Paul & Pacific RR Co. v. Railway Labor Executives' Ass'n, 658 F.2d 1149, 1153 (7th Cir. 1981), cert. denied, 102 S.Ct. 1632 (1982) ("Congress did not intend to elevate the aspects of any single ICC ruling to a statutory minimum protective level to be utilized in all transactions"). This principle is also applicable to employee protections under section 5333(b).

[2] The original versions of the bill which later became 13(c) provided that both the Housing and Home Finance Administrator and the Secretary of Labor would be responsible for determining what constituted fair and equitable arrangements and for certifying compliance under the Act. However, the final version of the bill provided that those determinations would be made solely by the Secretary as they involved matters clearly within the jurisdiction and special competence of the Secretary of Labor. See 110 Cong. Rec. 15453 (1964).

[3] The House Report states:

> [S]ubject to the basic standards set forth in the bill, specific conditions for worker protection will normally be the product of local bargaining and negotiation. The Committee also expects that the Secretary of Labor ... will assume responsibility for developing criteria as necessary to assure that worker interests are adequately protected in the different types of situations that may arise. H.R. Rep. No. 204 88th Cong., 2d Sess. (1964).

Where the parties have reached an agreement on the terms to be applied to a project, the Department will generally accede to their agreement when possible. Given this background, each of the five issues which you raised is discussed further below.

DUTY TO MINIMIZE EFFECTS UPON EMPLOYEES

The Department addressed the duty to minimize effects in its March 20, 1989 certification for the Utah Transit Authority (UTA). Language similar to that imposed in the UTA certification has also been included in numerous negotiated employee protection agreements, in the Department's non-union warranty and in the Section 18 Warranty. Specifically, the UTA certification provides:

> The Project shall be carried out in full compliance with the protective conditions described herein and in such a manner and upon such terms and conditions as will not adversely affect employees represented by the Union.

The Department indicated that this language was to be interpreted in accordance with pages 5-6 of the Rural Guidebook. The 1978 Rural Guidebook interprets the language of the Section 18 Warranty to require a duty to attempt to minimize adverse effects.[4] The Guidebook specifies that this language "serves to emphasize the specific statutory requirement [49 U.S.C. section 5333(b)(2)(C)] that employees be protected against a worsening of their positions related to employment." (Emphasis added.) The Department's March 20, 1989 letter regarding the UTA indicates that "the language of the Act itself provides for protection of the interests of employees who may be adversely affected by Federal assistance".

In arguing that there is no section 5333(b) duty to minimize adverse effects upon employees, Foothill relies on Wilmington Terminal Railroad, Inc.--Purchase and Lease-- CSX Transportation, Inc. 6 ICC 2d 799 (June 10, 1990, aff'd, 930 F.2d 11 (6th Cir. 1991), a 1990 Interstate Commerce Commission (ICC) case which

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[4] As explained in the Utah certification, the duty is to "attempt" to minimize effects upon employees. The Rural Guidebook specifies as follows:

> The first two sentences of this section express the general requirement that employee rights and interests be protected from effects of a Project. Initially, this means that Recipients and any other legally responsible party in designing and implementing a Project must consider the effects a Project may have on employees and attempt to minimize any adverse effects. If objectives can be met without adversely affecting employees it is expected that adverse effects will be avoided.

concludes that 5(2)(f) is not intended to shield employees "from all, or even any, adverse impact." Foothill interprets Wilmington as requiring "a compensatory scheme to 'cushion' employees from the impact of certain transactions." However, as the Court of Appeals review of the decision makes clear, Wilmington speaks more directly to the issue of preferential hiring, a section 5333(b)(2)(E) issue, than to the issue here - protecting against worsening of positions under section 5333(b)(2)(C). In light of the above, the Department does not believe that the Wilmington case provides sufficient justification to reverse the long-standing position that there is a duty to attempt to minimize effects upon employees in order to protect their interests.

Section 5333(b) does not limit labor protections to monetary reimbursement. It is clear from the enumerated provisions of the statute that more than mere compensation of adversely affected employees is contemplated in section 5333(b). Further, the legislative history of section 5333(b) makes clear the importance of stability of employment and maintenance of valuable benefits earned during a long employment relationship. See 110 Cong. Rec. 15454 (1964) (statement of Senator Morse that stability of employment and benefits earned are to be maintained). The duty to attempt to minimize effects under section 5333(b) also finds support in the ICC requirement that a carrier negotiate with the union over implementing arrangements before consummating an ICC-approved transaction which may result in adverse impacts upon employees. See New York Dock-Control-Brooklyn Eastern District Terminal, 360 ICC 60, 70, enf'd 609 F.2d 83 (2d Cir..1979).

On the other hand, the Department does not require that every section 5333(b) agreement contain an express provision addressing the duty to attempt to minimize effects upon employees. Foothill indicates in its October 28 letter that it never took the position that there is no duty to minimize adverse effects in negotiations with either the IBT or the TPOA. Under those circumstances, it would have been appropriate for the Department to give considerable weight to the negotiated arrangements reached by the parties, and to certify the Foothill arrangements with the TPOA and the IBT without a provision addressing the duty to attempt to minimize effects upon employees.

Since Foothill clearly has taken the position with respect to the TPOA and IBT, in its October 28 letter, that there is no duty to attempt to minimize effects on employees, the Department will require that some acknowledgement of this obligation be included in the Foothill arrangements. The precise language included in our letter of April 29, 1994, however, will not be required if the parties are able to agree upon alternative language. (We note that Foothill and the IBT have agreed upon satisfactory language in paragraph 2 of the arrangements submitted to the Department in February 1995.)

STANDARD FOR TRIGGERING NOTICE

Foothill questions the Department's determination that the standard for triggering notice is a contemplated change that "may" result in dismissal or displacement of employees. Foothill notes in its October 28 letter that the Department's certification of March 20, 1989 for the Utah Transit Authority (UTA) contained a provision which triggered notice where a contemplated change "will" result in a dismissal or displacement. Foothill also contends that "will" is the standard for triggering notice under Appendix C-1.

During negotiations over the protective arrangements to be applied to the UTA application certified on March 20, 1989, the parties did not raise this wording as an issue. However, in the face of a subsequent disagreement over the appropriate trigger, the Department issued a June 2, 1993 certification for the UTA which addressed the standard for triggering notice to negotiate an implementing agreement. This 1993 certification required that notice be provided where a contemplated change "may" result in dismissal or displacement of employees. The Department relied upon the precedents set forth in New York Dock, supra (The New York Dock Conditions), the Model Agreement, and the Section 18 Warranty in making its determination.

Section 5333(b) requires that:

> Arrangements under this subsection shall provide benefits at least equal to benefits established under section 11347 of this title (formerly section 5(2)(f) of the Interstate Commerce Act.)

Notice, negotiation, and arbitration provisions are among the "benefits" established pursuant to section 5(2)(f) of the Interstate Commerce Act (ICA) referred to above. Therefore, the trigger for notice must be consistent with New York Dock where notice is required if a contemplated change "may" result in a dismissal or displacement. This language is required to ensure that the protections under section 5333(b) are statutorily sufficient.

Furthermore, contrary to Foothill's assertion, notice under C-1 is not triggered when a contemplated change "will" result in the dismissal or displacement of employees. Rather, notice is

required in all contemplated transactions under Appendix C-1.[5] Thus, the trigger for the notice provision under Appendix C-1 does satisfy the requirements of section 5333(b).

Therefore, the Department will require that Foothill's arrangements contain language which ensures that notice and negotiation are triggered where a contemplated change "may" result in dismissal or displacement of employees.

PRECONSUMMATION LANGUAGE

In administering Title 49 U.S.C. section 5333(b), the Department gives considerable weight to interpretations under 5(2)(f) of the ICA which allow for differing implementation requirements based on the type of transaction involved. Where there is potential for major impacts on employees' rights, advance notice, binding grievance arbitration, and the requirement of an implementing agreement as a precondition to the initiation of an action are appropriate requirements. See New York Dock-Control-Brooklyn Eastern District Terminal, 360 ICC 60 (1979).

Where the impact on employees' rights may be minor, an implementing agreement may not be necessary prior to implementation. See Mendocino Coast Ry.-Lease and Operate-California Western RR., 360 ICC 653 (1980).[6] In these

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[5] Notice and negotiations under Appendix C-1 are triggered as follows:

> When Railroad contemplates a transaction after May 1, 1971, it shall give ... notice of such intended transaction ... . At the request of either Railroad or representatives of such interested employees, negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this Appendix shall commence immediately ... .

[6] Foothill relies on the Department's Appendix C-1 for support of its notice and proceed argument. Appendix C-1 sets forth fair and equitable employee protections under Section 405 of the Rail Passenger Service Act (RPSA) now codified at 49 U.S.C. §24706 (C)(1)-(3). However, due to the particular circumstances surrounding the issuance of Appendix C-1, it is not as instructive on this issue as the ICC cases New York Dock and Mendocino Coast cited above.

Appendix C-1 is an exception to the ICC line of cases. The plaintiff in Congress of Railway Unions v. Hodgson, 326 F. Supp. 68 (D.D.C. 1971) argued that section 405 of the RPSA, by its reference to section 5(2)(f), required notice, negotiation, and a final implementing agreement before a transaction could take place. In deciding that section 405 did not require a final implementing agreement to be in place before the intended transaction could take place, the court recognized that it was not possible for the Secretary to include the notice and negotiation provisions of sections 4 and 5 of the Washington Job Agreement in his April 16, 1971 certification of Appendix C-1 because time was limited by the RPSA's statutory mandate that passenger service begin on May 1, 1971.

In addition, Foothill notes that Appendix C-1 is routinely applied by the Department for non-union certifications even though it contains express "notice and proceed" language. Notice and negotiation, of course, is only

situations, the inclusion of the assurance that employees will be made whole should be sufficient to protect affected employees' rights under section 5333(b).[7]

As a result of disagreements over the issue of preconsummation in recent years, expedited arbitration procedures have been developed which satisfy the requirements of section 5333(b) when applied to any project.[8] These procedures ensure that implementing agreements are in place as a precondition to the initiation of an action in situations analogous to the New York Dock line of cases which require pre-implementation while permitting changes to take place in situations similar to the Mendocino Coast line of cases where impacts upon employees would be minor.

Most section 5333(b) agreements include language addressing notice and negotiation which specifies that "[i]n any such arbitration, the terms of this agreement are to be interpreted and applied in favor of providing employee protections and benefits no less than those established pursuant to §5(2)(f) of the Interstate Commerce Act." The Department has interpreted this language to provide for an analysis by the arbitrator to determine whether or not an intended change would be permitted to be implemented prior to completion of an implementing agreement under the standards established pursuant to section 5(2)(f) and in the facts and circumstances presented in the case.

The Department believes that this type of expedited arbitration provision reduces the administrative burden of making a determination of the appropriate ICC standard with respect to each project. Moreover, this procedure provides an opportunity for each party to provide essential input on the potential impact of a noticed change. However, the specific project in question, Project (CA-90-X531), has little potential for a substantial impact upon employees.

The Department's March 1, 1994 determination of notice and negotiation language clearly will satisfy the requirements of section 5333(b) under any circumstances. While such expedited arbitration language is entirely appropriate, given the nature of the Foothill project which was the subject of the March 1, 1994

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possible in situations where employees in the service area of a project are represented by a labor organization. Thus, the notice and negotiation provisions of Appendix C-1 will not be triggered in those situations where the Department applies standard non-union language which references Appendix C-1.

[7] See May 31, 1989 certification for Los Angeles County Transportation Commission.

[8] See, for example, September 2, 1993 certification for Miami Valley Regional Transportation Authority.

determination, and its limited potential for impact upon employees, the Department also could have accepted the "notice and proceed" language, accompanied by make whole language, in Foothill's earlier agreed-upon arrangements.

Therefore, the Department will accept "notice and proceed" language if it is agreed to by the parties for application to projects which clearly fall within the Mendocino Coast line of ICC cases.

PRIORITY OF REEMPLOYMENT

Priority of reemployment under section 5333(b)(2)(E) requires that the Department ensure meaningful reemployment rights, whether with a former employer or with other entities within the jurisdiction and control of the grantee. Thus, the parties may agree to reemployment rights which are limited to the employees' former employer where such a specification will provide sufficient opportunities for reemployment of dismissed employees. The policy of the Department throughout the administration of the employee protection program has been to ensure that any employee dismissed as a result of a Project be afforded a meaningful opportunity for gainful employment in available jobs within the jurisdiction and control of the grantee benefiting from the Federal assistance.

The legislative history confirms the intent of Congress that continued employment opportunities be provided for potentially affected workers, including employees of affected competitors (nongrantee or service area employees).[9] See U.S. House Committee on Banking and Currency, Urban Mass Transportation Act of 1963, House Rep. No. 204, 88th Cong., 1st Sess. 9, 15 (1963) and Urban Mass Transportation Act of 1963: Hearings on S.6 and S.917 before the Subcommittee on Housing of the Senate Committee on Banking and Currency, 88th Cong., 1st Sess. 308 (1963) (statement of Secretary of Labor Wirtz). In requiring protections of "employees affected by the assistance", section

[9] With respect to the provision requiring "priority of employment or reemployment of employees terminated or laid off" the committee report says: "Although the committee has sought to avoid an excessively detailed provision, it believes that certain kinds of protection may be sufficiently identified, and are of such concern to employees, that they should be set forth expressly in the bill. These relate, generally, to preserving various employment rights of workers who may be transferred from one employer to another and assisting in the readjustment of the number of workers who may be laid off or displaced as a result of assistance or financing made available under the bill." U.S. Senate Committee on Banking and Currency, Urban Mass Transportation Act of 1963, Senate Rep. No. 82, 88th Cong., 1st Sess. 10-12, 28 (1963).

5333(b) does not restrict protection solely to a grantee's employees.[10] The Secretary may not exclude nongrantee (service area) employees from section 5333(b) protections. Thus affected service area (or nongrantee) employees must be afforded priority of reemployment with the grantee or an entity within his jurisdiction and control since their own employer has no obligations under 5333(b).

Section 5333(b) requires that arrangements include provisions which provide benefits no less than those under 5(2)(f). It does not require that the level of benefits under 5333(b) be reduced so as not to exceed those under 5(2)(f). See 110 Cong. Rec. 14978 (1964) (statement of Congressman Griffin acknowledging that the provisions of section 5(2)(f) are a minimum). Employee protections under 5(2)(f) can be distinguished from those under section 5333(b) in that under 5(2)(f) the ICC can and does place obligations upon all the railroads whose employees may potentially be affected by a transaction. Under section 5333(b), only the grantee transit system (which includes the applicant and contractors within its jurisdiction and control) benefits from the Federal dollars and is obligated to provide employee protections. Thus, employees of a nongrantee transit provider in the service area of a project have recourse only to the grantee for any adverse affects which they may suffer.

In the Wilmington Terminal Railroad (WTR) case cited by Foothill, the ICC did not require the purchaser in a short line sale to grant preferential hiring rights to affected employees of the selling railroad, though it did require that the purchaser provide affected workers with notice of its available positions. While the seller may have had an obligation to provide reemployment rights to its own employees in the WTR case, no such obligation can be placed upon service area (non-grantee) employers under 5333(b).

To give meaning to each of the requirements of section 5333(b), reemployment opportunities must be afforded by some entity within the jurisdiction and control of the grantee. If a meaningful priority of reemployment cannot be afforded, the Secretary of Labor would be obligated to deny Federal assistance to a grantee who cannot satisfy all the requirements of section 5333(b). See Amalgamated Transit Union v. Donovan, 767 F.2d 939 (D.C. Cir. 1985).

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[10] See statement of Congressman Rains during floor debate in the House concerning his intention that his labor protection provision apply to employees of affected competitors [110 Cong. Rec. 14967-77 (1964)] and colloquy between Congressman Weltner and Secretary Wirtz at Urban Mass Transportation Act of 1963: Hearings on H.R. 3881 Before the Comm. on Banking and Currency, 88th Cong., 1st Sess. 485 (1963).

In Foothill's situation, the parties had agreed to specifically limit priority of reemployment to certain jobs and the priority of reemployment remains a meaningful one even with that limitation. Therefore, the Department will approve the language agreed to by the parties.

SUCCESSORSHIP

The paragraph in an employee protection agreement which is typically called the "Successorship" provision actually addresses the continuation of and allocation of section 5333(b) obligations to a wide range of service providers. As the Department has indicated in a number of prior determinations[11], under certain circumstances section 5333(b) obligations extend to other providers undertaking the management or operation of the transit system or project services even if these entities are not successors in interest under the National Labor Relations Act (NLRA).

The NLRA definition is too narrow to satisfy the requirements of section 5333(b) because the legislative history of the statute does not limit responsibilities to successors in interest.[12] Rather, it speaks in broad terms of the "principle of protecting workers so affected as a result of adjustments in an industry carried out under the aegis of Federal law." U.S. Senate Committee on Banking and Currency, Urban Mass Transportation Act of 1963, Senate Rep. No. 82, 88th Cong., 1st Sess. 12, 28 (1963).

Contrary to Foothill's assertions, the Department has not expanded the scope of 13(c) obligations in this area. In order to provide "fair and equitable" protections which reflect the intent of Congress, the Secretary has exercised his discretion[13] to require that multiple parties agree to be bound by the terms of protective agreements when these parties manage or operate the

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[11] See March 20, 1989 certification for Utah Transit Authority at page 6, November 27, 1991 letter regarding Los Angeles County Transportation Commission at pages 4-5, and August 12, 1994 certification for Luzerne County Transportation Authority at page 3.

[12] At the time of Congressional debate over the Act, several references were made to the obligations of "successors". Congress did not specifically define the term or speak to its intended scope. However, it is clear that the stability of employment and benefits gained from employment are to be maintained. See 110 Cong. Rec. 15454 (1964) (Statement of Senator Morse); See also 109 Cong. Rec. 5676 (1963), (Statement of Senator Morse that "the status quo must be preserved with respect to the employer-employee relationship" and "the Senate does not propose to take away from labor, in the mass transit bill, hard-earned collective bargaining rights achieved over the years."

[13] H.R. Rep. No. 204 88th Cong., 2d Sess. (1964).

service which is benefitting from the Federal assistance.[14] Such a provision is necessary to ensure that there is always a responsible party to provide the requisite protections and it is contained in all employee protective arrangements. The parties which are required to honor the protective agreement are not "non-grantee third parties" with no relationship to the recipient, as is suggested by Foothill, but transit providers which benefit from the Federal dollars passed through by the grant recipient.

The Department suggested that a second paragraph be included in the Foothill arrangements to ensure that any entity which undertakes the management or operation of Project services agrees to be bound by the section 5333(b) arrangements. While the LACTC language included in the Department's April 29 letter is more detailed than that contained in the Model Agreement, it, nevertheless has a similar effect.

The Department does not agree with Foothill's reading of the Model Agreement as limiting employee protection obligations to successors and assigns under the NLRA. Paragraph (19) of the Model Agreement is broadly and appropriately interpreted to define successors and assigns as "(a)ny such person, enterprise, body, or agency, whether publicly- or privately-owned, which shall undertake the management or operation of the system." Paragraph (19) further specifies that such entities "shall agree to be bound by the terms of this agreement and accept the responsibility for full performance of these conditions."

Model Agreement language, therefore, would also meet the requirements of section 5333(b) and would be acceptable as a supplement to the sentence originally proposed by Foothill. Therefore, the Foothill successorship language may be supplemented by either the language suggested in our April 29 letter or the second paragraph of the Model agreement either of which will ensure that any manager or operator of the system is bound by the terms of the section 5333(b) arrangement.

We have received the arrangements which Foothill has negotiated with the Transit Police Officer's Association. We should be completing our review of these documents shortly and will issue

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[14] The interests of affected employees will not be sufficiently protected if the grantee accepts all section 5333(b) responsibilities but does not ensure that its contractors abide by the terms and conditions the grantee has agreed to as a prerequisite to the receipt of Federal assistance. Frequently a grantee must rely upon commitments that these very contractors will preserve and continue collective bargaining rights, provide reemployment rights, or provide for training or retraining to satisfy the requirements of section 5333(b). Without these commitments, the grantee would be unable to satisfy the requirements of section 5333(b) and, thus, would be ineligible for Federal assistance.

our certification of the terms and conditions for application to the pending Foothill grant application taking into account the guidance set forth in this letter.

Sincerely,

Charles L. Smith
Deputy Assistant Secretary

cc: Roger Chapin/FTZ
Larry Pruden/TCU
Ron Carey/IBT
Lou Ippolito/IBT
Michael Worley/IBT
Luke Fuller/TPOA
Richard Levine/Counsel for TPOA
Earle Putnam/ATU
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U.S. Department of Labor
Office of the American Workplace
Washington, D.C. 20210

DEC 27 1995

Mr. Stewart F. Taylor
Regional Manager
Federal Transit Administration
Region IX
201 Mission Street
Suite 2210
San Francisco, California 94105

Re: FTA Applications
San Mateo County Transit District
(CA-03-0395)
(CA-03-0436)
(CA-90-X529) Rev #2
(CA-90-X600)
(CA-90-X678)

Dear Mr. Taylor:

This is in reply to the requests from your office that we review the above captioned applications for grants under Title 49 of the U.S. Code, Chapter 53.

The San Mateo County Transit District (Samtrans) and the Amalgamated Transit Union (ATU) Local 1225 have negotiated over protective arrangements to be made applicable to the above grants.

The Department of Labor (Department) met with the parties in an effort to assist them in reaching agreement. Following those meetings, the Department established a briefing schedule to address issues remaining in dispute. The parties were requested to submit their final positions for determination of the appropriate protective arrangements. The Department has completed its review of the issues that remained in dispute following mediation, including those that were not briefed. Below is the Department's determination:

TRANSFER OF TITLE/MATERIAL MODIFICATION LANGUAGE

When a dispute over this issue arises, the Department generally includes language to ensure against any failure to provide necessary protections. Accordingly, the Department will include language in the third enumerated condition of this certification to ensure that protections under 49 U.S.C., 5333(b) are appropriately applied should there be a transfer of the ownership

or title of the project assets that Samtrans is purchasing with these grant funds. In addition, the Department has included language addressing material modifications to ensure that the projects are carried out as specified in the grant.

TRIGGER FOR THE NOTICE AND NEGOTIATION PROVISION

When the parties are in dispute over the trigger for notice and negotiation, as they are here, the Department relies on the burden of proof standards and criteria used by the Interstate Commerce Commission (ICC) to address the preconsummation issue in cases under Section 5(2)(f) of the Interstate Commerce Act, as amended, currently codified at 49 U.S.C. Section 11347. See September 3, 1993 Miami Valley certification and the November 27, 1991 LACTC determination.

The Department has included language consistent with that standard in paragraph (5) of Attachment A.

WORSENED EMPLOYEE

While there were minor differences between the parties in the phrasing of this provision (which addresses employees affected by a project who are neither dismissed nor displaced), the Department was not persuaded to diverge from the language that generally has been used in Departmental determinations. Therefore, the Department's language will be included in paragraphs (7), (15) and (20).

REMEDIAL AUTHORITY OF THE ARBITRATOR

Samtrans has proposed that the remedial authority of the arbitrator be "confined to ensuring Section 13(c) protections." The ATU has proposed that the remedial authority be "confined to ensuring the protections of this Agreement or section 13(c) of the Act" and that this should "... be interpreted and construed consistent with the decision of the U.S. Supreme Court in United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597 (1960) and the [Department's] September 13, 1994, Section 13(c) determination addressing North San Diego County Transit District ...."

The remedial authority of an arbitrator was delineated by the Supreme Court in the Steelworkers case cited above:

> "When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgement to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded

> to meet a particular contingency. Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement: he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement."

A Section 13(c) arrangement, like a collective bargaining agreement, cannot be interpreted without considering context and situation. A Section 13(c) arbitrator should have similar authority and flexibility to fashion remedies as set forth in the above decision. Section 13(c) arrangements are required to specify certain remedies for certain harms; however, such do not represent an exhaustive or limiting list of potential remedies.

The "confined to ensuring" language, which the Department applies here, is not intended to establish a new standard for review by the courts. The Department intends that the phrase "any remedy must be confined to ensuring the protections of this Arrangement or Section 13(c) of the Act" will be interpreted consistent with the Steelworkers Supreme Court case cited above.

CONTRACTOR-TO-CONTRACTOR

Any assurance of a job right or preference is derived from the provision in the law at 49 U.S.C., §5333(b)(2)(D), formerly §13(c)(4). Section 5333(b)(2) provides, "Arrangements under this subsection shall include provisions that may be necessary for . . . assurances of employment to employees of acquired mass transportation systems." The Department's practice in certifying protections for grants is to identify the protections necessary in the situation presented by the particular grant(s). Because none of the above referenced grants involve the funding of an acquisition, the contractor-to-contractor language sought by the union is not required for the Department's certification of these grants.

Any protections provided pursuant to §5333(b)(2)(D) are addressed in the terms and conditions of the 1976 Section 13(c) agreement between the ATU and Samtrans. Should Samtrans change contractors from the existing transit provider, Grosvenor, to some other contractor, any ATU members who are not carried over to the new contractor who believe they are entitled to the jobs can file claims with a private arbitrator (as provided for under the 1976 protective agreement) to pursue their claimed rights.

Finally, the Department's finding that it is unnecessary to include the provisions sought by the ATU should not be interpreted as a position on the merits of any employment rights claim, or any other claim in any future arbitration proceedings.

STATEMENT OF INTENT OF PROTECTIVE ARRANGEMENTS

The ATU requested a statement of intent similar to that in Paragraph (24) of the ATU's arrangement for North San Diego County Transit District be included in the terms and conditions of this arrangement. The Department finds that the negotiation history here is dissimilar and therefore the language will not be included in this arrangement.

With these issues thus resolved, the Department of Labor makes the certification called for under the statute with respect to the instant projects on condition that:

1. This letter and the terms and conditions in Appendix A, attached hereto, shall be made applicable to the instant projects and made part of the contracts of assistance, by reference;

2. The term "project" as used in Appendix A shall be deemed to cover and refer to the instant projects;

3. The project activities defined by the scope and budget as incorporated in the contract of assistance between the U.S. Department of Transportation and the grantee shall be undertaken, carried out and completed substantially as described in 1) the grant application submitted to the FTA and subsequently referred to the union by the Department, and/or 2) in any budget revision or amendment. Such budget revision or amendment 1) must be reviewed by the Secretary of Labor to affirmatively determine, in an administrative action pursuant to 29 C.F.R. Section 215.5, that it revises or amends the application in immaterial respects, or otherwise does not alter the scope or purpose of the project, or 2) must be the subject of a subsequent certification action under 49 U.S.C. 5333(b) pursuant to the procedures established by 29 C.F.R. Section 215.3. The Secretary's action shall be undertaken prior to any FTA final approval or award. The grantee will use project assets and equipment in the manner described in such grant application, budget revision or grant amendment;

Any subsequent action by which the grantee may transfer, convey, or grant title, rights and/or interest in project equipment and assets to any subrecipient or subgrantee while itself remaining the project recipient and/or grantee shall require a review and certification action under 49 U.S.C. 5333(b) by the Secretary of Labor prior to, and as a precondition of, the grant amendment or title transfer;

4. The contract of assistance shall include the following language:

"The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements of the grant contract between the U.S. Department of Transportation and the San Mateo County Transit District, and the parties to the contract so signify by executing that contract. The employees, or their representative, may assert claims on their behalf. This clause creates no independent cause of action against the United States Government."

5. Disputes over the interpretation, application and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of such disputes; and

6. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the local union which is a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under Appendix A and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute remain, after exhausting any available remedies under the protective arrangement, and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards
Deputy Assistant Secretary

cc: Donald Durkee/FTA
Earle Putnam/ATU
James De Hart/Samtrans
Douglas Barton/Hanson, Bridgett, Marcus, Vlahos & Rudy

U.S. Department of Labor

Office of the American Workplace
Washington, D.C. 20210

APR 5 1996

Mr. Leslie Rogers
Acting Regional Manager
Federal Transit Administration
Region IX
211 Main Street
Room 1160
San Francisco, CA 94105

Re: FTA Application
City of Norwalk
Purchase Replacement Buses, Major Bus Components, Facility Modification, etc.
CA-90-X737

Dear Mr. Rogers:

This is in reply to the request from your office that we review the above-captioned application for a grant under Title 49 of the U.S. Code, Chapter 53.

Pursuant to its Guidelines (29 CFR Part 215.3(b)(3).(ii)), the Department of Labor (Department) provided unions representing affected employees with copies of the grant application and with the protective arrangements it proposed for certification under 49 U.S.C., Section 5333(b). By letter dated February 13, 1996, the Department issued a referral to the Amalgamated Transit Union, the United Transportation Union, the Transportation Communications International Union, the International Brotherhood of Teamsters, and the Transit Police Officers' Association. By letter dated March 18, 1996, the Department issued a referral to the International Association of Machinists.

The attached arrangement, on which the Department now certifies the instant project, includes changes made to Paragraph (9) based on the input of the City of Norwalk and representatives of the employees. The Department has determined that the terms of the attached arrangements provide to employees represented by the unions protections satisfying the requirements of Section 5333(b) and shall be made applicable to the instant project.

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the attached, CAPITAL ASSISTANCE PROTECTIVE ARRANGEMENT PURSUANT TO SECTION 5333(b) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53 FOR THE CITY OF NORWALK, CA , dated April 5, 1996, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the above-referenced arrangement shall be deemed to cover and refer to the instant project;

3. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangement certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned arrangements for the resolution of such disputes; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union which is a party to, or otherwise referenced in the protective arrangement, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the above-referenced arrangement and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

   Should a dispute remain after exhausting any available remedies under the protective arrangement, and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate

a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

Enclosure

cc: Donald Durkee/FTA
James Parker/City of Norwalk
George Kourpias/IAM
Ray Mathews/NCEA
Leo Wetzel/ATU
Robert Scardelletti/TCU
Ron Carey/IBT
Bernie McNelis/UTU
Guerrieri, Edmond & Clayman
Leland Tainter/TPOA
Patrick Thistle/TPOA

U.S. Department of Labor

Office of Labor-Management Standards
Washington, D.C. 20210

SEP 6 1996

Ms. Susan Schruth
Regional Manager
Federal Transit Administration
Region IV
1720 Peachtree Road, N.W.
Suite 400
Atlanta, Georgia 30309

Re: FTA Applications
Sarasota County Transportation Authority
Operating Assistance for FY-95
FL-90-X277
Construct Admin/Maint Facility
FL-90-X277 Revised
Operating Assistance for FY 96; Purchase 5 Buses with Lifts, Associate Capital Maintenance Items
FL-90-X302

Dear Ms. Schruth:

This is in reply to the request from your office that we review the above captioned applications for grants which include both operating and capital assistance under Title 49 of the U.S. Code, Chapter 53 [commonly and hereinafter referred to as Section 13(c)].

The Amalgamated Transit Union Local 1701 (ATU), which represents certain employees of Sarasota County Area Transit, the bus system operated by the Sarasota County Transportation Authority (SCTA), requested the opportunity to negotiate protective agreements on behalf of such employees in connection with the above referenced grants. ATU Local 1701 had been afforded an opportunity to negotiate protective agreements under the applicable procedures of the Department's March 31, 1978 guidelines at 29 CFR Part 215.

The Federal Transit Administration (FTA), which inadvertently released funds for the Operating Assistance portion of project FL-90-X277 without the Department's certification of employee protections, has indicated that an amendment will be executed to apply the certified terms and conditions, and SCTA will be required to sign the amendment to ensure that the instant terms and conditions are in place for the previously funded project.

FILE COPY

The parties engaged in negotiations and mediation although they were unable to resolve certain disputes. The following constitutes the Department's determination of the issues remaining in dispute between SCTA and ATU Local 1701, which will be applied in this certification.

DETERMINATION OF ISSUES IN DISPUTE FOR CAPITAL ASSISTANCE PROTECTIVE ARRANGEMENT

Definition of the Term "Recipient"

The definition of the term "Recipient" in the protective arrangement identifies which entities will be responsible for complying with and providing the requisite protective arrangements. The parties were unable to agree on language defining the term "Recipient" in the capital assistance protective arrangement. The principle difference between the two parties' proposals is that, under the language proposed by SCTA, it would be relieved of employee protection responsibilities if it chooses to contract out the work covered by the instant project. The ATU's proposal, however, ensures that SCTA itself remains responsible for providing protections if it provides services for this project indirectly through a contractor at some time in the future. The Department has included language here which will ensure that all beneficiaries of the Federal assistance will comply with the protective arrangements agreed to by the SCTA. The language included by the Department in the second introductory paragraph of Attachment A does not in any way restrict management's rights to direct its work force and manage its business in accordance with its collective bargaining agreement.

Remedial Authority of the Arbitrator

The parties were unable to agree on language regarding the remedial authority of the arbitrator in the paragraph addressing dispute resolution. SCTA's brief on this matter indicates that it is "willing to agree to final and binding arbitration using the American Arbitration Association as proposed" by the ATU, but that the final sentence of paragraph (4)(c) of that proposal "is too vague and open ended." That final sentence proposed that

"[A]wards made pursuant to said arbitration may include full back pay and allowances to employee-claimants and such other remedies as may be deemed appropriate and equitable".

In the November 27, 1991 determination for the Los Angeles County Transportation Corporation (LACTC), incorporating the same language, the Department addressed this issue. That decision indicated that:

> [A]n arbitrator must have the ability to provide an appropriate and equitable remedy for Section 13(c) violations other than those arising from individual claims that the employee has been placed in a worse position.... While the arbitrator's authority encompasses the ability to make determinations concerning any dispute arising out of the interpretation, application or operation of the provisions of the entire Section 13(c) arrangement, the arbitrator's remedy must be confined to ensuring Section 13(c) protections. If any party believes an arbitrator has exceeded the scope of his authority, judicial review is available.

Therefore, the language included in paragraph (4)(c) of Attachment A provides for appropriate remedies in the resolution of disputes over the terms and conditions of the protective arrangement.

DETERMINATION OF ISSUES IN DISPUTE FOR OPERATING ASSISTANCE PROTECTIVE ARRANGEMENT

Definition of the Term "Recipient"

The parties were unable to agree on the definition of the term "Recipient" in the operating assistance protective arrangement. SCTA proposed language which would define the "applicant and any recipients referenced in the grant" as "Recipients," and, therefore responsible for providing and complying with the protective arrangements. The ATU proposed that the term "Recipient," as with the capital assistance protective arrangement, include the "applicant and any other entity providing or contracting for the provision of transportation services related to the project".

For the reasons set forth with respect to the definition of the term "Recipient" in the capital assistance protective arrangement, the Department has included language in the operating assistance arrangement at Attachment B which

is the same language which was applied for the capital assistance protective arrangement. Additional language proposed by the ATU, which addresses pass-through situations, is unnecessary in the circumstances presented here.

Management Rights Clause

The parties disagreed over the inclusion of a "management rights" clause in the operating assistance protective arrangement. In its proposal, the SCTA has indicated that "management rights should not be diluted" in supporting the inclusion of such language. The ATU has indicated that its proposal is "entirely consistent with prior DOL determinations declining to include language of the type urged by SCTA here on the grounds that such is not necessary to meet the requirements" of Section 13(c). The Department's March 20, 1989 determination of this issue for the Utah Transit Authority (UTA) indicates that:

> The "management rights" clause proposed by the UTA is not necessary to meet the requirements of Section 13(c). In the absence of an agreement by the parties the Department will not impose such a provision for application to this project. This language is more appropriately a subject for discussions under the parties' collective bargaining agreement.

The Department, therefore, has not included the language proposed by SCTA in paragraph (3) of Attachment B.

Statute of Limitations for Filing Claims

The parties have been unable to reach agreement over language addressing the statute of limitations for filing claims under the operating assistance protective arrangement. SCTA has proposed standard language providing that claims must be filed within 60 days of the date an employee is terminated or laid off as a result of Project. The ATU has proposed that the limitation on the period to file claims be extended in this instance, because it would not be fair and equitable to "afford workers employee protections whose enforcement is precluded by the running of the statute of limitations before the rights are even extended."

Because the funds for project FL-90-X277 were released before this certification action, and because funding for project FL-90-X302 is intended to compensate SCTA for activities undertaken prior to this certification action, the ATU's proposal is appropriate for application to these grant applications. The

Department, therefore, has included language in the fourth enumerated condition of its certification which appropriately extends the statute of limitations for these projects. The Department, however, does not believe it is necessary to include the proposed language in paragraph (17) of the operating assistance arrangement at Attachment B, and, as SCTA has suggested is appropriate, it will not be included in future referrals.

Successor Provision

No agreement was reached with regard to the inclusion of the word "such" in the successor provision at paragraph (19) of the parties' proposals which they otherwise agree upon. Prior Departmental determinations have addressed this issue. In its November 27, 1991 determination for LACTC, the Department determined that language which omitted the word "such" from the successor provision "more accurately sets forth the obligations of the parties and generally reflects the Department's reading of the original intent of the standard language." Therefore, the Department will not include the word "such" in paragraph (19) of the operating assistance arrangement at Attachment B.

Discontinuance of Project Services

No agreement was reached with regard to the inclusion of language in paragraph (23) which indicates that Section 13(c) protections will not be triggered as a result of a "discontinuance of project services." Prior Departmental determinations indicate that such language should not be included because Section 13(c) obligations cannot be extinguished through a temporary shutdown of service. The statute was intended to protect employees from a discontinuance of project services where such is as a result of Federal assistance. Therefore, the Department will not include the reference to "discontinuance of project services" in paragraph (23) of the operating assistance arrangement at Attachment B.

Status of ATU as a Party to the Protective Arrangements

No agreement was reached with regard to language in paragraph (25) of the parties' proposals which addresses the ATU's status as a party to the protective arrangement.

This is not an issue to be resolved after the Department issues its certification. The Department, therefore, has included language at paragraph (25) of the operating assistance arrangement which ensures that ATU Local 1701's status as a party to the protective arrangement is not subject to challenge subsequent to the Department's certification.

In addition, the SCTA, for the first time, proposed in its brief that the "sole provider" provision in paragraph (22) be omitted from the operating assistance protective arrangement certified by the Department. This issue was not before the Department for resolution because it was not an issue in dispute during the parties' negotiations.

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant projects on condition that:

1. This letter and the terms and conditions of the capital assistance arrangement at Attachment A, dated September 6, 1996, shall be made applicable to the capital assistance portions of the instant projects and made part of the contract of assistance, by reference;

2. This letter and the terms and conditions of the operating assistance arrangement at Attachment B, dated September 6, 1996, shall be made applicable to the operating assistance portions of the instant projects and made part of the contract of assistance, by reference;

3. The term "project" as used in the arrangements dated September 6, 1996, shall be deemed to cover and refer to the capital and operating portions, respectively, of the instant projects;

4. The following language shall be included in the contracts of assistance, by reference:

   The 60-day and 18-month time limitations established by Paragraph (17) of Attachment B, as applied to the Project, shall be deemed to run from either the date of the employee impact as a result of the Project or the date of the U.S. Department of Labor's certification action pursuant to 49 U.S.C., Section 5333(b) addressing the Project, whichever is later.;

5. Disputes over the interpretation, application and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of such disputes; and

6. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the local union which is a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the above protective arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the projects.

   Should a dispute remain after exhausting any available remedies under the protective arrangements and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

Enclosures

cc: Donald Durkee/FTA
Jay A. Goodwill/SCTA
William M. Rossi/Attorney
Leo Wetzel/ATU

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

FEB 7 1997

Mr. Walter Kulyk, Director
Office of Mobility Innovation
Federal Transit Administration
400 7th Street S. W.
Washington, D. C. 20590

Re: **FINAL CERTIFICATION**
FTA Applications
Montgomery County Government

Parking/Ride-Share Information System: Develop and Implement An Informational System to Locate Parking; HOV Utilization and Coordination; Increase Responsiveness, etc. for Paratransit Service, and Enhance the Traveler Information System
MD-26-7021

Call-In Traveler Advisory System
MD-26-7022

Dear Mr. Kulyk:

This is in further response to the request from your office that we review the above captioned applications for grants under Title 49 U.S. Code, Chapter 53.

Pursuant to Department of Labor (Department) Guidelines (29 C.F.R. 215), Montgomery County Government (County) and Amalgamated Transit Union (ATU) Locals 689 and 1493 engaged in negotiations/discussions to develop the protective arrangements required under 49 U.S.C., Section 5333(b). The County and the ATU failed to reach agreement regarding those arrangements; thereafter the Department issued an interim certification dated October 29, 1996. This determination of the outstanding issues constitutes a final certification under the Department's Guidelines and sets forth the protective terms and conditions to be substituted for those in the Interim Certification of October 29, 1996 (29 C.F.R. 215.3(g)).

The issues separating the parties, although referenced as two items -- the definition of the term "recipient" and the inclusion of the word "such" in the successorship clause -- have in fact linkages and implications for other protections called for under Section 5333(b), 49 U.S.C., such as Section 5333(b)(2)(E), priority of reemployment.

The Union argues that the Department has consistently required the contractors of grant recipients operating the transit system to share in the responsibilities associated with the employee protective requirements of the statute; that such would ensure, among other things, the above referenced reemployment rights; and that a narrow interpretation of the successorship provision, which may be drawn from language retaining the word "such" in the second paragraph of that provision, is not consistent with legislative intent and previous DOL determinations which have specifically held that the protections of Section 5333(b) would be improperly limited by the successorship doctrine of the National Labor Relations Act.

For its part, Montgomery County argues that it is fully prepared to assume responsibility for the protective requirements, but that the nature of the Project is so limited that a requirement for protective responsibilities by contractors operating the transit system would be confusing and would exceed statutory intent. In addition, with regard to the successors and assigns provision, Montgomery County argues that no need exists to change the language which has long been accepted under the National or "Model" Agreement used extensively for operating assistance grants.

Having considered the briefs and replies of the parties relating to the above issues in this instance and again reviewing the grant application, we have concluded the following:

Montgomery County, as an applicant providing Project services directly, or providing such services through a contractor, must ensure the protections required here. Accordingly, the term "Recipient" in the first paragraph of the protective arrangements is limited to the Applicant (Montgomery County). Nonetheless, any entity providing or contracting for the provision of services under a grant Project must assume a measure of these responsibilities in order to ensure the effective delivery of protections. Therefore, consistent with the Department's previous determinations, additional language has been included in Paragraph (13)(b) which clarifies that entities which provide or contract for the provision of Federally assisted transportation services must assume responsibility for employee protections.

With specific reference to the word "such" in the second paragraph of the successors and assigns provision, the Department has omitted the word. In keeping with previous determinations of the Department, this interpretation of the language is found to be consistent with legislative intent of the Federal Transit statute which is not limited by the successorship doctrine of the National Labor Relations Act.

With consideration to the foregoing, the Department of Labor has determined that the attached Protective Arrangement Pursuant to Section 5333(b) of Title 49 of the U.S. Code, Chapter 53, Montgomery County, Maryland, dated February 7, 1997, meets the requirements of Section 5333(b) and shall serve as the basis for this final certification. Transit employees in the service area of these projects represented by unions other than the ATU shall be afforded substantially similar protections under the provisions of the forth enumerated paragraph below. Therefore, the Department makes the certification called for under the statute with respect to the instant projects on condition that:

1. This letter and the terms and conditions of the Protective Arrangement Pursuant to Section 5333(b)of Title 49 of the U.S. Code, Chapter 53, Montgomery County, Maryland, dated February 7, 1997, shall be made part of the contracts of assistance, by reference;

2. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned arrangements for the resolution of such disputes;

3. The contracts of assistance shall include the following language, by reference:

   "The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements of the grant contract between the U.S. Department of Transportation and Montgomery County, MD and the parties to the contract so signify by executing that contract. Employees, or their representative on their behalf, may assert claims under this provision. This clause creates no independent cause of action against the United States Government."; and

4. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the unions which are a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the above arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the projects.

Should a dispute remain after exhausting any available remedies under the protective arrangement, and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

cc: Carolyn G. Biggins/Montgomery County
Gene S. Donaldson/Montgomery County
Mark Atz/Montgomery County
Anthony Anderson/ESC&M
Leo E. Wetzel/ATU
Roxy Herbekian/HERE
Michael Goodwin/OPEIU
Ron Carey/IBT
Gino Renne/MCGEA
Donald Durkee/FTA

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

MAR 10 1997

Mr. Leslie Rogers
Acting Regional Manager
Federal Transit Administration
Region IX
201 Mission Street
Suite 2210
San Francisco, CA 94105-1800

FINAL CERTIFICATION

Re: FTA Application
San Diego Metropolitan Transit
Development Board
Add Operating Assistance for SDTI,
Annual Maintenance Costs for SDTC
CA-90-X734-01

Dear Mr. Rogers:

This is in reply to the request from your office that we review the above captioned application for a grant under Title 49 U.S. Code, Chapter 53.

In connection with a previous grant application, the San Diego Metropolitan Transit Development Board (MTDB) and the International Brotherhood of Electrical Workers (IBEW) executed an agreement dated March 27, 1990, which provides to the employees represented by the union protections satisfying the requirements of 49 U.S.C., Section 5333(b), commonly referred to as Section 13(c).

The MTDB and the IBEW have agreed that the terms and conditions of the March 27, 1990 agreement shall be made applicable to the San Diego Trolley, Inc. (SDTI) operating assistance and the San Diego Transit Corporation (SDTC) annual maintenance costs portions of the instant project.

With respect to the SDTC annual maintenance costs portion of the project, SDTC and Amalgamated Transit Union Local 1309 have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. The terms and conditions of the July 23, 1975 agreement, as supplemented by a side letter dated June 15, 1989 from the MTDB and by Appendix A, provides protections to the employees represented by the union which satisfy the requirements of 49 U.S.C., Section 5333(b) in general purpose operating assistance situations and for annual vehicle maintenance costs.

With respect to the SDTI operating assistance portion of the project, there were no existing protective arrangements to cover employees represented by ATU Local 1309. Therefore, pursuant to Department of Labor (Department) Guidelines (29 CFR 215), the San Diego Metropolitan Transit Development Board (MTDB) and the ATU Local 1309 engaged in discussions to develop protective arrangements required under 49 U.S.C., Section 5333(b). The MTDB and the ATU failed to reach agreement on those arrangements; therefore, the Department issued an interim certification dated January 8, 1997.

This determination of the outstanding issues constitutes a final certification under the Department's Guidelines and sets forth in Attachment A hereto the protective terms and conditions to be substituted for those in the Interim Certification of January 8, 1997 (29 C.F.R. 215.3(g)).

SUCCESSORS AND ASSIGNS PROVISION

MTDB argues that there is no justification for deleting the word "such" from the Paragraph (19) successor clause of the Operating Assistance Protective Arrangement, asserting that it is standard Section 13(c) language, it is consistent with the Model Agreement, it has repeatedly been found to be "fair and equitable", and that it properly describes the scope of the successor obligation.

The Union argues that the Department has consistently required the contractors of grant recipients operating the transit system to share in the responsibilities associated with the employee protective requirements of the statute; that such would ensure, among other things, reemployment rights; and that a narrow interpretation of the successorship provision, which may be drawn from language retaining the word "such" in the second paragraph of that provision, is not consistent with legislative intent and previous DOL determinations which have specifically held that the protections of Section 5333(b) would be improperly limited by the successorship doctrine of the National Labor Relations Act. The union also has proposed additional language to clarify the intent of this paragraph consistent with the Department's stated interpretation of its meaning.

With respect to the word "such" in the second paragraph of the successors and assigns provision, the Department has omitted the word and has included the additional language proposed by the Union. In keeping with previous determinations of the Department, this interpretation of the language is found to be

consistent with legislative intent of the Federal Transit statute which is not limited by the successorship doctrine of the National Labor Relations Act.

DISCONTINUANCE OF PROJECT SERVICES LANGUAGE

Paragraph (23) of the Department's Operating Assistance Protective Arrangement reads as follows:

> (23) An employee covered by this arrangement, who is not dismissed, displaced, or otherwise worsened in his position with regard to his employment as a result of the Project, but who is dismissed, displaced, or otherwise worsened solely because of the total or partial termination of the Project, discontinuance of Project services, or exhaustion of Project funding, shall not be deemed eligible for a dismissal or displacement allowance within the meaning of paragraphs (6) and (7) of this arrangement.

The Union argues that language indicating that Section 5333(b) protections cannot be triggered upon a "discontinuance of project services" is inconsistent with the requirements of the statute and therefore cannot be lawfully imposed and certified.

MTDB maintains that "discontinuance of project services" language should be retained because it reflects a correct proposition of law -- that employees who are worsened not "as a result of" a Federal project but, rather, are harmed because of the discontinuance of project services are not entitled to Section 13(c) protections.

Critical to this issue is the determination of whether impacts are as a result of a Federal project. In the event that employees are affected as a result of a discontinuance of project services and such discontinuance occurs as a result of Federal assistance, Section 13(c) rights would properly be triggered. Paragraph (23) provides that "[a]n employee ... who is not [affected] ... as a result of the Project, but who is [affected] ... solely because of the ... discontinuance of Project services ... shall not be deemed eligible for ... " protections. Thus, the paragraph ensures that employees are afforded protections whenever impacts are as a result of a Project. While it is not necessary to exclude the "discontinuance of project services" language from paragraph 23, neither is it required that it be included. Because such language may be misleading in that it may be improperly assumed to be an exclusion from Section 13(c) coverage, the Department has determined that "discontinuance of project services" language is not appropriately included in this protective arrangement.

With consideration to the foregoing, the Department of Labor has determined that the attached Protective Arrangement Pursuant to Section 5333(b)of Title 49 of the U.S. Code, Chapter 53, San Diego Metropolitan Transit Development Board (MDTB), dated March 10, 1997, meets the requirements of Section 5333(b) and shall serve as the basis of this final certification for the SDTI portion of the project. Accordingly, the Department makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreements dated March 27, 1990, and July 23, 1975, as supplemented, and the Protective Arrangement Pursuant to Section 5333(b)of Title 49 of the U.S. Code, Chapter 53, San Diego Metropolitan Transit Development Board, dated March 10, 1997, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned arrangements for the resolution of such disputes;

3. The contract of assistance shall include the following language, by reference:

"The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements of the grant contract between the U.S. Department of Transportation and MTDB and the parties to the contract so signify by executing that contract. Employees, or their representative on their behalf, may assert claims under this provision. This clause creates no independent cause of action against the United States Government."; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the unions which are party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the unions under the above arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute remain after exhausting any available remedies under the protective arrangement, and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

cc: Donald Durkee/FTA
Jane Sutter Starke/ESC&M
Leo E. Wetzel/ATU
John Barry/IBEW
Brian Boudreau/MTDB

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

APR 24 1997

Ms. Susan Schruth
Regional Administrator
Federal Transit Administration
Region IV
61 Forsythe Street, S.W.
Suite 17T50
Atlanta, Georgia 30303

FINAL CERTIFICATION

Re: FTA GRANT APPLICATION
City of Charleston
Operating Assistance for Metro Charleston Transit Fixed Routes (Operated by SCE&G); Purchase Trolley Components, 26 Electronic Fareboxes & Support Equipment, 25 Bus Radios, Design 25 Passenger Shelters, Construct 25 Passenger Shelters, 1200 Route Signage Renovation, etc.
SC-90-X097

Dear Ms. Schruth:

This is in reply to the request from your office that we review the above captioned application for a grant under Title 49 of the U.S. Code, Chapter 53.

Pursuant to Department of Labor (Department) Guidelines (29 C.F.R. 215), the City of Charleston (City), the South Carolina Electric and Gas Company (SCE&G), the Amalgamated Transit Union, Local 610 (ATU), and later the International Brotherhood of Electrical Workers, Local 398 (IBEW), were directed to engage in negotiations/discussions to develop protective provisions required under 49 U.S.C., Section 5333(b). The IBEW has withdrawn the objections that led to its negotiations.

The City and the ATU failed to agree on the required protective provisions. On February 25, 1997, therefore, the Department issued an interim certification and instructed the parties to brief the issues in dispute. As instructed, the parties submitted initial briefs on March 27, 1997, and reply briefs on April 3, 1997.

This determination of the outstanding issues constitutes a final certification under the Department's Guidelines and sets forth the protective terms and conditions to be substituted for those in the Interim Certification of February 25, 1997. (See 29 C.F.R. 215.3(e)(4).)

The City and ATU were directed to address the provisions to be applied in the event of an acquisition as contemplated by Section 5333(b)(2)(D) of the statute, i.e., to provide "assurances of employment to employees of acquired mass transportation systems." Attachment "A" to the Department's February 25, 1997 interim certification included such provisions.

The City and the ATU were unable to agree on whether an acquisition within the meaning of the statute will occur or has occurred. However, the issue before the Department is whether fair and equitable protections are included in the Department's certification which provide for all the protections required by Section 5333(b). Specifically, the Department's review focused on the requirements of Section 5333(b)(2)(D) which provides for "assurances of employment to employees of acquired mass transportation systems."

The Department's review of the existing protective arrangements reveals no such provision. The City has been a recipient of Federal funds for both operating and capital for numerous grants spanning a number of years, all of which facilitated the operation of the transit system. While processing this certification it became clear that events may occur which would constitute a change in the operation of the transit system. Therefore, the Department has included provisions to assure that appropriate protective arrangements are in place. This is done without prejudice to the merits of the issue but as part of the Secretary's obligations under the statute.

The ATU, in its briefs, sought additional language requiring that the resolution of a dispute over whether an acquisition will occur or has occurred be completed "on a preconsummation basis." In view of the proposed changes in the operation of the system and to assure that the required protections are in place, the Department has included such language in the final certification. This language prohibits certain proposed actions, such as an acquisition, from taking place until an implementing agreement or an arbitrator's decision permitting the action is in place. Alternatively, this language would permit certain other intended changes to be instituted prior to completion of an implementing agreement.

The ATU also suggested technical changes to Attachment A of the Department's February 25, 1997 Interim Certification. The Department has incorporated certain of these technical changes to Attachment A for clarification purposes. Thus, the introductory paragraph to Attachment A will be changed to read, "In the event of an acquisition within the meaning of Section 5333(b)(2)(D) of the Federal Transit statute, the following provisions shall apply:".

In addition, the first sentence in subparagraph (1)(a) of Attachment A will be changed to read "(1)(a) All employees of South Carolina Electric and Gas (SCE&G);" and, the reference beginning in the seventh line of subparagraph (1)(a) of Attachment A to an agreement "relieving SCE&G of its obligations to provide transit service in the City of Charleston", will be omitted. Finally, the dispute resolution procedure referenced in subparagraph (1)(c) of Attachment A is clarified to ensure that the City is appropriately a party to any proceedings addressing whether there is an acquisition.

Therefore, the Department of Labor has determined that the terms and conditions set forth below meet the requirements of Section 5333(b) and shall serve as the basis for this final certification.

In connection with previous grant applications the South Carolina Electric & Gas Company, ATU Local 610, and IBEW Local 398 executed agreements dated September 14, 1984 (for capital assistance grants), and July 27, 1987 (for operating assistance grants), which are supplemented by letters from Mayor Joseph P. Riley, Jr., to the Department of Labor dated August 7, 1984. The agreements of September 14, 1984, and July 27, 1987, as supplemented by the letters of August 7, 1984 and the additional provisions specified in Attachment A to this certification, provide protections to employees represented by the unions which satisfy the requirements of 49 U.S.C., Section 5333(b).

With regard to the protections afforded under Attachment A, the withdrawal of its objections by IBEW Local 398 does not relieve the Department of the responsibility to ensure that fair and equitable arrangements are in place to protect those employees, as well as other mass transit employees in the service area of the project. Therefore, pursuant to the fifth enumerated condition below, employees represented by IBEW Local 398 shall also be afforded substantially the same levels of protections as are afforded to employees represented by ATU Local 610 under the provisions of Attachment A.

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated July 27, 1987, as supplemented by the letter dated August 7, 1984 pertaining to operating assistance and by Attachment A hereto, shall be made applicable to the operating assistance portion of the instant project and made part of the contract of assistance, by reference;

2. This letter and the terms and conditions of the agreement dated September 14, 1984, as supplemented by the letter dated August 7, 1984 pertaining to capital assistance and by Attachment A hereto, shall be made applicable to the capital portion of the instant project and made part of the contract of assistance, by reference;

3. The term "project" as used in the agreements of July 27, 1987 and September 14, 1984, as supplemented, shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant project;

4. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of such disputes; and

5. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union which is a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the July 27, 1987 and September 14, 1984, agreements, as supplemented, and this

certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute remain after exhausting any available remedies under the protective arrangement, and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

cc: Howard Chapman/City
Christine Nelson/City
Bruce Smith/Apperson, Crump, Duzane & Maxwell
Leo Wetzel/ATU
John Barry/IBEW
Robert Chambless/IBEW
Donald Durkee/FTA

MAY 21 1997

SP:HODGE:ab:5-20-97

Mr. Leslie Rogers
Regional Manager
Federal Transit Administration
Region IX
201 Mission Street
Suite 2210
San Francisco, CA 94105

FINAL CERTIFICATION

Re: FTA Applications
City of Norwalk
Purchase 4 Replacement Buses, Bus Components, Facility Modification, etc
CA-90-X795
Purchase 4 Buses w/Lifts, Alternative Fueling Station
CA-03-0492

Dear Mr. Rogers:

This is in reply to the request from your office that we review the above captioned applications for grants under Title 49 of the U.S. Code, Chapter 53.

Pursuant to Department of Labor (Department) Guidelines (29 C.F.R. 215), the City of Norwalk (City) and Amalgamated Transit Union (ATU) Local 1277 were directed to engage in negotiations/discussions to develop the protective arrangements required under 49 U.S.C., Section 5333(b). The City and the ATU failed to reach agreement regarding those arrangements; thereafter the Department issued an interim certification dated April 7, 1997. This determination constitutes a final certification under the Department's Guidelines and sets forth the protective terms and conditions to be substituted for those in the Interim Certification of April 7, 1997 (29 C.F.R. 215.3(g)).

The City, by letter dated May 5, 1997, requested that the Department of Labor issue the instant certification "on the basis of warranties specified in Appendix A of ATU's Initial Brief, dated May 5, 1997." The Department subsequently confirmed by telephone that the City intended that the Department certify the projects on the basis of the proposed language set forth by ATU Local 1277.

Accordingly, the Department of Labor has determined that the attached Protective Arrangement Pursuant to Section 5333(b) of Title 49 of the U.S. Code, Chapter 53, City of Norwalk, dated May 21, 1997, meets the requirements of Section 5333(b) and shall serve as the basis of this final certification for the City of Norwalk and the ATU.

Furthermore, consistent with the Department's letter of March 3, 1997, and the Interim certification of April 7, 1997, transit employees in the service area of the project represented by the United Transportation Union (UTU) Local 1563, the Transportation Communications International Union (TCU), the International Brotherhood of Teamsters (IBT) Local 911, the Transit Police Officers' Association (TPOA), and the Norwalk City Employees' Association (IAM) Local Lodge 1957, shall also be deemed party to the terms and conditions of Attachment A of this Final Certification dated May 21, 1997, which provides fair and equitable protections to the employees represented by the unions satisfying the requirements of 49 U.S.C., Section 5333(b).[1]

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant projects on condition that:

1. This letter and the terms and conditions of the Protective Arrangement Pursuant to Section 5333(b) of Title 49 of the U.S. Code, Chapter 53, the City of Norwalk, dated May 21, 1997, shall be made part of the contracts of assistance, by reference;

2. The term "project" as used in the above-referenced arrangements shall be deemed to cover and refer to the instant projects;

3. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangement certified by the Department of Labor, which

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[1] Continued application of the terms and conditions included in the April 5, 1996 arrangement to other transit employees is not appropriate. The use of two separate arrangements with different language might lead to the erroneous conclusion that other entities which undertake the management, provision and/or operation of transportation services are not bound by the protective arrangements.

include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned arrangements for the resolution of such disputes.

Sincerely,

Charles A. Richards
Deputy Assistant Secretary

Attachment

cc: Donald Durkee/FTA
James Parker/City
Adam Newman/Liebert, Cassidy & Frierson
Mary Ellen Schubel/City of Norwalk
Leo Wetzel/ATU
George Kourpias/IAM
Bernie McNelis/UTU
Guerrieri, Edmond & Clayman
Robert Scardelletti/TCU
Luke Fuller/TPOA
Patrick Thistle/TPOA
Ron Carey/IBT
IBT Local 911
Ray Mathews/Norwalk City Employees' Asso. (IAM)

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

MAY 29 1997

Mr. Richard H. Doyle
Regional Administrator
Federal Transit Administration
Region I
Kendall Square
55 Broadway, Suite 920
Cambridge, Massachusetts 02142-1093

FINAL CERTIFICATION

Re: FTA Applications
Massachusetts Bay Transportation Authority
Reconstruction of Main Commuter Rail Maintenance Facility (Boston Engine Terminal)
MA-03-0210
FY 97 Operating Assistance
MA-90-X265
FY 97 Capital Assistance for Old Colony Rail Restoration Project: Purchase 5 Commuter Rail Coaches & 9 Diesel Locomotives, Overhaul 50 Pullman Coaches, Reconstruction of Right-of-Way, Station/Parking Lot Improvements
MA-90-X266
Improvements to MBTA Park & Ride Facilities in Wilmington, North Billerica, Hamilton-Wenham, and Walpole, Construction of MASSPIKE-Route 128 Commuter Rail Station in Weston, and Acquisition of Land for Norwood Central Facility
MA-90-X267
Major Rehabilitation of Adams St. and Medway St. Bridges
MA-90-X268
Rehabilitation/Restoration of Two Shelters
MA-90-X271

Dear Mr. Doyle:

This is in further response to the request from your office that we review the above captioned applications for grants under Title 49 U.S. Code, Chapter 53.

Pursuant to Department of Labor (Department) Guidelines (29 C.F.R. 215), the Massachusetts Bay Transportation Authority (MBTA) and the Amalgamated Transit Union Local 589 (ATU) engaged in negotiations to develop the protective arrangements required under 49 U.S.C., Section 5333(b). The MBTA and the ATU failed to reach agreement regarding those arrangements; thereafter the Department issued Interim Certifications dated March 7 and March 11, 1997, as clarified by letters dated April 18, 1997, for the above projects. This determination of the outstanding issues constitutes the final certification for all the above referenced projects under the Department's Guidelines and sets forth the protective terms and conditions to be substituted for those in the Interim Certifications (29 C.F.R. 215.3(g)).

In connection with a previous grant application, the MBTA and the ATU, the United Transportation Union (UTU), the Transportation-Communications International Union (TCU), the Transport Workers Union (TWU), the International Association of Machinists and Aerospace Workers (IAM), the Office and Professional Employees International Union (OPEIU) and the affiliates of the Railway Labor Executives' Association (RLEA) executed an agreement dated December 10, 1974, as supplemented by paragraphs (8) and (9) of a February 23, 1993 Settlement agreement between the MBTA and Rail Labor, and by a December 17, 1993 side letter specific to the Old Colony Rail Restoration.

In addition, the MBTA has stated that under state law it has the ability to and will comply with the December 10, 1974 Agreement.

The December 10, 1974 Agreement, as supplemented by paragraphs (8) and (9) of the February 23, 1993 Settlement agreement; the December 17, 1993 side letter (for application to project number MA-90-X266); the language in enumerated paragraph 4 below; and Attachment A hereto, along with the MBTA's statements that it has the ability to and will comply with the December 10, 1974 Agreement, provides to the employees represented by the unions protections satisfying the requirements of 49 U.S.C., Section 5333(b).

The Department, having considered the briefs and replies of the MBTA and the ATU with respect to the outstanding issues, has included supplementary language in enumerated paragraph 4 and in Attachment A addressing the issues discussed below.

Successors, Assigns and Contractors Provision

The MBTA, whether it is providing project services directly or providing services indirectly through a contractor, must ensure that employees will be afforded the protections required here. Thus, any entity providing or contracting for the provision of services under a grant project must assume a measure of the responsibility, as appropriate, for providing protections in order to ensure the effective delivery of all protections. For instance, if the applicant is not the direct provider of services, it cannot directly ensure continuation of collective bargaining rights, preservation of existing collective bargaining agreements, or priority of reemployment. Thus, in order to carry out these statutory requirements, the MBTA must require that any entity which undertakes the management and/or operation of the system and/or provision of services be bound by the protective arrangements.

It may not be sufficient for the MBTA to simply pay allowances to affected employees; the language of the statute clearly requires that the variety of protections under Section 5333(b) be effectively addressed by the protective arrangements. Paragraph (19) of the December 10, 1974 Agreement contains a provision which requires that the successors and assigns of the MBTA be bound by the protective arrangements; however, additional language is necessary to ensure that the obligation to comply with the Agreement is properly understood to also apply to any entity providing transportation services for the MBTA.[1] Therefore, consistent with previous Departmental determinations, language has been included in Attachment A which specifies that the MBTA must ensure that any entity which undertakes the management and/or operation of the system and/or provision of services, must agree to be bound by the terms of the protective agreement.

With respect to the language in the Interim Certification addressing the issue of joint and several responsibility for providing protections, the Department has determined that such language is not necessary. The Department's stated intent is to ensure that providers, such as third-party contractors or independent contractors, assume a measure of Section 5333(b)

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[1] Contrary to the MBTA's repeated assertions that "the 1974 13(c) Agreement has been found fair and equitable by the Department for over 20 years *without* a successors and assigns clause," such a provision is contained in the 1974 Agreement, but questions regarding its adequacy were not previously raised by the parties.

responsibilities, and comply with the protective arrangements agreed to by the applicant. The language included in Attachment A accomplishes this objective.

Introduction of joint and several responsibility language by the Department was intended to ensure that the MBTA itself would not be relieved of Section 5333(b) responsibilities when any entity undertaking system service accepts responsibility for full performance of the protective conditions. However, the Department has concluded that this concern is addressed by the inclusion in Attachment A of language which indicates that such an entity must accept responsibility together with the MBTA for full performance of those conditions. Thus, the MBTA is obligated to ensure that all requirements of the protective arrangements are given effect. As the MBTA has indicated in its brief, "the respective rights and obligations of the MBTA and its contractors will be governed by the contractual documents entered into by the parties." The MBTA must ensure that these contractors agree to comply with the requirements of the December 10, 1974 Agreement.

Arbitration Provisions

In the Interim Certifications for the instant projects, the Department included additional language in the enumerated terms and conditions setting forth its expectations regarding arbitration proceedings based upon assertions by the MBTA that it is able and willing to comply with the December 10, 1974 protective agreement. The MBTA has objected to the Department's inclusion of such language, indicating its belief that the language initially drafted by the Department would be "inconsistent with both State law regarding arbitrations and with Federal court decisions establishing the relationship between State law and Section 13(c)[Section 5333(b)]."

Some modifications have been made to the fourth enumerated condition below to clarify the intent of the Department and address the concerns of the parties. First, the Department has included additional language to clarify that, in requiring the MBTA to participate in any arbitration under the December 10, 1974 Agreement, the MBTA is not precluded from challenging the arbitrability of a dispute. Questions of substantive arbitrability are generally left to the courts to decide unless the arbitration clause clearly specifies that the arbitrator shall make the determination. See Elkouri and Elkouri, How Arbitration Works, Fourth Edition, p. 215. However, under the terms of this certification, questions of substantive or procedural arbitrability must be raised with the arbitrator.

Therefore, the Department has supplemented the December 10, 1974 Agreement with the language in enumerated condition 4, ensuring timely resolution by an arbitrator of any questions regarding the arbitrability of disputes under the Agreement.

Second, the Department has added, at the end of the phrase "shall comply with the arbitrator's ruling in any such arbitration," the words "unless such award has been vacated pursuant to Massachusetts state law." The addition of this language is intended to make it clear that the MBTA is not precluded from challenging an award under applicable State law.

Finally, the Department has not included the specification that the MBTA "shall not assert or invoke any state law which may appear to preclude any party from complying with any requirement of 49 U.S.C., Section 5333(b)." The MBTA is not precluded from challenging an arbitrator's award in the courts on the basis of external law which may conflict with the Section 5333(b) protections. However, as the MBTA's brief clearly acknowledges, if the MBTA prevails in such a challenge it may be found ineligible for Federal assistance. Section 5333(b) does not override State law, but where the framework for collective bargaining does not permit an applicant to satisfy all the requirements of the statute, the remedy must be to deny Federal assistance. See ATU v. Donovan, 767 F.2d 939, 948 n.9 (D.C. Cir. 1985).

Therefore, the Department makes the certification called for under the statute with respect to the instant projects on condition that:

1. This letter and the terms and conditions of the agreement dated December 10, 1974, as supplemented by paragraphs (8) and (9) of the February 23, 1993 Settlement agreement between the MBTA and Rail Labor, and as further supplemented by the language in enumerated paragraph 4 below and Attachment A dated May 29, 1997, shall be made applicable to the instant projects and made part of the contracts of assistance, by reference;

2. In the case of project number MA-90-X266, only, the December 10, 1974 Agreement as supplemented by paragraphs (8) and (9) of the February 23, 1993 Settlement agreement between the MBTA and Rail Labor, enumerated paragraph 4, and Attachment A, shall also be

supplemented by the December 17, 1993 Old Colony Rail Restoration side letter. The December 17, 1993 side letter shall be made applicable to project number MA-90-X266 and made part of the contract of assistance, by reference;

3. The term "project" as used in the agreement of December 10, 1974, as supplemented, shall be deemed to cover and refer to the instant projects;

4. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of such disputes.

   The following language shall supplement the arbitration clause of the December 10, 1974 Agreement and shall be included in the contract of assistance, by reference:

   The MBTA and the labor organizations referenced in this certification shall participate in any arbitration raised under the December 10, 1974 Agreement, as supplemented, and the arbitrator shall make any necessary determination of substantive or procedural arbitrability and, thereafter, shall proceed to hear and rule on the merits of the dispute between the parties. Furthermore, the parties shall comply with the arbitrator's ruling in any such arbitration unless such award has been vacated pursuant to Massachusetts state law; and

5. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local unions which are a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same

levels of protection as are afforded to the employees represented by the unions under the December 10, 1974 Agreement, as supplemented, and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the projects.

Should a dispute remain after exhausting any available remedies under the protective arrangement, and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

cc: Donald Durkee/FTA
James Scanlan/MBTA
Kent Woodman/Eckert Seamans Cherin & Mellott
Leo Wetzel/ATU
Douglas Taylor/Gromfine & Taylor
George Kourpias/IAM
Michael Goodwin/OPEIU
Les Parmelee/RLEA
Highsaw, Mahoney & Clarke
Robert Scardelletti/TCU
Frank McCann/TWU
Malcolm Goldstein/O'Donnell & Schwartz
Bernie McNelis/UTU
Guerrieri, Edmond & Clayman

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

JUN 30 1997

Mr. Sheldon Kinbar
Regional Administrator
Federal Transit Administration
Region III
1760 Market Street
Suite 500
Philadelphia, Pennsylvania 19103

FINAL CERTIFICATION

Re: FTA Application
West Virginia Department of Transportation on Behalf of:
Bluefield Transit System (Purchase 5 Buses with Lifts, 1 Expansion Van, 1 Support Vehicle ADP Hard and Software, etc.)
Central West Virginia Transit Authority (Purchase 11 Buses with Lifts, 2 Paratransit Vans with Lifts, 2 Support Vehicles, Rehabilitation and Renovation of Admin/Maintenance Facility, Acquisition of Real Estate, etc.)
Eastern Panhandle Transit Authority (Purchase 6 Buses, 1 Van with Wheelchair, 2 Expansion Buses, etc.)
Fairmont-Marion County Transit Authority (Purchase 10 Buses, 7 Vans, Replace 1 Support Vehicle, Spare Parts, etc.)
Kanawha Valley Regional Transportation Authority (Replace 16 Buses, 3 Trolley Buses and 6 Vans)
Mid-Ohio Valley Transit Authority (Replace 1 Bus, 1 Van, 1 Supervisory Vehicle, etc.)
Monongalia County Urban Mass Transit Authority (Replace 4 Buses, 4 Vans, Purchase 2 Support Vehicles, Land Acquisition, Construction for Bus Maintenance and Admin. Facility)

Mountain Transit Authority
(Replace 19 Buses, 2 Vans, Purchase 2 Support Vehicles, etc.)
Ohio Valley Regional Transit Authority (Replace 6 Buses, 3 Lift-equipped Vans, Replace 1 Shop Truck, Rehabilitate/Renovate Maintenance and Admin. Facility, etc.)
Potomac Valley Transit Authority
(Purchase 16 Buses, 2 Support Vehicles, etc.)
Preston County Senior Citizens, Inc. (d.b.a. Buckwheat Express)
Purchase 7 Buses, 5 Vans, 1 Shop Truck, Rehabilitate/Renovate the Bus Garage, etc.;
Tri-State Transit Authority
(Replace 6 Vans, Purchase 2 Vans, Purchase 1 Service Truck, Rehabilitate/Renovate Terminal Roof and Maintenance/Admin. Facility)
Weirton Transit Corporation
(Replace 2 Buses, Purchase 1 Van, 5 Bus Shelters, etc.)
Division of Public Transit
(Project Administration and Management, Hardware and Software, etc.)
WV-03-0024

Dear Mr. Kinbar:

This is in reply to the request from your office that we review the above captioned application for a grant under Title 49 of the U.S. Code, Chapter 53.

In connection with a previous grant application, the **Kanawha Valley Regional Transportation Authority** and ATU Local 1493 executed an agreement dated March 11, 1975, which provides to the employees represented by the union protections satisfying the requirements of 49 U.S.C., Section 5333(b).

In connection with a previous grant application, the **Ohio Valley Regional Transit Authority/Eastern Ohio RTA** and ATU Local 103 executed an agreement dated October 12, 1979, which provides to the employees represented by the union protections satisfying the equirements of 49 U.S.C., Section 5333(b).

In connection with a previous grant application, the **Central West Virginia Transit Authority** and ATU Local 812 executed an agreement dated October 19, 1972, which provides to the employees represented by the union protections satisfying the requirements of 49 U.S.C., Section 5333(b).

In connection with a previous grant application, the **Tri-State Transit Authority** and ATU Local 1493 executed an agreement dated May 29, 1975, which provides to the employees represented by the union protections satisfying the requirements of 49 U.S.C., Section 5333(b).

The parties have agreed that the terms and conditions of the above agreements shall be made applicable to the instant project.

Further, the Department makes the certification called for under the statute on condition that the West Virginia Department of Transportation (**WVDOT**) shall ensure that, as a precondition to the receipt of any assistance, the **Bluefield Transit System**, the **Eastern Panhandle Transit Authority**, the **Fairmont-Marion County Transit Authority**, the **Mid-Ohio Valley Transit Authority**, the **Monongalia County Urban Mass Transit Authority**, the **Mountain Transit Authority**, the **Potomac Valley Transit Authority**, **Preston County Senior Citizens, Inc.** (d.b.a. Buckwheat Express) and the **Weirton Transit Corporation**, agree to be responsible for providing the protections set forth in the attached "*Language for Incorporation Into the Contract of Assistance.*"

In addition, the Department of Labor makes the certification called for under the statute on condition that the **WVDOT** will ensures, as a precondition to the release of assistance to any recipient under this grant, that each Recipient agrees to the above terms and conditions for its respective portion of the grant, and that this certification letter and the terms and conditions of the above referenced protective arrangements are incorporated into the contract of assistance between the West Virginia Department of Transportation and each Recipient, by reference.

There were no previously certified protective arrangements to be applied to this grant on behalf of employees represented by ATU Locals 103, 812, and 1493, in the service area of the WVDOT **Division of Public Transit.** Therefore, pursuant to Department of Labor Guidelines (29 C.F.R. 215), the WVDOT Division of Public Transit and Amalgamated Transit Union Locals 103, 812, and 1493 (the ATU Locals) engaged in negotiations/discussions to develop protective arrangements required under 49 U.S.C., Section 5333(b) for application to the Division of Public Transit portion of the

project. The Division of Public Transit and the ATU Locals reached agreement regarding all issues except the provision addressing successors, assigns and other responsible parties under the protective arrangements; thereafter the Department issued an interim certification dated March 14, 1997. This determination of the outstanding issue constitutes a final certification under the Department's Guidelines and sets forth the protective terms and conditions to be substituted for those in the Interim Certification of March 14, 1997 (29 C.F.R. 215.3(g)).

Successors, Assigns and Other Responsible Parties

The WVDOT Division of Public Transit and the ATU Locals were unable to agree upon specific language addressing the obligations of successors, assigns and other parties responsible for providing protections. The Department has determined, based upon its analysis of the proposals submitted by the parties, correspondence addressing their views on the disputed language, and precedents established in prior Departmental determinations, that the language included in the attached Capital Assistance Protective Arrangement Pursuant to Section 5333(b) of the U.S. Code, Chapter 53, dated June 30, 1997, is appropriate for application to the instant project.

This language properly identifies the protective arrangement as an "arrangement" rather than a signed "agreement" executed by the parties. The provision makes reference to the "transit activities" of the recipient because the recipient does not provide actual "transit services." Consistent with the Department's November 27, 1991 determination for the Los Angeles County Transportation Commission, language is included which ensures that any entity which undertakes management, provision and/or operation of such transit activities, will be legally bound by the terms of the arrangement. Finally, this provision has been incorporated into the protective arrangement as paragraph (11). It would be inappropriate to include a modified paragraph (19) among provisions which are otherwise identical to those in the referenced National Agreement.

The attached Capital Assistance Protective Arrangement Pursuant to Section 5333(b) of the U.S. Code, Chapter 53, dated June 30, 1997, which includes the above determination and the terms agreed to by the WVDOT Division of Public Transit and the ATU Locals,

provides to employees represented by the union protections satisfying the requirements of 49 U.S.C., Section 5333(b). The WVDOT Division of Public Transit and ATU Locals 103, 812 and 1493 shall be deemed party to the Arrangement.

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant project and sets forth the protective terms and conditions to be substituted for those in the Interim Certification of March 14, 1997, on condition that:

1. This letter and the terms and conditions of the above protective agreements and/or arrangements, shall be made applicable to the respective portions of the grant and the recipients thereof, and shall be made part of the contract of assistance between the WVDOT and FTA, by reference;

2. As a precondition to the release of assistance to any recipient, this letter and the terms and conditions of the respective protective agreements or arrangements referenced above shall be incorporated into the contracts of assistance between the WVDOT and each recipient, by reference.

   Any dispute or controversy arising regarding the application, interpretation, or enforcement of this provision which cannot be settled by and between the parties at interest within thirty (30) days after the dispute or controversy first arises, may be referred by any party to any final and binding disputes settlement procedure acceptable to the parties, or in the event they cannot agree upon such procedure, to the Department of Labor or an impartial third party designated by the Department of Labor for a final and binding determination;

3. The term "project" as used in the above referenced agreements and/or arrangements shall be deemed to cover and refer to the instant project;

4. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of such disputes; and

5. Employees of urban mass transportation carriers in the service area of the Kanawha Valley Regional Transportation Authority, the Ohio Valley Regional Transit Authority, the Central West Virginia Transit Authority, and the Tri-State Transit Authority portions of the project, other than those represented by the local unions which are a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the unions under the aforementioned agreements and arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

   Should a dispute remain after exhausting any available remedies under the above protective arrangements, and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

Enclosures

cc: Donald Durkee/FTA ✓
Leo E. Wetzel/ATU ✓
Susan L. O'Connell/WVDOT ✓

Bluefield Transit System
Central West Virginia Transit Authority
Eastern Panhandle Transit Authority
Fairmont-Marion County Transit Authority
J. Douglas Hartley/Kanawha Valley RTA
Mid-Ohio Valley Transit Authority
Monongalia County Urban Mass Transit Authority
Mountain Transit Authority
Chester Sokol/Ohio Valley/Eastern Ohio Valley RTA
Potomac Valley Transit Authority
Preston County Senior Citizens, Inc.
Paul E. Davis/Tri-State Transit Authority
Dean M. Harris/City of Chester
Morgantown Municipal Transit Authority

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

AUG 13 1997

Mr. Lesile Rogers
Regional Administrator
Federal Transit Administration
Region IX
201 Mission Street
Suite 2210
San Francisco, CA 94105-1800

Re: FTA Applications
Los Angeles County Metropolitan
Transit Authority
Purchase Rail Spare Parts and
Associated Maintenance Items,
Miscellaneous Rail Facilities
Improvements, etc.
CA-03-0453

Operating Assistance for Bus and
Rail (FY 1996), Purchase
Replacement AFT Buses, Lease
Tires, Acquire Support Vehicle,
etc.
CA-90-X714
FINAL CERTIFICATION

Dear Mr. Rogers:

This is in further response to the request from your office that we review the above captioned applications for grants under Title 49 of the U.S. Code, Chapter 53.

On March 4, 1997, the Department of Labor (Department) issued a certification on an interim basis to permit Federal Transit Administration (FTA) funding of the grants identified above. As set forth in that certification, the interim terms and conditions were to be replaced by the terms and conditions determined by the Department in a final certification following the Department's review of arguments submitted by the Los Angeles County Metropolitan Transit Authority (LACMTA) and the Amalgamated Transit Union (ATU) Local 1277 on issues remaining in dispute between the parties. This is the determination of outstanding issues and specification of protective terms and conditions which constitutes the final certification referenced above and sets forth the protections to be substituted for those in the Interim Certification of March 4, 1997.

2. **Scope of Reemployment Rights** (C: ¶(5)(a),(6)(a),&(18); O: ¶(5)(b),(6)(a),&(18))[3]:

The parties disagreed over the scope of reemployment rights for employees whose employment is ended or who are laid off as a result of a project. In its initial brief LACMTA acknowledged prior decisions of the Department that Section 5333(b)(2)(E) reemployment rights extend to positions with a transit system contractor, but requested that the Department reconsider its position. For its part, the ATU urged that the Department adhere to its position on this issue.

LACMTA referenced court cases regarding the general interpretation of any statutory language, the legislative history of Section 5333(b), and certain cases dealing with the Interstate Commerce Act (ICA). These references were intended to support LACMTA's position that "reemployment" can only be "a return to employment with an individual's previous employer." LACMTA argued further that there is a clear connection between Section 5333(b) and the ICA with respect to reemployment rights which should govern Department decisions in this regard.

The two statutes, however, operate in different contexts. The Secretary of Labor is specifically directed to provide benefits "at least equal to" (emphasis added)[4] the ICA standard in the determination of fair and equitable protections for certification under Section 5333(b). Under the ICA, a regulatory agency allows actions such as mergers, consolidations, acquisitions, and abandonments to proceed. Each rail carrier involved must protect its own employees when permitted to undertake the action requested. In the FTA grant program, grant funds enable the grantee to undertake the intended actions and the grantee is responsible for protecting all affected employees as a condition of the grant, even when they are employees of other employers.

Priority of reemployment under Section 5333(b)(2)(E) requires the Department to ensure meaningful reemployment rights, whether with a former employer, as under the ICA, or with other entities within the jurisdiction and control of the grantee. In order to

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[3] Relevant paragraphs of protective arrangements relating to the issue under discussion: C denotes capital; O denotes operating.

[4] Prior to recodification of the statute the standard was expressed as "no less than" the protections afforded under the ICA.

give meaning and effect to the Section 5333(b)(2)(E) priority of reemployment requirement, "reemployment" must necessarily be interpreted more broadly than under the ICA. If transit operations in a service area are affected by grant activities resulting in the dismissal of an employee, a meaningful reemployment right, as contemplated by Section 5333(b)(2)(E), is more likely to exist with the employer whose operations are supported by the grant.

Therefore, Section 5333(b) must require reemployment with a grantee that can itself provide employment, or that can direct such employment with an employer providing service under a grant. To the extent that a contractor is engaged to deliver grant services, this obligation can reasonably be met by affording vacant positions with the contractor to employees dismissed as the result of a grant. Accordingly, the Department has specified language in the protective arrangements to ensure reemployment rights to jobs "within the jurisdiction and control" of the Public Body including jobs with subcontractors[5] for maintenance work.

To the extent that LACMTA or the ATU has a concern about any need to include language regarding consistency "with any applicable collective bargaining agreement" in paragraph (5)(a) of the capital arrangement, it is not necessary here since such rights are preserved under the more general provisions of Section 5333(b).

The Department also notes a difference in language between the parties' operating assistance proposals addressing the selection of forces. Here, the Department has included the language proposed by LACMTA because it more clearly defines the population to be offered employment, in conjunction with the phrase "not in contravention of collective bargaining agreements related thereto."

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[5] For an additional discussion of this issue, see pages 8-10 of the Department's July 19, 1995 letter regarding Foothill Transit Zone, grant CA-90-X531.

3. Implementing Agreements:

(a) Exclusion of Certain Changes (C: ¶(5)(a); O: ¶(5)(a)):

Provisions covering Implementing Agreements appearing in paragraph (5) of both the capital and operating arrangements generated several issues. In subparagraph (5)(a), the ATU proposed the addition of the word "solely" with regard to "changes which are not as a result of the project, but which grow *solely* out of the normal exercise of seniority rights . . . ." The ATU also proposed that paragraph (5)(a) of the capital arrangement include the phrase, "and/or other occurrences or actions which are not a result of the Project." This paragraph already specifies that changes "which are not a result of the Project" shall not be considered within the purview of the paragraph; the phrase "as a result of the project" is defined to include events directly or indirectly related to the Project. Therefore, the proposed language is not necessary and has not been included.

(b) Right of Employees to Follow Work (C: ¶(5)(b)):

Capital proposals submitted to the Department by the parties regarding paragraph (5)(b) reflected a dispute over "the right of employees to follow their work." The briefs subsequently submitted, however, indicated that this issue was eliminated by the withdrawal of the language in question, thus rendering this issue moot.

(c) Preconsummation Disputes; Expedited Arbitration (C: ¶(5)(c)):

The parties raised two additional issues identified under the "Preconsummation; Expedited Arbitration" provisions of their Implementing Agreement proposals: Burden of Proof and Standards to be Applied.

(1) Burden of Proof: LACMTA charged that the ATU's proposed burden of proof in preconsummation arbitration proceedings appears to place the burden on the LACMTA in all instances contrary to the objective of the ICC's standards to facilitate the prompt implementation of changes that present minor employee harm. The Department's November 27, 1991

determination for the Los Angeles County Transportation Commission stated, "[b]ecause the applicant has greater access to relevant information to support its position concerning the potential for a project to impact upon employees, it would not be fair and equitable to place the initial burden of proof on the union." (Emphasis added.) The Department maintains that position here, and notes that the language it has included relies upon the ICC standards and shifts the burden to the union after the initial test has been met.

(2) Standards to be Applied: LACMTA charged in its initial brief that "[t]he ATU's proposal does not clearly or expressly articulate the standard to be applied in [preconsummation] arbitration, creating potential uncertainty as to the applicable standard for implementing proposed changes." The ATU objected to LACMTA's ICC references and interpretations thereunder. Under ICC cases the incumbrance of completing implementing arrangements is lifted under certain circumstances, provided that employees are made whole, in order to speed the implementation of the intended action. These lesser circumstances include "trackage rights, lease proceedings, or similar transactions." The applicant is in the best position to explain its intended actions, after which it falls to both the parties to identify how such actions relate to the ICA standards in furtherance of their respective positions. The Department, therefore, has added language referencing the types of transactions which are included under the standards of the ICA.

4. Arbitration Process (C&O: ¶(15)(a)):

Three issues were raised by the parties under the arbitration procedures set forth in paragraph (15) of the capital and operating arrangements for disputes limited to LACMTA and the ATU: the Remedial Authority of the Arbitrator, the Scope of Disputes Subject to Arbitration, and the Arbitrator's Authority to Alter Labor Contracts.

(a) Remedial Authority of the Arbitrator:

With regard to the arbitrator's remedial authority to fashion awards, LACMTA viewed the proposal of the ATU as an infringement on the Department's statutory authority to determine fair and

equitable protections by yielding to the arbitrator authority which could improperly expand those protections. LACMTA further asserted that the ATU's proposal, which relies on the U.S. Supreme Court's opinion in United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597 (1960), is inconsistent with the conclusions of the Court.

The Department has addressed this issue on numerous occasions and has consistently held that the terms and conditions that it certifies do not represent an exhaustive list of potential remedies.[6] Section 5333(b) calls for the certification of fair and equitable arrangements as determined by the Secretary of Labor, and specifies a standard at least equal to that established under certain references in the ICA. The Department, however, cannot identify all potential remedies. The specific protective arrangements certified, the guidance provided by the Department in its determinations, ICA case law, and other judicial decisions, for example, provide an appropriate understanding of the scope of authority vested in the arbitrator.

The remedial authority of an arbitrator was delineated by the Supreme Court in the Steelworkers case cited above:

> "When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency. Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement."

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[6] See the Department's determinations for the Los Angeles County Transportation Commission dated November 27, 1991; North San Diego County Transit District, dated September 13, 1994; Triangle Transit Authority, dated November 10, 1994; and SAMTRANS, dated December 27, 1995.

Consistent with the sentiment expressed by the Court, the Department fulfills its statutory responsibility and maintains an appropriate standard of protections by directing the arbitrator to confine the remedy to one that ensures Section 5333(b) protections and draws its essence from the protective arrangement. The proposed language addressing the Steelworkers cases is not necessary and, therefore, has not been incorporated in either the capital or the operating arrangement.

The Department has included a sentence in the operating arrangement, similar to that which the parties agreed to in the capital arrangement, which addresses "[a]wards made pursuant to such arbitration . . ." and adds language which specifies that the arbitrator's award must "draw its essence from this Arrangement." This language is more specific than the language proposed by LACMTA, but is not intended to establish a new standard for review by the courts. The Department intends that the phrase "any remedy must be confined to ensuring Section 5333(b) protections and must draw its essence from this Arrangement" will be interpreted consistent with the Steelworkers case cited above.

(b) Scope of Disputes Subject to Arbitration:

Also, under the arbitration provisions of the capital and operating arrangements, LACMTA sought language to emphasize that disputes under Paragraph (15) are to be limited to the interpretation, application, or operation of the provisions of the protective arrangement. This prompted questions about the context of the proposed language and the use of the word "authority" to explain the powers assigned to the arbitrator.

The proposed language, however, is not necessary here where paragraph (15), at its opening sentence, clearly addresses the scope of disputes for arbitration and does not include references to grievances or interest disputes. If any party believes that the arbitrator has exceeded the scope of his or her authority, judicial review remains available.

(c) Arbitrator's Authority to Alter Labor Contracts:

Also in dispute is the authority of the arbitrator to alter the provisions of any collective bargaining agreement. LACMTA proposed a provision prohibiting such alterations, referencing the 1991 Arrangement determined by the Department and the Model

Agreement[7]. The ATU cites particular ICC cases as relevant precedent for permitting an arbitrator to alter the terms of a collective bargaining agreement.

Section 5333(b) and the protective agreements or arrangements certified by the Secretary protect employee rights under a collective bargaining agreement, as well as the right to collectively bargain. It is through that protected bargaining right that change in the labor agreement occurs. Absent the agreement of the parties, it is not appropriate for an arbitrator under a Section 5333(b) arrangement to alter the terms of a labor agreement. The Department has included the provision sought by LACMTA in both the capital and operating assistance arrangements.

5. Multiparty Arbitration Process (O: ¶(15)(b)):

The LACMTA proposed a provision for the arbitration procedure in the operating arrangement similar to that found in the Model Agreement. The proposal is intended to provide for a single arbitrator when multiple parties, or employees other than those of the recipient, are involved in disputes. The ATU argues that this arrangement is not like the Model Agreement, which contemplates multiple parties endorsing the same agreement. Here there are only two parties to this arrangement.

Because LACMTA and ATU are the only parties to the protections being determined here and the circumstances of the Model Agreement are not present, the Department has not included the proposed provision. For consistency, the Department has also deleted proposed paragraph (24) of the operating arrangement.

6. Claims Handling Process (C&O: LACMTA ¶17):

The LACMTA proposed extensive claims handling procedures for the capital and operating arrangements which provide for joint investigation of a claim prior to arbitration under paragraph (15). The LACMTA argues that a claims procedure is typical in Section 5333(b) agreements and serves to reduce or avoid costly arbitrations, but it did not provide an explanation of the

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[7] The Model Agreement, also called the National Agreement, refers to the agreement executed on July 23, 1975, by the American Public Transit Association and various transit employee labor organizations.

differences in its proposals. LACMTA also asserted that not including this language "raises issues as to the proper arbitrability of a dispute in the absence of exhaustion of the informal claims handling process that is a clear precondition to arbitration." The ATU, in turn, stated that the LACMTA provisions may result in needless delays to resolve arbitrability questions.

The protective arrangements being determined here contain a neutral, final, and binding procedure in paragraph (15) which satisfies the statutory requirements of Section 5333(b). Since the statute does not mandate a preliminary procedure, the Department will not include it here.

7. **Federally Assisted Systems: Exclusion of Locally Funded Projects; Successor Clause** (C: ¶(20)(a)&(b)):

With the inclusion of certain language in paragraph (20) of the capital arrangement and an additional paragraph (24), LACMTA sought to exclude from the obligations of Section 5333(b) those components of the LACMTA system which are locally funded. LACMTA argued that it is unique in its ability to undertake local projects of significant magnitude, and that Federal requirements do not apply to certain locally funded projects. LACMTA also pointed out that Federal operating assistance, which represents only three percent of its budget, supports only a small fraction of the system's operations. ATU argued that the language sought by LACMTA is not necessary because the protections to be applied are only intended to cover Federal projects.

The statute specifies that protections will apply as "a condition of any financial assistance" under applicable funding provisions of the Act. Section 5333(b) must be applicable, therefore, to entities which undertake the management, provision, and/or operation of any portion of transit system services if that portion is Federally funded, whether through the use of Federal grants for operating assistance or through the use of Federally funded capital assets. Therefore, the Department has included the language proposed by LACMTA in paragraph (20)(b). However, the Department has determined that the language proposed by LACMTA in paragraphs (20)(a) and (24) is neither necessary nor appropriate for application to these projects.

8. Subcontracting (C: Related to ¶(3)&(4)); and Sole Provider (O: Related to ¶(3)&(4)):

The ATU's proposals included provisions regarding the issue of subcontracting and a related matter referred to as the "sole provider" clause. The ATU's language specified that subcontracting, scope rules, and work classification rules would apply to work financed by Federal funds and that bargaining unit work would not be submitted to public bid "except as may be expressly or reasonably necessary implication permitted" under the parties' existing agreements.[8] The sole provider proposal would require the recipient to be the sole provider of mass transportation services under the project consistent with its obligations under Section 5333(b)(2)(A)[9].

The Department's responsibility under Section 5333(b) is to ensure that protections are in place for employees affected by the expenditure of Federal transit funds. The ATU's proposals on subcontracting and sole provider, are not necessary in the presence of provisions otherwise preserving rights, privileges and benefits under existing collective bargaining agreements and the collective bargaining rights of employees under Section 5333(b)(2)(A)&(B). The ATU did not provide sufficient justification to include the sought-after language for the instant projects, given that other provisions in the arrangements protect those rights -- in this case, paragraphs (3) and (4) of the capital and the operating arrangements herein certified.

9. Limitation of the Term "Public Body"

The LACMTA proposed to define the term "Public Body" in the third "Whereas" clause to limit application of these Section 5333(b) protections to actions performed as a transit operator and successor to the Southern California Rapid Transit District

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[8] The parties may find it useful to review "WORKING TOGETHER FOR PUBLIC SERVICE," Report of the Secretary of Labor's Task Force on Excellence in State and Local Government Through Labor-Management Cooperation (May 1996). Therein, it is reported that improving the cost, quality, and delivery of public services is best achieved, not by privatizing or contracting out work, but by embracing employee participation and labor-management cooperation as a way to create a less adversarial, more efficient work environment. See page 12 in the Executive Summary, pages 31 and 32 in Chapter II, and pages 47, 48, and 49 in Chapter III.

[9] ". . . the preservation of rights, privileges, and benefits . . . under existing collective bargaining agreements or otherwise;"

(SCRTD). LACMTA, however, is also a successor to the Los Angeles County Transportation Commission (LACTC), which also was an FTA grant recipient. For its part, the ATU argued that the proposed whereas clause would "constrict or limit the scope of the [LAC]MTA's responsibilities."

A provision such as the one proposed by LACMTA may wrongfully deny employees otherwise properly eligible, the protections to which they are entitled. There is clear and unambiguous statutory language that requires protections as a condition of any assistance provided under the grant. The protections are tied to the funding, and the user of those funds identifies the party responsible for providing those protections. LACMTA must now assume its own Section 5333(b) responsibilities in conjunction with all of its Federally funded transit activities.

When this issue arose in the context of LACMTA's negotiated protective agreements with TCU and UTU, the Department, in its March 4, 1997 Interim Certification for the instant grants, deleted the language which LACMTA has proposed here. The Department herein affirms its decision to delete the "Whereas" clause contained in the agreements with the TCU and UTU and as proposed for these arrangements covering the ATU.

10. Grant Application Amendments and Transfer of Title

The ATU proposed language to require that subsequent grants and amendments be subject to Departmental review for certification if they materially modify the project or the original grant. It also proposed Transfer of Title language. The ATU argued that these provisions do not conflict with, nor add to, any existing applicant or FTA responsibilities, and that the Department has on numerous occasions imposed or included such language. LACMTA argues that these provisions represent an unnecessary and unjustified intrusion into the established procedures of FTA, and those between FTA and the Department.

The ATU has not sufficiently demonstrated a need, in connection with these projects, for the inclusion of such provisions. Consequently, the proposed language has not been included.

11. Change in Residence (C: ¶(13)(d)&(14)(b); O: ¶(11)(d)&(12)(d)):

The ATU sought to delete "change in residence" language which had appeared in the parties' December 13, 1994 Agreement, in the November 27, 1991 LACTC Protective Arrangement, the February 25, 1981 SCRTD Agreement, and in paragraph 12(d) of the Model Agreement, to which the parties at one time had been a party. The ATU argued that absent such deletion, the provision in question "could be construed to provide that a move which partially grows out of the normal exercise of seniority rights but also partially grows out of funded activities is not 'as a result of the project' -- thereby effectively working an exception to the required provision on the burden of proof in 13(c) claims proceedings" and that the deletion is consistent with the required "burden of proof." LACMTA argued that the deletion would render the provision meaningless.

Although the deletion sought by the ATU may be consistent with the established standard of proof under Section 5333(b), it would also draw into question the purpose of the remaining portions of the provision as suggested by LACMTA. The language ATU seeks to delete provides well-established parameters for processing claims. Disputes and claims are resolved under Paragraph 15, which contains a clearly stated burden of proof under subparagraph (b). The Department, therefore, will not alter the language as certified in earlier arrangements and agreements.

12. **Valuation of Home** (C: ¶(14)(a)(1); O: ¶(12)(a)):

For the capital and operating arrangement provisions determining the fair market value of a home to insure against any loss on the sale of the home which may be due to the project, the timing of the valuation is typically referenced in relation to the date of the project. Such is the case in the Model Agreement and the parties' 1994 Agreement. The ATU, however, asserts that the articulation of the date of the project has been problematic in the case of LACMTA; and therefore, it proposed abbreviated language reflecting only the position that the value should be unaffected by the project. LACMTA responded by pointing out that its proposal, referencing "the date of the Project," is standard protective language and that the ATU offers no substantive reason for proposing such an untested change to delete the reference.

The Department is not persuaded that the deletion of established language would increase the certainty for establishing the project date. Therefore, the Department has used the standard language here.

13. **Successor Clause** (O: ¶(19):

The Department requires that the recipient ensure that contractors involved in the provision and/or operation of any part or portion of the transit system comply with Section 5333(b) protections. Therefore, with regard to Paragraph (19) of the operating protective arrangement, the Department has excluded the word "such" in the second paragraph.

That this does not comport with the language in the Model Agreement, as noted by LACMTA, is not persuasive. There is no reason to alter the Department's consistent treatment of the successorship/contractor question as it relates to operating arrangements. Any entity providing or contracting to provide services under a grant Project must assume a measure of responsibility with regard to protective arrangements in order to ensure the effective delivery of protections.[10]

The successor clause as included by the Department, does not interfere with established subcontracting rights under the parties' collective bargaining agreement. To the extent that the collective bargaining agreement addresses subcontracting, the provisions of that agreement are protected under the Act.[11] There is enough latitude in the language of paragraph (19) to define these protective obligations in a manner which will not conflict with the parties' collective bargaining arrangements. Accordingly, consistent with the Department's previous determinations, additional language has been included under Paragraph (19) which clarifies that entities providing Federally-assisted transportation services must assume a measure of responsibility with LACMTA for employee protections.

14. **Opening "Whereas" Clause** and **"Now, Therefore," Clause** (Capital Arrangement):

The ATU proposed the addition of the term *inter alia* to the opening "Whereas" clause of the capital protective arrangement. This clause includes other agreed upon language reflecting the intent of the parties to have the protections apply to both

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[10] See the Department's February 7, 1997 determination for Montgomery County, Maryland.

[11] See the Department's December 23, 1994 determination for the Southeastern Pennsylvania Transportation Authority.

pending grants: one capital and one operating and capital. Because this clause simply identifies that LACMTA has applied for capital assistance, the additional language is not needed.

In the "Now Therefore" clause, after the words, "the following terms and conditions shall apply," the ATU proposed adding the phrase "to the Project capital assistance". ATU argued that the the language is factually accurate and constitute the exact terms which are necessary to clarify and articulate the subject of the arrangements. The language proposed by the ATU parallels a similar agreed upon provision found in the operating arrangement which specifies the application of its protective terms "to any contract governing Federal operating assistance." This additional language may help avoid confusion in the presence of other agreed-upon language in the capital arrangement's Whereas clause (which, as mentioned above, refers to both pending grants, one of which includes capital and operating funds). The Department has, therefore, included this proposed language.

Conclusion:

Having resolved the foregoing issues, the Department of Labor has determined that the terms and conditions set forth in Attachments A and B: the *Capital Protective Arrangement Pursuant to Section 5333(B), 49 U.S.C., for Los Angeles County Metropolitan Transit Authority and Local 1277, Amalgamated Transit Union, AFL-CIO,* dated August 13, 1997; and the *Operating Protective Arrangement Pursuant to Section 5333(b), 49 U.S.C., for Los Angeles County Metropolitan Transit Authority and Local 1277, Amalgamated Transit Union, AFL-CIO,* dated August 13, 1997, respectively, meet the requirements of Section 5333(b) and shall serve as the basis for the protections applicable to the employees represented by ATU Local 1277.

Also in connection with the processing of these grant applications, LACMTA and the Transportation Communications International Union (TCU) executed an agreement dated September 10, 1996, for application to both capital and operating assistance grants. In addition, LACMTA and the United Transportation Union (UTU) executed a protective agreement dated January 16, 1997, for application to capital and operating grants. As explained above, the Department has reviewed these agreements and has determined that the deletion of the third "Whereas" clause is appropriate for its certification of these protective arrangements which, as so modified, satisfy the requirements of 49 U.S.C., Section 5333(b).

With regard to the Transit Police Officer's Association (TPOA), the LACMTA and the TPOA executed an agreement dated February 7, 1996, in connection with a previous grant application for both capital and operating assistance. The February 7, 1996 agreement provides to employees represented by the union protections satisfying the requirements of 49 U.S.C., Section 5333(b). LACMTA and the TPOA have agreed that the terms and conditions of the agreement dated February 7, 1996, shall be applied to the instant projects.

Also, the International Brotherhood of Teamsters (IBT), which represents employees of LACMTA, has not objected to proposals that employees it represents should be afforded substantially the same levels of protection as those provided in the February 7, 1996 agreement between LACMTA and the TPOA. Therefore for purposes of this certification, LACMTA employees represented by the IBT shall be afforded substantially the same level of protections as those contained in the February 7, 1996 agreement.

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant projects on condition that:

1. This Final Certification letter and the terms and conditions of the agreements dated February 7, 1996, and September 10, 1996, as modified, and January 16, 1997, as modified, and the attached *Capital Assistance Arrangement* dated August 13, 1997, shall be made applicable to the capital assistance portions of the instant projects and made part of the contracts of assistance, by reference;

2. This Final Certification letter and the terms and conditions of the agreements dated February 7, 1996, and September 10, 1996, as modified, and January 16, 1997, as modified, and the attached *Operating Assistance Arrangement* dated August 13, 1997, shall be made applicable to the operating assistance portions of the instant projects and made part of the contracts of assistance, by reference;

3. The term "project" as used in the above agreements and arrangements shall be deemed to cover and refer to the capital and operating portions, respectively, of the instant projects;

4. Disputes over the interpretation, application and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of such disputes;

5. The contracts of assistance shall include the following language, by reference:

   "The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements of the grant contract between the U.S. Department of Transportation and the LACMTA and the parties to the contract so signify by executing that contract. Employees, or their representative on their behalf, may assert claims under this provision. This clause creates no independent cause of action against the United States Government."; and

6. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the local unions which are a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the unions under the above protective arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the projects.

Should a dispute remain after exhausting any available remedies under the protective arrangements, and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

Enclosures

cc: Donald Durkee/FTA
Dennis Newjahr/LACMTA
Frank Flores/LACMTA
Jane Sutter Starke/ESC&M
Lee Tainter/TPOA
Robert Scardelletti/TCU
Bernie McNelis/UTU
Guerrieri, Edmond & Clayman
Leo Wetzel/ATU
Ron Carey/IBT

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

SEP 8 1997

Mr. Lee Waddleton
Regional Administrator
Federal Transit Administration
Region VII
6301 Rockhill Road
Suite 303
Kansas City, Missouri 64131

FINAL CERTIFICATION

Re: FTA Application
Kansas City Area Transportation Authority
Preliminary Engineering
MO-03-0049-01
MO-90-X143

Dear Mr. Waddleton:

This is in reply to the request from your office we review the above-captioned application for a grant under Title 49 of the U.S. Code, Chapter 53.

Pursuant to Department of Labor (Department) Guidelines (29 C.F.R. 215), the Kansas City Area Transportation Authority (KCATA) and the Amalgamated Transit Union (ATU), Local 1287 engaged in negotiations to develop the protective arrangements required under 49 U.S.C., Section 5333(b). The KCATA and ATU Local 1287 were unable to reach agreement regarding those arrangements; thereafter, the Department issued an Interim Certification dated July 11, 1997. This determination of the outstanding issues constitutes the final certification of the above project under the Department's guidelines and sets forth the protective terms and conditions to be substituted for those in the Interim Certification (29 C.F.R. 215.3(g)).

KCATA and ATU Local 1287 executed an agreement dated April 24, 1973, which was certified for previous grant applications. In connection with previous grant applications, the parties were in dispute over certain issues which this Department has spoken to in respective certifications of those applications. KCATA and the ATU continue to disagree over the inclusion of certain language in paragraph (17) of the April 24, 1973 agreement for certification by the Department. It is the Department's

determination that paragraph (17) of the April 24, 1973 agreement shall be made applicable except to the extent that it provides for interest arbitration. Such provisions shall be substituted by provisions set forth in the third enumerated condition below pursuant to the requirements of Section 5333(b).

The Department, having considered the briefs and replies of the KCATA and ATU Local 1287 with respect to the outstanding issue, has included supplementary language in the third enumerated paragraph below which addresses the issue discussed below. These arrangements provide to employees represented by the union protections satisfying the requirements of 49 U.S.C., Section 5333(b).

Supplemental Light Rail Implementation Arrangements

The ATU has proposed the inclusion of four paragraphs which set forth obligations of the KCATA in connection with the establishment of a Southtown Corridor Rail project. KCATA has indicated a preference to defer development of such language until the Southtown Corridor project has progressed further in its development. The Department has determined, in view of the first opportunity of employment provision at paragraph (15) of the parties' April 24, 1973 Agreement, that it is fair and equitable to include language in the certification which specifies how that provision will be implemented for this project providing funding for the initial Southtown Corridor project.

KCATA has also provided a proposal for specific language in the event that the Department does not defer inclusion of language addressing the parties' paragraph (15) rights and obligations. With respect to the differences in the parties' proposals, the Department has determined that it is not necessary to reference any specific paragraph from the parties' 1973 Agreement in the third paragraph, but it has included the reference to paragraph (15) because it was referenced in both the parties' proposals. The Department has not included KCATA's sixth proposed paragraph because it would not be appropriate to provide, as proposed, for the termination of the protective obligations associated with this specific project as long as the first opportunity of employment provisions of the 1973 Agreement continue to apply. Finally, the Department has not included KCATA's seventh proposed paragraph, since, contrary to the proposed language, the obligations set forth here clearly provide additional protection for employees, not the least of which is timely information which will assist them in exercising their rights.

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the April 24, 1973 agreement shall be made applicable to the instant project and made part of the contract of assistance, by reference, provided, however, that paragraph (17) of the April 24, 1973 agreement shall be made applicable except to the extent that it provides for interest arbitration;

2. The term "project" as used in the agreement of April 24, 1973, shall be deemed to cover and refer to the instant project;

3. The interest arbitration procedures contained in Sections 1.7 and 1.14 of the parties' November 15, 1986 collective bargaining agreement, or as such appears in current collective bargaining agreement, shall be preserved pursuant to 49 U.S.C., Section 5333(b)(2)(A). In the event that the dispute resolution procedures contained in the parties' current collective bargaining agreement are determined not to be applicable to any interest dispute, the procedures contained in Appendix "A" of the Department of Labor's certification for project MO-90-X033, dated December 29, 1986, shall be used as a substitute for (in lieu of) the inapplicable collective bargaining agreement procedures;

   The following understandings will govern the implementation of the first opportunity of employment provisions contained in paragraph (15) of the April 24, 1973 Agreement for the Southtown Corridor project:

   (1) The Authority (understood to herein refer to KCATA, its successors or assigns and/or any entity managing or operating Project-assisted light rail services) will provide ATU Local 1287 with construction progress reports at least once every six (6) months until light rail revenue service begins.

(2) At least eighteen (18) months prior to commencing any light rail revenue service, the Authority will provide to the Union written notice of its desire to meet with the Union for the purpose of discussing the formation of a labor-management committee which, if created, will travel to one or more agreed-upon city(ies) where the labor-management committee can meet with representatives from labor and management of a similar light rail system(s) to discuss training programs, potential light rail labor relations problems (including, but not limited to, typical grievances as they occur and the like) as well as other matters of mutual concern which may aid the parties in the implementation of light rail service. Each party will pay for its own expenses, it being understood and agreed that the creation of this Iabor-management committee and any decision as to whether or not to make any such trip(s) to such city(ies) will be completely voluntary. Should either the Authority or the Union choose not to participate when the time arrives, no such committee will be created.

(3) At least twelve (12) months prior to the opening of the first maintenance facility where light rail maintenance will be performed or prior to the commencement of any light rail revenue service, whichever is earlier, the Authority shall send the Union written notice to begin negotiations on an implementing arrangement to staff the light rail system in accordance with Paragraph (15) of the parties' April 24, 1973 Section 13c Agreement. In order to ensure that the maximum number of existing employees qualify for the new light rail bargaining unit for comparable jobs, the implementing arrangement shall include, but not be limited to, job training programs for employees seeking positions in maintenance of way, power substations, automatic train control systems, and

other light rail jobs. In the event the Authority and the Union are unable to agree upon such implementing arrangements within sixty (60) days after the authority notifies the Union to begin negotiations, the dispute may be submitted to arbitration in accordance with the procedures contained in paragraph (17) of the 1973 Section 13c Agreement and pursuant to Section 1.14 of the parties' collective bargaining agreement.

(4) The Union will survey its members in advance of implementing negotiations to determine approximately how may existing employees desire to bid laterally to light rail jobs, e.g., cleaner to cleaner, mechanic to mechanic, etc., as well as employees who wish to bid to comparable bargaining unit jobs which will require reasonable training or retraining in order to qualify. The Union will report the results of this survey to the Authority so that the Authority can obtain an approximate idea of the number of employees desiring to bid jobs on the light rail system.

(5) Any dispute regarding the interpretation, application and/or enforcement of the foregoing supplemental protective arrangements pursuant to 49 U.S.C. Section 5333(b) which cannot be settled within thirty (30) days after such dispute first arises may be submitted to arbitration in accordance with the procedures contained in paragraph (17) of the 1973 Section 13c Agreement.

4. The protective agreement/arrangement hereby certified by the Secretary of Labor shall be effective and in full force according to its terms and shall continue in effect from year to year during the period of the Federal Contracts of Assistance and/or, thereafter, for as long as necessary to satisfy its intended purpose to protect potentially affected employees from the impact of Federal assistance;

5. The contract of assistance shall include the following language, by reference:

"The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project.

These employees are intended third-party beneficiaries to the employee protective arrangements of the grant contract between the U.S. Department of Transportation and the Kansas City Area Transportation Authority, and the parties to the contract so signify by executing that contract. The employees, or their representative, may assert claims on their behalf. This clause creates no independent cause of action against the United States Government;"

6. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of such disputes; and

7. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union which is a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the above referenced arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute remain after exhausting any available remedies under the Section 5333(b) arrangements, and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate

a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

Enclosure

cc: Donald Durkee/FTA
James R. Willard/Spencer Fane Britt & Browne
Richard Davis/KCATA
Leo Wetzel/ATU

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

SEP 29 1997

Mr. Richard H. Doyle
Regional Administrator
Federal Transit Administration
Region I
Kendall Square
55 Broadway, Suite 920
Cambridge, Massachusetts 02142-1093

PARTIAL FINAL CERTIFICATION

Re: FTA Application
Commonwealth of Massachusetts
on Behalf of the City of
Somerville
Operating Assistance for New
Shuttle Service
MA-90-X251 Part C

Dear Mr. Doyle:

This is in further response to the request from your office that we review the above captioned application for a grant under Title 49, U.S. Code, Chapter 53. This certification addresses only the City of Somerville element of the above grant.

Pursuant to the Department of Labor (Department) Guidelines (29 C.F.R. 215), the City of Somerville (City) and the Amalgamated Transit Union Local 589 (ATU) were directed to engage in negotiations/discussions to develop protective provision required under 49 U.S.C., Section 5333(b). The parties failed to reach agreement and an interim certification was issued on July 29, 1997 by the Department. The Department then directed the parties to submit briefs on the issues in dispute. This determination of the outstanding issues constitutes the final certification for the above referenced project under the Department's Guidelines and sets forth the protective terms and conditions to be substituted for those in the Interim Certification (29 C.F.R. 215.3 (g)).

The issues upon which the parties remain in disagreement are discussed below.

SUCCESSORS AND ASSIGNS PROVISION, PARAGRAPH (19)

The City and ATU are in dispute over the specific language to be included in paragraph (19) of the proposed Operating Arrangements contained in the Department's referral of March 20, 1997.

The threshold issue in this case is whether Section 5333(b) protective obligations must be shared by any entity which undertakes the management or operation of project services which receive Federal assistance. While the City agrees to the language in Paragraph (19) of the Department's referral, it is opposed to placing any obligations under Section 5333(b) on its vendor. The City argues that "any claims against the vendor would jeopardize its existence" if the City were required to ensure that the vendor agree to be bound by the terms of the Section 5333(b) protective arrangement.

As a condition of all federal transit assistance, 49 U.S.C., Section 5333(b) requires that certain protections be in place before the release of federal funds. This requirement applies to all recipients of federal funding. It is the Department's responsibility to ensure that these provisions are fair and equitable, and to use its discretion in determining such provisions. The exercise of this discretion does not, however, permit the Department to waive the requirements of the statute for any entity.

The Department has determined any entity providing or contracting for the provision of services under a grant project must assume a measure of responsibility under the protective arrangements to ensure the effective delivery of protections. If the applicant is not the direct provider of service it cannot, for instance, directly ensure the required priority of reemployment under the statute. (Section 5333(b)(2)(E). In order to carry out these statutory requirements, the City must ensure that any entity which undertakes the management, provision and/or operation of the transportation services assisted by the City portion of the project agree to be bound by the terms of the protective arrangement and accepted responsibility with the City for performance of these conditions.

While the City has proposed the language of Paragraph (19) as it appeared in the Department's referral of March 20, 1997, it does not interpret that language as placing the requisite obligations on the City's vendor. Therefore, consistent with prior Departmental determinations, and in order to ensure a proper interpretation of the City's obligations with regard to its vendor, the Department will include the language proposed by the ATU in this final

certification for the City. This is necessary to ensure that the obligation to comply with arrangements is properly understood to also apply to any entity providing transportation service for the City. This does not preclude the City from making separate arrangements indemnifying its vendor for any financial loss which arises from its protective responsibilities.

CONDITION PRECEDENT LANGUAGE (PARAGRAPH 19)

The parties are also in dispute over the addition of "condition precedent" language in Paragraph (19) proposed by the union and contained in the Department's interim certification.

In the Department's view, any entity which is to be bound by the terms and conditions of the protective arrangements should be made aware of its obligations prior to initiating its contract. Therefore, in this situation, where the parties are in dispute over including such language, the Department has determined that it is appropriate to include "condition precedent" language.

DISCONTINUANCE OF PROJECT SERVICES - PARAGRAPH (23)

Paragraph (23) of the proposed Operating Arrangements contained in the Department's referral of March 20, 1997 reads:

> "An employee covered by this arrangement, who is not dismissed, displaced, or otherwise worsened in his position with regard to his employment as a result of the Project, but who is dismissed, displaced, or otherwise worsened solely because of the total of partial termination of he Project, **discontinuance of project services**, or exhaustion of Project funding, shall not be deemed eligible for a dismissal or displacement allowance within the meaning of paragraphs (6) and (7) of this arrangement." (Emphasis added.)

The union proposes that the language in bold be deleted because its suggestion that Section 5333(b) benefits cannot be triggered upon a "discontinuance of project services" is inconsistent with the requirements of the statute and therefore, cannot be imposed and certified. The City argues that removing such language is not mandated by Section 5333(b).

While it is not necessary to exclude the "discontinuance of project services" language from Paragraph (23), neither is it required that it be included. This language may be misleading if it is interpreted to exclude from Section 5333(b) coverage actions which occur as a result of Federal assistance. Therefore, the Department has determined that "discontinuance of project services" language should be deleted from this protective arrangement.

With consideration to the forgoing, the Department has determined that the attached OPERATING ASSISTANCE PROTECTIVE ARRANGEMENT PURSUANT TO SECTION 5333(B) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53, FTA GRANT MA-90-X251, September 29, 1997, Between City of Somerville and Amalgamated Transit Union Local 589 shall serve as the basis of this final certification for the City of Somerville portion of the project.

In addition, the Department has revised the protections included in its interim certification of July 29, 1997 for the City of Somerville and the UTU, TCU, TWU, IAM, OPEIU, and the RLEA, all of which represent Massachusetts Bay Transportation Authority (MBTA) employees in the service area of the Somerville project, to incorporate the Paragraph (19) language applied for the ATU-represented employees.[1] These protections are incorporated in the attached OPERATING ASSISTANCE PROTECTIVE ARRANGEMENT PURSUANT TO SECTION 5333(b) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53, FTA GRANT MA-90-X251, Between City of Somerville and UTU, TCU, TWU, IAM, OPEIU, and RLEA.

The Department of Labor makes the certification called for under the statute conditioned upon the Commonwealth of Massachusetts Executive Office of Transportation and Construction (MEOTC) ensuring, as a precondition to the release of assistance to any recipient under this grant, that such recipient agrees to the above referenced terms and conditions, and that this certification letter and the terms and conditions of the above protective arrangements are incorporated into the contract of assistance between MEOTC and the recipient, by reference.

---

[1] In view of positions taken by the City which exhibit an incorrect interpretation of the referred Paragraph (19) language to place no obligation on contractors, the Department will apply this alternative language to ensure that the requirements of 5333(b) are satisfied.

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the above protective arrangements, shall be made applicable to the City of Somerville portion of the instant project and shall be made part of the contract of assistance between the Commonwealth of Massachusetts Executive Office of Transportation and Construction (MEOTC) and the FTA, by reference;

2. As a precondition to the release of assistance to the City of Somerville, this letter and the terms and conditions of the above protective arrangements shall be incorporated into the contract of assistance between MEOTC and the City of Somerville, by reference.

   Any dispute or controversy arising regarding the application, interpretation, or enforcement of this provision which cannot be settled by and between the parties at interest within thirty (30) days after the dispute or controversy first arises, may be referred by any party to any final and binding disputes settlement procedure acceptable to the parties, or in the event they cannot agree upon such procedure, to the Department of Labor or an impartial third party designated by the Department of Labor for a final and binding determination;

3. The term "project" as used in the above protective arrangements, shall be deemed to cover and refer to the instant project;

4. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall

be resolved in accordance with the provisions in the aforementioned arrangement for the resolution of such disputes; and

5. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local unions which are a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the above protective arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

   Should a dispute remain, after exhausting any available remedies under the protective arrangement, and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

Enclosures

cc: Donald Durkee/FTA
Jennifer Nadelson/MEOTC
Todd Fontanella/Somerville
Jura Strimaitis/Somerville
Leo Wetzel/ATU
George Kourpias/IAM
Michael Goodwin/OPEIU
Les Parmelee/RLEA
Highsaw, Mahoney & Clarke
Robert Scardelletti/TCU
Frank McCann/TWU
Malcolm Goldstein, Esq.
Bernie McNelis/UTU
Guerrieri, Edmond & Clayman

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

SEP 29 1997

Mr. Richard H. Doyle
Regional Administrator
Federal Transit Administration
Region I
Kendall Square
55 Broadway, Suite 920
Cambridge, Massachusetts 02142-1093

PARTIAL FINAL CERTIFICATION
Re: FTA Application
Commonwealth of Massachusetts
on Behalf of the City of
Newton
Operating Assistance
MA-90-X251 Part D

Dear Mr. Doyle:

This is in further response to the request from your office that we review the above captioned application for a grant under Title 49, U.S. Code, Chapter 53. This certification addresses only the City of Newton element of the above grant.

Pursuant to the Department of Labor (Department) Guidelines (29 C.F.R. 215), the City of Newton (City) and Amalgamated Transit Union Local 589 (ATU) were directed to engage in negotiations/ discussions to develop protective provisions required under 49 U.S.C., Section 5333(b). The parties failed to reach agreement and an interim certification was issued on July 29, 1997 by the Department. The Department then directed the parties to submit briefs on the issues in dispute. This determination of the outstanding issues constitutes the final certification for the above referenced project under the Department's Guidelines and sets forth in Attachment A the protective terms and conditions to be substituted for those in the Interim Certification (29 C.F.R. 215.3 (g)).

The issues upon which the parties remain in disagreement are discussed below.

CONDITION PRECEDENT LANGUAGE (PARAGRAPH 19)

The ATU proposed, and the City has not objected to, language in Paragraph (19) addressing the obligations of successors, assigns and any other entity undertaking the management, provision and/or operation of the transportation services assisted by the City of Newton operating assistance element of the Project. The ATU and City are however in disagreement over the inclusion of the following language at the end of Paragraph (19):

"As a condition precedent to any such contractual arrangements, the City of Newton shall require such person, enterprise, body or agency to so agree."

The City argues that this language is not necessary because the language agreed to by the parties already addresses this obligation. In addition, the City argues that it cannot require the contractor to be bound to the terms and conditions of the protective arrangements as a "condition precedent" since the contract for services has already been awarded.

The ATU argues that the "condition precedent" language is required because an arrangement between two parties (the ATU and the City) cannot declare a third party (e.g. a contractor) to be bound thereto. These obligations must be established separately through an arrangement to which the third party is directly and itself a party.

In the Department's view, any entity which is to be bound by the terms and conditions of the protective arrangements must be made aware of its obligations prior to initiating its contract. Therefore, in this situation, where the parties are in dispute over including such language, the Department has determined that it is appropriate to include "condition precedent" language.

However, as a practical matter, and as the City has stated in its brief, it had already entered into a contract with LoLaw Transit, Inc., a private operator, prior to receipt of federal funds, thereby making its execution of the requisite terms as a "condition precedent" to the contract impossible in this instance. Accordingly, the Department has determined that, during the term of the contract with LoLaw Transit, Inc., in effect as of September 29, 1997, the condition precedent language shall not apply. This does not relieve the City of its obligation to ensure that LoLaw Transit, Inc., or any entity

which undertakes the management, provision and/or operation of the transportation services assisted by the Project, is bound by the terms of the protective arrangement.

DISCONTINUANCE OF PROJECT SERVICES (PARAGRAPH 23)

The briefs of the ATU and the City indicate that the parties have both agreed to omit "discontinuance of project services" language from Paragraph (23) of the protective arrangement.

The City, though, has requested that the Department's final certification "make clear that the terms and conditions of the Protective Arrangement shall not apply to employees of the City's current Contractor for the transportation service nor to any future Contractor for the transportation services." However, employees of the Contractor (who are not currently represented by a labor organization) are clearly covered under the final enumerated condition of the Department's certification which provides that these employees receive substantially the same levels of protection as those contained in the protective arrangement.

Section 5333(b) rights, though, would be triggered only if impacts are as a result of the Project. Neither the City nor its contractor would be responsible for protections under the language of paragraph (23) when the adverse effects result solely from a total or partial termination of the Project or from the exhaustion of Project funding.

ADDITIONAL ISSUES

The City presented additional issues in its brief that were not properly before the Department for resolution. Therefore, the Department has determined that it would be inappropriate to include the City's proposals' in this certification. The Department will apply the attached OPERATING ASSISTANCE PROTECTIVE ARRANGEMENT PURSUANT TO SECTION 5333(B) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53, FTA GRANT MA-90-X251, September 29, 1997, Between City of Newton and Amalgamated Transit Union Local 589.

Finally, the Department has revised the protections included in its interim certification of July 29, 1997 for the City of Newton and the UTU, TCU, TWU, IAM, OPEIU, and the RLEA, all of which represent Massachusetts Bay Transportation Authority (MBTA) employees in the service area of the Newton project, to

incorporate the Paragraph (19) language applied for the ATU-represented employees.[1] These protections are incorporated in the attached OPERATING ASSISTANCE PROTECTIVE ARRANGEMENT PURSUANT TO SECTION 5333(b) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53, FTA GRANT MA-90-X251, Between City of Newton and UTU, TCU, TWU, IAM, OPEIU, and RLEA.

The Department of Labor makes the certification called for under the statute conditioned upon the Commonwealth of Massachusetts Executive Office of Transportation and Construction (MEOTC) ensuring, as a precondition to the release of assistance to any recipient under this grant, that such recipient agrees to the above referenced terms and conditions, and that this certification letter and the terms and conditions of the above protective arrangements are incorporated into the contract of assistance between MEOTC and the recipient, by reference.

Accordingly, the Department makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the above protective arrangements, shall be made applicable to the City of Newton portion of the instant project and shall be made part of the contract of assistance between the Commonwealth of Massachusetts Executive Office of Transportation and Construction (MEOTC) and the FTA, by reference;

2. As a precondition to the release of assistance to the City of Newton, this letter and the terms and conditions of the above protective arrangements shall be incorporated into the contract of assistance between MEOTC and the City of Newton, by reference.

   Any dispute or controversy arising regarding the application, interpretation, or enforcement of this provision which cannot be settled by and between the parties at interest within thirty (30) days after the dispute or controversy first

[1] In view of positions which exhibit an incorrect interpretation of the referred Paragraph (19) language to place no obligation on contractors, the Department will apply this alternative language to ensure that the requirements of 5333(b) are satisfied.

arises, may be referred by any party to any final and binding disputes settlement procedure acceptable to the parties, or in the event they cannot agree upon such procedure, to the Department of Labor or an impartial third party designated by the Department of Labor for a final and binding determination;

3. The term "project" as used in the above protective arrangements, shall be deemed to cover and refer to the instant project;

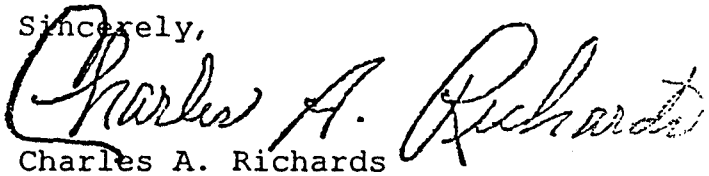
4. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned arrangement for the resolution of such disputes; and

5. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local unions which are a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the above protective arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute remain, after exhausting any available remedies under the protective arrangement, and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third

party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,



Charles A. Richards
Deputy Assistant Secretary

Enclosures

cc: Donald Durkee/FTA
Jennifer Nadelson/MEOTC
Catherine Lester/Newton
Louis Mercuri/Newton
Leo Wetzel/ATU
George Kourpias/IAM
Michael Goodwin/OPEIU
Les Parmelee/RLEA
Highsaw, Mahoney & Clarke
Robert Scardelletti/TCU
Frank McCann/TWU
Malcolm Goldstein, Esq.
Bernie McNelis/UTU
Guerrieri, Edmond & Clayman

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

OCT 9 1997

Mr. Leo E. Wetzel
Associate Counsel
Amalgamated Transit Union
5025 Wisconsin Avenue, NW
Washington, D.C. 20016-4139

Mr. G. Kent Woodman
Eckert Seamans Cherin & Mellott
Attorneys at Law
1250 24th Street, NW
Washington, D.C. 20037

Re: FTA Applications
Los Angeles County Metropolitan
Transit Authority
CA-03-0453
CA-90-X714
August 13, 1997 Certification

Gentlemen:

This is in reference to Mr. Wetzel's letter of September 16, 1997, on behalf of Amalgamated Transit Union (ATU) Local 1277, and Mr. Woodman's letter of September 30, 1997. Both letters address the selection of forces language of the Operating Assistance Protective Arrangement in the Department of Labor's (Department) August 13, 1997 certification for the above captioned projects. Mr. Woodman's letter also indicates that, "if the Department embarks upon a substantive reconsideration of its August 1997 Certification, it should take another look at the issue of reemployment rights ... ."

The language certified by the Department of Labor with respect to the selection of forces language in question reads as follows:

> At the request of either the Public Body or the representatives of the affected employees, negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this Arrangement shall commence immediately. These negotiations shall include determining the selection of forces from among the employees of other urban mass transportation employers who may be affected as a result of the Project, to establish which such employees shall be offered employment for vacancies within the

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> jurisdiction and control of the Public Body for which they are qualified or can be trained; not, however, in contravention of collective bargaining agreements relating thereto. (Emphasis added.)

This language ensures that employees of other mass transportation employers will be given consideration in discussions concerning the application of the terms and conditions of the protective arrangement. It does not in any way exclude ATU Local 1277 employees who are specifically covered by the August 13, 1997 operating assistance protective arrangement. According to Webster's New Collegiate Dictionary (G. & C. Merriam Company, Springfield, Massachusetts, 1979, p. 576.), the word "include" is synonymous with the word "involved" and is defined as "to take in or comprise as a part of a larger aggregate or principle." (Emphasis added.)

Similarly, the inclusion of employees of other mass transportation employers in the selection of forces language indicates that those employees are but a part of the larger aggregate which also encompasses ATU Local 1277 employees. This interpretation is consistent with prior Department certifications. Consequently, there is no need to modify the language of the August 13, 1997 Operating Assistance Protective Arrangement.

The ATU and the Los Angeles County Metropolitan Transit Authority will have five (5) days from the date of this letter to provide the Department with their views on the pending projects: CA-90-X771, CA-03-0466 and CA-90-X664-03.

Sincerely,

Kelley Andrews

Kelley Andrews
Policy Director

cc: Donald Durkee/FTA
Frank Flores/LACMTA

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

OCT 22 1997

Mr. Daniel R. Elliott, III
Assistant General Counsel
United Transportation Union
14600 Detroit Avenue
Cleveland, OH 44107-4250

Re: RESPONSE TO OBJECTIONS TO EMPLOYEE PROTECTION TERMS FOR PENDING FTA GRANT APPLICATIONS
Los Angeles County Metropolitan Transportation Authority
CA-03-0466, CA-90-X771 and CA-90-X664-03

Dear Mr. Elliott:

This is in response to your letter of October 3, 1997, in which the United Transportation Union (UTU) registers certain objections to the Proposed Terms for Employee Protection Certification contained in the Department's referral letter of September 18, 1997. Pursuant to Department Guidelines (29 CFR Part 215), your objections were timely received.

Under the Guidelines, objections to be considered sufficient must raise material issues which may require alternative protections, or must concern changes in legal or factual circumstances that may affect the rights or interests of employees, as presented by the grant project. Your objections and the views of the other parties have been considered.

The terms and conditions contained in the January 16, 1997 agreement between the UTU and LACMTA satisfy the requirements of the statute for each of the issues raised by the union. With respect to the reemployment rights issue, the Department notes that, before it executed the January 16, 1997 agreement, the UTU was aware or should have been aware of a prior decision by the Department to certify a provision where "the parties had agreed to specifically limit priority of reemployment to certain jobs and the priority of reemployment remains a meaningful one even with that limitation."1 The Department, therefore, has determined that these objections do not present a sufficient showing of material issues or changes in legal or factual circumstance that are not otherwise addressed by the protective arrangements set forth in the Department's referral letter.

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1 See enclosed July 19, 1995 letter to Mr. Kent Woodman addressing a Foothill Transit Zone project. The UTU was copied on this letter which addresses the protective agreement of the same UTU bargaining unit involved in the current proceedings.

Accordingly, the Department will issue its certification applying the terms and conditions contained in our September 18, 1997 referral on behalf of employees represented by the UTU.

If you have any questions, I can be reached by facsimile at(202) 219-5338.

Sincerely,

Dorothy C. Hodge
Project Representative

cc: Donald Durkee/FTA
Frank Flores/LACMTA
Jane Sutter Starke/ESC&M
Bernie McNelis/UTU

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

OCT 27 1997

Ms. Susan Schruth
Regional Administrator
Federal Transit Administration
Region IV
61 Forsythe Street SW
Suite 17T50
Atlanta, Georgia 30303

Re: FTA GRANT APPLICATION
City of Charleston
Operating Assistance; Purchase 6 Replacement Trolleys, Construct & Design 25 Passenger Shelters, Construct & Design 1 Superstop
SC-90-X109

Dear Ms. Schruth:

This is in further regard to the request from your office that we review the above captioned application for a grant under Title 49 of the U.S. Code, Chapter 53.

On October 9, 1997, the Department issued its certification for SC-90-X109. That certification was withdrawn on October 10, 1997, in order for the Department to evaluate issues relating to the certified terms for SC-90-X097 raised by the Amalgamated Transit Union (ATU) which had implications for the instant grant. The Department has now resolved those issues and herewith issues its final certification for grant SC-90-X109.

As you are aware, the Department's final certification for SC-90-X097, included language in its certification letter of April 24, 1997, and Attachment A, to require that any dispute over whether an acquisition will occur or has occurred, should be resolved before the intended action is implemented. During the processing of the instant grant, the ATU raised concerns that the Department's language in Attachment A was subject to misinterpretation and should not be reapplied without clarification. In order to ensure a proper understanding of the Department's intent with respect to this requirement, a technical clarification has been made to the introductory language in Attachment A (copy enclosed)of the Department's April 24, 1997 certification for SC-90-X097. The Department has added the

following language to the beginning of the introductory paragraph of the terms of Attachment A. This language will be applied to both SC-90-X097 and the instant grant, SC-90-X109:

> Any dispute between the City and the union (or the successors or assigns of either party) as to whether or not an acquisition has occurred or will occur, must be resolved before there can be a transition of employees from SCE&G to another employer. If the parties cannot resolve this matter through agreement, the dispute will be referred to an arbitrator for resolution according to the provisions described in paragraph (15) of the September 14, 1984 Section 13(c) Agreement and/or paragraph (15) of the July 27, 1987 Section 13(c) agreement referenced in the Department's certification.

With regard to the other provisions of the Department's certification, the South Carolina Electric & Gas Company, ATU Local 610, and IBEW Local 398 executed agreements dated September 14, 1984 (for a previous capital assistance grant), and July 27, 1987 (for a previous operating assistance grant), which were supplemented by letters from Mayor Joseph P. Riley, Jr., to the Department of Labor dated August 7, 1984. The agreements of September 14, 1984, and July 27, 1987, as supplemented by the letters of August 7, 1984 and the additional provisions specified in the Department's April 24, 1997 certification and Attachment A thereto (as clarified above), provide protections to employees represented by the unions which satisfy the requirements of 49 U.S.C., Section 5333(b).

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated July 27, 1987, as supplemented by the letter dated August 7, 1984 pertaining to operating assistance and by Attachment A to the Department's April 24, 1997 certification (clarified), shall be made applicable to the operating assistance portion of the instant project and made part of the contract of assistance, by reference;

2. This letter and the terms and conditions of the agreement dated September 14, 1984, as supplemented by the letter dated August 7, 1984 pertaining to capital assistance and by Attachment A to the Department's April 24, 1997 certification (clarified), shall be made applicable to the capital portion of the instant project and made part of the contract of assistance, by reference;

3. The term "project" as used in the agreements of July 27, 1987 and September 14, 1984, as supplemented, shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant project;

4. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of such disputes; and

5. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union which is a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the July 27, 1987 and September 14, 1984, agreements, as supplemented, and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

   Should a dispute remain, after exhausting any available remedies under the protective arrangement, and absent mutual agreement by the parties to utilize other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate

a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

Enclosure

cc: Donald Durkee/FTA
Leo Wetzel/ATU
John L. Barry/IBEW
Christine Nelson Burr/Charleston
Bruce Smith/Apperson, Crump, Duzane & Maxwell, PLC

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

OCT 30 1997

Mr. Sheldon Kinbar
Regional Administrator
Federal Transit Administration
Region III
1760 Market Street
Suite 500
Philadelphia, Pennsylvania 19103

FINAL CERTIFICATION

Re: FTA Application
Commonwealth of Virginia
Park and Ride Lot in Phase I in
Support of Bus Service and Rail
Service in Phase II
VA-03-0060

Dear Mr. Kinbar:

This is in further response to the request from your office that we review the above captioned application for a grant, under Title 49 of the U.S. Code, Chapter 53.

Pursuant to Department of Labor (Department) Guidelines (29 C.F.R. 215), the Commonwealth of Virginia, Department of Rail and Public Transportation (Commonwealth), and the Amalgamated Transit Union Locals 689 and 1708 (ATU) were directed on May 2, 1997 to engage in negotiations/discussions to develop protective arrangements required under 49 U.S.C., Section 5333(b). The parties failed to reach agreement and the Department issued an Interim certification on June 27, 1997. This determination of the outstanding issues constitutes the final certification for the above referenced project under the Department's Guidelines and sets forth the protective terms and conditions to be substituted for those in the Interim Certification (29 C.F.R. 215.3(g)).

The issues upon which the parties remain in dispute are discussed below.

DEFINITION OF THE TERM "RECIPIENT"

The Commonwealth and the ATU have agreed to the ATU's proposed definition of the term "Recipient" except for the phrase "including Phase I bus and Phase II rail services." The Commonwealth asserts that this language "unduly emphasizes the possible future use which the proposed facility may eventually serve." The Commonwealth also argues that the scope of the instant project is to serve carpools and van pools and the future express bus service.

In its argument to include the phrase "including Phase I bus and Phase II rail services," the ATU quotes from the project application which states that the project facility is to serve as a principal terminal for enhanced bus service in the Dulles corridor operated by Loudoun County and would later be converted to serve as a rail transit station as proposed in the Dulles Corridor Transportation Study. The ATU also acknowledges that the language proposed by the union "would operate to bind to the Section 5333(b) protections only a rail service provider ..." which undertakes the management, provision and/or operation of mass transportation services utilizing or directly benefiting from the facility.

The project application clearly confirms that the project was developed to accommodate the possible future "extension of rail transit from the West Falls Church Metrorail station out to Dulles Airport and beyond into eastern Loudoun County in the general location of the proposed park and ride lot." However, if rail service is not instituted, or does not use the Federally assisted park and ride lot, no rail provider would be bound by these protections. Accordingly, the Department will include the disputed language in this instance.

SUCCESSORS, ASSIGNS and CONTRACTORS PROVISION

The Commonwealth and the ATU are also in dispute over the specific language to be included in the Capital Arrangement addressing the obligations of any entity which undertakes the management, provision and/or operation of mass transportation services assisted by the Project.

The Commonwealth argues, without further elaboration, that the "... language proposed by the ATU does not appear to be necessary and is somewhat less clear than that contained in Paragraph (19) of the Capital Arrangement." In addition, the Commonwealth

objects to the ATU's proposed inclusion of the phrase "including Phase I bus and Phase II rail service" in this provision as well as in the definition of "Recipient" addressed above.

The Department has determined that any entity which undertakes the management, provision and/or operation of mass transportation services assisted by the Project must share in the responsibility under the protective arrangements to ensure the effective delivery of protections. In order to carry out these statutory requirements, the Commonwealth must ensure that any such entity be bound by the terms of the protective arrangement and accept responsibility with the Commonwealth for the full performance of these conditions.

Although the Commonwealth prefers the language in paragraph (19) of the referred Capital Arrangement, the Department has determined that the language proposed by the ATU more clearly places the requisite obligations upon any entity which undertakes the management, provision and/or operation of transportation services utilizing the facility funded under the Project. Therefore, consistent with prior Departmental determinations, and in order to ensure the proper allocation of protective obligations, the Department will include in this final certification for VA-03-0060, the language proposed by the ATU.

The enclosed Capital Assistance Protective Arrangement between the Commonwealth of Virginia and the ATU, dated October 30, 1997, provides to employees represented by the union protections satisfying the requirements of 49 U.S.C., Section 5333(b). The Commonwealth of Virginia, Department of Rail and Public Transportation, and ATU Locals 689 and 1708 shall be deemed a party to the arrangement.

In addition, the Commonwealth and the American Federation of State, County and Municipal Employees (AFSCME) Local 3398, the International Brotherhood of Teamsters (IBT) Local 639, the Office and Professional Employees' International Union (OPEIU) and the Parking and Service Workers Union (PSWU) Local 27, did not object to the terms and conditions included in the Department's referral of March 20, 1997. Those arrangements, which provide to employees represented by the unions protections satisfying the requirements of 49 U.S.C., Section 5333(b), have been included in an attached document dated October 30, 1997, on behalf of employees represented by these labor organizations. The Commonwealth of Virginia, Department of Rail and Public Transportation, and the American Federation of State, County and Municipal Employees (AFSCME) Local 3398, the International

Brotherhood of Teamsters (IBT) Local 639, the Office and Professional Employees' International Union (OPEIU) and the Parking and Service Workers Union (PSWU) Local 27, shall be deemed a party to the arrangement.

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the CAPITAL ASSISTANCE PROTECTIVE ARRANGEMENTS PURSUANT TO SECTION 5333(B) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53 - FTA GRANT VA-03-0060, dated October 30, 1997, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the above-referenced arrangements shall be deemed to cover and refer to the instant project;

3. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned arrangements for the resolution of such disputes.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

Enclosures

cc: Donald Durkee/FTA
William C. LaBaugh, III
Leo E. Wetzel/ATU
Gerald McEntee/AFSCME
Ron Carey/IBT
Roxie Herbekian/PSWU
Michael Goodwin/OPEIU

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

NOV 17 1997

Ms. Helen Knoll
Regional Administrator
Federal Transit Administration
Region X
Jackson Federal Building
915 Second Avenue, Suite 3142
Seattle, Washington 98174

FINAL CERTIFICATION

Re: FTA GRANT APPLICATION
METRO
Preliminary Engineering for
South/North Light Rail
OR-29-9023-01/OR-03-0066

Dear Ms. Knoll:

This is in reply to the request from your office that we review the above captioned application for a grant under Title 49 of the U.S. Code, Chapter 53.

Pursuant to Department of Labor (Department) Guidelines (29 C.F.R. 215), METRO (the Portland area's designated Metropolitan Planning Organization) and Amalgamated Transit Union Local 757 (ATU) were directed to engage in negotiations/discussions to develop protective arrangements required under 49 U.S.C., Section 5333(b). METRO and the ATU failed to reach agreement on these arrangements. Therefore, on May 27, 1997, the Department issued an Interim Certification which permitted FTA to release funds, specifying that no action was to be taken under the grant relating to the issues which remain in dispute which would result in irreparable harm to employees (29 C.F.R. 215.3(d)(8). Since there were no previously certified protective arrangements which could appropriately be applied to the grant, the Department's Interim Certification was based upon the terms and conditions contained in its initial referral to the parties.

METRO and the ATU were directed to address the definition of "Recipient" and the "successors and assigns" language to be included in the Department's certification. This determination of the outstanding issues constitutes the Department's Final Certification pursuant to its Guidelines (29 C.F.R. 215.3(e)(4))

and sets forth the protective terms and conditions to be substituted for those contained in the Department's Interim Certification of May 27, 1997, for the above captioned project.

DEFINITION OF "RECIPIENT"

METRO proposed that the definition of "Recipient" included in the Department's initial referral, be applied in the final certification. METRO acknowledges that it is the intended "Recipient" for the project and indicates that it has "never taken the position that it would not be bound by the protective arrangement." (METRO Initial Brief - p.6) The ATU believes that METRO's proposed definition of "Recipient" creates certain ambiguities "which could leave the grant applicant without any 13(c) obligations" while the ATU proposal would ensure that the term "Recipient" would "include not only any entity providing assisted transportation services but also, and in all circumstances, the applicant." (ATU Initial Brief - p.4.)

Under the circumstances presented in this grant, where METRO is not a provider of transportation services assisted by the project, the Department has determined that the definition of "Recipient" proposed by the ATU will ensure that the requirements of the statute are satisfied and that METRO will remain responsible for providing protections even though it does not itself provide transportation services. Accordingly, the introductory paragraphs of the enclosed CAPITAL ASSISTANCE PROTECTIVE ARRANGEMENT PURSUANT TO SECTION 5333(b) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53, Between METRO and ATU Local 757, FTA GRANT OR-29-9023-01/OR-03-0066, dated November 17, 1997, will define "Recipient" to include METRO and any entity providing Project-assisted activities.

SUCCESSORS, ASSIGNS, AND CONTRACTORS PROVISION

As with the definition of "Recipient," METRO proposed to adopt the successors and assigns language included in the Department's initial referral (paragraph 19 of the July 23, 1975 National Agreement, as incorporated into the proposed capital arrangements by reference). METRO objects to the ATU proposal to delete the term "such" from this paragraph. METRO states that it "believes that deletion of [the term] 'such' changes the intended meaning of the language as written" and that "its deletion expands the reach of the paragraph to 'any entity' regardless of whether it is a successor in interest or assign of METRO." (See METRO Brief - p.8.)

The ATU's proposal for a new paragraph (11) ensures that any entity which undertakes the management, provision and/or operation of project activities will be bound by the protective arrangements even if it is not technically a successor in interest or an assign of the Recipient. In addition, the ATU has included language in its proposal that further defines the recipient's obligations under the provision and language that would alleviate METRO's concern that it would be bound "to satisfaction of the applied labor protections even after the anticipated assumption of all light rail activities by Tri-Met (see ATU's letter of May 14, 1997)."

Consistent with prior determinations addressing this issue, the Department finds that the successorship obligation envisioned by METRO is clearly more limited than that contemplated in the legislative history of the statute. In order to satisfy the statutory requirements, METRO must ensure that any entity which undertakes the management, provision and/or operation of project activities be bound by the protective arrangements. Accordingly, the Department has included the language proposed by the ATU with the exception of the phrase "joint and several." This phrase is not necessary because the remaining language indicates that such an entity must accept responsibility with the Recipient for full performance of these conditions.

The Department has determined that the terms and conditions set forth in the enclosed CAPITAL ASSISTANCE PROTECTIVE ARRANGEMENT PURSUANT TO SECTION 5333(b) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53, Between METRO and ATU Local 757, FTA GRANT OR-29-9023-01/OR-03-0066, dated November 17, 1997, meet the requirements of Section 5333(b), and shall serve as the basis of the Department's final certification for this project. ATU Local 757, which represents transportation related employees in the service area of the project, shall be deemed a party to the protective arrangements under this certification.

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the CAPITAL ASSISTANCE PROTECTIVE ARRANGEMENT PURSUANT TO SECTION 5333(b) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53, Between METRO and ATU Local 757, FTA GRANT OR-29-9023-01/OR-03-0066 dated November 17, 1997, shall be made

applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the above-referenced arrangements shall be deemed to cover and refer to the instant project;

3. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned arrangements for the resolution of such disputes.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

Enclosure

cc: Donald Durkee/FTA
Andy Cotugno/METRO
Leo Wetzel/ATU

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

NOV 18 1997

Ms. Helen Knoll
Regional Administrator
Federal Transit Administration
Region X
Jackson Federal Building
915 Second Avenue, Suite 3142
Seattle, Washington 98174

FINAL CERTIFICATION

Re: FTA GRANT APPLICATION
METRO
Transit Oriented Development
Implementation Program:
Land Acquisition[1]
OR-90-X070

Dear Ms. Knoll:

This is in reply to the request from your office that we review the above captioned application for a grant under Title 49 of the U.S. Code, Chapter 53.

Pursuant to Department of Labor (Department) Guidelines (29 C.F.R. 215), METRO (the Portland area's designated Metropolitan Planning Organization) and Amalgamated Transit Union Local 757 (ATU) were directed to engage in negotiations/discussions to develop protective arrangements required under 49 U.S.C., Section 5333(b). METRO and the ATU failed to reach agreement on these arrangements. Therefore, on May 27, 1997, the Department issued an Interim Certification which permitted FTA to release funds, specifying that no action was to be taken under the grant relating to the issues which remain in dispute which would result in irreparable harm to employees (29 C.F.R. 215.3(d)(8). Since there were no previously certified protective arrangements which could appropriately be applied to the grant, the Department's Interim Certification was based upon the terms and conditions contained in its initial referral to the parties.

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[1] By letter dated November 18, 1997, the Department informed the parties that its certification for the grant application would be limited to the land acquisition portion of the project because we had been informed that the Federal Transit Administration did not intend to fund other portions of the grant application under this project number. The Department's Interim Certification was withdrawn to the extent that it applied to line items other than land acquisition.

METRO and the ATU were directed to address the definition of "Recipient" and the "successors and assigns" language to be included in the Department's certification. This determination of the outstanding issues constitutes the Department's Final Certification pursuant to its Guidelines (29 C.F.R. 215.3(e)(4)) and sets forth the protective terms and conditions to be substituted for those contained in the Department's Interim Certification of May 27, 1997, for the above captioned project.

DEFINITION OF "RECIPIENT"

METRO proposed that the definition of "Recipient" included in the Department's initial referral, be applied in the final certification. METRO acknowledges that it is the intended "Recipient" for the project and indicates that it has "never taken the position that it would not be bound by the protective arrangement." (See METRO Initial Brief - p.6) The ATU believes that METRO's proposed definition of "Recipient" "give rise to very real issues of potential enforceability given that the term `Recipient' as used therein does not necessarily include the applicant - the only entity that is to execute the contract of assistance with the federal government into which the arrangements must be incorporated." (ATU Initial Brief - p.4) The ATU proposal would ensure that the term "Recipient" would include not only any entity providing assisted transportation services but also, and in all circumstances, the applicant.

Under the circumstances presented in this grant, where METRO is not an employer providing transportation service assisted by the project, the Department has determined that the definition of "Recipient" proposed by the ATU will ensure that the requirements of the statute are satisfied and that METRO will remain responsible for providing protections even though it does not itself provide transportation services. Accordingly, the introductory paragraphs of the enclosed CAPITAL ASSISTANCE PROTECTIVE ARRANGEMENT PURSUANT TO SECTION 5333(b) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53, Between METRO and ATU Local 757, FTA GRANT OR-90-X070, dated November 18, 1997, will define "Recipient" to include METRO and any entity providing Project-assisted activities.

SUCCESSORS, ASSIGNS, AND CONTRACTORS PROVISION

As with the definition of "Recipient," METRO proposed to adopt the successors and assigns language included in the Department's initial referral (paragraph 19 of the July 23, 1975 National

Agreement, as incorporated into the proposed capital arrangements by reference). METRO objects to the ATU proposal to delete the term "such" from this paragraph. METRO states that it "believes that deletion of [the term] 'such' changes the intended meaning of the language as written" and that "its deletion expands the reach of the paragraph to 'any entity' regardless of whether it is a successor in interest or assign of METRO." (See METRO Brief - p.8.)

The ATU's proposal for a new paragraph (11) ensures that any entity which undertakes the management, provision and/or operation of project activities will be bound by the protective arrangements even if it is not technically a successor in interest or an assign of the Recipient. In addition, the ATU has included language in its proposal that further defines the recipient's obligations under the provision.

Consistent with prior determinations addressing this issue, the Department finds that the successorship obligation envisioned by METRO is clearly more limited than that contemplated in the legislative history of the statute. In order to satisfy the statutory requirements, METRO must ensure that any entity which undertakes the management, provision and/or operation of project activities be bound by the protective arrangements. Accordingly, the Department has included the language proposed by the ATU with the exception of the phrase "joint and several." This phrase is not necessary because the remaining language indicates that such an entity must accept responsibility <u>with</u> the Recipient for full performance of these conditions.

The Department has determined that the terms and conditions set forth in the enclosed CAPITAL ASSISTANCE PROTECTIVE ARRANGEMENT PURSUANT TO SECTION 5333(b) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53, Between METRO and ATU Local 757, FTA GRANT OR-90-X070, dated November 18, 1997, meet the requirements of Section 5333(b), and shall serve as the basis of the Department's final certification for this project. ATU Local 757, which represents transportation related employees in the service area of the project, shall be deemed a party to the protective arrangements under this certification.

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the CAPITAL ASSISTANCE PROTECTIVE ARRANGEMENT PURSUANT TO SECTION 5333(b) OF TITLE 49 OF

THE U.S. CODE, CHAPTER 53, Between METRO and ATU Local 757, FTA GRANT OR-90-X070 dated November 18, 1997, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the above-referenced arrangements shall be deemed to cover and refer to the instant project;

3. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned arrangements for the resolution of such disputes.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

Enclosure

cc: Donald Durkee/FTA
Andy Cotugno/METRO
Leo Wetzel/ATU

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

NOV 18 1997

Ms. Helen Knoll
Regional Administrator
Federal Transit Administration
Region X
Jackson Federal Building
915 Second Avenue, Suite 3142
Seattle, Washington 98174

Re: FTA GRANT APPLICATION
METRO
Transit Oriented Development
Implementation Program:
Land Acquisition
OR-90-X070

Dear Ms. Knoll:

This is in reference to the above captioned project which was certified by the Department of Labor (Department) on an Interim basis on May 27, 1997. The Federal Transit Administration (FTA) has recently informed the Department that only the land acquisition portion of the above captioned project will be funded by the FTA under this project number. This letter is intended to confirm that oral communication in writing and further confirm the Department's understanding that funds for other line items under the grant will be obligated under a separate project number.

Accordingly, the Department **withdraws its May 27, 1997 Interim Certification to the extent that it applies to line items other than land acquisition**, and no further processing will occur for those portions of the grant application. The Department will issue its final certification for the land acquisition line item of the above captioned grant application shortly.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

cc: Donald Durkee/FTA
Andy Cotugno/METRO
Leo Wetzel/ATU

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

FEB 17 1998

Mr. Leslie T. Rogers
Regional Administrator
Federal Transit Administration
Region IX
201 Mission Street
Suite 2210
San Francisco, CA 94105

Re: FTA Applications
City of Norwalk
Capitalization of Annual Maintenance Costs; Purchase Supervisor Vehicle, Office Equipment, Maintenance Equipment, Bus Stop Amenities, Facility Modification, etc.
CA-90-X840

Dear Mr. Rogers:

This is in reply to the request from your office that we review the above captioned application for a grant under Title 49 of the U.S. Code, Chapter 53.

The City of Norwalk, the Amalgamated Transit Union (ATU) Local 1277, and the Norwalk City Employees' Association, which subsequently affiliated with the International Association of Machinists (IAM), have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. Representatives of the United Transportation Union (UTU) and the Transportation Communication International Union (TCU)(as successor to the Brotherhood of Railway and Airline Clerks) have also indicated their agreement that the terms and conditions of the July 23, 1975 agreement should apply for the protection of their represented employees in connection with the above referenced grant application. The terms and conditions of the July 23, 1975 agreement provide to employees represented by these unions protections satisfying the requirements of Section 5333(b) and shall be made applicable to the Capitalization of Annual Maintenance portion of the grant with respect to these labor organizations.

In addition ATU Local 1589, which represents employees in the transportation service area of the project, has accepted protections under the third enumerated paragraph of this certification.

FILE COPY

The City of Norwalk, the Transit Police Officers Association (TPOA) and the International Brotherhood of Teamsters (IBT), have accepted the terms of the Operating Assistance Protective Arrangement Pursuant to Section 5333(b) of Title 49 of the U.S. Code, Chapter 53, City of Norwalk, February 17, 1998 - FTA Grant CA-90-X840, included as Attachment B of this certification, which provides to employees represented by the unions protections satisfying the requirements of 49 U.S.C., Section 5333(b). The TPOA and IBT, which represent transportation related employees in the service area of the project, shall be deemed parties to the Protective Arrangement under this certification. This Arrangement provides protections to the employees represented by the unions, satisfying the requirements of 49 U.S.C., Section 5333(b) for the Capitalization of Annual Maintenance costs.

In connection with a previous grant application for the City of Norwalk, the Department of Labor (Department) certified the protective arrangements contained in Attachment A to the Department of Labor's certification dated May 21, 1997, covering employees represented by the Amalgamated Transit Union (ATU) Local 1277, the United Transportation Union (UTU) Local 1563, the Transportation Communications International Union (TCU), the International Brotherhood of Teamsters (IBT) Local 911, the Transit Police Officers' Association (TPOA), and the Norwalk City Employees' Association (IAM) Local Lodge 1957.

The Department of Labor determined that the Capital Protective Arrangement Pursuant to Section 5333(b) of Title 49 of the U.S. Code, Chapter 53, City of Norwalk, May 21, 1997, meets the requirements of Section 5333(b) and shall serve as the basis of certification for the City of Norwalk and the ATU. Transit employees in the service area of the project represented by unions other than the ATU shall also be deemed party to the terms and conditions of Attachment A of the Department's Certification dated May 21, 1997, which provides fair and equitable protections to the employees represented by the unions satisfying the requirements of 49 U.S.C., Section 5333(b).

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated July 23, 1975 shall be made applicable to the Capitalization of Annual Maintenance portion of the instant project for the ATU, IAM, UTU, and TCU and shall be made part of the contract of assistance, by reference;

2. This letter and the terms and conditions of ATTACHMENT B - OPERATING ASSISTANCE PROTECTIVE ARRANGEMENT PURSUANT TO SECTION 5333(b) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53, City of Norwalk, February 17, 1998 - FTA Grant CA-90-X840 shall be made applicable to the Capitalization of Annual Maintenance portion of the instant project for the TPOA and the IBT and shall be made part of the contract of assistance, by reference;

3. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local unions which are a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the unions under the above-mentioned agreements and arrangements, covering the Capitalization of Annual Maintenance costs and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

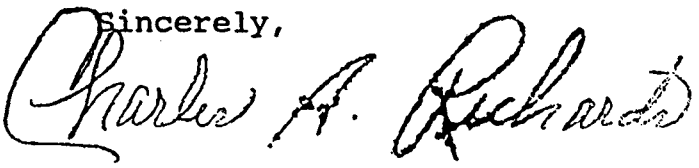
   Should a dispute remain after exhausting any available remedies under the protective arrangement, and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination;

4. This letter and the terms and conditions of the Capital Protective Arrangement Pursuant to Section 5333(b) of Title 49 of the U.S. Code, Chapter 53, City of Norwalk, May 21, 1997, shall be applicable to the capital portion of the instant project and shall be made part of the contract of assistance, by reference;

5. The term "project" as used in the above-referenced agreements and arrangements shall be deemed to cover and refer to the instant project; and

6. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned arrangements for the resolution of such disputes.

Sincerely,



Charles A. Richards
Deputy Assistant Secretary

Attachment

cc: Donald Durkee/FTA
James Parker/City
Leo Wetzel/ATU
George Kourpias/IAM
Bernie McNelis/UTU
Guerrieri, Edmond & Clayman
Robert Scardelletti/TCU
Luke Fuller/TPOA
Patrick Thistle/TPOA
Tom Sever/IBT
IBT Local 911
Ray Mathews/NCEA (IAM)

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

FEB 19 1998

Ms. Helen Knoll
Regional Administrator
Federal Transit Administration
Region X
Jackson Federal Building
915 Second Avenue, Suite 3142
Seattle, Washington 98174

FINAL CERTIFICATION

Re: FTA GRANT APPLICATION
City of Seattle
Monorail Train Rehabilitation
WA-03-0092-01

Dear Ms. Knoll:

This is in reply to the request from your office that we review the above captioned application for a grant under Title 49 of the U.S. Code, Chapter 53.

Pursuant to Department of Labor (Department) Guidelines (29 C.F.R. 215), the City of Seattle (Seattle) and Amalgamated Transit Union Local 587 (ATU) were directed to engage in negotiations/discussions to develop protective arrangements required under 49 U.S.C., Section 5333(b). Seattle and the ATU failed to reach agreement on these arrangements. Therefore, on July 7, 1997, the Department issued an Interim Certification which permitted FTA to release funds, specifying that no action was to be taken under the grant relating to the issues which remain in dispute which would result in irreparable harm to employees (29 C.F.R. 215.3(D)(8). Since there were no previously certified protective arrangements which could appropriately be applied to the grant, the Department's Interim Certification was based upon the terms and conditions contained in its April 30, 1997 referral to the parties.

By letter dated July 16, 1997, Seattle and the ATU were directed to address any differences between the proposed language in Seattle's letter dated June 30, 1997, and in the ATU letters dated June 30, 1997 and July 3, 1997.

Transit employees in the service area of the project are also represented by the International Brotherhood of Electrical Workers Local 77 (IBEW) and the International Federation of Professional and Technical Engineers Local 17 (IFPTE), which, like Seattle, did not object to the referral terms. The Department's Interim Certification, however, noted that, if language applied for resolution of any issue in dispute between Seattle and the ATU is necessary to provide fair and equitable protections satisfying the requirements of Section 5333(b), the Department would also apply that language with respect to these labor organizations. A discussion of the protections to be applied on behalf of these labor organizations follows the Department's determination of protections on the issues in dispute between Seattle and the ATU.

This determination of the outstanding issues constitutes the Department's Final Certification pursuant to its Guidelines (29 C.F.R. 215.3(e)(4)) and sets forth the protective terms and conditions to be substituted for those contained in the Department's Interim Certification of July 7, 1997, for the above captioned project.

DEFINITION OF "RECIPIENT"

In the April 30, 1997 referral, the Department proposed to define the term "Recipient" as "any employer, including the applicant and other recipients, if any, providing transportation service assisted by the project." This definition would, among other things assure that employees would be provided a "priority of reemployment" for any vacant positions within the jurisdiction and control of Seattle. It could also be construed to exclude Seattle from the definition of "Recipient" since it does not provide transportation services directly.

Seattle proposed that the definition of "Recipient" included in the Department's April 30, 1997 referral, be narrowly constructed to include only the applicant, and not other entities "providing transportation services assisted by the Project." In the Seattle proposal, the identification of legally responsible parties other than the applicant would be established in the successors, assigns and contractors provision, which provision itself is also in dispute in this case.

The ATU proposed that the definition of "Recipient" include any entity providing transportation services assisted by the project and also, and in all circumstances, the applicant.[1] The ATU proposal would have all legally responsible parties specifically identified within the definition of the term "Recipient."

A definition of the term "Recipient" which includes entities other than the applicant may be confusing because of the manner in which that term is used elsewhere by the Federal Transit Administration. At the same time, a more narrow definition of the term "Recipient" similar to that proposed by Seattle, would not necessarily be inappropriate as long as paragraphs (2)(b) and (7) are modified to ensure that employees continue to be afforded a priority of reemployment with other entities providing transportation services assisted by the project.[2]

The Department has determined that limiting the definition of "Recipient" to Seattle and modifying paragraphs (2)(b) and (7) will ensure that the protections required by the statute are provided. Accordingly, the Department has included language in the second paragraph of the enclosed CAPITAL ASSISTANCE PROTECTIVE ARRANGEMENT PURSUANT TO SECTION 5333(b) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53, Between the City of Seattle and ATU Local 587, FTA GRANT WA-03-0092-01, dated February 19, 1998, which reflects this result. A corresponding modification has been made to the first paragraph because only the applicant will be defined as a recipient in this instance.

SUCCESSORS, ASSIGNS, AND CONTRACTORS PROVISION

The Department found the ATU objections to the successors and assigns language included in the Department's referral (paragraph 19 of the July 23, 1975 National Agreement, as incorporated into the proposed capital arrangements by reference) to be sufficient to permit negotiations.[3] Seattle has indicated that "[c]ertain

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[1] The Department's notes that the ATU proposal is properly formulated to apply to only ATU-represented employees. The Department will include separate protective arrangements for application to the ATU and the other labor organizations covered by this certification.

[2] The Department does not find arguments concerning the volume of jobs available with the contractor or the relative financial resources of the applicant and its contractor convincing. (Seattle brief of August 5, 1997, at page 6 and Attachments 1 through 4.) The controlling factor in the decision to afford a priority of reemployment with the contractor is its status as an entity which is undertaking the management, provision and/or operation of the Project-assisted transit services.

[3] A decision to apply language which is not identical to that included

provisions of the alternative language recommended by the ATU with respect to §19 of the Capital Assistance Protective Arrangement proposed by the Department of Labor (elaborating on the "successors and assigns" clause and identifying the entities that are intended and required to be bound by the specific terms and conditions) are acceptable to Seattle." (Seattle letter of June 30, 1997 at page 6.) The parties, however, remain in disagreement over the ATU proposals to 1) delete the term "such" from this paragraph; 2) include "joint and several responsibility" language to address the responsibilities of other legally responsible parties; and 3) add language requiring that other legally responsible parties be bound "as a condition precedent to any such contractual arrangement."

Inclusion of the Word "Such"

The language of Paragraph (19) of the July 23, 1975 National Agreement, which was incorporated into the terms and conditions in the Department's April 30, 1997 referral, reads as follows:

> (19) This arrangement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms, or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by reason of the arrangements made by or for the Recipient to manage and operate the system.
>
> Any such person, enterprise, body, or agency, whether publicly- or privately-owned, which shall undertake the management or operation of the system, shall agree to be bound by the terms of this arrangement and accept the responsibility for full performance of these conditions.

The Seattle proposal to include the word "such" would inappropriately limit the scope of the second paragraph to only those entities which are technically the successors and assigns of the Recipient. Seattle believes that it alone can satisfy all requirements of the statute without placing obligations on contractors.

The ATU proposal omits the word "such" to ensure that <u>any</u> entity which undertakes the management, provision and/or operation of project activities will be bound by the protective arrangements

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in paragraph (19) of the National Agreement would require that the Department exclude it from among those paragraphs of the Agreement which are referenced in the protective arrangement, and include an additional paragraph (11) to address the substantive issue before the Department.

even if it is not technically a successor in interest or an assign of the Recipient. ATU states that "the proposition that Section 5333(b) imposes no contractor obligations is faulted if for no other reason than the elementary truth that such would leave transit properties free to deny responsibility for, and/or effective remedy of, §13(c) violations at the hands of project agents." (ATU brief of August 5, 1997, at page 12.)

The successorship obligation envisioned by Seattle is too limited and, therefore, is not consistent with the obligations contemplated in the legislative history of the statute. In order to satisfy the statutory requirements, Seattle must ensure that any entity which undertakes the management, provision and/or operation of project activities be bound by the protective arrangements. Accordingly, consistent with prior determinations addressing this issue, the Department has omitted the word "such" from the language which has been included in the protective arrangement at a new Paragraph (11).

Joint and Several Responsibility

Seattle also argues that it already has a valid contract with Seattle Monorail Services Joint Venture (SMSJV) which "does not provide for "SMSJV's assumption of joint and several liability for the satisfaction of Seattle's obligations as a recipient of FTA funding."

The Department has not included the ATU language with respect to the phrase "joint and several" responsibility. The Department has concluded that it is sufficient to include language which indicates that such an entity must accept responsibility together with Seattle for full performance of those conditions. Thus Seattle is obligated to ensure that all requirements of the protective arrangements are given effect. Any entity which undertakes the management, provision and/or operation of Project-assisted transit services would, however, remain responsible, with the Recipient, for full performance of the protective terms and conditions.

Condition Precedent Language

Seattle indicates that "language requiring the Monorail system operator's agreement to be bound to the Arrangement's terms and conditions 'as a condition precedent' to Seattle's contractual arrangement with SMSJV, makes no sense whatsoever" because the contract is already in place. (Seattle brief of August 5, 1997, at page 8.) The ATU, however, asserts that the "service operator

should be called to contractually acknowledge and accept its relevant obligations. (ATU reply brief of August 15, 1997, at page 7.)

The Department has included the language which specifies that "As a condition precedent to any such contractual arrangements, the City shall require such person, enterprise, body or agency to so agree." In the Department's view, any entity which is to be bound by the terms and conditions of the protective arrangements must be made aware of its obligations prior to initiating its contract. Therefore, in this situation, where the parties are in dispute over the inclusion of such language, the Department has determined that it is appropriate to include "condition precedent" language.

However, the Department recognizes that, in this instance, there is an existing contract with SMSJV. As a practical matter, as Seattle has indicated in its brief, it has already entered into a contract with SMSJV, thereby making its execution of the requisite terms as a "condition precedent" to the contract impossible. Accordingly, the Department has determined that, during the term of the existing contract with SMSJV, the condition precedent language shall not apply. This does not relieve Seattle of its obligation to ensure that SMSJV or any entity which undertakes the management, provision and/or operation of Project-assisted transit services is bound by the terms of the protective arrangement. The "condition precedent" language shall be applicable upon expiration of the current contract between Seattle and SMSJV or when either party reopens or amends the contract.

The Department has determined that the terms and conditions set forth in the enclosed CAPITAL ASSISTANCE PROTECTIVE ARRANGEMENT PURSUANT TO SECTION 5333(b) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53, Between the City of Seattle and ATU Local 587, FTA GRANT WA-03-0092-01, dated February 19, 1998, meet the requirements of Section 5333(b), and shall serve as the basis of the Department's final certification for this project. ATU Local 587, which represents transportation related employees in the service area of the project, shall be deemed a party to the protective arrangements under this certification.

PROTECTIONS FOR IBEW AND IFPTE

Seattle asserts that the Department "has the legal obligation to ensure that whatever terms and conditions are included in the Final Certification are generalized so that there is one standard

that must be applied and implemented." (Seattle reply brief of August 15, 1997, at page 2.) However, the Department frequently certifies differing terms and conditions for distinct groups of employees for application to the same grant based on differing circumstances. In this instance, where only the ATU objected to the Department's referral terms, circumstances dictate that the Department apply more than one set of protective arrangements in its final certification.

The Department has determined, in view of additional information received during the processing of this grant, that some modification to the protective arrangements applied on behalf of the IBEW and the IFPTE in the Interim Certification of July 7, 1997, is necessary in order to ensure that the requirements of the statute are satisfied. These protections are included in the enclosed CAPITAL ASSISTANCE PROTECTIVE ARRANGEMENT PURSUANT TO SECTION 5333(b) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53, Between the City of Seattle and IBEW Local 77 and IFPTE Local 17, FTA GRANT WA-03-0092-01, dated February 19, 1998. IBEW Local 77 and IFPTE Local 17, which represent transportation related employees in the service area of the project, shall be deemed a party to the protective arrangements under this certification.[4]

With respect to the definition of the term "Recipient," the Department has determined that it is necessary to modify the language in its initial referral to ensure that Seattle is bound by the protective arrangement even when it is not providing transportation services assisted by the project. Accordingly, the Department has defined "Recipient" as is included in the ATU protections. In addition, in order to ensure that these employees continue to be afforded the same priority for reemployment as was included under the terms of the April 30, 1997 referral, the Department has also included modifications to paragraphs (2)(b) and (7) of the protective arrangement.

With respect to the successors, assigns and contractors provision, the Department has omitted the word "such" from a new Paragraph (11) to be included in the arrangement for IBEW and IFPTE employees. This will ensure that Seattle has a clear understanding of its obligation to ensure that any entity which undertakes the management or operation of the system must abide by the protective terms and conditions.

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[4] As indicated in the second paragraph of the arrangement, these protections are not limited to employees represented by the IBEW and IFPTE, but cover other transportation related employees in the service area of the project, including those which may not be represented by a labor organization.

With consideration to the foregoing, the Department of Labor has determined that the attached protective arrangements dated February 19, 1998, meet the requirements of Section 5333(b) and shall serve as the basis for this final certification. Therefore, the Department makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the CAPITAL ASSISTANCE PROTECTIVE ARRANGEMENT PURSUANT TO SECTION 5333(b) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53, Between the City of Seattle and ATU Local 587, FTA GRANT WA-03-0092-01, dated February 19, 1998, and the CAPITAL ASSISTANCE PROTECTIVE ARRANGEMENT PURSUANT TO SECTION 5333(b) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53, Between the City of Seattle and IBEW Local 77 and IFPTE Local 17, FTA GRANT WA-03-0092-01, dated February 19, 1998, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the above-referenced arrangements shall be deemed to cover and refer to the instant project;

3. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned arrangements for the resolution of such disputes.

Sincerely,

Charles A. Richards

Charles A. Richards
Deputy Assistant Secretary

Enclosure

cc: Donald Durkee/FTA
Gordy Davidson/Seattle
Leo Wetzel/ATU
John L. Barry/IBEW
Paul E. Almeida/IFPTE

CITY OF DECATUR ILLINOIS

#1 GARY K. ANDERSON PLAZA DECATUR, ILLINOIS 62523-1196

March 3, 1998

Mr. Patrick W. Riley
Chief Legal Counsel
U.S. Department of Transportation
Federal Transit Administration
400 Seventh Street, S.W.
Washington, D. C. 20590

Re: Successor Employers and 13 (c)

Dear Mr. Riley:

The City of Decatur, Illinois purchased the assets of a private transportation provider, Decatur City Lines, Inc., in 1972 and commenced the provision of public transportation services to the community. It did not, however, hire the employees of the private transit company as City employees, but instead contracted with American Transit Corporation to manage the transit system. The management company then retained the employees as its employees to operate and maintain the coaches. The City was a recipient of federal funds which were used to acquire, operate, and maintain the transit system. Because of 13 (c), of the Federal Transit Act (49 U.S.C.A. Sec. 1609 (c), the City had to retain said employees or to pay the affected employees "displacement allowances."

The City changed management firms (as a result of the competitive bidding process) in 1983 and again in 1990. Each time the employees remained with the property and became employees of the new firm, or a subsidiary thereof. The City has always believed that this arrangement did not give it the flexibility to operate the transit system as efficiently as it otherwise could. It almost seemed like the transit employees were being guaranteed lifetime employment or else they were entitled to a large payment if they were replaced or their economic condition was worsened. All of this was because the City had accepted federal funds and was bound by 13 (c).

The City is currently faced with a situation where it would like to replace the management firm. The collective bargaining agreement between the management firm and transit employees has expired and the Union employees are working without a contract. In such a case:

1. Would the new management firm be obligated to take the existing transit employees as its employees?

2. Would the same wage levels, benefits, seniority, follow the employees from the former employer to the new employer?

3. Would the new employer have an obligation to assume the existing employee pension plan?

Any information or clarification that you can provide relative to this inquiry will be greatly appreciated.

Sincerely,

Robert S. Reed
Mass Transit Administrator

RSR/pd

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

MAR 25 1998

Mr. Richard H. Doyle
Regional Administrator
Federal Transit Administration
Region I
Kendall Square
55 Broadway, Suite 920
Cambridge, Massachusetts 02142

FINAL CERTIFICATION

Re: FTA Application
Massachusetts Port Authority
(Massport)
Design and Construction of a
Regional Transportation Center
(RTC) in Woburn, MA
MA-90-X278

Dear Mr. Doyle:

This is in reply to the request from your office that we review the above captioned application for a grant, under Title 49 of the U.S. Code, Chapter 53.

Pursuant to Department of Labor (Department) Guidelines (29 C.F.R. 215), the Massachusetts Port Authority (Massport) was directed to engage in negotiations/discussions with the Amalgamated Transit Union Local 589 (ATU) and the Transportation-Communications International Union (TCU), which represent employees in the service area of the project, to develop protective provisions required under 49 U.S.C., Section 5333(b). The parties failed to reach agreement and the Department issued an Interim Certification on February 4, 1998. The Department then directed the parties to submit briefs on the issues in dispute. This determination of the outstanding issues constitutes the final certification for the above referenced project under the Department's Guidelines (29 C.F.R. 215.3(e)(4)) and sets forth in Attachment A the protective terms and conditions to be substituted for those in the Interim Certification of February 4, 1998.

Transit employees in the service area of the project are also represented by the International Association of Machinists and Aerospace Workers (IAM), Office and Professional Employees International Union (OPEIU), Railway Labor Executives' Association (RLEA), Transport Workers Union (TWU), United

Transportation Union (UTU) and, International Brotherhood of Teamsters (IBT). The Department's December 31, 1997 response to the objections of the ATU and the TCU noted that, if the Department determines that the language applied for resolution of any issue in dispute is necessary to provide fair and equitable protections satisfying the requirements of Section 5333(b), the Department will also apply that language on behalf of the employees represented by other labor organizations. A discussion of the protections to be applied on behalf of these labor organizations follows the Department's determination of protections on the issues in dispute between Massport and the ATU and TCU.

The resolution of the issues upon which the parties remained in disagreement is discussed below.

SUCCESSORS, ASSIGNS AND CONTRACTORS PROVISION

Massport, the ATU and TCU are in disagreement over the proper formulation of successors, assigns and contractors language. The disagreement relates to identification of those entities which must accept responsibility for providing and complying with the requisite protections under Section 5333(b) of the Federal transit statute. On this point, Paragraph (19) of the July 23, 1975 National Agreement, incorporated into the proposed capital arrangements by reference in the Department's referral of December 8, 1997, reads as follows:

> This agreement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms, or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by reason of the arrangements made by or for the Recipient to manage and operate the system.
>
> Any such person, enterprise, body, or agency, whether publicly - or privately-owned, which shall undertake the management or operation of the system, shall agree to be bound by the terms of this agreement and accept the responsibility for full performance of these conditions."

Obligations of Entities Utilizing the Facility

The language of the ATU and TCU proposals requires that any entity "which shall undertake the management, provision and/or operation of any public mass transportation services utilizing or serving the facility assisted by the Project funds" must agree to

be bound by the terms of the protective arrangements.[1] This would not only bind and extend protective obligations to contractors of Massport, but would also require other providers that "utilize or serve" the facility assisted by the Project funds to accept Section 5333(b) responsibilities. For instance, under the unions' proposals, the Massachusetts Bay Transportation Authority (MBTA), would be among those entities required to agree to be bound by the protective arrangements before it could utilize the federally assisted facility, and Massport would be required to bind MBTA to the protective terms and conditions.

Massport's position is that the language proposed by the Department in the December 8, 1997 referral is statutorily sufficient and is, therefore, adequate in this situation. In addition, Massport argues that it cannot bind a third party to the protective arrangements where Massport has no contractual relationship with that party for the provision of transit services.

The Department has not previously addressed the issue of binding any transit provider which merely "utilizes or serves" a Federally funded facility. Employee protections are required "as a condition of federal assistance" under various sections of the Federal transit law. Thus, protective obligations are required of Massport and, similarly will be required of the MBTA when it applies for federal assistance for the RTC.[2] Merely "utilizing or serving" the facility funded in the instant grant application, as the MBTA will be doing, while providing a clear benefit to MBTA, is not, as the statute contemplates, "financial assistance under sections 5307-5312, 5318(d), 5323(a)(1), (b), (d), and (e), 5328, 5337, and 5338(j)(5) of this title." Therefore, the Department does not believe it is appropriate to extend Section 5333(b) obligations to such entities, which are not "recipients" or "contractors" receiving Federal assistance under the statute.

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[1] The quoted language is from the ATU's December 23, 1997 proposal; however, the TCU has proposed language which is similar in intent. The ATU proposal also includes a stipulation that Massport require all entities afforded the right to utilize the facilities to be bound by the protections as a condition precedent to the receipt of Federal funds, and that Massport publicly notify mass transit providers in the service area that use of the facility is subject to the terms of the protective arrangements. The TCU's proposed language is similar, however, TCU does not propose that providers be bound by the terms of the protective arrangements as a condition precedent to the receipt of Federal funds.

[2] The FTA has informed the Department that MBTA will be applying for Federal assistance to fund its portion of the RTC.

In other circumstances, a situation may arise where the Department may deem it necessary to bind an entity that utilizes or serves a Federally assisted facility to ensure satisfaction of the requirements of the statute. In this instance, however, the requirements of the statute can be satisfied by Massport without extending protective obligations to other service providers which utilize or serve the federally funded facility. Accordingly, the Department has not included the language proposed by the unions with respect to this issue. Moreover, notwithstanding Massport's contention that it cannot bind a third party to the protective arrangements where Massport has no contractual relationship with that party for the provision of transit services, this determination would not preclude Massport from independently binding a third party to the protective terms and conditions by means of a separate arrangement, should it choose to do so.

Condition Precedent Language

The ATU has also proposed language which requires that Massport ensure that any responsible party which is to be bound by the protective arrangements must agree to be bound as a "condition precedent" to contractual arrangements with Massport. The Department has included "condition precedent" language similar to that proposed by the ATU in its protective arrangement because any entity which is to be bound by the terms and conditions of the protective arrangements should be made aware of its obligations prior to initiating its contract with the Recipient. Massport did not address this language in its briefs.

Inclusion of the Word "Such"

The ATU and TCU also objected to inclusion of the word "such" in the second paragraph of the referred successors and assigns language on the basis that it has been interpreted by some transit authorities to limit its application to those entities which replace the applicant and/or otherwise satisfy the successorship criteria established by the National Labor Relations Board. The Department has previously determined that the scope of the second paragraph of the successors, assigns and contractors language should not be inappropriately limited to only those entities which are technical successors and assigns of the Recipient. Accordingly, consistent with prior determinations addressing this issue, the Department has omitted the word "such" from the successors, assigns and contractors language which has been included in a new paragraph (11) of the protective arrangements for the ATU and TCU attached hereto and has included language which ensures that any entity which undertakes the management, provision, and/or operation of the transit system or of Project services is bound by the protective terms and conditions.

RE-EMPLOYMENT RIGHTS - SECTION 13(c)(4)

Massport, the ATU and TCU are also in disagreement over language to be included in Paragraphs 2(b),(c) and (7). The language proposed in the referral for these paragraphs provides for reemployment rights "in the Recipient's employment" or "within the control of the Recipient." The ATU and TCU assert that this language falls short of the legislative intent of the statute and would exclude positions with other entities which should be bound by the protective arrangements. Massport, however, believes that the language proposed by the unions is broader than that which has previously been approved by the Department and would expand the scope of the statute.

Paragraph (2)(b) requires that the Recipient provide notice to affected employees of any adverse employment actions. The unions have proposed language that would require the notice to contain a statement of "the number and classifications of jobs within the jurisdiction and control of the Recipient, including those in the employment of any entity bound by this arrangement pursuant to paragraph (11), hereof, available to be filled by such employees." In this instance, the language proposed by the unions refers to the "successors and assigns" provision and would ensure that employees are entitled to available jobs with any mass transit provider utilizing or serving the Federally assisted facility. The unions also proposed that selection of forces language be included in paragraph (2)(c), further addressing the scope of reemployment rights for affected employees. Finally, both unions argue that the language in paragraph (7), which addresses priority of reemployment rights of affected employees, must extend to positions "within the jurisdiction and control of the Recipient including those in the employment of any entity bound by this arrangement pursuant to Paragraph (11) hereof."

The Department has determined that reemployment rights extend to jobs that are within the jurisdiction and control of a recipient, and must include jobs with any entity which is required to be bound by the terms and conditions of the protective arrangements. Thus, the Department has included the language proposed by the unions, including the reemployment language with respect to selection of forces. However, in the protective arrangements certified by the Department, the reference to "any entity bound by this arrangement pursuant to Paragraph (11)" refers only to any entity which undertakes the management, provision, and/or operation of the transit system or of Project services, and does not include those which only "utilize or serve" the facility assisted by the Federal funds.

PROTECTIONS FOR EMPLOYEES REPRESENTED BY OTHER UNIONS

The Department has revised the protections included in its interim certification of February 4, 1998 for Massport and the IBT, UTU, TCU, TWU, IAM, OPEIU, and the RLEA, all of which represent employees in the service area of the Massport project, to incorporate a new Paragraph (11) which omits the word "such" and ensures that any entity which undertake the management, provision and/or operation of the transit system or Project services is bound by the protections.[3] These protections are incorporated in the attached *CAPITAL ASSISTANCE PROTECTIVE ARRANGMENT PURSUANT TO SECTION 5333(b) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53 BETWEEN THE MASSACHUSETTS PORT AUTHORITY AND THE IBT, UTU, TCU, TWU, IAM, OPEIU, and the RLEA - FTA GRANT MA-90-X278, March 25, 1998.*

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the three above referenced protective arrangements dated March 25, 1998 (enclosed herewith) shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the above referenced arrangements shall be deemed to cover and refer to the instant project;

3. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions

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[3] In view of positions taken by Massport which do not exhibit a clear understanding of the appropriate interpretation of the referred Paragraph (19) language to obligate any entity which undertakes the management, provision and/or operation of the system or Project services, the Department will apply this alternative language to ensure that the requirements of 5333(b) are clearly understood and satisfied.

in the aforementioned agreements and/or arrangements for the resolution of such disputes.

Sincerely,

Chuck Richards

Charles A. Richards
Deputy Assistant Secretary

Enclosures

cc: Donald Durkee/FTA
Chris Gordon/Massport
Michael A. Leon/Warner & Stockpole
Leo Wetzel/ATU
George Kourpias/IAM
Michael Goodwin/OPEIU
Les Parmelee/RLEA
Highsaw, Mahoney & Clarke
Robert Scardelletti/TCU
Frank McCann/TWU
Malcolm Goldstein, Esq./O'Donnell & Schwartz
Bernie McNelis/UTU
Guerrieri, Edmond & Clayman
Tom Sever/IBT

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

APR - 6 1998

Mr. Richard H. Doyle
Regional Administrator
Federal Transit Administration
Region I
Kendall Square
55 Broadway, Suite 920
Cambridge, Massachusetts 02142

FINAL CERTIFICATION

Re: FTA Applications
Worcester Regional Transit Authority
Rehabilitate/Construct Intermodal Terminal at Union Station
MA-90-X299
Construction of Towers and Marquee at Union Station
MA-03-0215

Dear Mr. Doyle:

This is in reply to the request from your office that we review the above captioned applications for grants, under Title 49 of the U.S. Code, Chapter 53.

Pursuant to Department of Labor (Department) Guidelines (29 C.F.R. 215), the Worcester Regional Transit Authority (WRTA) was directed to engage in negotiations/discussions with the Transportation-Communications International Union (TCU) and the Railway Labor Executives' Union (RLEA), which represent employees in the service area of the project, to develop protective provisions required under 49 U.S.C., Section 5333(b). The parties failed to reach agreement and the Department issued an Interim Certification on February 3, 1998. The Department then directed the parties to submit briefs on the issues in dispute. This determination of the outstanding issues constitutes the final certification for the above referenced project under the Department's Guidelines (29 C.F.R. 215.3(e)(4)) and sets forth in Attachment A the protective terms and conditions to be substituted for those in the Interim Certification of February 3, 1998.

Transit employees in the service area of the projects are also represented by the International Association of Machinists and Aerospace Workers (IAM), Office and Professional Employees International Union (OPEIU), Transport Workers Union (TWU) and, United Transportation Union (UTU), each of which did not have existing protective arrangements for application to the pending project. The Department's December 29, 1997 response to the objections of the TCU and the RLEA, however, noted that, if the Department determines that the language applied for resolution of any issue in dispute is necessary to provide fair and equitable protections satisfying the requirements of Section 5333(b), the Department will also apply that language on behalf of the employees represented by other labor organizations. A discussion of the protections to be applied on behalf of these labor organizations follows the Department's determination of protections on the issues in dispute between Worcester and the TCU. Because the RLEA failed to submit a brief on the outstanding issues, the Department has applied the same terms and conditions for the RLEA as those determined applicable for the IAM, OPEIU, TWU and UTU.

The issues upon which the WRTA and the TCU remain in disagreement are discussed below.

SUCCESSORS, ASSIGNS AND CONTRACTORS PROVISION

The WRTA and the TCU are in disagreement over the proper formulation of successors, assigns and contractors language. The disagreement relates to identification of those entities which must accept responsibility for providing and complying with the requisite protections under Section 5333(b) of the Federal Transit law. Paragraph (19) of the July 23, 1975 National Agreement was incorporated into the proposed capital arrangements by reference in the Department's referral of December 2, 1997, and reads as follows:

> This agreement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms, or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by reason of the arrangements made by or for the Recipient to manage and operate the system.
>
> Any such person, enterprise, body, or agency, whether publicly - or privately-owned, which shall undertake the management or operation of the system, shall agree to

be bound by the terms of this agreement and accept the responsibility for full performance of these conditions."

Obligations of Entities Utilizing the Facility

The language of the TCU proposal would require that any entity "which shall undertake the management, provision and/or operation of public transportation services utilizing or serving the facility assisted by the Project funds" must agree to be bound by the terms of the protective arrangements. This would not only bind and extend protective obligations to contractors of the WRTA, but would also require other providers that "utilize or serve" the facility assisted by the Project funds to accept Section 5333(b) responsibilities. For instance, the Massachusetts Bay Transportation Authority (MBTA), which will utilize the intermodal terminal at Union Station, would be among those entities required to agree to bound by the protective arrangements before it could utilize the federally assisted facility, and WRTA would be required to bind MBTA to the protective terms and conditions.

WRTA's position is that the language proposed by TCU would substantially expand the scope of the successors and assigns paragraph beyond that which is statutorily required. In addition, WRTA argues that it cannot bind a third party to the protective arrangements where WRTA has no contractual relationship with that party for the provision of transit services.

Employee protections are required "as a condition of federal assistance" under various sections of the Federal Transit law. Thus, protective obligations are required of the WRTA, which is willing and able to accept Section 5333(b) liability for all employees of service area transit providers, including those employed by or contracting with the MBTA. Merely utilizing or serving the facility funded in the instant grant application, while providing a clear benefit to the entity using the facility, is not, as the statute contemplates, "financial assistance under sections 5307-5312, 5318(d), 5323(a)(1), (b), (d), and (e), 5328, 5337, and 5338(j)(5) of this title." Therefore, the Department does not believe it is appropriate to extend Section 5333(b) obligations to such entities which are not "recipients" or "contractors" receiving Federal assistance under the statute.

In other circumstances, a situation may arise where the Department may deem it necessary to bind an entity that utilizes a Federally assisted facility to ensure

satisfaction of the requirements of the statute. In this instance, however, the requirements of the statute can be fully satisfied by WRTA without extending protective obligations to other service providers which utilize or serve the federally funded facility. Accordingly, the Department has not included the language proposed by the TCU with respect to this issue. Moreover, notwithstanding WRTA's contention that it cannot bind a third party to the protective arrangements where WRTA has no contractual relationship with that third party for the provision of transit services, this determination would not preclude WRTA from independently binding a third party to the protective terms and conditions by means of a separate arrangement, should it choose to do so.

Inclusion of the Word "Such"

The TCU also objected to inclusion of the word "such" in the second paragraph of the referred successors and assigns language on the basis that it has been interpreted by some transit authorities to limit its application to those entities which replace the applicant and/or otherwise satisfy the successorship criteria established by the National Labor Relations Board. The Department has previously determined that the scope of the second paragraph of the successors, assigns and contractors language should not be inappropriately limited to only those entities which are technical successors and assigns of the Recipient. Accordingly, consistent with prior determinations addressing this issue, the Department has omitted the word "such" from the successors, assigns and contractors language which has been included in a new paragraph (11) of the protective arrangements for the TCU attached hereto.[1] In this manner, the Department ensures that any entity which undertakes the management, provision, and/or operation of the transit system or of Project services is bound by the protective terms and conditions.

RE-EMPLOYMENT RIGHTS - SECTION 13(c)(4)

WRTA and the TCU are also in disagreement over language to be included in Paragraphs 2(b),(c) and (7). The language proposed in the Department's referral for the above cited paragraphs provides for reemployment rights "in the Recipient's employment" or "within the control of the

[1] A new Paragraph (11) is included in the protective arrangement and paragraph (19) of the National Agreement is omitted from the provisions of the National which are incorporated by reference into the protective arrangement. It would be inappropriate for the Department to modify the provisions of the National Agreement itself to make changes directly to paragraph (19).

Recipient." The TCU asserts that this language falls short of the legislative intent of the statute and would exclude positions "within the control and jurisdiction of the grant recipient, including service subcontractor positions." WRTA, however, believes that the language proposed by the union would expand the scope of the statute. The appropriate language to be applied by the Department to this grant is discussed below.

Paragraph (2)(b) of the Department's proposed arrangements requires that the Recipient provide notice to affected employees of any adverse employment actions. The TCU has proposed language that would require the notice to contain a statement of "the number and classifications of any jobs within the jurisdiction and control of the Recipient, including those in the employment of any entity bound by this arrangement pursuant to paragraph (19), hereof, available to be filled by such affected employees." In this instance, the language proposed by the union refers to the "successors and assigns" provision and would ensure that employees are entitled to available jobs with any mass transit provider utilizing or serving the Federally assisted facility. The TCU also proposed that selection of forces language be included in paragraph (2)(c), further addressing the scope of reemployment rights for affected employees. Finally, TCU argues that the language in paragraph (7), which addresses priority of reemployment rights of affected employees, must extend to positions "within the jurisdiction and control of the Recipient, including those in the employment of any entity bound by this arrangement pursuant to Paragraph (19) hereof."

The Department has determined that reemployment rights extend to jobs that are within the jurisdiction and control of a recipient, and must include jobs with any entity which is required to be bound by the terms and conditions of the protective arrangements. Thus, the Department has included the language proposed by the TCU, including the reemployment language with respect to selection of forces. However, in the protective arrangements certified by the Department, reference is made to "any entity bound by this arrangement pursuant to Paragraph (11)." This refers only to any entity which undertakes the management, provision, and/or operation of the transit system or of Project services, and does not include those which only "utilize or serve" the facility assisted by the Federal funds.

The Department has determined that it will apply the protections in the attached protective arrangement entitled CAPITAL ASSISTANCE PROTECTIVE ARRANGEMENT PURSUANT TO

SECTION 5333(b) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53 BETWEEN THE MASSACHUSETTS PORT AUTHORITY AND THE TCU - FTA GRANTS MA-90-X299 and MA-03-0215, April 6, 1998. These arrangements provide to the employees represented by the unions protections satisfying the requirements of 49 U.S.C., Section 5333(b). WRTA and the TCU shall be deemed parties to these protective arrangements.

PROTECTIONS FOR EMPLOYEES REPRESENTED BY OTHER UNIONS

The Department has also revised the protections included in its interim certification of February 3, 1998 for WRTA and the UTU, TWU, IAM, OPEIU, and the RLEA, all of which represent employees in the service area of the WRTA project, to incorporate a new Paragraph (11) which omits the word "such" and ensures that any entity which undertakes the management, provision and/or operation of the transit system or Project services is bound by the protections.[2] These protections are incorporated in the attached CAPITAL ASSISTANCE PROTECTIVE ARRANGEMENT PURSUANT TO SECTION 5333(b) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53 BETWEEN THE WORCESTER REGIONAL TRANSIT AUTHORITY AND THE UTU, RLEA, TWU, IAM, AND OPEIU, FTA GRANTS MA-90-X299 and MA-03-0215, April 6, 1998. These arrangements provide to the employees represented by the unions protections satisfying the requirements of 49 U.S.C., Section 5333(b). WRTA and these unions shall be deemed parties to these protective arrangements.

In addition, in connection with a previous grant application, the WRTA and the Amalgamated Transit Union (ATU) Local 22 executed an agreement dated October 12, 1978, which provides to the WRTA transit employees represented by the ATU protections satisfying the requirements of 49 U.S.C., Section 5333(b). In addition, the WRTA and the ATU have agreed that the terms and conditions of the agreement dated October 12, 1978, as supplemented by item three below, shall be made applicable to the instant projects for bus-related transit employees within the service area of the projects.

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant projects on condition that:

---

[2] In view of positions taken by WRTA which do not exhibit a clear understanding of the appropriate interpretation of the referred Paragraph (19) language to obligate any entity which undertakes the management, provision and/or operation of the transit system or Project services, the Department will apply this alternative language to ensure that the requirements of 5333(b) are clearly understood and satisfied.

1. This letter and the terms and conditions of the protective arrangements dated April 6, 1998, and the October 12, 1978 agreement, as supplemented, shall be made applicable to the instant projects and made part of the contracts of assistance, by reference;

2. The term "project" as used in the above referenced arrangements shall be deemed to cover and refer to the instant projects;

3. The contracts of assistance shall include the following language, by reference:

   "The phrase 'employees covered by this agreement' and all similar such references in the parties' October 12, 1978 Section 13(c) Agreement shall be deemed to cover not only the employees of the Company represented by ATU Local Union 22, but also those employees of Worcester Area Van Express represented by the Union.";

4. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of such disputes; and

5. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the local unions which are party to, or otherwise referenced in the aforementioned agreements and/or arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the unions under those arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the projects.

Should a dispute remain after exhausting any available remedies under the protective arrangements, and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards
Deputy Assistant Secretary

Enclosures

cc: Donald Durkee/FTA
Robert Ojala/WRTA
James O'Brian/WRTA
Leo Wetzel/ATU
George Kourpias/IAM
Michael Goodwin/OPEIU
Les Parmelee/RLEA
Highsaw, Mahoney & Clarke
Robert Scardelletti/TCU
Frank McCann/TWU
Malcolm Goldstein, Esq./O'Donnell & Schwartz
Bernie McNelis/UTU
Guerrieri, Edmond & Clayman

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

APR 14 1998

Mr. Blas Uribe
Acting Regional Administrator
Federal Transit Administration
Region VI
524 East Lamar Boulevard
Suite 175
Arlington, Texas 76011-3900

FINAL CERTIFICATION

Re: FTA Application
Dallas Area Rapid Transit Authority
Purchase 53 Replacement Buses, Track & Signal Improvements, etc.
TX-90-X408;
and also regarding

FTA Application
TX-03-0180-03
Land Acquisition, Railroad Right of Way, etc.

Dear Mr. Uribe:

This is in reply to the requests from your office that we review the above captioned applications for grants under 49 U.S.C. §5333(b) (formerly Section 13(c) of the Federal Transit Act).

On December 12, 1997, the Department of Labor (Department or DOL) determined that the Amalgamated Transit Union's (ATU) objections to the proposed terms for certification were sufficient pursuant to the Department's Guidelines at 29 C.F.R. §215.3(d)(3). The Department, however, did not believe that negotiations would result in a resolution of the issues and directed the parties to submit briefs, and reply briefs, in order for the Department to determine the protections to be applied to the pending grant pursuant to 29 C.F.R. §215.3(e)(4). An interim certification was issued for TX-90-X408 on December 12, 1997, which permitted FTA to release funds provided that no action was taken under the grant relating to the issues in dispute which would result in irreparable harm to employees (29 C.F.R. §215.3(D)(8)).

This determination of the outstanding issues constitutes the Department's Final Certification for project **TX-90-X408** pursuant to its Guidelines at 29 C.F.R. §215.3(e)(4), and sets forth the protective terms and conditions to be substituted for those contained in the Department's Interim Certification of December 12, 1997.

With regard to FTA Grant **TX-03-0180-03**, the Department issued a certification on September 25, 1997. However, because issues raised for determination under the instant grant were also raised during the processing of TX-03-0180-03, the Department has reviewed these issues in the context of both grants, and this certification shall also stand to clarify the terms and conditions applied to TX-03-0180-03 in any deliberations involving the interpretation, application, or enforcement of the protective terms certified by the Department. The final enumerated paragraph of this certification shall be substituted for the final paragraph of the Department's September 25, 1997, certification for FTA grant TX-03-0180-03. In accordance with its procedures, the FTA will execute an Administrative Amendment or take such other action as necessary and appropriate to give legal effect to this substitution.

Issue for Determination: Coverage of Employees Under DART Protective Arrangement

The issue before the Department relates to the coverage of employees under DOL-certified protective arrangements for DART and centers on the wording of the last enumerated provision of the certification letter. The question is whether all DART employees are directly covered by the specific terms of the protective arrangements of the Department's September 30, 1991 certification and attachments thereto, or whether DART's salaried employees are simply entitled to "substantially the same" levels of protection under the final enumerated provision of the certification letter.

Generally, the final enumerated provision of DOL certifications ensures protections for employees not covered under negotiated protective arrangements, including employees of other mass transit providers in the service area of the project. Any ambiguity caused by including this standard language in the final enumerated paragraph in the DART certification was unintentional as it was always the Department's intent to apply the certified protections to all DART employees, as was expressly provided in Attachment B of the September 30, 1991 protections.

In 1995, as the parties are aware, DART contacted the Department regarding changes to its General Grievance procedure for salaried employees. DART requested that the Department confirm that those changes satisfied DART's obligations under Title 49 U.S.C., Section 5333(b), inasmuch as DART did not consider its salaried employees represented by a union and, therefore, not directly covered by the certified protective arrangements. In response to that letter, the Department took no position on the appropriateness of DART's action. Rather, the Department stated:

> "Although you indicate that DART, in its view, revised the procedures in compliance with the provisions of the certified arrangements, it appears that a potential dispute may exist with respect to DART's action."

Because the Department could have become responsible for arbitrating a claim on such a dispute under the provisions of the protective arrangement, it would have been inappropriate to make a decision on the request at that time. The objections raised by the ATU for these grants are derived from issues raised in the 1995 DART inquiry.

In order to resolve this matter in relation to DART certifications, the Department has revised the language in the final enumerated provision of this certification and thereby affirms that the certified protections continue to apply to all DART employees, except those management employees specifically identified in Attachment B.

Discussion:

The parties do not dispute that hourly employees, the majority of whom are members of the ATU, are covered by the specific terms of the September 30, 1991 arrangement. DART asserts, however, that salaried employees, the majority of whom do not belong to a particular labor organization, are not so covered and are only entitled to "substantially the same" level of protections, which would permit DART to provide different protections to salaried employees.

In order to satisfy the requirements of Section 5333(b)(2)(A) and (B) for DART grants, the Department must ensure the preservation of employee rights and the continuation of collective bargaining rights as such exist

under Texas state law. Certain of these rights are ordinarily expressed as the right to present grievances, either individually or through a representative[1].

In order to preserve these rights, the 1991 protective arrangement included provisions in paragraphs (3),(4), and (5) of Attachment A and a version of DART's grievance procedures in Attachment B entitled "8.10 General Grievances" which affords the right to present general grievances. It states that: "This Section applies to all employees of the Authority with the exception of the Executive Director, Assistant to the Executive Director, Assistant Executive Directors, and the General Counsel." (Emphasis added.)

The General Grievances language above originated with the Dallas Transit System (DTS) Personnel Policy Manual and was adopted in the DART Personnel Policy Manual (DPPM). The Department applied the DPPM's Discipline, Grievance, and Appeal Procedure in its entirety in the protective arrangement certified for DART on February 2, 1988. The 1991 certification, however, included only the "General Grievances" procedure in Attachment B and the "8.11 Modification" provision of the DPPM with language added to prevent unilateral changes to these particular provisions of the DPPM. This preserved the process for presenting grievances, but gave DART greater flexibility to modify certain DPPM policies and procedures while continuing to apply the terms and conditions of the protections to all DART employees except the named positions.

DART, nonetheless, has asserted the right to make changes to the General Grievance procedure as it relates to salaried employees and supports that position in its initial brief at page 10, arguing that the General Grievance Procedure was originally intended to apply to hourly workers because it was developed between DTS and the ATU which has represented a majority of hourly workers. Therefore, the reference in Attachment B to "all employees," DART argues, means all hourly employees. Also, at page 4 of its brief, DART argues that the ATU has no standing to object under 29 C.F.R. § 215.3(d)(3) on behalf of salaried employees at DART because ATU does not represent a majority of salaried employees.

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[1] The right to file "Grievances" under Texas state law, which includes addressing matters related to wages, hours of work, and conditions of work, is the form of collective bargaining protected under Section 5333(b) for DART.

DART's view regarding majority status and its assertion that state law must be read to afford representation rights for "grievances" to only those labor organizations with a demonstrated majority within a group or class of employees (i.e., hourly or salaried employees) is not supported. In making its argument for a majority status requirement, DART relies on its interpretation of Texas state law and its application of principles from the National Labor Relations Act. Texas state law, however, permits employees to present grievances individually or as a group and with or without a union representing them. Lubbock Professional Firefighters v. Lubbock. 472 S.W.2d, 413, 418 (Tex. App.-Amarillo 1987). There is no reference to majority status in the Texas State Code; and Texas State Courts, in considering the statute, have rejected the need for a showing of majority status. Therefore, it is inappropriate to apply NLRA principles relating to majority status in this instance.

Section 5333(b) of the Federal Transit law stipulates that employees are entitled to the "preservation of rights privileges, and benefits" and the "continuation of collective bargaining rights" (see footnote #1). This is required for all DART employees who enjoyed the right to present general grievances under Texas law, including salaried employees, regardless of whether these employees are represented or whether their representative holds a majority status.

While a majority status may, in DART's view, be determinative of certain employee rights, when DOL incorporated the above provisions into the certified protective arrangement to ensure the preservation of employee rights under Section 5333(b)(2)(A) and (B), consistent with Texas state law, it did so for all employees. The positions noted in Attachment B of the 1991 certification as excepted from coverage are the only DART employees not included under the specific terms of the 1991 arrangement.

To clarify the Department's position that the September 30, 1991 Protective Arrangement and Attachments A and B are directly applicable to all DART employees, the final enumerated paragraph of this certification letter has been modified. This determination is not intended to expand or contract employee rights which exist under applicable state law.

Finally, although the September 30, 1991 Arrangement, Attachment B, 8.11, indicates that the General Grievance Procedure cannot be modified, the parties may, in fact, as with all certifications, propose changes to the protections for future pending grant applications. Any proposed changes

would be considered in the normal processing of those grants (i.e., by filing an objection to the proposed certification terms pursuant to the Department's Guidelines at 29 C.F.R. §215.3(d)(1) in the context of a pending Federal grant).

With regard to the September 1992 Addendum to the 1991 Protective Arrangement, which was developed to cover "Employees of ATE Management and Services Company, Inc. (ATE) and Crawford Technical Services (CTS), represented by ATU Local 1338, and employees of any other private employer providing urban mass transportation services for the Public Body," certain of these parties have changed. Therefore, the Department has adjusted the descriptive references below to conform to those used in more recent certifications which reflect the entities currently involved.

With consideration to the foregoing, the Department of Labor has determined that the following protective arrangements satisfy the requirements of 49 U.S.C., Section 5333(b) and shall serve as the basis for this final certification. Therefore, the Department makes the certification called for under the statute with respect to the project TX-90-X408 on condition that:

1. This letter and the terms and conditions of the Department's certification dated September 30, 1991, with Attachments A and B thereto, and the September 1992 Addendum, shall be made applicable to the instant project and made part of the contract of assistance, by reference, except for the final enumerated condition of the September 30, 1991 certification letter;

2. The term "project" as used in the terms and conditions in the September 30, 1991 letter and Attachments and the September 1992 Addendum, shall be deemed to cover and refer to the instant project; the reference to ATU Local 1338 in the Addendum and the term "Union" as used in the 1991 Attachment A and the 1992 Addendum shall be deemed to refer to ATU Local 1635 also, as appropriate; and, the references to Crawford Technical Services and CTS in the 1992 Addendum shall be deemed to refer to TCT, Inc., and/or any successor contractor;

3. The contract of assistance shall include the following language, by reference:

"The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements of the grant contract between the U.S. Department of Transportation and DART, and the parties to the contract so signify by executing that contract. Employees, or their representative on their behalf, may assert claims under this provision. This clause creates no independent cause of action against the United States Government.";

4. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of such disputes; and

5. The September 30, 1991 protective arrangements are applicable to all employees of DART other than those specifically excluded in Attachment B. The September 1992 Addendum is applicable to employees represented by ATU Locals 1635 and 1338 at ATE Management and Service Company, Inc., TCT Inc., and/or any successor contractor, and to employees of any other private employer providing urban mass transportation services for the Public Body. Employees of all other mass transportation providers in the service area of the project shall be afforded substantially the same levels of protection as are afforded to employees covered by the aforementioned arrangements and/or agreements and this certification. Such protections include

procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute remain, after exhausting any available remedies under the protective arrangement, and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards
Deputy Assistant Secretary

cc: Donald Durkee/FTA
Leo Wetzel/ATU
Beverly F. LaBenske/DART
Anthony Anderson/ESC&M

U.S. Department
of Transportation
**Federal Transit
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

MAY 1 1998

Mr. Robert S. Reed
Mass Transit Administrator
City of Decatur Illinois
Decatur, Illinois 62523-1196

Dear Mr. Reed:

This responds to your March 3, 1998, letter seeking guidance on the obligations of successor employers under Section 13(c) of the Federal transit laws (now codified at 49 U.S.C. 5333(b)). Please be advised, that the administration of Section 5333(b) is vested in the Department of Labor (DOL); accordingly, I am forwarding your letter to DOL. If in the meantime you have any additional concerns and/or questions, please direct them to:

Ms. Kelley Andrews
U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
Division of Statutory Programs
200 Constitution Ave., N.W.
Room N-5603
Washington, D.C. 20210

I sincerely hope that this information is helpful to you.

Very truly yours,

Patrick W. Reilly
Chief Counsel

cc: Kelley Andrews

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

MAY 20 1998

Mr. Robert S. Reed
Mass Transit Administrator
City of Decatur
#1 Gary K. Anderson Plaza
Decatur, Illinois 62523-1196

Dear Mr. Reed:

Chief Counsel Patrick W. Reilly of the U.S. Department of Transportation, by copy of a letter to you dated May 1, 1998, has requested that I respond to your March 3, 1998 inquiry concerning the application of employee protection obligations to successor employers.

As I understand the situation outlined in your letter, the City of Decatur acquired a private mass transportation system in 1972 and hired a management company in order to continue collective bargaining rights as required by Section 13(c). The City is currently considering the replacement of its management company and has inquired concerning the obligations of a new management firm.

The obligations of a new management company are largely controlled by the existing employee protection arrangements between the City and the Amalgamated Transit Union Local 859. Those agreements, dated July 23, 1975, for operating assistance, and May 12, 1977, for capital assistance, have been applied to numerous grants of Federal assistance to the City and each contains provisions addressing the obligations of successor employers which satisfy the requirements of the Federal Transit statute at Section 5333(b).

Paragraphs (12) and (13) of the May 12, 1977 agreement read as follows:

> (12) All employees represented by the Union shall continue to be employed on the transit system by any successor-employer in the management and operation of the transit system . . . . The successor-employer shall assume, or arrange for the assumption of, the obligations of the Company with regard to wages, hours, working conditions, health and welfare, and pension or retirement provisions for employees. . . .

FILE COPY

(13) This agreement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms, or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by reason of the arrangements made by or for the Company to manage and operate the system. Any person, enterprise, body, or agency, whether publicly or privately owned, which shall undertake the management or operation of the transit system, shall agree to be bound by the terms of this agreement and accept the responsibility for full performance of these conditions.

I hope the above information is helpful in answering your questions. A copy of the May 12, 1977 agreement is enclosed for your further review. If you have any questions concerning this matter, I can be reached at (202) 219-4473, ext. 133.

Sincerely,

Kelley Andrews

Kelley Andrews
Director, Statutory Programs

cc: Patrick W. Reilly/FTA

Enclosure

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

AUG 12 1998

Mr. Blas Uribe
Acting Regional Administrator
Federal Transit Administration
Region VI
524 East Lamar Boulevard
Suite 175
Arlington, Texas 76011

FINAL CERTIFICATION

Re: FTA Application
Central Arkansas Transit
Authority (Little Rock)
Preliminary Engineering Services,
Project Management Services
AR-03-0014

Dear Mr. Uribe:

This is in further response to the request from your office that we review the above captioned application for a grant under Title 49 of the U.S. Code, Chapter 53.

Pursuant to Department of Labor (Department) Guidelines (29 C.F.R. 215), the Central Arkansas Transit Authority (CATA) and the Amalgamated Transit Union (ATU), Local 704 engaged in negotiations/discussions to develop protective arrangements required under 49 U.S.C., Section 5333(b). The parties failed to reach agreement on these arrangements and on May 22, 1998, the Department issued an interim certification pursuant to its Guidelines at 29 C.F.R. 215.3(d)(7). The Department then directed the parties to submit briefs on the disputed issue. This determination constitutes a final certification under the Department's Guidelines (29 C.F.R. 215.3(e)(4)) and sets forth the protective terms and conditions to be substituted for those in the Interim Certification of May 22, 1998 (29 C.F.R. 215.3(g)).

Issue For Determination: Supplemental Light Rail Arrangements

In its instructions to the parties, the Department requested arguments in support of their respective positions on the following:

> In light of the paragraph 23 prohibition on the use of the October 29, 1990 Section 13(c) Agreement for grants involving light rail, what provisions, if any, should be instituted to ensure the fair and equitable protections required by Section 5333(b) for the pending light rail grant?

The ATU has proposed the inclusion of what it refers to as "industry standard" supplemental light rail protections to "afford a preference [for CATA bus employees] in the staffing of the Rail River (sic) Streetcar." The ATU argues that supplemental protective arrangements addressing fixed guideway service are consistent with the parties' intentions under paragraph (23) to recognize that an alternative transit mode "would give rise to unique and distinct considerations." The ATU supports its proposal based on the Section 5333(b) requirement that terms and conditions must be fair and equitable. It argues that "CATA entirely ignores the *overriding* dictate of Section 13(c) that certified arrangements be 'fair and equitable'" and focuses instead on the enumerated requirements. In support of its position that its proposal is the "industry standard," ATU cites various transit properties where similar provisions have been employed.

CATA states that the ATU has "failed to identify any legal requirement under 13(c) to provide the protections it seeks" and, that no requirement or basis exists to provide rights to new jobs created by the service initiated under the current project. CATA argues that if employees are impacted as a result of this project, provisions covering these eventualities are already contained in the existing protective arrangement. To provide more than this, CATA argues, would establish new rights not intended by the Congress. In support of its position, CATA cites passages from the legislative history and court cases which emphasize the intent of Section 13(c) to maintain the status quo and which reserve for the collective bargaining process the establishment of any new rights. CATA also argues that these protections are not necessary because the pending grant provides funding only for preliminary engineering activities and not the construction of the new system.

The Department has determined that CATA's existing protective arrangement (the October 29, 1990 Agreement, as supplemented) is fair and equitable, that it provides the protections required by Section 5333(b), and that the union's proposal is not necessary to satisfy the requirements of the statute in the circumstances presented. Paragraph (23) of the October 29, 1990 Agreement is inoperative in this situation because the parties did not reach an understanding as to any supplemental terms and the Department has determined that the statute does not itself require anything additional in this case. Employees are protected by the provisions of the parties' October 29, 1990 Agreement, as supplemented, which covers a worsening of their positions with regard to employment, provides priority reemployment for those employees to vacant jobs within the jurisdiction and control of CATA, and affords notice and an opportunity for negotiations over changes in the transit system.

With regard to the ATU's assertion that these supplemental terms are the "industry standard," the Department notes that where such supplemental light rail protection language has been included, it has been based on the agreement of the parties.1

It should also be noted that preliminary engineering grants do require a Section 5333(b) certification and that these will be referred to the union(s) involved as appropriate under DOL Guidelines to ensure that proper protections are in place prior to the construction phase. Concerns regarding employee interests should be considered at the preliminary engineering stage, either under the Department's procedures prior to certification or as appropriate under the "notice and negotiation" provisions of the arrangement certified for such a grant. CATA's assertion to the contrary is not sustainable.

With consideration to the foregoing, the Department has determined that the terms and conditions set forth below meet the requirements of Section 5333(b) and shall serve as the basis of this final certification.

In connection with a previous grant application, the Central Arkansas Transit Authority (CATA) and the Amalgamated Transit Union (ATU), Local 704, executed an agreement dated October 29, 1990, which, along with the "1994 Department of Labor Supplement to the Agreement ... Dated October 29, 1990", and as further supplemented by the July 31, 1990, "Second Amendment to Interlocal Agreement Chartering the Central Arkansas Transit Authority" (approved by the Arkansas Attorney General on September 12, 1990, in Opinion No. 90-246), provides to employees represented by the union protections satisfying the requirements of 49 U.S.C., Section 5333(b) for the instant grant.

Accordingly the Department of Labor makes the certification called for under the Statute respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated October 29, 1990, as supplemented, except for paragraph (23) which shall not be applied, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

---

1 The one exception to this was a preliminary engineering grant for Kansas City, MO., where a provision already existed in the parties' Section 13(c) agreement that afforded employees the first opportunity for new jobs created as a result of the project.

2. The term "project" as used in the agreement of October 29, 1990, as supplemented, shall be deemed to cover and refer to the instant project;

3. Disputes over the interpretation, application and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of such disputes; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union which is a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under October 29, 1990 agreement, as supplemented, and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

   Should a dispute remain after exhausting any available remedies under the protective arrangement, and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards
Deputy Assistant Secretary

cc: Jane Sutter Starke/ESC&M
Leo E. Wetzel/ATU
Vickie Carroll/CATA
Rita Daguillard/FTA

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

AUG 13 1998

Mr. Leslie Rogers
Regional Administrator
Federal Transit Administration
Region IX
201 Mission Street
Suite 2210
San Francisco, CA 94105-1800

FINAL CERTIFICATION

Re: FTA Application
Regional Transportation Commission
of Clark County, (Las Vegas, NV)
Preliminary Engineering and DEIS
for Fixed Guideway Transit System
NV-03-0012

Dear Mr. Rogers:

This is in reply to the request from your office that we review the above captioned application for a grant, under Title 49 of the U.S. Code, Chapter 53.

Pursuant to Department of Labor (Department) Guidelines (29 C.F.R. 215), the Regional Transportation Commission of Clark County (RTC) was directed to engage in negotiations/ discussions with the Amalgamated Transit Union (ATU), to develop protective provisions required under 49 U.S.C., Section 5333(b). The parties failed to reach agreement and the Department issued an Interim Certification on June 15, 1998. The Department then directed the parties to submit briefs on the issues in dispute. This determination of the outstanding issue constitutes the final certification for the above referenced project under the Department's Guidelines (29 C.F.R. 215.3(e)(4)) and sets forth the protective terms and conditions to be substituted for those in the Interim Certification of June 15, 1998.

The RTC and the Service Employees International Union - L.U. 1107 (SEIU) executed an agreement dated January 13, 1994, which provides to employees represented by the union protections satisfying the requirements of 49 U.S.C., Section 5333(b). The parties have agreed that the terms and conditions of the January 13, 1994 Agreement shall apply to the above captioned grant application.

Similarly, the RTC and the International Brotherhood of Teamsters Local 631 (IBT) agreed that the terms and conditions of their Section 13(c) Agreement, dated November 12, 1992, should be made applicable to the instant grant. As explained by the Department in earlier certifications employing the November 12, 1992 Agreement, the parties agreed that language concerning the remedial authority of the independent arbitrator under paragraph (14)(b) is meant to provide examples of the arbitrator's authority and not meant to limit that authority to the powers listed in that paragraph.

Further, with regard to the priority of employment provisions of paragraph (17) of the November 12, 1992 Agreement, the Department determined that, in order to satisfy the requirements of 49 U.S.C., Section 5333(b), relevant parts of Paragraph (17) shall read, "... priority of employment to fill any vacant position within the jurisdiction and control of the Public Body which is reasonably comparable..."

With the above interpretation and supplemental language, the November 12, 1992 Agreement provides to employees represented by the union protections satisfying the requirements of 49 U.S.C., Section 5333(b).

With regard to the RTC and the Amalgamated Transit Union - L.U. 1637 (ATU), the Department issued a certification dated September 21, 1994, which included the determination of outstanding issues between the parties and incorporated the applicable protective terms and conditions in a document entitled, "Arrangement Pursuant to Section 13(c) of the Federal Transit ... September 21, 1994," (Arrangement). In connection with a previous grant application, the Department determined that this Arrangement provides to employees represented by the union protections satisfying the requirements of 49 U.S.C., Section 5333(b).

With respect to the outstanding dispute between the RTC and ATU over the application of supplemental light rail protections proposed by the union, the Department, as discussed below, has determined that it will not include the ATU's proposal.

Light Rail Implementation Arrangements

The ATU proposed the inclusion of supplemental light rail protections to address the RTC's proposed Resort Corridor Fixed Guideway System. The key elements of the union's proposal focus on the rights of employees of RTC's bus system to future fixed quideway jobs and an implementing arrangement to staff these jobs. The ATU argues that "[T]he Act, . . ., does not merely specify that arrangements must include terms as specified in the enumerated elements of

Section 5333(b), but also that the arrangements must be certified as otherwise being both "fair and equitable" thereby, in the union's opinion, necessitating the proposed arrangement.

The RTC argues that there is no statutory requirement or basis that provides job rights when an existing transit grantee starts a new type or mode of transit services. The RTC's position is that the existing 1994 protective arrangement is sufficient and provides the requisite protective benefits for displaced and dismissed employees.

The Department had determined that the September 21, 1994 employee protective arrangement between the RTC and ATU is fair and equitable and does provide the requisite protections against impacts occurring as a result of the project. The union's proposal is not necessary to satisfy the requirements of Section 5333(b) in the circumstances presented. Employees are protected by the provisions of the September 21, 1994 arrangement against a worsening of their positions with regard to employment by a priority of reemployment in vacant jobs within the jurisdiction and control of the RTC. In this instance, Section 5333(b) does not support a right to priority consideration in new jobs created by a project absent a negative impact as a result of that project. Where such supplemental light rail protection language has been included, it has been based on the agreement of the parties.[1]

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreements dated January 13, 1994, and November 12, 1992, as interpreted and supplemented in the above references, and the Arrangement dated September 21, 1994, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreements of January 13, 1994, and November 12, 1992, and the Arrangement of September 21, 1994, shall be deemed to cover and refer to the instant project;

---

[1] An exception to this was a preliminary engineering grant for Kansas City, MO., where a provision already existed in the parties' Section 13(c) agreement that afforded employees the first opportunity for new jobs created as a result of the project.

3. Disputes over the interpretation, application and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned arrangements which cover such disputes;

4. The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements of the grant contract between the Department of Transportation and the RTC, and the parties to the contract so signify by executing that contract. The contract of assistance shall include the following language: The employees, or their representative, may assert claims on their behalf. This clause creates no independent cause of action against the United States Government; and

5. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union which is a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the unions under the above referenced arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute remain after exhausting any available remedies under the protective arrangement, and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate

a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards
Deputy Assistant Secretary

cc: Rita Daguillard/FTA
Leo Wetzel/ATU
Andrew Stern/SEIU
Tom Sever/IBT
Dennis Kist/Kist & Associates
Kurt Weinrich/RTC
G. Kent Woodman/ESC&M

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

AUG 17 1998

Mr. Richard H. Doyle
Regional Administrator
Federal Transit Administration
Region I
Kendall Square
55 Broadway, Suite 920
Cambridge, MA 02142

FINAL CERTIFICATION

Re: FTA Application
Connecticut Department of
Transportation
Construct a Pedestrian Bridge
Between New London Multi-Modal
Transportation Station Parking
Garage and the Ferry Terminal
CT-90-X299

Dear Mr. Doyle:

This is in reply to the request from your office that we review the above captioned application for a grant under Title 49 of the U.S. Code, Chapter 53.

Pursuant to the Department of Labor's (Department) Guidelines (29 CFR 215), the Connecticut Department of Transportation (CDOT) was directed to engage in negotiations/discussions with the Amalgamated Transit Union Local 1209 (ATU), which represents employees of Southeast Area Transit District, to develop protective arrangements required under 49 U.S.C., Section 5333(b). The parties failed to reach agreement and the Department issued an Interim Certification on June 29, 1998. The Department then directed the parties to submit briefs on the issues in dispute. CDOT elected not to file briefs on the provisions to be applied to the pending grant application. The Department has decided to proceed with its determination of the final terms and conditions for application to the pending project. This constitutes the final certification for the above referenced project under the Department's Guidelines (29 CFR 215.3(e)(4)) and sets forth the protective terms and conditions to be substituted for those in the Interim Certification of June 29, 1998.

The unresolved issues are discussed below.

SUCCESSORS, ASSIGNS, AND CONTRACTORS PROVISION

The ATU objected to the Department's formulation of successors, assigns and contractors language. The objection relates to the proper identification of those entities which must accept responsibility for providing and complying with the requisite protections under Section 5333(b) of the Federal Transit law. Paragraph (19) of the July 23, 1975 National Agreement was incorporated into the proposed capital arrangements by reference in the Department's referral and reads as follows:

> (19) This agreement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms, or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by reason of the arrangements made by or for the Recipient to manage and operate the system.
>
> Any such person, enterprise, body, or agency, whether publicly - or privately-owned, which shall undertake the management or operation of the system, shall agree to be bound by the terms of this agreement and accept the responsibility for full performance of these conditions.

The ATU proposal omits the word "such" and includes additional language to ensure that any entity which undertakes the management, provision and/or operation of transit services under contractual arrangements of any form shall agree to be bound by the protective arrangements. Consistent with prior determinations addressing this issue, the Department has omitted the word "such" and included additional language in a new paragraph (11) of the protective arrangement applicable to this CTDOT project.

RE-EMPLOYMENT RIGHTS - SECTION 5333(b)(2)(E)

The ATU also objected to language to be included in Paragraphs 2(b),(c) and (7). The language proposed in the Department's referral for the above cited paragraphs provided for reemployment rights "in the Recipient's employment" or "within the control of the Recipient." The ATU seeks language which provides reemployment to positions within the "jurisdiction and control" and defines the scope of reemployment rights through a cross-reference to those entities bound to the applied protections through the "successors and assigns" provision.

Paragraph (2)(b) of the Department's proposed arrangements requires that the Recipient provide notice to affected employees of any adverse employment actions. The ATU has proposed additional language that would require the notice to contain a statement of the number and classifications of any jobs "within the jurisdiction and control of the Recipient, including those in the employment of any entity bound by this arrangement pursuant to paragraph (11), hereof, available to be filled by such affected employees." In this instance, the language proposed by the union refers to the "successors and assigns" provision and would ensure that employees are entitled to available jobs with any entity which undertakes the management, provision and/or operation of transit services.

The ATU also proposed that selection of forces language be included in paragraph (2)(c), further addressing the scope of reemployment rights for affected employees. Finally, ATU argues that the language in paragraph (7), which addresses priority of reemployment rights of affected employees, must extend to positions "within the jurisdiction and control of the Recipient, including those in the employment of any entity bound by this arrangement pursuant to Paragraph (11) hereof."

The Department has determined that reemployment rights extend to jobs that are within the jurisdiction and control of a recipient, and must include jobs with any entity which is required to be bound by the terms and conditions of the protective arrangements. Thus, the Department has included the language proposed by the ATU, including the reemployment language with respect to selection of forces.

Finally, the Department has made appropriate changes in paragraph (9) to reflect that the ATU is the only union representing employees covered by the protective arrangement in question.

Accordingly, the Department has determined that it will apply the protections in the attached protective arrangement entitled CAPITAL ASSISTANCE PROTECTIVE ARRANGEMENT PURSUANT TO SECTION 5333(b) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53 BETWEEN THE CONNECTICUT DEPARTMENT OF TRANSPORTATION AND ATU LOCAL 1209 - FTA GRANT CT-90-X299, August 17, 1998. CTDOT and ATU Local 1209 shall be deemed parties to these protective arrangements. These arrangements provide to employees represented by ATU Local 1209 protections satisfying the requirements of 49 U.S.C., Section 5333(b) in capital assistance grant situations.

In addition, in connection with a previous grant application, CDOT executed an agreement with various rail labor unions affiliated with the Railway Labor Executives Association, the Transport Workers Union (TWU), and the United Transportation Union (UTU) dated January 10, 1977, which is supplemented by four side letters dated December 8, 1976, and further supplemented by a side letter dated September 27, 1983.

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the January 10, 1977 agreement, as supplemented and the August 17, 1998 arrangement, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the January 10, 1977 agreement and the August 17, 1998 arrangement shall be deemed to cover and refer to the instant project; and

3. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of such disputes; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local unions that are signatory to the executed agreement or party to the referenced arrangement, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the unions under the above referenced January 10, 1977 agreement and August 17, 1998 arrangement, and this certification.

Should a dispute arise, after exhausting any available remedies under the protective arrangements and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards
Deputy Assistant Secretary

Enclosure

cc: Rita Daguillard/FTA
Leo Wetzel/ATU
Bernie McNelis/UTU
Guerrieri, Edmond & Clayman
Frank McCann/TWU
Malcolm Goldstein/O'Donnel & Schwartz
Les A. Parmalee/ATD
Clarence V. Monin/BLE
Mac A. Fleming/BMWE
W.D. Pickett/BRS
Don Buchanan/SMW
Joseph Stinger/IBB
George Kourpias/IAM
George J. Francisco/IBFO/SEIU
Richard Johnson/BRC/TCU
Richard Edelman/O'Donnell & Schwartz

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

SEP 11 1998

Mr. Leslie Rogers
Regional Administrator
Federal Transit Administration
Region IX
Federal Office Building
200 Mission Street, Suite 2210
San Francisco, CA 94105-1800

FINAL CERTIFICATION

Re: FTA Application
City of Phoenix
Fixed Guideway Corridor (EIS),
Fixed Guideway Corridor (PM),
Fixed Guideway Corridor (PE),
Fixed Guideway Corridor (Land)
AZ-03-0031

Dear Mr. Rogers:

This is in further response to the request from your office that we review the above captioned application for a grant under Title 49 of the U.S. Code, Chapter 53.

Pursuant to Department of Labor (Department or DOL) Guidelines (29 C.F.R. 215), the City of Phoenix (City) and the Amalgamated Transit Union (ATU), Local 1433, engaged in negotiations/ discussions to develop protective arrangements required under 49 U.S.C., Section 5333(b). The parties failed to reach agreement on these arrangements and on July 13, 1998, the Department issued an interim certification pursuant to its Guidelines at 29 C.F.R. 215.3(d)(7). The Department then directed the parties to submit briefs on the disputed issues. This determination constitutes a final certification under the Department's Guidelines (29 C.F.R. 215.3(e)(4)) and sets forth the protective terms and conditions to be substituted for those in the Interim Certification of July 13, 1998 (29 C.F.R. 215.3(g)).

Issue For Determination: Supplemental Light Rail Arrangements

In finding the ATU's objections sufficient, the Department acknowledged that the parties' existing protective arrangements, which included specific provisions covering "fixed guideway" jobs, might nonetheless benefit from further discussion/ negotiation regarding the obligations of the parties under a long term light rail* project such as this; and directed the parties to discuss the need, if any, for additional provisions to implement the protective arrangements. At the end of the negotiation period the Department instructed the parties to submit arguments in support of their respective positions regarding the need for a supplemental light rail* arrangement proposed by the ATU.

The ATU had proposed the inclusion of what it refers to as "industry standard" supplemental light rail protections and it argued that such supplemental protective arrangements are a reasonable and accurate specification of protected employees' existing paragraph (7) job rights appropriate for imposition by DOL under the fair and equitable standard of the statute. In support of its proposal, the ATU cited various transit properties where similar provisions were employed including Baltimore MD, Los Angeles CA, and particularly Kansas City MO where the union pointed out the Department had imposed additional language in a similar context in order to add needed specificity to an existing job rights provision.

The City takes the position that the existing "new jobs" provisions are operable and enforceable without the additional terms and conditions proposed by the ATU and that the proposed addition "represents an unwarranted expansion of Section 13(c) obligations well beyond the statutory requirements." With regard to the Kansas City case cited by the ATU, Phoenix distinguishes that case, and the Department's imposition of additional language, by arguing that the existing jobs clause in the Kansas City Section 13(c) Agreement was virtually silent with respect to how the provision was to be implemented. Phoenix concludes its

* In using the terms "fixed guideway" and "light rail," the Department relies on definitions provided by FTA for the term fixed guideway to include light rail.

argument by stating that "Unlike the situation confronted with respect to KCATA's case, the current case does not justify the imposition of the ATU's proposed supplemental language to specify how the new jobs clause will be implemented."

The Department has determined that the existing protective arrangement between the City of Phoenix and the ATU (the September 8, 1976 Agreement, as supplemented by a side letter dated September 8, 1994) is fair and equitable, that it provides the protections required by Section 5333(b), and that the union's proposal for additional language as a part of these protective arrangements is not necessary in this case in order to satisfy the requirements of the statute.

With consideration to the foregoing, the Department has determined that the terms and conditions set forth below meet the requirements of Section 5333(b) and shall serve as the basis of this final certification.

In connection with a previous grant application, the following parties executed capital protective agreements. These agreements are as follows:

Phoenix Transit Division of ATC/Vancom, and the Amalgamated Transit Union (ATU) executed a Section 13(c) Agreement dated September 8, 1976, as supplemented by side agreement dated September 8, 1994;

Phoenix Transit Division of ATC/Vancom, the International Brotherhood of Teamsters and the International Union of Operating Engineers have agreed to apply the terms and conditions of the September 8, 1976 agreement, as supplemented by side agreement dated August 31, 1994;

Valley Coach and the ATU executed a Section 13(c) Agreement dated March 25, 1991, as supplemented by a March 26, 1991 side letter from the City of Phoenix to the Department of Labor;

Arnett Cab and the ATU executed a Section 13(c) Agreement dated March 25, 1991, as supplemented by a March 26, 1991 side letter from the City of Phoenix to the Department of Labor;

Accordingly the Department of Labor makes the certification called for under the Statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated September 8, 1976, as supplemented, and the two agreements of March 25, 1991, as supplemented, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement of September 8, 1976, as supplemented, and the two agreements of March 25, 1991, as supplemented, shall be deemed to cover and refer to the instant project;

3. Any dispute or controversy regarding the interpretation, application, or enforcement of the March 26, 1991 letter from the City of Phoenix to the Department, which cannot be settled twenty (20) days after such dispute first arises, may be submitted at the written request of either the City or the Union to any mutually acceptable final and binding disputes procedure, or in the event the City and the Union cannot agree upon such procedure within ten (10) days after such request, to the Secretary of Labor, or his designee, for purposes of final and binding determination of any and all matters in dispute;

4. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements, certified by the Department of Labor, excluding the March 26, 1991 side letter from the City of Phoenix, but including this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements

accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of such disputes; and

5. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union which is a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the unions under the September 8, 1976 agreement, as supplemented, the March 25, 1991 agreements, as supplemented, and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute remain after exhausting any available remedies under the protective arrangement, and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards
Deputy Assistant Secretary

cc: Rita Daguillard/FTA
Neal E. Manske/City of Phoenix
Ron Norton/Phoenix Transit
Carol Knowles/Valley Coach
William Arnett/Arnette Transp. Services
Heidi Kitchen/Laidlaw
Dick Cvitkovich/IUOE Local 428
Leo E. Wetzel/ATU
Tom Sever/IBT
Frank Hanley/IUOE

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

NOV 20 1998

Mr. Joel P. Ettinger
Regional Administrator
Federal Transit Administration
Region V
200 West Adams Street, Suite 2410
Chicago, CA 60606

FINAL CERTIFICATION

Re: FTA Application
Ohio-Kentucky-Indiana Regional
Council of Governments
Investment Analysis and Preliminary
Engineering for I-71 Corridor
Project
OH-03-0171

Dear Mr. Ettinger:

This is in further response to the request from your office that we review the above captioned application for a grant under Title 49 of the U.S. Code, Chapter 53.

Pursuant to Department of Labor (Department) Guidelines (29 C.F.R. 215), the Ohio-Kentucky-Indiana Regional Council of Governments (OKI) and the Amalgamated Transit Union (ATU), Locals 627 and 628, engaged in negotiations/ discussions to develop protective arrangements required under 49 U.S.C., Section 5333(b). The parties failed to reach agreement on these arrangements and on September 21, 1998, the Department issued an interim certification pursuant to its Guidelines at 29 C.F.R. 215.3(d)(7). The Department then directed the parties to submit briefs on the disputed issues. This determination constitutes a final certification under the Department's Guidelines (29 C.F.R. 215.3(e)(4)) and sets forth the protective terms and conditions to be substituted for those in the Interim Certification of September 21, 1998 (29 C.F.R. 215.3(g)).

As a threshold matter, Section 5333(b) certification by the Department is a prerequisite to the receipt of FTA funding for the instant project. The contract of assistance with FTA must include statutorily sufficient employee protections, by reference, prior to the release of funding to any applicant, whether such is a transit authority, a city, a public utility commission, or a metropolitan planning organization.

Preliminary engineering grants do require a Section 5333(b) certification and such grants have been referred to the appropriate union(s) under the Department's Guidelines.

Concerns regarding employee interests should be considered at the preliminary engineering stage, either under the Department's procedures prior to certification or as appropriate under the "notice and negotiation" provisions of the arrangement certified for such a grant. OKI's assertion to the contrary is not sustainable.

Successors, Assigns, and Contractors

The OKI and ATU are in disagreement over the appropriate terminology for determining the entity(ies) which must accept responsibility for providing and complying with the requisite protections under Section 5333(b) of the Federal Transit law.

In the first paragraph of its proposal on this issue, OKI seeks to bind only OKI and the ATU, and not any successors and assigns, to the employee protective arrangements.[1] In the second paragraph, OKI seeks to assign protective obligations to other entities, indicating that any entity which "shall undertake the management or operation of the I-71 corridor light rail system under contractual arrangements of any form with the Recipient, shall agree to be bound by the terms of this agreement and shall accept *sole and exclusive* responsibility for full performance of this agreement in regard to the management or operation of the system." The OKI briefs did not address condition precedent language to bind such entities.

The ATU proposal for the first paragraph specifies that "successors and assigns" of the parties are to be bound by the protections. In the second paragraph, the union proposed that any entity which "shall undertake the management, provision and/or operation of any Cincinnati/Northern Kentucky Northeast Corridor Transit Services under contractual arrangements of any form with the Recipient shall agree to be bound by the terms of this arrangement and accept responsibility *with* the Recipient for full performance of these conditions." The ATU also proposed that language be added ensuring that any such entity would be bound by the protections as a condition precedent to such contractual arrangements.

To ensure continued application of the requisite section 5333(b) protections in the event that either OKI or the ATU is replaced by another organization, the Department requires that successors

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[1] Although OKI indicates that it is proposing language to substitute for paragraph (19) of the protective arrangement included in the Department's referral, it would be inappropriate for the Department to make changes to paragraph (19), which is taken directly from the July 23, 1975 Model Agreement. Accordingly, the Department has incorporated a new paragraph (11) addressing this issue into the protective arrangement attached to this determination.

and assign of the parties be bound by the protective arrangements. The Department, therefore, has included language in Paragraph (11) to ensure that successors and assigns are bound to the terms and conditions of the employee protective arrangements.

With respect to the issue of which parties are obligated to provide protections under the second paragraph, OKI is the only recipient of assistance which is a party to the contract with the FTA. Therefore, under the statute, OKI must be obligated to ensure that all requirements of the protective arrangements are given effect. In addition, OKI must remain responsible for ensuring the protections since there may be multiple service providers or such may change over time. If the applicant is not the direct provider of transportation services, as may be the case here, and it cannot directly ensure some protections such as continuation of bargaining rights or priority of reemployment for employees laid off as a result of the project, those protections are best given effect through performance by the actual service provider. Thus, in order to carry out these statutory requirements, the applicant must require that any entity which undertakes the management, provision and/or operation of transit services is *also* bound by the protective arrangements. These obligations appropriately extend to transit service providers as well as entities which manage or operate project services. Language to this effect has been included in the Department's determination at Paragraph (11).

In response to the ATU proposal for including condition precedent language, the Department has determined that any entity which is to be bound by the protections should be made aware of its obligations prior to initiating its contract. Language to this effect has been included in Paragraph (11).

Finally, the parties differ on language characterizing the nature of the project under paragraph (11). OKI proposes that protective obligations extend to "the I-71 corridor light rail *system*." ATU proposes that protective obligations extend to "*any* Cincinnati/Northern Kentucky Northeast Corridor Transit *Services*." For the instant project application, the OKI language may be viewed as limiting obligations to only entities providing light rail activities for the entire "system" (a system which does not exist as of yet). At the same time, the ATU language may be too broad in extending obligations to "any" Cincinnati/Northern Kentucky Northeast Corridor Transit Services. The Department has included language which appropriately extends protective obligations for the instant project to "the Cincinnati/Northern Kentucky Northeast Corridor light rail transit services. Such services include the instant project for investment analysis and preliminary engineering and design.

Reemployment Rights Under Paragraphs 2(b), 2(c), and (7)

OKI addressed some issues under Paragraphs (2) and (7) which are not within the scope of the Department's negotiation and briefing orders directing the parties to address language regarding "reemployment rights".[2] These issues were not the subject of the objections by the ATU which were found sufficient, nor were they objected to by OKI prior to the expiration of review indicated in the July 23, 1998 referral to the parties. Therefore, the Department's discussion and determination of issues under these paragraphs is limited to those issues which are within the purview of "reemployment rights."

With regard to issues related to reemployment rights, OKI proposes in Paragraph (2)(b) that notice be provided with respect to "any jobs in the Recipient's employment." The ATU proposes language in Paragraph (2)(b) which ensures that notice is provided concerning positions with any entity which is obligated to provide employee protections. Thus, the ATU proposal states that the reemployment right would include a notice of "any jobs within the jurisdiction and control of the Recipient, including those in the employment of any entity bound by this arrangement pursuant to paragraph (11) hereof." The ATU also proposed that "selection of forces" language be included in Paragraph 2(c) ensuring that negotiations over implementing agreements address which employees will be offered employment and clarifying the scope of reemployment rights to be afforded affected employees. OKI's proposal does not include "selection of forces" language.

The Department has consistently required "meaningful" reemployment rights with the applicant and/or with other entities within the jurisdiction and control of the applicant.[3] When an applicant does not provide transportation services directly, as is the case with OKI, there may be limited vacancies with the applicant itself for which an affected employee can qualify, with or without training. Under such circumstances, meaningful reemployment rights may be with a contracted transit related

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[2] For instance, OKI proposed a different standard for triggering notice in paragraph (2)(b) and proposed altering the timing for the initiation of negotiations in Paragraph (2)(c). These proposals addressed notice and negotiation provisions that would be unaffected by the scope of reemployment rights afforded to affected employees. Similarly, OKI proposed that additional language be inserted in Paragraph (7) characterizing the activities to be funded under the project. These issues would be unaffected by the scope of reemployment to be afforded affected employees.

[3] See, for instance, August 13, 1997 final certification for Los Angeles County Metropolitan Transit Authority projects CA-03-0453/CA-90-X714 at pages 3 and 4; and April 6, 1998 final certification for Worcester Regional Transit Authority projects MA-90-X299/MA-03-0215 at pages 4 and 5.

service provider.[4] If a meaningful assurance of priority of reemployment cannot be afforded, the Secretary of Labor would be obligated to deny labor certification to an applicant who could not satisfy all the requirements of 5333(b).[5]

Accordingly, the Department has determined that reemployment rights must extend to jobs that are within the jurisdiction and control of a recipient, and must include jobs with any entity which is required to be bound by the terms and conditions of the protective arrangements. Thus, the Department has included the language proposed by the ATU, including the reemployment language with respect to selection of forces.

"Light-Rail Implementation Arrangements"

The ATU has proposed the inclusion of what it refers to as "industry standard" supplemental light rail protections which, among other things, afford "preferential opportunities in the staffing of any fixed guideway operation which may be realized in the I-71 Corridor" to the existing METRO and TANK employees represented by the ATU.

The ATU supports its proposal based on the Section 5333(b) requirement that terms and conditions must be fair and equitable, asserting that previous Departmental determinations in this regard "simply ignored the *overriding* dictate of Section 13(c) that certified arrangements be 'fair and equitable' as well as the cardinal rule of statutory construction which specifies that remedial legislation is to be broadly interpreted and liberally applied." In support of its position that its proposal is the "industry standard," ATU cites various transit properties where similar provisions have been employed. OKI has agreed to only Paragraph (a) of the supplemental side letter proposed by the ATU.[6] OKI takes the position that that the ATU proposal "is clearly designed to a give a discriminatory priority preference to employees represented by ATU for employment in any new light rail jobs, even though they are not adversely affected through termination, lay off, displacement, or otherwise by an aspect of the project."

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[4] The OKI cites a Worcester decision where the Department did not require a service provider to be bound by the labor protections. In that case, however, the service provider in question was not a successor or assign and did not provide services pursuant to a contract with the applicant; it merely utilized the facilities which were the subject of the grant application.

[5] See Amalgamated Transit Union v. Donovan, 767 F.2d 939 (D.C. Cir. 1985)

[6] The Department has included this agreed upon language in the attached protective arrangement as a new Paragraph (12).

While the ATU asserts that these supplemental terms are the "industry standard," the Department notes that where such supplemental light rail protection language has been included, it has been based on the agreement of the parties.[7] In this instance, the Department has determined that Section 5333(b) does not support a right to priority consideration in new jobs created by the project without employees first having been negatively affected as a result of that project. The provisions of the attached protective arrangement provide fair and equitable protective arrangements required by Section 5333(b), and the ATU's proposal is not necessary to satisfy the requirements of the statute in the circumstances presented.

With consideration to the foregoing, the Department has determined that the terms and conditions set forth below meet the requirements of Section 5333(b) and shall serve as the basis of this final certification.

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the CAPITAL ASSISTANCE PROTECTIVE ARRANGEMENT PURSUANT TO SECTION 5333(b) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53 - FTA GRANT for the Ohio-Kentucky-Indiana Regional Council of Governments (OH-03-0171), November 20, 1998, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the above-referenced arrangements shall be deemed to cover and refer to the instant project;

3. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned arrangements for the resolution of such disputes; and

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[7] The one exception to this was a preliminary engineering grant for Kansas City, MO., where a provision already existed in the parties' Section 13(c) agreement that afforded employees the first opportunity for new jobs created as a result of the project.

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local unions which are a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the unions under the above referenced protective arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

   Should a dispute remain, after exhausting any available remedies under the protective arrangements and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards
Deputy Assistant Secretary

Enclosure

cc: Rita Daguillard/FTA
Warner S. Moore/OKI
Robert J. Townsend/Taft, Stettinius & Hollister
Leo Wetzel/ATU

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

NOV 24 1998

Mr. Blas Uribe
Acting Regional Administrator
Federal Transit Administration
Region VI
524 East Lamar Boulevard
Suite 175
Arlington, Texas 76011

Re: FTA Applications
Dallas Area Rapid Transit Authority
Add Funds For Real Estate
TX-03-0180-4 and

Full Funding Grant for the North
Central Light Rail Transit
TX-03-0180-5

Dear Mr. Uribe:

This is in reply to the request from your office that we review the above captioned applications for grants under Title 49 of the U.S. Code, Chapter 53.

Pursuant to Department of Labor (Department or DOL) Guidelines (29 C.F.R. 215), the Department referred a copy of each grant application to the Amalgamated Transit Union (ATU). The referrals afforded the ATU and the Dallas Area Rapid Transit Authority (DART) the opportunity to review the proposed terms for certification and both registered objections to the terms of the arrangement as allowed under DOL Guidelines. (The proposed protective arrangement had been the subject of a dispute and was clarified by the Department in an April 14, 1998 certification.) The Department determined that the ATU's objections were insufficient, but found that the objections raised by DART (seeking changes to the General Grievances procedure as it relates to salaried employees) were sufficient under its Guidelines. Since the objections registered by DART under grant TX-03-0180-5 incorporated those found sufficient by DOL under TX-03-0180-4, the Department is proceeding with action under both grants.

The Department directed the parties to negotiate and offered immediate mediation assistance to the top officials of each organization. The Department adopted this approach because earlier discussions between the parties on these matters had failed and the Department thought it unlikely that they would reach agreement on their own. However, the Department's offer of mediation was declined, first by DART and then by the ATU. The Department then suspended its formal processing of the pending grant applications and conducted individual meetings with top level representatives of DART (President/Executive Director, Vice President Human Resources, Assistant General Counsel, and outside counsel) and the ATU (International President, General Counsel, and Associate Counsel). The meetings afforded the parties the opportunity to express their concerns and further clarify their positions as they related to the issues pending certification. They also afforded the Department the opportunity to assess how best to resolve this matter.

The information developed at the Department's meetings with the parties, an examination of the briefs submitted in conjunction with the April 1998 certification, and a review of the negotiating history of the parties relative to these issues have persuaded the Department that it is now appropriate to proceed with its certification without further negotiations or briefs by the parties. Therefore, the Department is proceeding to certify these currently pending grants.

DISCUSSION: Previously, on April 14, 1998, the Department had issued its certification involving two other DART grants which clarified earlier DOL certifications regarding the application of existing protections for DART employees. The issues now before the Department are grounded in the same matters raised during the processing of the April 14 certification which were thoroughly briefed by the parties at that time.

In developing certification terms where the parties' negotiations have resolved an issue between them, alternative terms and conditions from those offered in the referral may be certified. Where, as here, the parties have been unable to resolve the issues, that option is not available. Under any circumstance, the Department's certification must, of course, reflect the strictures of state law.

As pointed out in the April certification, "Texas state law ... permits employees to present grievances individually or as a group and with or without a union representing them." Given this provision of Texas state law, the Department cannot certify a proposal which would unilaterally create and isolate a group of employees whose protections would be determined by whether a majority of its members are represented by a union. Furthermore, in the absence of an agreement between the parties, the Department has determined that it need not nor should not unilaterally create nor sanction a separate group of employees with its own set of protections through its certification, when such differentiation is not provided for under state law. (See "Discussion" in DOL certification involving TX-90-X408 and TX-03-0180-3, dated April 14, 1998, incorporated herein by reference.)

Finally, this is particularly true in light of the fact that during its efforts to resolve the differences between the parties, the Department was advised that DART had filed suit for a declaratory judgment in Texas state court regarding these same issues. The resolution of the court suit may provide the parties with a basis for further consideration of these issues. However, at this time, the Department finds the current protections sufficient and appropriate to satisfy the requirements of Section 5333(b).

Following the court's ruling, DART or the ATU may choose to present objections in the context of the Department's processing of future grants which will be considered pursuant to Department Guidelines and its responsibility to determine whether alternative protective arrangements may satisfy the requirements of Section 5333(b) as a condition for Federal funding.

With consideration to the foregoing, the Department of Labor has determined that the following protective arrangements satisfy the requirements of 49 U.S.C., Section 5333(b) and shall serve as the basis for this final certification for the above captioned grants. The Department makes the certification called for under the statute on condition that:

1. This letter and the terms and conditions of the Department's certification dated September 30, 1991, with Attachments A and B thereto, the September 1992 Addendum, and the "Modified Light Rail Transfer Implementation Arrangement" forwarded to the Department of Labor on November 10, 1997, shall be made

applicable to the instant project and made part of the contract of assistance, by reference, except for the final enumerated condition of the September 30, 1991 certification letter;

2. The term "project" as used in the Department's certification dated September 30, 1991, and Attachments, and the September 1992 Addendum, shall be deemed to cover and refer to the instant project.

The reference to ATU Local 1338 in the Addendum and the term "Union" as used in the 1991 Attachment A and the 1992 Addendum shall be deemed to refer to ATU Local 1635 also, as appropriate.

The references to Crawford Technical Services and CTS in the 1992 Addendum shall be deemed to refer to TCT, Inc., and/or any successor contractor.

The interpretation of DART protective arrangements regarding coverage of DART employees shall be consistent with the Department's April 14, 1998 determination and certification of DART grant TX-90-X408 and TX-03-0180-03, which is incorporated herein by reference for that purpose;

3. The contract of assistance shall include the following language, by reference:

"The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements of the grant contract between the U.S. Department of Transportation and DART, and the parties to the contract so signify by executing that contract. Employees, or their representative on their behalf, may assert claims under this

provision. This clause creates no independent cause of action against the United States Government.";

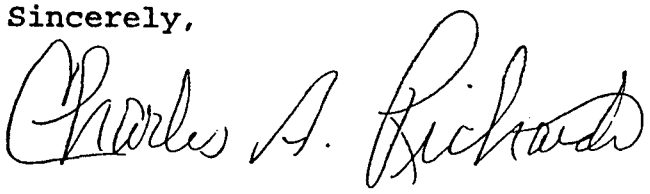
4. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of such disputes; and

5. The September 30, 1991 protective arrangements are applicable to all employees of DART other than those specifically excluded in Attachment B. The September 1992 Addendum is applicable to employees represented by ATU Locals 1635 and 1338 at ATE Management and Service Company, Inc., TCT Inc., and/or any successor contractor, and to employees of any other private employer providing urban mass transportation services for the Public Body. Employees of all other mass transportation providers in the service area of the project shall be afforded substantially the same levels of protection as are afforded to employees covered by the aforementioned arrangements and/or agreements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute remain after exhausting any available remedies under the protective arrangement, and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate

a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,



Charles A. Richards
Deputy Assistant Secretary

cc: Beverly LaBenske/DART
Johnanna Greiner/DART
George Salem/AGSHF
Laura Franze/AGSHF
Susan Lent/AGSHF
Roland Juarez/AGSHF
Leo E. Wetzel/ATU
Rita Daguillard/FTA
Tony Anderson/ESC&M

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

DEC 17 1998

Ms. Letitia Thompson
Acting Regional Manager
Federal Transit Administration
Region II
26 Federal Plaza
Suite 2940
New York, New York 10278

FINAL CERTIFICATION

Re: FTA Application
Westchester County Department of Transportation
Facility Design, Engineering and Specification of the Intermodal Terminal and Plaza, and Project Administration
NY-03-0337 Revised

Dear Ms. Thompson:

This is in further response to the request from your office that we review the above captioned application for a grant under Title 49 of the U.S. Code, Chapter 53.

In connection with a previous grant application, Liberty Lines Transit, Inc. (a service provider of the Westchester County Department of Transportation) and the Transport Workers Union Local 100 executed a side letter agreement, addressed to the Department of Labor, dated June 19, 1990, incorporating several previous protective agreements, by reference. These agreements provide to the employees of Westchester County's Bee-Line System represented by the union protections satisfying the requirements of 49 U.S.C., Section 5333(b).

In addition, pursuant to the Department of Labor's (Department) Guidelines (29 CFR 215), the Westchester County Department of Transportation (Westchester) engaged in negotiations/discussions with the Transportation Communications International Union (TCU), which also represents rail employees in the service area of the project, to develop protective arrangements required under 49 U.S.C., Section 5333(b). The parties failed to reach agreement and the Department issued an Interim Certification on September 25, 1998. The Department then directed the parties to submit briefs on the issues in dispute. This determination of the outstanding issues constitutes the final certification for the above referenced project under the Department's Guidelines (29 C.F.R. 215.3(e)(4)) and sets forth in Attachment A the protective terms and conditions to be substituted for those in the Interim Certification of September 25, 1998.

Rail mass transportation employees in the service area of the project are also represented by the Transport Workers Union (TWU), the United Transportation Union (UTU), the American Train Dispatchers Department (ATD), the Independent Railway Supervisors Association (IRSA), the National Conference of Firemen and Oilers (NCFO/SEIU), the Brotherhood of Locomotive Engineers (BLE), the Brotherhood of Maintenance of Way Employees (BMWE), the Brotherhood of Railway Signalmen (BRS), the Hotel and Restaurant Employees (H&RE), the International Association of Machinists and Aerospace Workers (IAM), the International Brotherhood of Boilermakers (IBB), the Sheet Metal Workers International Association (SMW), and the International Brotherhood of Electrical Workers (IBEW). The Department's September 10, 1998 response to the objections of the TCU noted that, if the Department determines that the language applied for resolution of any issue in dispute is necessary to provide fair and equitable protections satisfying the requirements of Section 5333(b), the Department will also apply that language on behalf of the employees represented by other labor organizations. A discussion of the protections to be applied on behalf of these labor organizations follows the Department's determination of protections on the issues in dispute between Westchester and the TCU.

The issues upon which Westchester and the TCU remain in disagreement are discussed below.

SUCCESSORS, ASSIGNS AND CONTRACTORS PROVISION PARAGRAPH (11)[1]

Obligations of Entities Utilizing the Federally Assisted Facility

The TCU proposed additional language in Paragraph (11) that would require any entity "which shall undertake the management, provision and/or operation of public transportation services utilizing or serving the facility assisted by the Project funds" to be bound by the terms of the protective arrangements. This would not only bind and extend protective obligations to contractors of Westchester which use the facility, but would also require Metro-North Commuter Railroad, which would "utilize or serve" the facility assisted by the Project funds to accept Section 5333(b) responsibilities. Westchester's position is that the language proposed by TCU has previously been determined by the Department to be unnecessary to meet the requirements of the Act.

In view of the facts presented by the parties the Department is not persuaded to change its previous determinations with regard to entities utilizing the Federally funded facility. Merely utilizing or serving the facility funded in the instant grant application, while providing a clear benefit to the entity using the facility, is not, as the statute contemplates, "financial assistance under sections 5307-5312, 5318(d), 5323(a)(1), (b), (d), and (e), 5328, 5337, and 5338(j)(5) of this title." Therefore, the Department does not believe it is appropriate to extend Section 5333(b) obligations to such entities, which are not "recipients" or "contractors" receiving Federal assistance under the

[1] Although TCU indicates it is proposing language to substitute for paragraph (19) of the protective arrangement included in the Department's referral, it would be inappropriate for the Department to make changes to paragraph (19), which is taken directly from the July 23, 1975 Model Agreement. Accordingly, the Department has incorporated a new paragraph (11) addressing this issue into the protective arrangement attached to the determination.

statute. Accordingly, the Department has not included the language proposed by the TCU with respect to this issue. However, this determination would not preclude Westchester from independently binding a third party such as Metro-North to the protective terms and conditions by means of a separate arrangement.

Language addressing who should be bound by the protective arrangements and inclusion of the word "such"

The parties were also directed to brief whether elements of paragraph (11) should be included which ensure that any entity which "undertakes the management, provision, and/or operation of the . . . Recipient's transit system, or any part or portion thereof, under contractual arrangements of any form with the Recipient" will be bound by the protections. The TCU objected to inclusion of the word "such" in the second paragraph of the referred successors and assigns language on the basis that it has been interpreted by some transit authorities to limit its application to those entities which replace the applicant and/or otherwise satisfy the successorship criteria established by the National Labor Relations Board. The TCU's proposal, however, only addresses those entities which serve or utilize the Federally funded facility.

Westchester's position is that the alternative language, which omits the word "such," is overly broad in its intent and expands the scope of protections. Westchester argues that there should be some "relationship, nexus, between a contractor with the County and the Project."

The Department has determined that any entity providing Federally assisted transportation services, whether through the use of grants for operating assistance or through the use of Federally funded capital assets, must assume a measure of responsibility for employee protections. Westchester must be obligated to ensure that all requirements of the protective arrangements are given effect. If the applicant is not the direct provider of transportation services, as may be the case here, and it cannot directly ensure some protections such as priority of reemployment for employees laid off as a result of the

project, those protections can be given effect through performance by other entities which operate transportation services under contract with the recipient of the Federal funds. The language should not be inappropriately limited to only those entities which are technical successors and assigns of the Recipient.

The language proposed by the TCU is inappropriate because, in this instance as addressed previously, the Department has determined that entities utilizing or servicing the facility need not be bound by the protective arrangements. Likewise, Westchester's interpretation of the proposed language in the Department's referral is too limiting.

Therefore, consistent with prior determinations addressing this issue, the Department has omitted the word "such" from the successors, assigns and contractors language, and has included language which ensures that any entity which undertakes the management, provision, and/or operation of Westchester's mass transit services or of Project services is bound by the protective terms and conditions.

Condition Precedent/Notification Language

The Department proposed alternative arrangements for the parties consideration in a letter dated September 24, 1998, which included "condition precedent" language in Paragraph (11). The parties were requested to brief whether the protective arrangements should be a made as a "condition precedent" to contractual arrangements with service providers.

The TCU did not brief this issue. Westchester argues against the inclusion of such language in Paragraph (11). They argue that it is not possible to satisfy this condition without renegotiating existing contracts.

In the Department's view, to be fair and equitable, any entity which is to be bound by the protective arrangements must be made aware of its obligations prior to initiating its contract. However, as a practical matter, execution of the requisite terms as a "condition precedent" would be impossible for existing contracts. Therefore, the Department will not include condition precedent language in this instance. This does not relieve Westchester of its obligation to ensure that any entity which undertakes the management, provision and/or operation of Project services or its mass transportation services is bound by the terms of the protective arrangement.

OBLIGATIONS OF THE CITY OF NEW ROCHELLE

Westchester County Department of Transportation is the designated grantee for the instant project and will provide funds to the City of New Rochelle to build a new Intermodal facility. The TCU believes that the City of New Rochelle should also be bound as a party to the protective arrangements.

The Department is not persuaded that it is necessary to bind both the City of New Rochelle and Westchester to the protective arrangements. However, if the City of New Rochelle is responsible for operating the facility, as Westchester has stated in its brief of November 16, 1998, then Paragraph (11) of the attached protective arrangement would require that Westchester bind the City to the terms and conditions of the arrangement. Even if the City is bound by the protective arrangements, Westchester, as the grantee, must continue to remain responsible for ensuring the protections.

REEMPLOYMENT RIGHTS WITHIN THE JURISDICTION AND CONTROL OF THE COUNTY

The TCU proposed additional language to be included in Paragraphs 2(b), (c) and (7) addressing the scope of reemployment rights. The TCU seeks language that would provide reemployment rights within the "jurisdiction and control of the Recipient" and defines the scope of reemployment rights through a cross-reference to those entities bound to the applied protections through the "successors and assigns" provision. Westchester believes that jobs should be limited to transportation jobs

within the jurisdiction and control of the County, but suggests that the provision should be limited to "subcontractors somehow related to the Project."[2]

The Department's policy throughout the administration of the employee protection program has been to ensure that any employee dismissed as a result of the Project be afforded a meaningful opportunity for gainful employment in available jobs within the jurisdiction and control of the grantee. This includes jobs with contractors providing Federally assisted transportation services. Therefore, the Department has included the language proposed by the union with respect to reemployment rights. However, in the protective arrangements certified by the Department, the reference to "any entity bound by this arrangement pursuant to Paragraph (11)" refers to any entity which undertakes "the management, provision, and/or operation of the Project services or the Recipient's transit system." It does not, as TCU proposed, include those which only "utilize or serve" the facility assisted by the Federal funds but are not providing mass transportation services for the Recipient.

INCLUSION OF SELECTION OF FORCES LANGUAGE

The parties were directed to brief the TCU proposal to include "selection of forces" language in Paragraph 2(c), separate from the issue pertaining to Paragraphs 2(b) and (7). Westchester objects to including selection of forces language in the protective arrangement if the intent is to extend the standard by which an employee demonstrates he has lost a job as a result of the Project or the standard by which the employee is offered employment. The language proposed by the union, however, appropriately ensures that negotiations over implementing agreements address which employee will be offered employment and clarifies the scope of reemployment rights to be afforded affected employees.

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[2] Westchester also raises questions in its brief with respect to the types of jobs to be made available under the reemployment provision--whether these are limited to transportation jobs, and the impact of the protective arrangements on existing collective bargaining arrangements. The Department refers the applicant to paragraph (18) of the protective arrangement which already addresses these issues.

The Department believes that some type of selection of forces language is required to provide employees with the protections to which they are entitled under 5(2)(f) of the Interstate Commerce Act.[3] Therefore, the Department has included selection of forces language, consistent with language contained in Paragraphs 2(b) and (7) of the protective arrangement.

OTHER ISSUES IN DISPUTE

The TCU's objections with respect to the Paragraph (4) claims dispute procedure were not found sufficient in the Department's response to objections dated September 10, 1998. Although the Department proposed alternative terms for consideration of the parties by letter dated September 24, 1998, these alternative terms were not accepted by the parties. Therefore, the dispute resolution procedure from Paragraph (4) of our referral of August 25, 1998, will be included in the final certification.[4]

PROTECTIONS FOR EMPLOYEES REPRESENTED BY OTHER UNIONS

The Department has, in this instance, determined that the provisions of this determination will be made applicable to employees represented by other rail labor unions in addition to the TCU. This action is necessary to ensure satisfaction of the requirements of Section 5333(b) in view of the applicant's expressed interpretation of language initially referred to the parties. With consideration to the foregoing, the attached protections are entitled CAPITAL ASSISTANCE PROTECTIVE ARRANGMENT PURSUANT TO SECTION 5333(b) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53 - FTA GRANT NY-03-0337-Revised For Westchester County

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[3] Pursuant to the Department's Guidelines at Section 215.1(3), arrangements under this subsection shall provide benefits at lease equal to benefits established under section 11347 (formerly 5(2)(f)) of this title.

[4] The Department's October 29, 1998 letter to Westchester County inaccurately indicated that the dispute resolution procedure from Paragraph (4) of the interim certification would be applied for the final certification. However, the interim terms and conditions were not the same as those of the referral, and the referral terms are appropriately included in the final certification.

Department of Transportation and the TCU, TWU, UTU, ATD, IRSA, NCFO/SEIU, BLE, BMWE, BRS, H&RE, IAM, IBB, SMW, and IBEW, dated December 17, 1998.

Accordingly, the Department of Labor makes the certification called for under the statue with respect to the instant project on condition that:

1. This letter and the terms and conditions of the June 19, 1990 side letter agreement, incorporating several previous agreements, by reference, and the CAPITAL ASSISTANCE PROTECTIVE ARRANGMENT PURSUANT TO SECTION 5333(b) OF TITLE 49 OF THE U.S. CODE, CHAPTER 53 - FTA GRANT NY-03-0337-Revised For Westchester County Department of Transportation and the TCU, TWU, UTU, ATD, IRSA, NCFO/SEIU, BLE, BMWE, BRS, H&RE, IAM, IBB, SMW, and IBEW, dated December 17, 1998, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the above referenced protective arrangements shall be deemed to cover and refer to the instant project;

3. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of such disputes; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local unions which are a party to or otherwise referenced in the above protective

arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the unions under the above referenced arrangements, and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute arise, after exhausting any available remedies under the protective arrangements and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a member of her staff to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards
Deputy Assistant Secretary

Enclosure

cc: Rita Daguillard/FTA
John Murray/Westchester County
Stewart Glass/Westchester County
Chris Tully/TCU
Bernie McNeilis/UTU
Guerrieri, Edmond & Clayman
Frank McCann/TWU
Malcolm Goldstein/O'Donnell & Schwartz
Les A. Parmalee/ATD
Clarence V. Monin/BLE
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James Marrone/IRSA
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Don Buchanan/SMW

Joseph Stinger/IBB
George Kourpias/IAM
William L. Scheri/IAM
George J. Francisco/IBFO/SEIU
Rich Edelman/O'Donnell, Schwartz and Anderson
Daniel Davis/IBEW

SP:

FEB 2 1999

Mr. Blas Uribe
Acting Regional Administrator
Federal Transit Administration
Region VI
819 Taylor Street
Room 8-A 36
Fort Worth TX 76102

Partial Certification:
Part "B" Final
Re: FTA Application
Dallas Area Rapid Transit Authority
Final Certification for the
Capitalized Preventive
Maintenance Portion of this Grant
Only
TX-90-X440

Dear Mr. Uribe:

This is in further response to the request from your office that we review the above captioned application for a grant under Title 49 of the U.S. Code, Chapter 53.

Pursuant to Department of Labor (Department or DOL) Guidelines (29 C.F.R. 215), the Dallas Area Rapid Transit Authority (DART) and the Amalgamated Transit Union (ATU) were directed to engaged in negotiations/discussions to develop protective arrangements required under 49 U.S.C., Section 5333(b). However, DART and the ATU failed to reach agreement on these arrangements and on December 1, 1998, the Department issued an interim certification pursuant to its Guidelines at 29 C.F.R. 215.3(d)(7) for the capitalized preventive maintenance portion of this grant. The Department then directed the parties to submit briefs addressing disputed issues. This determination constitutes a final certification under the Department's Guidelines (29 C.F.R. 215.3(e)(4)) and sets forth the protective terms and conditions to be substituted for those in the Interim Certification of December 1, 1998 (29 C.F.R. 215.3(g)) for the Capitalized Preventive Maintenance portion of the grant TX-90-X440.

Introduction:

At the initial steps toward certification of this grant both DART and the ATU raised objections concerning the terms of the Department's proposed Operating Protective Arrangement covering the capitalized preventive maintenance portion of the instant grant. Pursuant to its Guidelines (29 C.F.R. 215.3(d)(2)&(3)), the Department found certain of those objections sufficient and directed the parties to engage in good faith negotiations/ discussions "to seek a mutually acceptable resolution of the issue(s) specified by each party ... relating to the application of fair and equitable protective terms under the Operating Protective Arrangement" and thereby limited the negotiations/discussions of the parties.

In its objections, DART had also raised questions regarding the Department's referral of operating protections to cover capitalized preventive maintenance. These objections were not found to be sufficient by the Department. DART has, nonetheless, maintained the position that it is not appropriate for the Department to certify operating type protections for grant activities which are categorized by FTA as capital items or activities. Preventive maintenance was an activity previously categorized as operating, but its funding source was changed in recent years by the Congress in order to continue to support that activity following certain other reductions in operating funds.

The legislation affecting that change (including, most recently, The Transportation Equity Act for the 21st Century, June 9, 1998) provides no direction for the Secretary of Labor as to the treatment of this activity under its new funding category and the legislative history is silent as well. The Secretary's responsibility under the statute to "protect the interests of affected employees," nonetheless remains. It is reasonable and appropriate for the Department of Labor to assign protections based on the nature of the activity, considering the impact on employees, and not simply on the funding source or technical category under which it may fall. This certification/ determination, therefore, will only address the differences between the parties as they relate to the Operating Protective Arrangement.

In addition, the Department's Guidelines specify that at the end of the negotiation period "each party must submit to the Department its final proposal and a statement describing the issues still in dispute" (29 C.F.R. 215.3(d)(6)). Thereafter, "the Department will define the issues still in dispute and set a schedule for the final resolution of all such issues" (Guidelines at 215.3(e)(2)). In its briefing order, dated December 4, 1998, the Department provided the following instructions:

> The [parties'] final proposals ... included language changes and modifications being sought by each party. Where the parties' positions differ and are not consistent with the referred terms ..., please provide the Department with briefs in support of your position. The briefs should include any additional language changes that the parties believe are necessary and appropriate to the extent that such changes relate to the points raised in your final position letters .... In instances where the parties' proposed terms are in agreement, the Department will review the conforming language and incorporate the provision(s) in the terms and conditions for certification, provided that such meets the requirements of the Act. (Emphasis added.)

In the briefs submitted by DART, it raised a number of issues, and sought changes to the protective terms not referenced in its final position statement, including terms that appeared to have been agreed upon. The Department will not entertain efforts to re-open agreed-upon revisions to the Operating Protective Arrangement or the introduction of new proposals. On the other hand, the Department must seek conformance with state law while ensuring the protections of Section 5333(b), and has, therefore, reviewed a limited number of provisions identified by the parties that jointly acknowledge a potential conflict with state or Federal law.

Issues For Determination:

Conflicts With State Law Cited Regarding Collective Bargaining, ¶'s(3);(5);(6)(b)&(c);(7)(a),(b),&(e);(8);(15)(a),(b),&(c); (16);(17);(18);(21);(22);(25);and(26):

In its briefs DART points out that it cannot comply with provisions of the above-cited paragraphs due to conflicts with State law regarding collective bargaining and the recognition of labor organizations. The Department acknowledged that conflict in a "Clarification" to its interim certification dated December 16, 1998, and explained that the term "collective bargaining" and related expressions, as they may be used in relation to public employees, are not to be read so as to conflict with any provisions of Texas state law. Such terms should be understood to mean any "meet and confer rights" or "rights to present grievances" that individuals or groups in public employment have under Texas state law and shall include any established rules or arrangements specifying rights which are consistent with the terms and conditions of the Department's April 14, 1998 certification/determination involving FTA grants TX-90-X408 and TX-03-0180-03.

For this final certification, the Department has reviewed the paragraphs identified by DART concerning collective bargaining or representation issues and has made adjustments deemed appropriate.

Duty to Minimize, ¶(2):

The Department has a long-standing position on this issue and has previously made a determination involving DART and the ATU supporting the "duty to minimize" effects on employees. (See: DOL, Rural Transportation Employee Protection Guidebook, September 1979, at pages 5&6; and DOL certification for TX-03-0142, TX-90-X103#3, and -X193, dated September 30, 1991, at pages 2&3.) The ATU has made a proposal to include such language in the Operating Protective Arrangement which DART has opposed. The Department finds no compelling reason to change its position on this responsibility to minimize effects on employees from actions taken in the course of activities carried out under a Federal grant. However, in the presence of this dispute, it appears that the Department must reaffirm its position. Therefore, the language appearing in the Department's 1991 determination has been included in the protective arrangement for this grant.

Protection of DART Employment Terms, ¶(3)(a); and
Private Sector Employee Coverage, ¶'s(3)(b)&(4)(b):

The capital protective arrangements used for DART grants include two arrangements: one that covers the employees of DART and another for private contractor employees. The primary issue here concerns the need to ensure that that distinction is retained in the single operating arrangement to be utilized here. The Department has reviewed the positions of the parties and the proposals made by each. DART has agreed to the incorporation of the language proposed by the ATU in paragraphs (3)(b) and (4)(b), but is seeking certain assurances with regard to the application of those provisions only to ATU-represented employees of private transit employers providing services for DART. The Department believes the protections to be afforded under each paragraph are made sufficiently clear by the language proposed by the ATU, and, in conjunction with the enumerated provisions at the close of this certification, provides the assurance that DART is seeking.

The specific reference to ATU-represented employees in paragraph (3)(b) addresses DART's concern that those protections apply only to ATU-represented employees at private contractors. Similar language in paragraph (4)(b) also addresses DART's concern regarding coverage specific to ATU-represented employees of contractors. The ATU does, however, have two locals representing employees at the private contractors involved and such is properly referenced in the language being adopted. The fact that one of the local unions also represents certain DART employees does not alter the intent of these provisions to afford protections to employees of DART's private contractors.

Regarding the Addendum at paragraph (4)(b)(1), that provision, by its placement, also applies only to DART contractors and, by its terms, governs only "where applicable." It is a provision derived from the National "Model" 13(c) Agreement and is well suited to situations which may require an accommodation to varying or changing circumstances, which is a more likely occurrence where contract service is involved. DART's other issues regarding paragraph (3)(a) are subsumed under the Department's explanation above regarding collective bargaining consistent with other DART certifications and are reflected in the language adopted.

Notice and Implementing Provisions, ¶(5):

DART's position regarding Paragraph (5), as contained in the Department's proposed Operating Protective Arrangement, is that "it conflicts with state law by requiring DART to engage in collective bargaining with the ATU" and that it fails to recognize the rights of individuals to present grievances, as afforded by state law. DART proposes the use of corresponding provisions from its capital protective arrangements to address these State law concerns. In its reply brief, DART adds the concern that the DOL proposed provision includes language which creates conflicts for DART when read in conjunction with proposed paragraph (18) -- Priority of Reemployment. Paragraph (18) is addressed below.

The ATU has proposed language which resolves DART's concerns regarding collective bargaining. The Department views these corrections as sufficient, and in the absence of any arguments specific to those provisions, the Department adopts them with one exception. In its proposal, the ATU eliminated the last sentence in (5)(a) -- the proviso for exclusions within the purview of the paragraph. The Department sees no reason for an adjustment here beyond a corrective reference to DART's personnel policies, which would work without conflict in conjunction with the reference to applicable collective bargaining agreements. Therefore, the Department has not adopted the ATU's proposal to delete the last sentence of paragraph (5)(a).

"Then-Existing" and "Applicable" Personnel Policies, ¶'s(6)(b), (7)(h), and (7)(e):

At various places in these paragraphs, DART is seeking to reaffirm that other provisions affecting the benefits afforded employees, which are based outside the protective arrangement (such as collective bargaining agreements that may be applicable to contractors or personnel policies), should be those currently in effect. This is not inconsistent with existing references in the arrangement and other provisions affording updated benefits to employees such as subsequent wage increases, cost of living adjustments, and benefits that continue to be accorded other employees. The Department has included DART's proposed additional language in this regard. It has not included DART's proposed substitution for paragraph (7)(e), as derived from DART's 1991 capital arrangement, because those provisions would

conflict with other DOL determinations herein regarding the obligations of DART and other employers providing services under the project.

Early Cessation of Benefits, ¶(6)(d)(formerly(c)):

Paragraph (6)(c) of the Department's Operating Assistance Protective Arrangement reads as follows:

> (6)(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his employment.

DART objects to the Department's proposed language in this provision following the word "cause," thereby eliminating the reference to labor agreements. DART also rejects the ATU's proposed language seeking to balance that reference with the inclusion of a reference to the personnel policies of DART. DART's explanation is that such references "imply that the displacement allowance and/or make whole remedy is contained in a separate labor agreement or personnel policy." (Emphasis added.) DART continues, "Instead, the displacement allowance and make whole remedy are set forth in subparagraphs (6)(a)-(c) of the arrangement." DART's concerns are without foundation. The references of concern to DART are references regarding the location of procedures for determining cause, not the remedy, once cause has been determined. The Department is employing its proposed language as supplemented by ATU language referencing the applicable personnel policies of DART.

Priority of Reemployment, ¶(18) and (5)(b):

The question before the Department here is the scope of the reemployment right to be afforded employees under Section 5333(b)(2)(E) when one's employment has ended as the result of Federal funding of a transit project. DART takes the position that reemployment should be limited to the affected employee's original employer. Although it acknowledges a responsibility on the part of employers that are recipients of Federal funds through a grant applicant such as DART, DART does not allow for any reciprocal responsibilities on the part of the two entities.

It rejects the ATU's proposal, stating that it "suggests that DART's employees would have priority to fill vacancies with the private entities contracting with DART and vice-versa."

The Department's responsibility with regard to an employee's right to priority reemployment is to assure that such right be meaningful. The statute does impose obligations from one employer to another to afford an employment priority to vacant positions that may be available with those employers who are benefiting from the Federal grant. The likelihood of reemployment with an employer whose operations have been reduced as a result of a Federal grant would not appear to be very strong. A meaningful reemployment right, as contemplated by Section 5333(b)(2)(E), is more likely to exist with the employer whose operations are supported by the grant, either directly or through contract, operating within the jurisdiction and control of the applicant. On the other hand, if the employee is laid-off due to seasonal down turns or other reasons not related to the grant, no obligation exists. In addition, employees afforded reemployment rights must satisfy certain obligations and conform to requirements specified under the provision.

Accordingly, the Department has incorporated the language proposed by the ATU, which is consistent with Department policy and more specific to the circumstances found at DART.

Successors, Assigns, and Contractors ¶(19):

The Department's referral included the following language at paragraph (19), which was intended to ensure that successors, assigns, and contractors are bound by the protective arrangements:

> (19) This arrangement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms, or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by reason of the arrangements made by or for the Recipient to manage and operate the system.

> Any such person, enterprise, body, or agency, whether publicly- or privately-owned, which shall undertake the management or operation of the system, shall agree to be bound by the terms of this arrangement and accept the responsibility for full performance of these conditions.

The ATU raised concerns with the Department's proposed language, including the use of the term "such" in the second subparagraph and references to the term "system" appearing in both subparagraphs.

DART objected to the Department's proposal as well as to the ATU's proposal for paragraph (19). DART raised concerns regarding the absence of any indemnification of DART Board members and elected officials, language proposed by ATU to make DART responsible for ensuring compliance with paragraph (19), and the inclusion of "condition precedent" language proposed by the ATU. DART proposed that paragraph (20) of its 1991 Arrangement be substituted for paragraph (19) in the Department's referral.

Neither party's final proposal included the word "such," which can inappropriately limit those entities that are responsible for providing protections. It is noted that this word is no longer included in the Department's referral terms, and it will be excluded here, consistent with Department policy.

The ATU proposed that the term "transit services" be substituted for the referred term "system." The ATU proposed substitution of "transit services" to avoid " any suggestion that the reach of the Arrangement could be constricted by what DART may at any point try to characterize as its 'system'." The transit industry generally recognizes the term "transit system" as "[a]n organization (public or private) providing local or regional multi-occupancy-vehicle passenger service. Organizations that provide service under contract to another agency are generally not counted as separate systems."[1] (Emphasis added.) The Department recognizes the term "generally" as used in this broadly accepted definition may be ambiguous. To minimize the potential for confusion, the Department is adopting the ATU's proposed language.

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[1] See Transportation Expressions, U.S. Department of Transportation , Bureau of Transportation Statistics, 1996, p. 192.

DART raised the need for indemnification arrangements for its Board members and elected officials. Such a provision is not normally within the purview of the Department's certification. However, DART can independently provide such assurances if it deems this to be appropriate.

The ATU proposed language which would make DART specifically responsible for complying with and ensuring the compliance of contractors with the protective obligations under paragraph (19). DART objected to " ATU's attempt to make DART responsible for compliance with paragraph (19)." The Department has determined that responsibility for providing these protections and responsibility for assuring that these protection are carried out falls to DART as the grant recipient and the entity executing the contract of assistance. Therefore, the Department will include the ATU's proposed language.

The ATU also proposed the inclusion of "condition precedent" language which requires that any entity which undertakes the management or operation of transit services under contract with DART must be bound to these protections before it undertakes a service contract. DART indicated that its " proposed paragraph (19) would negate any need to include the 'condition precedent' language proposed by ATU because such language would be repetitive and superfluous." The Department has determined that any entity which is to be bound by the protective arrangements, must be made aware of its obligations prior to initiating its contract. The DART proposal does not accomplish this objective, therefore, the Department will apply the ATU language.

Finally, DART did not provide arguments in support of its proposal to substitute paragraph (20) of its 1991 arrangement for paragraph (19) of the Department's referral. Therefore, for reasons set forth above, the Department will include the language cited above.

Sole Provider Clause, ¶(22):

DART has objected to the sole provider clause, paragraph (22) of the Department's referral of the Operating Assistance Arrangement as referred. This paragraph, which, under this grant, is applicable only to the preventive maintenance activities, reads as follows:

> (22) The designated Recipient, as hereinabove defined, signatory hereto, shall be the sole provider of mass transportation services to the Project and such services shall be provided exclusively by employees of the Recipient covered by this agreement, in accordance with this agreement and any applicable collective bargaining agreement. The parties recognize, however, that certain of the recipients signatory hereto, providing urban mass transportation services, have heretofore provided such services through contracts by purchase, leasing, or other arrangements and hereby agree that such practices may continue. Whenever any other employer provides such services through contracts by purchase, leasing, or other arrangements with the Recipient, or on its behalf, the provisions of this agreement shall apply.

DART objected to the application of this clause on the grounds that it violates Texas law and the intent of Section 5333(b). Texas Mass Trans. Code §452.056(e) requires that:

> (e) An authority consisting of one subregion governed by a subregional board created under Subchapter O shall, at least once every five years, evaluate each distinct transportation service the authority provides that generates revenue, including light rail, bus, van, taxicab, and other public transportation services, and determine whether the authority should solicit competitive, sealed bids from other entities to provide these transportation services.

The ATU argues that it is appropriate to include paragraph (22) because it would not violate State law, it preserves the status quo as called for in the legislative history, and it ensures that " existing practices relative to the potential outsourcing of work are not altered with the introduction of federal funding."

DART has previously funded operating activities, including preventive maintenance, with local dollars. The Department is unaware of previous contracting activity for preventive maintenance, although DART does have an established practice of

contracting for the provision of other transportation services. There would not appear to be any conflict between paragraph (22) and such past practice, inasmuch as the clause provides for the continuation of established contracting practices. If, however, DART should seek to contract out in a way that affects the then-existing rights, wage and benefit levels, pension plan entitlements, conditions of employment, etc. of DART employees and/or of other protected employees in the service area, then DART would, of course, be responsible for providing the necessary and appropriate employee protections to those affected employees.

Furthermore, §452.056(e) does not appear to foreclose application of paragraph (22) to Federally funded activities since the statute only directs a transit authority to evaluate its services and then to determine whether to solicit competitive bids from other entities. It does not dictate a particular outcome.

Section 5333(b) requires " the preservation of rights, privileges, and benefits ... under existing collective bargaining agreements or otherwise" and " the protection of individual employees against a worsening of their positions related to employment." In the circumstances presented, where there is no collective bargaining agreement applicable to DART employees, the Department is obligated to preserve such rights consistent with existing past practice. Similarly, the Department is obligated to protect against the worsening of employees' positions. Section 5333(b) does not prohibit contracting out, nor does the sole provider clause, by its very language, prohibit all contracting out. However, the significance DART places on the presence of §452.056(e) and DART's interpretation and possible application of the provision indicates that there is a need to include paragraph (22) to ensure satisfaction of the protective obligations for the instant grant application.

Therefore, the Department has determined that the sole provider clause set forth below is necessary in order to provide fair and equitable protections as directed under Section 5333(b). Inasmuch as the Department has concluded that the State law does not appear to require DART to contract out certain of its operations under §452.056(e), there does not appear to be a conflict with the sole provider clause, which would render DART ineligible for Federal assistance.[2]

2 The Department has construed the Federal and State laws in a manner which would avoid a conflict between the two laws and would permit the certification of fair and

In the negotiations and briefing for these employee protections, DART has not presented any proposed language, or counter proposal of language, for a sole provider clause. Nor has ATU suggested any changes in the sole provider clause contained in the Operating Assistance Arrangement that the Department referred out to the parties as a proposed basis for this certification. Consequently, the provision in the proposed Operating Arrangement as referred will be included in this certification with the following minor modifications reflecting the circumstances of the instant grant:

> (22) The Recipient shall be the sole provider of mass transportation services to the Project and such services shall be provided exclusively by employees of the Recipient covered by this arrangement, in accordance with its terms. The parties[3] to this arrangement recognize, however, that certain recipients, providing urban mass transportation services, have heretofore provided such services through contracts by purchase, leasing, or other arrangements and hereby agree that such practices may continue. Whenever any other employer provides such services through contracts by purchase, leasing, or other arrangements with the Recipient, or on its behalf, the provisions of this arrangement shall apply.

Service Discontinuance, ¶(23):

Paragraph (23) of the Department's referred Operating Assistance Protective Arrangement reads as follows:

> (23) An employee covered by this arrangement, who is not dismissed, displaced, or otherwise worsened in his position with regard to his employment as a

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equitable protections as mandated by Federal law. Had the Department adopted DART's construction, finding the two laws in conflict, Federal assistance would appear to be precluded. See Amalgamated Transit Union International v. Donovan, 767 F.2d 939, 947-48, n.9 (D.C. Cir. 1985)("where a state, through its laws or otherwise, fails to satisfy the requirements of § 13(c), the Secretary must cut off funds by denying certification.").

3 The term "parties" as used in this arrangement, shall mean DART and employees covered by the protective arrangement and/or their representatives.

> result of the Project, but who is dismissed, displaced, or otherwise worsened solely because of the total or partial termination of the Project, discontinuance of Project services, or exhaustion of Project funding, shall not be deemed eligible for a dismissal or displacement allowance within the meaning of paragraphs (6) and (7) of this arrangement. (Emphasis supplied.)

The ATU has pointed out discrepancies between the Department's Operating Arrangement and the Capital Protective Arrangement (an arrangement used by the Department in other circumstances) in regard to the term "discontinuance of Project services." That term does not appear in the Capital Arrangement and has been deleted by the Department when disputed by the parties because of its potential for misinterpretation. The union argues that this potential may materially affect the rights or interests of employees and would justify the development of alternative language, which it proposed.

DART objected to the ATU's proposal and argued that the paragraph should remain unchanged.

What is key to this issue is whether the impact that occurs is as a result of Federal assistance. If a discontinuance of project services occurred as a result of Federal assistance, Section 5333(b) protections would apply. If no relation to the project exists, then protections are not warranted. Under any circumstances, Section 5333(b) obligations cannot be extinguished through a temporary shutdown of service. The Department acknowledges that the term "discontinuance of Project services" may be misleading and may be improperly assumed to exclude employees from Section 5333(b) coverage. Hence, in the presence of this potential for misinterpretation the Department will not include the term in this protective arrangement.

Other Provisions Warranting Comment or Explanation:

DART first registered objections to paragraphs (15) and (17) in its initial brief. The objections raised concerns regarding the type of conflicts with State law previously referenced in this determination. DART's reply brief makes no further mention of these paragraphs. The ATU, in its reply brief, has offered modifications to paragraphs (15) and (17) of the proposed

Operating Protective Arrangement, which it suggests address these concerns. As referenced above for issues of State law, the Department has reviewed these modifications and, with the exception of a presumed typographical error, has incorporated these changes as proposed by the ATU.

With consideration to the foregoing, the Department has determined that the terms and conditions set forth below meet the requirements of Section 5333(b) and shall serve as the basis of this final certification. Accordingly the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the Operating Protective Arrangement for The Dallas Area Rapid Transit Authority (Operating Arrangement), dated February 2, 1999, shall be made applicable to the capitalized preventive maintenance portion of the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the Operating Arrangement dated February 2, 1999, shall be deemed to cover and refer to the instant project;

3. The contract of assistance shall include the following language, by reference:

   "The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements of the grant contract between the U.S. Department of Transportation and DART, and the parties to the contract so signify by executing that contract. Employees, or their representative on their behalf, may assert claims under this

provision. This clause creates no independent cause of action against the United States Government.";

4. Disputes over the interpretation, application, and enforcement of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of such disputes; and

5. The Operating Arrangement dated February 2, 1999, is applicable to all employees of DART other than those specifically excluded in Attachment B to the Department's certification for DART grants TX-03-0124, et al., dated September 30, 1991, and consistent with the Department's April 14, 1998 DART certification.

   The Operating Protective Arrangement dated February 2, 1999, is also applicable, according to its terms, to employees represented by ATU Locals 1635 and 1338 at ATE Management and Service Company, Inc., TCT Inc., and/or any successor contractor providing urban mass transportation services for the Public Body.

   Employees of urban mass transportation carriers in the service area of the project not covered by the terms of the above referenced protective arrangements and/or agreements shall be afforded substantially the same levels of protection as are afforded to the employees covered by the aforementioned protective arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute remain after exhausting any available remedies under the protective arrangement, and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards
Deputy Assistant Secretary

cc: Beverly LaBenske/DART
Ben Gomez/DART
Dora Torseth/DART
Susan Lent/AGSHF
Roland Juarez/AGSHF
Leo E. Wetzel/ATU
Rita Daguillard/FTA

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

MAR 30 1999

Ms. Helen M. Knoll
Regional Administrator
Federal Transit Administration
Region X
Jackson Federal Building
915 2nd Avenue, Suite 3142
Seattle, Washington 98174-1002

Final Certification

Re: FTA Applications
Central Puget Sound Regional
Transit Authority
Revised Grant Application Includes
Only the Purchase of Diesel
Locomotives, Purchase Of Rail
Cars
WA-03-0119-Rev
LRT Agency Management Costs, LRT
Project Controls, LRT
Environmental Impact Statement,
LRT Civil Engineering, LRT Other
Services & Equipment, LRT Other
Jurisdiction Project Activities
WA-03-0121

Dear Ms. Knoll:

This is in further response to the request from your office that we review the above captioned applications for grants under Title 49 of the U.S. Code, Chapter 53.

Pursuant to Department of Labor (Department or DOL) Guidelines (29 C.F.R. 215), the Central Puget Sound Regional Transit Authority (Sound Transit) and the Amalgamated Transit Union (ATU) were directed to engage in negotiations/discussions to develop protective arrangements required under 49 U.S.C., Section

5333(b). However, Sound Transit and the ATU failed to reach agreement on these arrangements and on December 8, 1998, the Department issued an interim certification for the above-referenced grants pursuant to its Guidelines at 29 C.F.R. 215.3(d)(7). The Department then directed the parties to submit briefs addressing the disputed issues. This determination constitutes a final certification under the Department's Guidelines (29 C.F.R. 215.3(e)(4)) and sets forth the protective terms and conditions to be substituted for those in the Interim Certification of December 8, 1998 (29 C.F.R. 215.3(g)) for grants WA-03-0119-Rev and WA-03-0121.

Introduction

In connection with a previous grant, Sound Transit and the ATU, Locals 587, 758, 883, and 1576, executed an agreement dated February 29, 1996, which was certified by the Department on March 6, 1996.

Following referral of the pending grants pursuant to Department Guidelines (29 C.F.R. 215.3 (b)(2)), Sound Transit registered objections to the proposed terms for certification which were based on the February 29, 1996 Agreement. The objections were in two parts. The first part asserted that it was inappropriate for the Department to propose the use of the parties' February 29, 1996 protective agreement; the second part raised specific objections regarding that Agreement in the event that the Department decided that it would be used.

The Department found that the 1996 Agreement negotiated by Sound Transit and the ATU was an appropriate arrangement for referral of the grant applications in accordance with the Department's Guidelines (215.3(b)(2)). The Department did, however, find certain of the specific objections registered by Sound Transit to be sufficient. The failure of the parties to reach agreement on the issues raised by those objections required the Department to determine the terms and conditions for certification pursuant to the provisions of Section 5333(b).

Issues for Determination

1. Implementing (Agreements) Arrangements - *"as a result of the Project", Preconsummation, and Expedited Arbitration* ¶(5):

Sound Transit objected to certain language in paragraph (5) of the parties' February 29, 1996 agreement because it does not limit notice and development of an implementing arrangement to changes occurring "as a result of a Project." Furthermore, it objected to language that would prohibit Sound Transit from implementing changes to its operations pending the consummation of an implementing arrangement, whether by agreement or an arbitrator's decision. Sound Transit proposed the use of the Interstate Commerce Commission (ICC) "major/minor" standard for determining whether changes may proceed prior to an implementing arrangement. In addition, it proposed expedited arbitration if the parties failed to agree on whether the intended changes could proceed before an implementing agreement is concluded.

The ATU argued that Sound Transit had not justified the need for any changes to paragraph (5) of the February 29, 1996 agreement and proposed that the strict prohibition on the ability to proceed be left in place. In the alternative, the ATU proposed language incorporating ICC standards, which differed in several respects from Sound Transit's proposed language. According to the ATU, its proposal would provide appropriate protective terms should the Department determine that alternative language is required.

The Department has concluded that the strict prohibition on proceeding with an intended change is not appropriate in the context of the protective arrangements between Sound Transit and the ATU for the above-referenced projects. Therefore, the Department requires the alternative language which is set forth in paragraph (5)(a) of Attachment A. This new language permits intended changes to be effectuated under certain circumstances before an implementing arrangement is completed.

Also in paragraph (5), the parties agreed to insert the language "as a result of the Project." Although they disagree over its interpretation, the language is consistent with the Department's interpretation of the requirements of the statute, and has been included. The parties also agreed on additional language for paragraph (5) that protects employee interests in the event a change is effectuated without an implementing agreement in place. That agreed-upon language is also included. The remaining differences regarding paragraph (5) are discussed below.

Burden of Proof in Arbitration of Preconsummation Issues

The ATU charged that Sound Transit's proposal inappropriately places the burden of proof in preconsummation arbitration proceedings on the union by ensuring that the union will always be the moving party in such a dispute. In contrast, the ATU proposed a procedure which would compel Sound Transit to initiate arbitration over whether it could proceed with an intended change.[1]

Sound Transit indicates that its proposal is based on provisions previously certified by the Department. However, its language does not accurately capture the Department's position on this issue in that it does not reflect an appropriate burden of proof. The applicant has greater access to relevant information to support its position concerning the potential impact of a project upon employees. Therefore, it would not be fair and equitable in arbitrating preconsummation issues to place the initial burden of proof on the union.

Accordingly, to ensure fair and equitable protections in connection with these projects, the Department has included in paragraph 5(a) much of the language proposed by the ATU. In addition, the Department has included language in paragraph 5(b) that clearly requires Sound Transit to carry the initial burden of proof in preconsummation arbitrations.

Expedited Arbitration in Preconsummation Disputes

Sound Transit has proposed an expedited arbitration procedure to ensure prompt resolution of disputes regarding intended changes for which notice is required under paragraph (5). It argues that expedited procedures were developed by the American Arbitration Association (AAA) to provide a prompt and inexpensive method for resolving disputes. Sound Transit has proposed a process which will ensure that a decision is issued within fifty days after the dispute is submitted to arbitration, and indicates that without this expedited procedure, the ability to implement a proposed

[1] The ATU proposal provided four circumstances under which intended changes could proceed: if the parties mutually agree in writing; if an implementing agreement is reached; if an arbitration panel renders a decision on implementing arrangements; or if an arbitration board determines that the intended change may be instituted prior to the finalization of implementing arrangements.

change would effectively be thwarted by the inability to obtain a timely arbitration decision.

The ATU argues that the Sound Transit procedure for accelerated arbitration has no basis in ICC precedent in that "5(2)(f) rail preconsummation questions are not subjected to any 'accelerated' consideration process." The ATU also observes that expedited arbitration procedures, such as the AAA process relied on by Sound Transit, are properly applied only where agreed to by the parties and that such procedures call for trade-offs which are unacceptable to the union, such as foregoing transcripts and the typical arbitration briefing. The Department notes, however, that there is nothing in the Sound Transit proposal requiring that the union forego these elements of typical arbitration.

The Department has determined that expedited arbitration is appropriate in this instance to ensure that implementation of proposed changes by Sound Transit are not unnecessarily delayed. The procedure requires Sound Transit to provide at least sixty days notice of intended changes as a result of the Project. Sound Transit should be fully aware of the relevant facts concerning the intended change, and is permitted to submit the preconsummation issue to arbitration immediately. If Sound Transit promptly submits a preconsummation dispute to arbitration, the proposed timeframes would leave at least ten days after the dispute procedure is completed before expiration of the notice period. Therefore, to ensure timely yet full consideration of the issues, the Department has modified the Sound Transit timeframes in Attachment A to provide five days for the parties to select their respective board members, and to provide for the selection of a neutral member through AAA if the parties are unable to agree on the selection.

Accordingly, the Department's determination in Attachment A sets forth in paragraph (5)(b) a procedure for expedited arbitration.

2. 5333(b) Arbitration - - *Remedial Authority of the Arbitrator*, ¶(16)(a):

The second issue that the Department asked the parties to brief was the extent of the arbitrator's authority to resolve disputes under the protective arrangement. Sound Transit had argued in its objection that the existing language in the parties 1996 Agreement was overly broad, that it opened the door to remedies

well beyond those contemplated by the statute, and that it conflicted with decisions of the Department on this matter.

The ATU argued that the arbitrator should be able to rely on the terms of the protective arrangement or the statute, and that any remedy be confined to ensuring 13(c) protections or draw its essence from the Agreement.

In certifying terms and conditions of a protective arrangement that are fair and equitable, the Department does not certify a finite list of remedies for an arbitrator to employ. The certified terms and conditions do not represent an exhaustive list of potential remedies under Section 5333(b).

The Department's position on the arbitrator's authority to fashion a remedy in an arbitration award reflects the decision of the Supreme Court in United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960). There, the Court declared that an arbitrator, interpreting a collective bargaining agreement, may look to additional sources outside the agreement for guidance, as long as his award draws its essence from the agreement. Similarly, the Section 5333(b) arbitrator may look beyond the terms of the protective arrangement in order to make an award, but the award must draw its essence from the protective arrangement.

The Department is not persuaded that there is sufficient reason to develop alternate language on the arbitrator's authority from that in the parties' February 29, 1996 Agreement, which reads as follows: "Awards made pursuant to said arbitration may include full back pay and allowances to employee-claimants and such other remedies as may be deemed appropriate and equitable." The Department intended, and intends, that language to be interpreted in a manner consistent with Enterprise Wheel. Thus, the 1996 language remains unchanged.

3. Claims Handling Procedure -- *the time period to respond, the need to "make the necessary arrangements," and the tolling of time in the absence of such arrangements,* ¶(18):

In its briefing schedule, dated December 21, 1998, the Department instructed the parties to address the time period afforded Sound Transit to respond to claims and the public body's obligations to "make [the] necessary arrangements" for the filing of claims.

Sound Transit proposed that its response to any Section 5333(b) claim be required within 60 days rather than the 21 days in the parties' 1996 Agreement. Sound Transit believes that 60 days would provide sufficient time to explore the issues raised by the claim, gather relevant information and respond.

In its brief, the ATU indicated that "the 21-day limit was initially crafted with an eye toward the Paragraph (16) language which in turn affords either party the right to invoke arbitration thirty (30) days after a dispute arises." The ATU wished to assure that, in any claims procedure, a claimant would receive a formal management answer before he or she has the right to seek arbitration. The 60-day response period envisioned by Sound Transit would "specifically envision and affirmatively authorize" a response to a claim weeks after an arbitration demand was authorized under Paragraph (16).

The Department is not persuaded that the 21 day requirement in paragraph (18) of the existing 1996 Agreement must be revised. Sound Transit did not sufficiently explain why it would take substantially longer than 21 days to respond to a claim, nor address why routine claims could not be delegated within the transit authority. On the other hand, the Department found the ATU's position regarding potential conflicts with paragraph (16) to be valid. Therefore, the provision in the parties' 1996 Agreement specifying that Sound Transit must respond to all claims within 21 days remains unchanged.

Sound Transit proposed that the requirement to "make the necessary arrangements" for the filing of claims be replaced by language stating that "[a]ny employee affected as a result of the Project may file a claim, either individually or through the Union, in writing with the Executive Director of the Public Body . . . ." Sound Transit indicated that this replacement of the "necessary arrangements" language would effectuate a "simple clarification" of that language. Sound Transit appears to suggest that this clarification will satisfy its obligation to "make the necessary arrangements" in its entirety.

In response, the ATU proposed that detailed arrangements be included in the protective arrangement setting forth the "necessary arrangements" required under the claims handling provision. These arrangements are similar to those the Department had previously found appropriate in a claim

determination involving the State of Rhode Island under Section 5311 (at that time Section 18, the Small Urban and Rural Program).

The Department finds Sound Transit's proposal insufficient to address all aspects of the arrangements that must necessarily be made before an employee can file a claim. In view of Sound Transit's limited proposal, arrangements to be made may not be adequate unless specific guidance is provided beyond that in the existing paragraph (18). The Department has, therefore, incorporated the ATU's proposal specifying what "necessary arrangements" are to be made.

The ATU also proposed that language be included which provides for the tolling of the time limits for filing a claim if the public body has not implemented the "necessary arrangements" for the filing of claims. Sound Transit countered that the absence of arrangements to file a claim should not result in the tolling of any time limitations for the filing of the claim. Although the Department prefers that the parties develop such arrangements at the local level, we do view them as necessary to provide fair and equitable protections, and have included them here. In the Department's view, it is simply unfair to require a claimant to meet time deadlines for filing a claim until these arrangements are put in place. Thus, the Department has included language in Attachment A which requires that the time limits for filing a claim are tolled until these "necessary arrangements" are implemented.

Finally, the ATU proposed that the essence of the claims handling procedure in paragraph (18) be eliminated. The ATU's proposal to delete much of the claims handling procedure is not within the scope of the objections found sufficient by the Department and has not been considered here.

With consideration to the foregoing, the Department has determined that the terms and conditions set forth below meet the requirements of Section 5333(b) and shall serve as the basis of this final certification.

Accordingly the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated February 29, 1996, as supplemented by Attachment A to this certification, shall be made applicable to instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the above referenced agreement as supplemented, shall be deemed to cover and refer to the instant project;

3. The contract of assistance shall include the following language, by reference:

   "The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements of the grant contract between the U.S. Department of Transportation and Sound Transit, and the parties to the contract so signify by executing that contract. Employees, or their representative on their behalf, may assert claims under this provision. This clause creates no independent cause of action against the United States Government.";

4. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements, as supplemented, for the resolution of such disputes; and

5. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union which is a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the above referenced agreement, as supplemented, and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

   Should a dispute remain after exhausting any available remedies under the protective arrangement, and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards
Deputy Assistant Secretary

cc: Rita Daguillard/FTA
Leo Wetzel/ATU
Leslie Rathbun/Sound Transit
Desmond Brown/Sound Transit
Jane Sutter Starke/ESC&M

STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION

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September 9, 1999

Mr. Bernard Anderson
Assistant Secretary for Employment Standards
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Washington, D.C. 20010

Re: EMPLOYEE PROTECTIONS REFERRAL OF PENDING FTA GRANT APPLICATION Connecticut Department of Transportation Construction of New Rail Station in New Haven to Service Shoreline East Commuter Rail
CT-90-X331

Dear Mr. Anderson:

The Connecticut Department of Transportation ("ConnDOT") received the proposed terms and conditions of the Department of Labor's pending certification of the above-referenced project on August 30, 1999 and provides the following objections to the proposed terms and conditions.

Attachment A

1. Section 1 on page 2 attempts to incorporate the terms and conditions of the April 20, 1976 agreement into the certification. Yet on page 1 of Attachment, the second paragraph clearly states "...there were no previous certified protective arrangements that could appropriately be applied to this grant." Therefore, based upon the Department of Labor's own findings, it is inappropriate to make the April 20, 1976 agreement a part of this certification and ConnDOT objects to incorporating the April 20, 1976 agreement into this agreement.

2. Section 4 on page 2 requires disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements to be resolved in accordance with the provisions in the protective arrangements. Those terms and conditions include final and binding arbitration as listed in paragraph 5 on page 3. ConnDOT cannot agree to final and binding arbitration as it is construed as a waiver of sovereign immunity which may only be done by the Connecticut General Assembly. The Department of Labor is authorized to utilize special procedures to accommodate the special needs of states so as not to contravene state law pursuant to 29 CFR 215.3(2). In this case, those procedures are to allow the parties to resolve the dispute in accordance with Connecticut law.

The United States Supreme Court in Jackson Transit Authority v. Transit Union, 457 U.S. 15, 102 S.Ct. 2202, 72 L.Ed.2d 639, ruled that Congress intended disputes over interpretation, application, and enforcement of the terms and conditions of protective arrangements to be governed by state law applied in state courts. Nothing in 49 U.S.C. §5333 authorizes the Department of Labor to supersede the procedures set forth in Connecticut state law for the resolution of contract disputes arising from the interpretation, application, and enforcement of protective arrangement agreements. Such a provision runs afoul of the Tenth Amendment of the United States Constitution. Therefore based upon these objections, ConnDOT cannot agree to binding arbitration.

Capital Assistance Protective Arrangement for CT-90-X331

1. The certification should limit protective arrangements to employees of mass transportation carriers (see Section 5 in Attachment A). The current language in the Capital Assistance Protective Arrangement for the Project does limit coverage to mass transportation carriers but rather proposes protective arrangements for "transportation related employees in the transportation service area of the project represented by IBEW, TCU, TWU, IAM, ATDD/BLE, BMWE, BRS, IBB, NCF&O, SMWIA, UTU and H&RE" and "employees of the Recipient and of any other surface public transportation provider in the transportation service area of the Project" (see Capital Assistance Protective Arrangement for CT-90-X331).

ConnDOT believes that this language should be modified to cover only employees of mass transportation providers rather than transportation providers in general. Such broad coverage could be misconstrued to include any person engaged in surface transportation requiring a public service endorsement, such as taxicab or livery transportation. These are not mass transportation services and should not fall within the scope of coverage of the protective arrangements provided by this agreement.

Similarly, the protective arrangements should not extend to employees "related" to transportation but should be limited to employees engaged in public surface mass transportation. This is consistent with the provisions of 49 U.S.C. 5333. ConnDOT believes the introductory language and Section (1) of the Capital Assistance Protective Arrangement for CT-90-X331 should read as follows:

The terms and conditions set forth below shall apply for the protection of the mass transportation employees in the transportation service area of the project represented by IBEW, TCU, TWU, IAM, ATDD/BLE, BMWE, BRS, IBB, NCF&O, SMWIA, UTU and H&RE. The term "Recipient," as used herein, shall refer to the CTDOT.

(1) The Project shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees of the Recipient and of any other surface public mass transportation provider in the transportation service area of the Project. It shall be an obligation of the Recipient to assure that any and all transportation services assisted by the Project are contracted for and operated in such a manner that they do not impair the rights and interests of affected employees. The term "Project," as used herein, shall not be limited to the particular facility, service, or operation assisted by Federal funds, but shall include any changes, whether organizational, operational, technological, or otherwise, which are a result of the assistance provided. The phrase "as a result of the Project," shall when used in this arrangement, include events related to the Project occurring in anticipation of, during, and subsequent to the Project and any program of efficiencies or economies related thereto; provided, however, that volume rises and falls of business, or changes in volume and character of employment brought about solely by causes other than the Project (including any economies or efficiencies unrelated to the Project) are not within the purview of this arrangement.

An employee covered by this arrangement, who is not dismissed, displaced or otherwise worsened in his/her position with regard to his/her employment as a result of the Project, but who is dismissed, displaced or otherwise worsened solely because of the total or partial termination of the Project or exhaustion of Project funding shall not be deemed eligible for a dismissal or displacement allowance within the meaning of paragraphs (6) and (7) of the National (Model) Section 13(c) Agreement.

2. ConnDOT objects to the provision in Section 3 requiring unconditional acceptance of the National (Model) Section 13(c) Agreement executed July 23, 1975. ConnDOT cannot agree to any provisions of the Model Agreement which conflict with Connecticut law or violates existing labor agreements. For example, ConnDOT cannot agree to provide a priority to employees covered by this agreement over other employees in the State of Connecticut who are protected by collective bargaining agreements giving them priority. Such requirements imposed by the Department of Labor could constitute an impairment of contracts in contravention of the Fifth Amendment of the United States Constitution and could subject ConnDOT to conflicting labor law provisions. See objection number 4 below.

3. For the reasons in objection number 2 to Attachment A, ConnDOT objects to the binding arbitration provision set forth in Section (4). Additionally, the shifting of the burden of proof requires the Recipient to prove a negative which is contrary to the evidentiary procedures of Connecticut state courts, thus running afoul of the Supreme Court's directive that 13(c) disputes are contract disputes for resolution in state courts in Jackson, supra. Although the Department of Labor may ensure that protective arrangements are in place, ConnDOT does not believe that the Department of Labor's mandate to certify the existence of such protective arrangements authorizes a modification of the standard burden of proof adopted in the various state courts. Such a provision infringes upon the sovereignty of the states.

The Department of Labor is authorized to utilize special procedures to accommodate the special needs of states so as not to contravene state law pursuant to 29 CFR 215.3(2). Therefore, Section (4) should be modified to read as follows:

> (4) Any disputed, claim, or grievance arising from or relating to the interpretation, application or enforcement of the provisions of this arrangement, not otherwise governed by Section 12(c) of the Model Agreement, the Labor-Management Relations Act, as amended, Railway Labor Act, as amended, or by impasse resolution provisions in a collective bargaining or protective arrangement involving the Recipient and the Union, which cannot be settled by the parties thereto within thirty (30) days after the dispute or controversy arises, may be resolved in accordance with the laws of the State of Connecticut. .
>
> In the event of any dispute as to whether or not a particular employee was affected by the Project, it shall be his/her obligation to identify the Project and specify the pertinent facts of the Project relied upon. It shall then be the burden of the Recipient to rebut those facts.

4. Similar to the objections listed in paragraph 2 above, ConnDOT raises the same objections to the requirements in Section (7). ConnDOT proposes the following language as a substitute for Section (7). The Department of Labor is authorized to utilize special procedures to accommodate the special needs of states so as not to contravene state law pursuant to 29 CFR 215.3(2).

> (7) In the event any employee covered by these arrangements is terminated or laid off as a result of the Project, he shall be granted priority of employment or reemployment to fill any vacant position within the control of the Recipient for which he is, or by training or retraining within a reasonable period, can become qualified. In the event training or retraining is required by such employment or reemployment, the Recipient shall provide or provide for such training or retraining at no cost to the employee. This priority shall be subject to any other collective bargaining agreements covering the vacant position and shall be subject

to any law or regulation which governs the procedure for filling the vacant position.

Respectfully submitted,

Harry P. Harris
Bureau Chief, Bureau of Public Transportation
Connecticut Department of Transportation

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U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
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September 17, 1999

Mr. Harry P. Harris
Bureau Chief, Bureau of
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Connecticut Department of
Transportation
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Newington, CT 06131-7546

Re: RESPONSE TO OBJECTIONS TO EMPLOYEE PROTECTION TERMS FOR PENDING FTA GRANT APPLICATION
Connecticut Department of
Transportation
Construction of New Rail
Station in New Haven
To Service Shoreline
East Commuter Rail
CT-90-X331

Dear Mr. Harris:

This is in response to your letter of September 9, 1999, in which you register certain objections to the Proposed Terms for Employee Protection Certification contained in the Department's referral letter of August 25, 1999. Pursuant to Department Guidelines (29 CFR Part 215), your objections were timely received.

This response addresses only the threshhold issues raised in your letter which relate to the ability of the Connecticut Department of Transportation (ConnDOT) to comply with the terms and conditions necessary to satisfy the requirements of Section 5333(b) as a condition of the receipt of federal assistance. The Department of Labor (the Department) guidelines at 29 CFR 215.3(a)(2) require that "[i]n instances where states or political subdivisions are subject to legal restrictions on bargaining with employee organizations, the Department of Labor

will utilize special procedures to satisfy the Federal statute in a manner which does not contravene state or local law." (Emphasis added.) This does not mean that the requirements of the statute are to be ignored in favor of state law. Rather, the Department will attempt to find a way to accommodate *both* the Federal and state requirements.

One approach to accommodate state law restrictions on the ability of a state to satisfy the requirements of the statute has been to created a state agency which can comply with section 5333(b) requirements and acts as the applicant for federal assistance. In some instances, state laws have been modified to enable the states to satisfy the requirements of section 5333(b), and/or states have determined that some accommodation in their existing state laws will permit them to do whatever is necessary to be eligible for federal grants.

ConnDOT has indicated that it "cannot agree to final and binding arbitration as it is construed as a waiver of sovereign immunity which may only be done by the Connecticut General Assembly." Final and binding arbitration over disputes concerning the interpretation, application and enforcement of protective arrangements is a requirement for certification under section 5333(b). Similarly, the burden of proof set forth in the protective arrangement is required for certification. ConnDOT has, in fact, previously agreed to both the arbitration and burden of proof clauses in protective agreements and arrangements which have been applied in connection with its receipt of numerous Federal grants.

You may want to further examine whether and on what basis ConnDOT previously determined that it could, agree to the requisite terms of section 5333(b) (formerly called Section 13(c)). While ConnDOT reviews this matter, the Department will place this and all other ConnDOT grants into an **inactive** status.

Based on ConnDOT's review, the Department will determine how to proceed with processing for this grant and what actions must be taken in connection with prior grants to ConnDOT for which it previously agreed to provide all the requisite employee protections under Section 5333(b).

If you have any questions concerning this letter, I can be reached at (202) 693-1182.

Sincerely,

Kelley Andrews
Director, Statutory Programs

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Guerrieri, Edmond & Clayman
Richard Edelman/O'Donnell, Schwartz & Anderson
Representing:
American Train Dispatchers Department/BLE
Brotherhood of Maintenance of Way Employees
Brotherhood of Railway Signalmen
International Brotherhood of Boilermakers and Blacksmiths
National Conference of Firemen and Oilers/SEIU
Sheet Metal Workers International Association
Transport Workers Union of America (**rail division** only)
Charles V. Monin/BLE
Isaac Monroe/H&RE
Robert Roach, Jr./IAM

U.S. Department of Labor

Assistant Secretary for
Employment Standards
Washington, D.C. 20210

September 17, 1999

Mr. Richard H. Doyle
Regional Administrator
Federal Transit Administration
Region I
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Cambridge, MA 02142

Re: FTA Applications
Massachusetts Bay Transportation
Authority
Procure Kiosk Info System -
South Station Intermodal Center
MA-03-0218-01
Operating Assistance for JOB ACCESS
MA-37-X002
Procurement and Installation of
Approximately (10) Bicycle Racks
MA-23-9023
Park and Ride Improvements at Commuter
Rail Stations
MA-90-X244-04
Green Line Accessibility Improvements/
D Line, Line Construct and
Design/Envir Activities
MA-90-X305-01
Final Design and Environmental Efforts
for Park St./Boylston St. Station
Kiosk Rehab
MA-90-X308-01
Capitalized Preventive Maintenance;
Pigeon Removal Program, etc.
MA-90-X310-01
Design Services for ITS Center
MA-03-0226

Dear Mr. Doyle:

This is in reply to the request from your office that we review the above captioned applications for grants under Title 49 of the U.S. Code, Chapter 53.

In connection with a previous grant application, the Massachusetts Bay Transportation Authority (MBTA) and the Amalgamated Transit Union (ATU), the United Transportation Union (UTU), the Transportation-Communications International Union (TCU), the Transport Workers Union (TWU), the International Association of Machinists and Aerospace Workers (IAM), the Office and Professional Employees International Union (OPEIU) and various affiliates of the Railway Labor Executives' Association (RLEA)[1] executed an agreement dated December 10, 1974, which is supplemented by paragraphs (8) and (9) of the February 23, 1993 Settlement agreement between the MBTA and various Rail Labor organizations, and by supplementary language in enumerated paragraph 3 below and by Attachment A to the Department's May 29, 1997 certification of various MBTA projects (copy enclosed). The December 10, 1974 agreement provides to the employees represented by the unions protections satisfying the requirements of 49 U.S.C., Section 5333(b).

In addition, the MBTA has stated that under state law it has the ability to and will comply with the December 10, 1974 Agreement; by letter dated January 3, 1997, MBTA again confirmed that it has the statutory authority to comply with the 1974 13(c) Agreement.

The Department of Labor hereby applies the terms and conditions of the December 10, 1974 agreement, as supplemented by paragraphs (8) and (9) of the February 23, 1993 Settlement agreement between MBTA and various Rail Labor organizations, and as further supplemented by the language in enumerated paragraph 3 below and the enclosed Attachment A to the instant project.

---

[1] Although the RLEA has disbanded, employees represented by the various unions formerly affiliated with the RLEA will be referred an application and continue to be covered by the agreement of December 10, 1974, executed between the RLEA, on behalf of these unions, and the MBTA. These unions include the American Train Dispatchers Department\BLE, Brotherhood of Maintenance of Way Employees, Brotherhood of Railway Signalmen, International Brotherhood of Boilermakers and Blacksmiths, National Conference of Firemen and Oilers/SEIU, Sheet Metal Workers International Association, Transport Workers Union of America (rail division only), International Federation of Professional and Technical Engineers, Brotherhood of Locomotive Engineers, International Association of Machinists and Aerospace Workers, and International Brotherhood of Electrical Workers.

In addition, the Department of Labor's certifications each contain a final enumerated paragraph which ensures that transportation related employees in the service area of the project are afforded substantially the same levels of protection as those afforded employees represented by the unions which are a party to, or otherwise referenced in the protective arrangements. In order to ensure that service area employees are afforded the requisite protections of Section 5333(b), the Department must include some language in its certifications which affords these employees an opportunity to pursue claims with respect to any adverse affects occurring as a result of Federal assistance. We have included alternative language in this certification in order to provide requisite protections and expedite the MBTA's receipt of Federal assistance. This alternative language does not replace or affect previously applied dispute resolution procedures for service area employees nor modify, replace or affect Departmental policy regarding those procedures.

The Department, therefore, has included language in the last enumerated paragraph of this certification which provides for arbitration of claims of service area employees using the process developed by the American Arbitration Association.

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated December 10, 1974, as supplemented, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the agreement of December 10, 1974, shall be deemed to cover and refer to the instant project;

3. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions

in the aforementioned agreements and/or arrangements for the resolution of such disputes.

The following language shall supplement the arbitration clause of the December 10, 1974 Agreement and shall be included in the contract of assistance by reference:

The MBTA and the labor organizations referenced in this certification shall participate in any arbitration raised under the December 10, 1974 Agreement, as supplemented, and the arbitrator shall make any necessary determination of substantive or procedural arbitrability and, thereafter, shall proceed to hear and rule on the merits of the dispute between the parties. Furthermore, the parties shall comply with the arbitrator's ruling in any such arbitration unless such award has been vacated pursuant to Massachusetts state law; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local unions which are a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the unions under the December 10, 1974 agreement and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Any dispute, claim, or grievance arising from or relating to the interpretation, application or enforcement of the provisions of these protections which cannot be settled by the parties thereto within thirty (30)

days after the dispute or controversy arises, shall be submitted at the written request of the MBTA or other party to arbitration administered by the American Arbitration Association (AAA) under its Labor Arbitration Rules. The MBTA further agrees to accept the arbitrator's award as final and binding and so signifies by executing the contract(s) of assistance for the above captioned grant(s) with the Department of Transportation.

In the event of any dispute as to whether or not a particular employee was affected by the Project, it shall be his/her obligation to identify the Project and specify the pertinent facts of the Project relied upon. It shall then be the burden of the Recipient to prove that factors other than the Project affected the employee. The claiming employee shall prevail if it is established that the Project had an effect upon the employee even if other factors may also have affected the employee.

Sincerely,

Charles A. Richards
Deputy Assistant Secretary

cc: Regina Martin/FTA
Peter Butler/MBTA
Jane Sutter-Starke/ESC&M
Leo E. Wetzel/ATU
ATU Local 589/Recording Secretary
Thomas Buffenbarger/IAM
Michael Goodwin/OPEIU
Robert Scardelletti/TCU
Frank McCann/TWU
Malcolm Goldstein/O'Donnel & Schwartz
Charles Little/UTU

Guerrieri, Edmond & Clayman
Paul E. Almeida/IFPTE
Daniel Davis/IBEW
Richard Edelman/O'Donnell, Schwartz & Anderson
Representing:
American Train Dispatchers Department/BLE
Brotherhood of Maintenance of Way Employees
Brotherhood of Railway Signalmen
International Brotherhood of Boilermakers and Blacksmiths
National Conference of Firemen and Oilers/SEIU
Sheet Metal Workers International Association
Transport Workers Union of America (**rail division** only)
Clarence V. Monin/Brotherhood of Locomotive Engineers

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

December 20, 1999

Mr. Anthony Anderson
Eckert Seamans Cherin & Mellott
1250 24th Street, NW
Seventh Floor
Washington, DC 20037

Mr. Leo E. Wetzel
Associate Counsel
Amalgamated Transit Union
5025 Wisconsin Avenue, NW
Washington, DC 20016

Re: FTA Applications
Butler County Regional Transit
Authority

Dear Mr. Anderson and Mr. Wetzel:

The Department of Labor has completed its review of the circumstances relating to application of protective arrangements for grants of Federal assistance to the Butler County Regional Transit Authority (BCRTA).

As you are aware, the Department undertook this review upon the petition of the Amalgamated Transit Union (ATU) which, by letter dated June 22, 1999, requested that the Department revoke its February 2, 1999 certification for OH-90-X332. The ATU asserted that the certification was made in disregard of the ATU's prior letter indicating that it retained a continuing interest in such grants and "in derogation of the rights and interests of those in the ATU Local 738 bargaining unit."

The Department has determined the following information from its review of the materials submitted by the parties:

1. The City of Hamilton provided Federally assisted transportation services for over 20 years, through a contractor whose employees were represented by ATU Local 738. In March 1996, the City of Hamilton terminated its transit service and disposed of its assets.

2. The City of Hamilton resumed service through a contract with Universal Transportation Services, without Federal assistance, for a short period of time following its discontinuance of services. This service was also discontinued.

3. The Butler County Regional Transit District had been established by the Board of County Commissioners by Resolution dated August 24, 1994.

4. In February 1998, the City of Hamilton passed an ordinance transferring to BCRTA its "designated recipient" status. The ordinance requires the return of the "designated recipient" status if viable transportation alternatives are not developed or implemented by BCRTA in a timely manner. This status enabled BCRTA to apply for Federal operating and capital assistance to provide transportation services in the City of Hamilton.

5. The initial Federal funding was provided to BCRTA as the "designated recipient," based on the amount that FTA had allocated for the City of Hamilton to provide service before that service was shut down in 1996.

6. In May 1999, BCRTA began to provide transit service in Butler County, including the City of Hamilton.

7. BCRTA did not purchase the assets of the City of Hamilton for use in its system, but it did initiate service with buses donated by other Federally assisted transit authorities, and it did seek Federal operating and capital assistance to provide transportation services prior to initiating service in the City.

8. The City of Hamilton contracted with the BCRTA to provide Federally assisted transportation services in the City of Hamilton. The contract specified the services to be provided and the dollar amount to be paid by the City of Hamilton.

9. The Department's previous certifications for the City of Hamilton, including a September 22, 1995 certification for funding to purchase 3 buses, reference a May 25, 1975 Section 13(c) Agreement applied to City of Hamilton Federal grants which requires that "[t]his agreement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms, or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by reason of the arrangements made by or for the Company to manage or operate the system. Any person, enterprise, body or agency, whether publicly or privately owned, which shall undertake the management or operation of the transit system, shall agree to be bound by the terms of this agreement and accept the responsibility for full performance of these conditions." (Emphasis added.)

Based on these facts, the Department has concluded that neither the disposition of assets purchased with Federal assistance nor the three year discontinuance of transportation services serves to negate the contractual obligations of the City of Hamilton. The City remains bound by the protective obligations which it agreed to as a condition of prior Federal grants.

The City of Hamilton had an obligation, when contracting with BCRTA, to ensure that the BCRTA, which has undertaken the management and operation of the City of Hamilton transit system under contract with the City, was aware of the employee protection obligations which would be placed upon it as the provider of City transportation services.

Accordingly, ATU Local 738 is entitled to represent those employees of the BCRTA providing transportation services for the City of Hamilton. The BCRTA, in its capacity as contractor for the City, is directed to participate in negotiations with the ATU to develop an implementing agreement in accordance with Paragraph (8) of the May 25, 1975 Agreement. The implementing agreement should ensure the continuation of obligations set forth in the

May 25, 1975 protective agreement, including continuation of collective bargaining rights, with respect to the City of Hamilton portion of the BCRTA's transportation services.

In addition, the Department will shortly issue a referral letter to the ATU and BCRTA for project OH-90-X332 and the BCRTA portion of project OH-37-X007. Prior to the Department's certification of project OH-37-X007, the terms and conditions developed pursuant to this referral process will be substituted for those contained in the Department's February 22, 1999 certification for OH-90-X332 through an amendment executed by the BCRTA and the Federal Transit Administration.

Sincerely,

Charles A. Richards
Deputy Assistant Secretary

cc: Regina Martin/FTA
Joel P. Ettinger/FTA
Amy Terango/BCRTA
Steve Sorrell/City Manager/City of Hamilton
Guy Casper/Transit Coordinator/City of Hamilton

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

January 24, 2000

Mr. Anthony Anderson
Eckert Seamans Cherin & Mellott
1250 24th Street, NW
Seventh Floor
Washington, DC 20037

Mr. Leo E. Wetzel
Associate Counsel
Amalgamated Transit Union
5025 Wisconsin Avenue, NW
Washington, DC 20016

Re: **FINAL** RESPONSE TO OBJECTIONS
TO EMPLOYEE PROTECTION TERMS
FOR PENDING FTA GRANT
APPLICATIONS
Butler County Regional Transit
Authority
OH-90-X332
OH-37-X007-B

Gentlemen:

This is the final response to your letters of January 13, 2000, in which you register certain objections to the Proposed Terms for Employee Protection Certification contained in the Department's referral letter of December 29, 1999. Pursuant to Department Guidelines (29 CFR Part 215), your objections were timely received.

As indicated in the Department's determination of December 20, 1999, the City of Hamilton had an obligation, when contracting with the Butler County Regional Transit Authority (BCRTA), to ensure that the BCRTA, which has undertaken the management and operation of the City of Hamilton transit system under contract with the City, was aware of the employee protection obligations which would be placed upon it as the provider of City transportation services. The Department views the BCRTA as the successor to St. John Transportation Company under the May 25, 1975 Agreement. This letter addresses the two remaining issues raised by the BCRTA.

Under the Guidelines, objections, to be considered sufficient, must raise material issues which may require alternative protections, or must concern changes in legal or factual circumstances that may materially affect the rights or interests of employees, as presented by the grant project.

The BCRTA's objections with respect to 1) the inclusion of interest arbitration as a dispute resolution mechanism and 2) the inclusion of the "new jobs clause" have been considered in this regard and the Department has determined that these objections do not present a sufficient showing of material issues or changes in legal or factual circumstance that are not otherwise addressed by the protective arrangements set forth in the Department's referral letter.

Accordingly, the parties are directed to proceed with negotiations on the BCRTA issue found sufficient in accordance with the Department's partial response dated January 18, 2000.

If you have any questions or need any additional information, please contact me by phone at (202) 693-1231. The office FAX number is (202) 693-1342.

Sincerely,

MaryAnn Mullen
Project Representative

Enclosure

cc: Regina Martin/FTA

MAY 4 2000

SP:NEWTON:ys:5-4-00

Mr. F. Bradford Wilson, Jr.
Adams, Hemingway & Wilson, L.L.P.
544 Mulberry Street
Suite 1956
Macon, Georgia 31202-1956

Mr. Leo E. Wetzel
Associate Counsel
Legal Department
Amalgamated Transit Union
5025 Wisconsin Avenue, NW
Washington, DC 20210

Mr. Edgar W. Ennis, Jr.
Constangy, Brooks & Smith, LLG
Suite 710
577 Mulberry Street
Macon, Georgia 31201

Re: RESPONSE TO OBJECTIONS TO EMPLOYEE PROTECTION TERMS FOR PENDING FTA GRANT APPLICATION
Georgia Department of Transportation on Behalf of the Macon-Bibb Transit Authority
Operating Assistance; Lease 30-FT Buses, Lease STD Trolley Buses, Purchase Computers and Software, Purchase Mobile Surv/ Security Equipment
GA-90-X134-B

Gentlemen:

This is in response to the letters of February 28 from Mr. Wilson, February 29 from Mr. Wetzel, and March 6, 2000 from Mr. Ennis objecting to the Proposed Terms for Employee Protection

Initials/date	5/4/00		KA 5.4.00	
Name	Newton	Husselmann Marchant Mullen	Andrews	Richards
Office	OSP	OSP	OSP	Dep. Asst. Secy

Certification in the Department's referral letter of February 14, 2000 for the above referenced project. Pursuant to Department Guidelines (29 CFR Part 215), these objections were timely received.

The Department has conducted a thorough analysis and review of this unique case, and finds no compelling case law interpreting Section 13(c) under comparable circumstances. In cases where Federal mass transit funds are used to acquire a private transit system, the passage of time does not lessen the requirement that private sector bargaining rights be continued. However, where there is no nexus between the public acquisition of a private transit company and Federal mass transit assistance, continuation of private-sector collective bargaining rights is not required, because the loss of such rights is unrelated to Federal mass transit assistance.

Macon sought Federal transit funds between 1974 and 1981, and the Department determined then that as a condition of receipt of the funds, provision must be made for continuation of collective bargaining rights as they existed in 1973, the year in which Macon took over the transit company. However, Macon never received Federal transit funds for the takeover. The takeover was accomplished with local funds and the transit system has been operated with local funds during this entire time. While the acquisition with local funds may have occurred in anticipation of Federal funding, now, some 19 years after Macon's last effort to obtain transit funds, and 27 years after the transition occurred without federal funding, the Department has determined that the nexus to the events of 1973 no longer exists in such a way as to require Macon to honor obligations that would have existed had federal funds been used for the acquisition.

Therefore, based on the Department's analysis of events that have occurred since 1973, the Department withdraws its referral of February 14, 2000, and hereby issues its final certification, a copy of which is enclosed.

Sincerely,

Larry Newton
Project Representative

Enclosure

cc: Regina Martin/FTA
Len Lcour/FTA Region IV
Steven Kish/GA-DOT
Joseph McElroy/MBTA

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

May 9, 2000

Ms. Susan E. Schruth
Regional Administrator
Federal Transit Administration
Region IV
61 Forsyth Street, S.W.
Suite 17T50
Atlanta, GA 30303

FINAL CERTIFICATION

Re: FTA Application
Triangle Transit Authority
Complete Preliminary Engineering and
Right-of-Way Acquisition for Regional
Transit Plan
NC-03-0037-02

Dear Ms. Schruth:

This is in reply to the request from your office that we review the above captioned application for a grant under Title 49 of the U.S. Code, Chapter 53.

Pursuant to Department of Labor (Department) Guidelines (29 C.F.R. 215), the Research Triangle Regional Public Transportation Authority (TTA) was directed to engage in negotiations/ discussions with the Amalgamated Transit Union Locals 1328, 1493, 1700 and 1565 (ATU), to develop protective provisions required under 49 U.S.C., Section 5333(b). The parties failed to reach agreement on one of the issues in dispute and the Department issued an Interim Certification on March 13, 2000. The Department then directed the parties to submit briefs on the issue in dispute. This determination of the outstanding issue constitutes the final certification for the above referenced project under the Department's Guidelines (29 C.F.R. 215.3(e)(4)) and sets forth the protective terms and conditions to be substituted for those in the Interim Certification of March 13, 2000.

In connection with the processing of the instant grant application, TTA and the ATU did agree to the application of certain protective arrangements. Thereafter, the Research Triangle Regional Public Transportation Authority (TTA) executed a Warranty arrangement on April 27, 2000. The April 27, 2000 Warranty (which is to be interpreted in conjunction with the guidance in the Department of Labor's previous determination letters of November 10 and December 2, 1994, and the Department's December 23, 1994 certification letter), is supplemented by a side letter from TTA, dated April 27, 2000. These arrangements provide to the employees represented by ATU Locals 1328, 1493, 1700 and 1565, protections satisfying the requirements of 49 U.S.C., Section 5333(b).

With respect to the outstanding dispute between the TTA and ATU over the application of supplemental light rail protections proposed by the union, the Department, as discussed below, has determined that it will not include the ATU's proposal.

Light Rail Implementation Arrangements

The ATU proposed the inclusion of supplemental light rail protections for the TTA's proposed Rail Project. The union's proposal required an implementing arrangement to staff the regional rail operations of TTA. The ATU argues that it is "the *overriding* dictate of Section 13(c) that certified arrangements be 'fair and equitable.'" The ATU further states that "a provision assuring to those experienced and dedicated individuals who are currently employed on the Triangle Region's surface transportation operations any job opportunities in a fixed guideway operation that may be realized with the assistance of funding under the Act is a perfect illustration of fundamental fairness and equity."

The TTA argues that the Department previously indicated that the Warranty agreed to by the parties provides "'fair and equitable' protection in accordance with the statutory language of Section 5333(b)" and "is sufficient to protect the employees represented by the ATU against any adverse effect that may theoretically result from the pending grant." Furthermore, TTA notes that there is nothing in the statutory language of Section 5333(b) that requires differing or supplemental protections be made applicable to fixed guideway projects.

The Department has determined that the April 27, 2000 Warranty employee protective arrangement, as supplemented, is fair and equitable and does provide the requisite protections against impacts occurring as a result of the instant project. [1] The union's proposal is not necessary to satisfy the requirements of Section 5333(b) in the circumstances presented. Section 5333(b) does not support a right to priority consideration in new jobs created by the project in this instance absent a potential negative impact as a result of the project.

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the Warranty Arrangement executed April 27, 2000, (which is to be interpreted in conjunction with the guidance in the Department's determination letters of November 10 and December 2, 1994, and the December 23, 1994 certification letter), as supplemented by the April 27, 2000 side letter, shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the April 27, 2000 Warranty, shall be deemed to cover and refer to the instant project. The project activities defined by the scope and budget as incorporated in the contracts of assistance between the U.S. Department of Transportation and the grantee shall be undertaken, carried out and completed substantially as described in 1) the grant applications submitted to the FTA and subsequently referred to the union by the Department, and/or 2) any budget revision or amendment which a) the Secretary of Labor

[1] The Department finds no impediment in North Carolina state law, addressed in the September 13, 1994 Advisory Opinion of the Attorney General, to the provisions in paragraphs (4)(b) and (21) of the April 27, 2000 Warranty or to the proposal made by the ATU.

affirmatively determines, in an administrative action pursuant to 29 C.F.R. Section 215.5, revises or amends the application in immaterial respects, or otherwise does not alter the scope or purpose of the project, or b) is the subject of a subsequent Section 13(c) certification action pursuant to the procedures established by 29 C.F.R. Section 215.3. The Secretary's action shall be undertaken prior to any FTA final approval and award. The grantee will use project assets and equipment in the manner described in such grant application, budget revision or grant amendment;

Any subsequent action by which the grantee may transfer, convey, or grant any title, rights, and/or interest in project equipment and assets to any subrecipient or subgrantee while itself remaining the project recipient and/or grantee shall require a review and Section 13(c) certification action by the Secretary of Labor prior to, and as a precondition of, the grant amendment or title transfer;

3. The contract of assistance shall include the following language, by reference:

The phrase "provided, however, that such rights, privileges and benefits not previously vested may be modified or altered pursuant to Paragraph (3) hereof to substitute other rights, privileges and benefits," shall not be applicable to ATU Locals 1328, 1493, and 1700;

4. Disputes over the interpretation, application and enforcement of the terms and conditions of the protective arrangements prescribed by the Department of Labor, which include this certification letter, shall be resolved in

accordance with the provisions in the aforementioned agreements and arrangements for the resolution of such disputes; and

5. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local unions which are a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under these arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

   Should a dispute remain, after exhausting any available remedies under the protective arrangements and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards
Deputy Assistant Secretary

cc: Regina Martin/FTA
Jim Ritchey/TTA
Anthony Anderson/ESC&M
Leo E. Wetzel/ATU

U.S. Department of Labor

Office of Labor-Management Standards
Washington, D.C. 20210
June 30, 2000

Mr. Sheldon Kinbar
Regional Administrator
Federal Transit Administration
Region III
1760 Market Street
Suite 500
Philadelphia, PA 19103

FINAL CERTIFICATION

Re: FTA GRANT APPLICATION
Transportation District Commission
of Hampton Roads
Transfer of Title from the
Peninsula and Tidewater
Transportation District
Commissions

VA-90-X100-02	VA-03-0061
VA-90-X144-02	VA-90-X121
VA-90-X155-01	VA-90-X135-02
VA-90-X167-01	VA-90-X146-03
VA-90-X180-02	VA-90-X156-01
VA-03-0068	VA-90-X169-02
VA-03-0063	VA-90-X182-03

Operating Assistance for CMAQ Demos and Non Fixed Route ADA Paratransit Service, Capitalized Preventive Maintenance; Purchase 9 40-ft Expansion Buses w/lifts, 15 40-ft Replacement Buses, 8 Replacement Vans, LRT Preliminary Engineering, Misc. Support Equipment, etc.
VA-90-X189

Dear Mr. Kinbar:

This is in reply to the request from your office that we review the above captioned applications for assistance under Title 49 of the U.S. Code, Chapter 53.

Pursuant to the Department of Labor's (Department) Guidelines (29 CFR 215), the Transportation District Commission of Hampton Roads (HRT) and the Amalgamated Transit Union, Local 1177 (ATU) engaged in negotiations/discussions to develop protective arrangements required under 49 U.S.C., Section 5333(b) for the above referenced projects. The parties were unable to reach agreement on these arrangements. The Department requested and received opening and reply briefs and with due consideration of the issues and arguments presented by the parties has determined that the terms and conditions set forth below meet the requirements of Section 5333(b) and shall serve as the basis for this final certification.

BACKGROUND

On October 1, 1999, the Transportation District Commission of Hampton Roads (HRT) was created. The Tidewater Transportation District Commission (TTDC) and the Peninsula Transportation District Commission (PTDC) were combined into a single entity and assigned their assets to HRT. By Resolution dated October 14, 1999, HRT assured the Federal Transit Administration (FTA) that it assumed all the requirements and responsibilities of TTDC and PTDC with regard to all grant agreements entered into with the FTA. Accordingly, HRT is the successor to TTDC and PTDC under the existing protective agreements.

On February 1, 2000, the Department of Labor made a referral of proposed labor protective arrangements for HRT project VA-90-X189. The FTA subsequently requested the Department's concurrence that the previously certified protective arrangements continue to satisfy the requirements of 49 U.S.C., Section 5333(b) for the fourteen above-captioned projects, identified hereinafter as VA-03-0061-tt, which were subject to transfer of title from TTDC and PTDC to HRT. On March 1, 2000, a referral was made for project VA-03-0061-tt which was identical to the referral for VA-90-X189. Since the HRT is the successor to the TTDC and the PTDC, both referrals were made on the basis of the protective conditions that existed for both predecessor transit commissions.

Objections to Referral for VA-90-X189

On February 16, 2000, the Department received an objection from the Amalgamated Transit Union Local 1177 (ATU), which represented transit employees in two separate bargaining units of the TTDC and the PTDC. ATU now represents employees in a bargaining unit comprised of public employees working directly for HRT, and a second bargaining unit comprised of private sector employees working for a management company. The ATU objected to the application of the two separate agreements, petitioning for the development of a merged capital agreement for the protection of a workforce that it presumed would be consolidated. It further stated, "[l]ittle would be involved in the preparation of such … because their substance is in virtually every particular very much comparable." The ATU noted, however, that there "is a threshold divergence between the two sets of arrangements premised upon TTDC's utilization of a private sector management company, in the one instance, and the direct public employment structure utilized by Pentrans (PTDC), in the other." No objection was received from the HRT.

The Department found the ATU's objection to be sufficient and issued a negotiating order on February 25, 2000, for the "[d]evelopment of a 'merged' labor protective agreement to reflect the particulars of the newly created Transportation District Commission of Hampton Roads." The Department permitted negotiations to reconcile any differences between the two protective agreements.

On March 13, 2000, the Department of Labor provided technical assistance and mediation in a meeting between the parties. During this meeting the HRT indicated that there had been no change in the organizational structure of the workforce of the former TTDC and the PTDC, and indicated that no commitment regarding any future consolidation could be made at the present time. In response to this information, the ATU proposed, as an alternative to a merged capital agreement, a "bridge document" to establish how the former TTDC and the PTDC capital agreements would operate in the environment of their successor, the HRT. Following the facilitated session, the HRT countered ATU's proposed bridge document with its own bridge document. The parties found each other's proposals unacceptable.

Objections to Referral for VA-03-0061-tt

As noted above, the Department made its referral of proposed protective conditions for project VA-03-0061-tt on March 1, 2000. The ATU objected to the Department's referral on March 16, 2000. While maintaining its preference for a "single consolidated set of capital assistance employee protective arrangements," the ATU called for express assurances from the HRT of its legal capacity to commit to, and intent to abide by, the protections entered into by the former TTDC and the PTDC. The ATU also sought supplemental language to ensure the development of appropriate implementing arrangements, which would specifically include the development of a merged protective arrangement, in advance of any merger or consolidation of the former TTDC and PTDC workforces. The ATU's March 13 bridge document proposal was attached as a complete proposal on these two issues. No objection to the referral for VA-03-0061-tt was received from the HRT.

In light of the HRT's previous statements, including indications that the two workforces remained separate and there could be no commitment regarding any consolidation, the Department found sufficient the ATU's objection to certification of VA-03-0061-tt. A negotiating order was issued on March 27, 2000, directing the parties to negotiate on the "issues raised by the transfer of FTA grants and transit assets from the Tidewater Transportation District Commission and the Peninsula Transportation District Commission to the Transportation District Commission of Hampton Roads, including the legal capacity of HRT to comply with the existing protections and the development of implementing agreement procedures and a merged protective agreement in the event of a merger or consolidation." The parties were directed to negotiate on an abbreviated schedule since a proposal and counterproposal on a bridge document had already been made in the context of the negotiations for project VA-90-X189.

On April 5, 2000, HRT wrote to the Department indicating that it had reconsidered its position with regard to a single, consolidated Section 13(c) agreement. It further indicated that a proposal for such a consolidated agreement would be made to the ATU and requested that the negotiations for project VA-03-0061-tt be extended to allow for a full 30-day period for such negotiations. HRT also requested that the Department suspend any requirement for the parties to submit briefs with respect to

project VA-90-X189. By letter dated April 12, 2000, the Department granted HRT's request, effectively combining the processing of VA-90-X189 and the transfer of title projects designated as VA-03-0061-tt.

Briefing Order for VA-90-X189 & VA-03-0061-tt

The parties were unable to reach agreement on either project VA-90-X189 or the fourteen transfer of title projects designated here as VA-03-0061-tt. Therefore, the Department issued a combined briefing schedule on May 2, 2000, directing the parties to provide their positions regarding the issues raised by the transfer of FTA grants and transit assets from the TTDC and PTDC to HRT. Consistent with the Department's guidelines at 29 C.F.R. Part 215.3(e)(2), the Department defined the issues still in dispute. The parties were directed to address (1) the legal capacity of HRT to comply with the existing protections and (2) implementing agreement procedures and preconsummation language to apply in the event of a merger or consolidation of the workforce.

CONSOLIDATED CAPITAL PROTECTIVE AGREEMENT

Following the issuance of the briefing order, HRT requested that it be allowed to brief its position regarding its "consolidated" HRT proposal. The Department advised HRT that it could use the briefing space provided as it deemed fit, but that it must specifically include discussion of the two issues requested by the Department. By letter dated May 8, 2000, the HRT confirmed this understanding.

Because a consolidated workforce had not been established and there was no commitment regarding any future consolidation, the parties were not requested to address a consolidated capital agreement. Furthermore, the only proposal for a consolidated agreement, submitted by HRT, was actually a new agreement rather than a merged document which reconciled differences between the existing agreements. The many issues raised by the proposed new agreement far exceeded the issues raised by the only objections received and found sufficient by the Department.

For the above reasons, the Department concluded that consolidation of the existing capital protective agreements of the former TTDC and PTDC is not necessary at this time.

Accordingly, the Department has not addressed the issues raised by the single agreement in this determination and will apply the PTDC and the TTDC protective arrangements which were included in the referral.

LEGAL CAPACITY OF THE HRT TO COMPLY WITH EXISTING CAPITAL AGREEMENTS

The ATU requested in its negotiations on VA-90-X189 and in its objections to VA-03-0061-tt, that the HRT assure that it has the lawful ability to comply with, and contractually commits to honor, the terms and conditions of the TTDC and PTDC protective arrangements. The ATU bases the need for this assurance on information provided and arguments presented by the HRT during the course of the negotiations.

The HRT, however, has already pledged in Resolution 1-2000 of the HRT Commissioners, dated October 14, 1999, to assume the "requirements and responsibilities of the Tidewater Transportation District Commission and the Peninsula Transportation District Commission with regard to all grant agreements entered into with the Federal Transit Administration as of October 1, 1999." In addition, in a March 22, 2000 letter, HRT informed the Department that it has "full legal authority to receive Federal grant funds and to satisfy all Federal grant conditions. The HRT has not objected to certification on the basis of the existing Section 13(c) protections, and will obviously be accepting those protections when it executes the grant agreements with FTA."

Furthermore, the Federal transit law stipulates that the Department must approve protective arrangements prior to the FTA's release of funds to its grantees. The terms and conditions of the Department's certification letters, and the terms and conditions of the Section 13(c) agreements are then incorporated into the grantee's contract with the FTA. Thus, when HRT contracts with the FTA, it will contractually commit to the certified protective arrangements.

Accordingly, the Department has determined that it is not necessary for HRT to provide additional assurances that it has the ability to comply with the protective arrangements for the

instant projects. However, the Department emphasizes that HRT must comply with *all* of the provisions set forth in the protective arrangements referenced in the Department's certification. The protective arrangements herein constitute the legally required protections which HRT must comply with for these particular projects and must be construed to give full force and effect to each and every one of the provisions specified or referenced.

NOTICE AND NEGOTIATIONS

The ATU also proposed in its negotiations on VA-90-X189 and in its objections to VA-03-0061-tt, supplemental language that would ensure the development of implementing arrangements in advance of any merger or consolidation of the TTDC and PTDC workforces.

The existing "notice and negotiation" provisions of the TTDC and PTDC agreements are substantially the same. Each requires reasonable notice prior to any change resulting in a "rearrangement of the working forces ... as a result of the Project" and specifies that the parties will meet within 30 days thereafter to negotiate "for the purpose of reaching agreement with respect to the application of the terms and conditions of this agreement to the intended changes." The term "Project" is defined in each agreement to "include any changes, whether organizational, operational, technological, or otherwise, which are traceable to the assistance provided." Thus, notice and negotiation language already exists to address the implementation of any merger or consolidation of the TTDC and PTDC workforces, or any transfer of work from one to the other.

The ATU proposal also included language requiring that "finalization of such implementing arrangements shall be a necessary prerequisite and precondition of the consummation of any action" to merge or consolidate the TTDC and PTDC workforces. The ATU indicated that the Interstate Commerce Commission (ICC) precedents establish "a right to the preconsummation development of implementing terms in appropriate circumstances, including (without question) those implicating the merger or consolidation of two or more working forces." In fact, the PTDC agreement clearly references ICC precedents in requiring that, in any arbitration arising out of or by virtue of any provisions of the agreement, the "terms of this agreement are to be interpreted and

applied in favor of providing employee protections and benefits no less than those established pursuant to §5(2)(f) of the Interstate Commerce Act." [Now codified at 49 USC Section 11326.] While the TTDC agreement does not include this specific language the statute clearly requires that benefits must be equal to those established under 49 USC Section 11326. Therefore, the TTDC arbitration clause requires application of the ICC standards which require preconsummation under applicable circumstances. If the parties are unable to agree on whether an intended action may proceed during the notice and negotiation period, the issue of whether the intended action may proceed would be submitted to arbitration for a decision, prior to carrying out the intended action. While the ATU proposal could serve to reinforce and apply the existing provisions in the context of the current circumstances, the Department finds that it is unnecessary.

APPLICATION OF PROTECTIVE TERMS

In connection with a previous grant application, the TTDC and the PTDC, as predecessors to HRT, and Amalgamated Transit Union Local 1177, have agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. In addition, the parties have agreed that paragraphs (11) and (12) of the February 14, 1973 Section 13(c) agreement for TTDC (incorporated by reference into the December 24, 1974 agreement), and paragraph (11) of the October 11, 1974 PTDC agreement, executed in connection with earlier grant applications, respectively, shall be included as the addenda to the July 23, 1975 agreement pursuant to paragraph (4) thereof. The terms and conditions of the July 23, 1975 agreement provide protections to employees represented by the union which satisfy the requirements of 49 U.S.C., Section 5333(b) for operating assistance, capitalized non-fixed route ADA paratransit service, capitalized preventive maintenance, and any other capitalized operating assistance.

Also in connection with previous grant applications, the parties agreed that the terms and conditions of the December 24, 1974 TTDC agreement, and the October 11, 1974 PTDC agreement, shall be made applicable to capital assistance projects. Furthermore, TTDC and the ATU have agreed that the five numbered paragraphs

set forth in the ATU's letter of October 27, 1997, shall supplement the December 24, 1974 agreement for projects involving light rail. The terms and conditions of these agreements provide to employees represented by the union protections satisfying the requirements of 49 U.S.C., Section 5333(b).

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant projects on condition that:

1. This letter and the terms and conditions of the agreement dated July 23, 1975, shall be made applicable to the operating assistance, capitalized non-fixed route ADA paratransit service, preventive maintenance, and any other capitalized operating portions of the instant projects and shall be made part of the contracts of assistance, by reference;

2. This letter and the terms and conditions of the agreements dated October 11, 1974 and December 24, 1974, as supplemented, shall be made applicable to the remaining capital portions of the instant projects and made part of the contracts of assistance, by reference:

3. The term "project" as used in the above protective arrangements, shall be deemed to cover and refer to the above reference portions of the instant projects, as specified;

4. Disputes over the interpretation, application and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of such disputes; and

5. Employees of urban mass transportation carriers in the service area of the projects, other than those represented by the local union which is a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the above arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

   Should a dispute remain after exhausting any available remedies under the protective arrangement, and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Chuck Richards.

Charles A. Richards
Deputy Assistant Secretary

cc: Regina Martin/FTA
Michael Townes/HRT
Wendi Glover/HRT
Kent Woodman/ESC&M
Greg Dash/Dash & Associates
Leo Wetzel/ATU

AMALGAMATED TRANSIT UNION

5025 WISCONSIN AVE., N.W. WASHINGTON, D.C. 20016-4139
(202) 537-1645 FAX (202) 244-7824

July 29, 2000

VIA FACSIMILE

Robert J. Andres
Project Representative
U.S. Department of Labor
Room N-5603
200 Constitution Avenue, NW
Washington, DC 20210

Re: FTA Application
Central Puget Sound Regional Transit Authority
(WA-90-X243)

Dear Mr. Andres:

We are in receipt of your July 24, 2000, "referral" initiating the Section 5333(b) employee protection processing of the above-referenced funding application.

As you surely appreciate and must concede, a responsible and reasoned response thereto (necessary to satisfy the legal duties of fair representation imposed upon the involved ATU local unions) requires an adequate and complete understanding of the administrative action being proposed. We therefore take this opportunity to avail ourselves of your offer to provide any needed assistance and request that the Department explain and clarify the nature and basis of the currently contemplated certification as detailed in Attachment A to the July 24 referral.

The Attachment A certification would specifically cite and be premised, in part, upon the Department's March 30, 1999, administrative determination which you letter indicates DOL has preliminarily concluded to set forth protection arrangements appropriate for extension to the currently pending grant. In that earlier ruling, of course, the Department found that the "preconsummation"language of the February 29, 1996, Section 13(c) Agreement negotiated by and between the applicant and ATU Locals 587, 758, 883 and 1576 was "not appropriate in the context of the protective arrangements between Sound Transit and the ATU [sic] for the . . . projects" which were at issue there — i.e., WA-03-0019-Rev. and WA-03-0121. Unfortunately, the standardized language and form nature of your July 24 referral does afford any basis upon which to evaluate how that case and circumstance-specific judgement bears on this matter.

Why does the Department – which is contemporaneously proposing that certification of *this* grant also be premised upon DOL-drafted protections for those represented by the IBEW, the IFPTE, or

the Machinists which *include* a "strict prohibition upon proceeding with an intended change" that might result in employee dismissals or displacements prior to the development of complete Section 5333(b) implementing arrangements — believe that the *very same* language as negotiated in Paragraph (5) of the February 29, 1996 Agreement is by contrast "*not* appropriate" (emphasis supplied) in the context of arrangements protecting the *ATU-represented* area transit workers for this same grant?

The review period currently in effect is slated to expire on Tuesday, August 8. Accordingly, in order to ensure that this office has an opportunity to adequately consider and timely act upon the Department's explanation and clarification, it is requested that your reply to the foregoing be forwarded to the undersigned via facsimile and by no later than this Thursday, August 3, 2000.

Sincerely,

Leo E. Wetzel
Associate Counsel

cc: L. Norton, Local 587
R. Thornton, Local 758
P. Downes, Local 883
C. Reiter, Local 1576
D. Hansen, ATU
M. Schoppert, ATU
C. Richards, DOL
L. Wolterink, Sound Transit
T. Buffenbarger, Machinists
J. Barry, IBEW
P. Almeida, Professional & Technical Engineers

U.S. Department of Labor
Office of Labor-Management Standards
Washington, D.C. 20210

August 4, 2000

Mr. Leo E. Wetzel
Associate Counsel
Amalgamated Transit Union
5025 Wisconsin Avenue, NW
Washington, DC 20016-4139

Re: FTA Applications
Transportation District
Commission of Hampton Roads
VA-03-0075
VA-03-0068-01

Dear Mr. Wetzel:

This is in response to your July 28, 2000, inquiry concerning the above captioned projects. You have requested clarification of the Department of Labor's (the Department) June 30, 2000 determination for various projects for the Transportation District Commission of Hampton Roads (HRT).

In your letter you indicated that the Department's determination specified that "any disputed issue as to whether an intended action might proceed would be subject to 'arbitration for a decision, prior to carrying out the intended action.'" In actuality, the full sentence quoted indicated that "[i]f the parties are unable to agree on whether an intended action may proceed during the notice and negotiation period, the issue of whether the intended action may proceed would be submitted to arbitration for a decision, prior to carrying out the intended action." (Emphasis added.) The intent of the Department's certification was to indicate that the issue would be submitted to arbitration prior to carrying out the intended action.

Furthermore, with respect to the issue of burden of proof, the existing Tidewater Transportation District Commission protective arrangements contain language in paragraph (7) of the February 14, 1973 agreement which is incorporated therein, addressing the burden of proof. This would be the burden applicable to any dispute under paragraph (11) of the agreement, including disputes with respect to preconsummation arbitration.

The language applied by the Department in the March 30, 1999 Sound Transit ruling is not directly transferable to the HRT situation, and will be subject to interpretation by an arbitrator. If the Amalgamated Transit Union (ATU) believes that it has sufficient objections to the referred terms it may, of course, submit those objections to the Department pursuant to the Guidelines at 29 C.F.R. § 215.3.

I hope this has been responsive to your inquiry.

Sincerely,

Denise Diminuco
Industrial Relations Specialist

cc: Michael Townes/HRT (with copies of incoming letter from ATU and March 30, 1999 Sound Transit letter)
Wendy Glover/HRT (with copies of incoming letter from ATU and March 30, 1999 Sound Transit letter)
Greg Dash/Dash and Associates (with copies of incoming letter from ATU and March 30, 1999 Sound Transit letter)
G. Kent Woodman (with copies of incoming letter from ATU and March 30, 1999 Sound Transit letter)

U.S. Department of Labor

Office of Labor-Management Standards
Washington, D.C. 20210
August 8, 2000

Mr. Leo E. Wetzel
Associate Counsel
Amalgamated Transit Union
5025 Wisconsin Avenue, NW
Washington, DC 20016-4139

Re: FTA Applications
Transportation District
Commission of Hampton Roads
VA-03-0075 and VA-03-0068-01

Dear Mr. Wetzel:

This is in response to your letters of August 7, 2000, raising several questions with respect to the existing agreements applied to HRT projects and proposed as the basis for the Department's certification for the above projects.

Initially, I note that the October 11, 1974 Pentran agreement contains a "burden of proof" in paragraph (7) which is similar to that in paragraph (7) of the Tidewater Transportation District Commission (TTDC) agreement.

The remaining issues raised in your letters will not be addressed at this time. If either of the parties raises questions concerning their understanding of the language of their agreements in the context of an objection to proposed certification terms for a pending project, the Department will consider those objections pursuant to the guidelines. If the ATU believes that there are possible constructions of the Transportation District Commission of Hampton Roads (HRT) agreements that could result in protections that are not fair and

equitable, the ATU should object to the proposed certification terms pursuant to the Department's guidelines, as indicated in our August 4, 2000 correspondence.

Sincerely,

Charles A. Richards
Deputy Assistant Secretary

cc: Michael Townes/HRT (with incoming letters from ATU)
Wendy Glover/HRT (with incoming letters from ATU)
Greg Dash/Dash and Associates (with incoming letters)
G. Kent Woodman (with incoming letters from ATU)

U.S. Department of Labor

Office of Labor-Management Standards
Washington, D.C. 20210

August 8, 2000

Mr. Leo E. Wetzel
Associate Counsel
Amalgamated Transit Union
5025 Wisconsin Avenue, NW
Washington, DC 20016-4139

Re: FTA Application
Central Puget Sound Regional
Transit Authority
WA-90-X243

Dear Mr. Wetzel:

This is in response to your July 29, 2000, inquiry concerning the above captioned project. You have requested that the Department of Labor (the Department or DOL) clarify the "nature and basis of the currently contemplated certification as detailed in Attachment A to the July 24 referral."

As you indicated, the proposed certification terms and conditions for the Amalgamated Transit Union, Locals 587, 758, 883, and 1576, (ATU) are based on the Department's March 30, 1999 determination for Sound Transit. In connection with that certification, Sound Transit had registered several objections, including an objection to language that would prohibit it from implementing changes to its operations pending the consummation of an implementing arrangement with the ATU. The Department found certain of the objections sufficient and directed negotiations. Thereafter, the Department determined that the "pre-consummation" language of the parties' February 29, 1996 Section 13(c) agreement was "not appropriate in the context of the protective arrangements between Sound Transit and the ATU" for the projects in question.

An important consideration in the Department's determination was the fact that Sound Transit had agreed to the ATU's proposal for a strict prohibition for only one project, a demonstration grant, conducted prior to institution of the Department's 1995 procedural guidelines. Sound Transit argued that it had not intended that the strict prohibition provision, which exceeds the requirements of the statute, would be applied to all future projects. As the ATU is aware, similar facts were taken into consideration when the Department evaluated a Seattle, Washington project where the union sought to change previously agreed upon protections.

Subsequent to the Department's March 30, 1999 determination for the ATU and Sound Transit, other unions were identified in the service area of Sound Transit. As called for under DOL Guidelines, they received referrals proposing protections based on the Department's standard Capital Assistance Protective Arrangement. In this instance, no objections to the strict prohibition language for the other unions were submitted. (Nor were any objections registered on this matter in other subsequent grant referrals by any of the parties involved.)

It is not unusual for the applicant or the union to negotiate varying protections with different parties, based on individual circumstances. For instance, the ATU and United Transportation Union (UTU) have different "pre-consummation" protections for North San Diego County Transit District (NCTD) projects. In that case, the ATU reached agreement on strict prohibition language; but the Department determined that a two-track procedure should be applied for the UTU and NCTD when the parties failed to agree on protections. In Sound Transit, Department actions to propose and then proceed with a certification based on separate and somewhat different protections was consistent with its Guidelines and practices.

I hope this has been responsive to your inquiry.

Sincerely,

Robert J. Andres

Robert Andres
Industrial Relations Specialist

cc: L. Wolterink/Peugot Sound
G. Kent Woodman (with copies of incoming letter from ATU)
T. Buffenbarger/IAM
J. Barry/IBEW
P. Almeida/IFPTE

U.S. Department of Labor

Office of Labor-Management Standards
Washington, D.C. 20210
August 21, 2000

Mr. G. Kent Woodman
Eckert Seamans Cherin & Mellott
1250 24th Street, NW
Suite 700
Washington, DC 20037

Mr. Leo E. Wetzel, Associate Counsel
Legal Department
Amalgamated Transit Union
5025 Wisconsin Avenue, NW
Washington, DC 20016

Re: RESPONSE TO OBJECTIONS TO
EMPLOYEE PROTECTION TERMS FOR
PENDING FTA GRANT APPLICATION
Transportation District of
Hampton Roads
Additional Funding for
Preliminary Engineering,
Add Alignment Analysis
VA-03-0068-01
Engineering and Design for
Portsmouth Ferry Docking
Facility
VA-03-0075

Gentlemen:

This is in response to Mr. Wetzel's letter of August 9, 2000, in which he registers certain objections on behalf of Amalgamated Transit Union Local 1177 to the Proposed Terms for Employee Protection Certification contained in the Department's referral letters of July 25, 2000, for the above projects. Pursuant to Department Guidelines (29 C.F.R. Part 215), these objections were timely received.

Under the Guidelines, objections, to be considered sufficient, must raise material issues which may require alternative protections, or must concern changes in legal or factual circumstances that may affect the rights or interests of employees, as presented by the grant project. The objections have been considered in this regard and the Department has

determined that certain of the objections present a sufficient showing of material issues or changes in legal or factual circumstance that may not otherwise be addressed by the protective arrangements set forth in the Department's referral letter.

The ATU's objections are based on the possibility that the Department's June 30, 2000 certification for earlier HRT projects might be interpreted in a manner that would not provide sufficient protections. Although statutorily sufficient, the Department has concluded that under the particular facts of that case, the notice and negotiation provisions of its June 30, 2000 certification could be subject to misinterpretation and may require clarification through supplemental language.

Therefore, under the provisions of the Department's Guidelines, the HRT and ATU Local 1177 **are directed to engage in good faith negotiations/discussions for a period not to exceed September 20, 2000,** to seek a mutually acceptable resolution of the issue specified below which will supplement the parties' protective arrangements.

For the Department's purposes, negotiations or discussions between the parties should address the following:

1. Development of fair and equitable terms and conditions which ensure that employees are afforded benefits with respect to the notice and negotiation process which are no less than those which would be applicable under Section 5(2)(f) of the Interstate Commerce Act following a noticed change.

During the negotiation period, the Department's resources are available for technical assistance and mediation. The Department will monitor the progress of negotiations.

As an alternative to such negotiations, however, the Department proposes language for the parties' consideration which is enclosed herewith at Attachment I. This language sets forth the Department's interpretation of the requirements of the Section 5(2)(f) notice and negotiation process in the HRT June 30, 2000 certification. (Attachment A, "Proposed Terms for Employee

Protection Certification," incorporating the supplemental provisions, is attached for reference.) The Department offers this language pursuant to its Guidelines at 29 C.F.R. 215.3(d)(6), which provide that the Department may, after reviewing the objections, develop new terms and conditions for application to the project, and the parties may waive negotiations/discussions if these terms and conditions are acceptable. If the parties are able to agree upon this language, they should inform the Department of their intentions to waive negotiations.

Otherwise, the recipient should respond to the ATU's proposal as soon as possible to ensure good faith negotiations contemplated in the Department's Guidelines at 29 C.F.R. 215.3. Should the parties reach agreement, the Department will review the agreement to ensure that it meets statutory requirements and will issue a final certification on the basis of the agreement.

For any issues not resolved through negotiations, the parties are to prepare final proposals covering the unresolved issues, along with supporting statements, which are to be submitted to the Department by September 21, 2000, the day after negotiations are completed. The Department's Guidelines call for an interim certification to be issued within five (5) days after the end of negotiations. This interim certification will permit FTA to release funds, although no action is to be taken under the grant relating to the issues in dispute which would result in irreparable harm to employees. Following the interim certification, the Department will provide the parties with additional instructions and a time schedule for the final resolution of any outstanding issues.

The ATU also raised concerns (see Objection #1) with respect to the burden of proof following the Department's August 4, 2000 response to an inquiry concerning the HRT. Contrary to the indication in its August 4, 2000 letter, which is hereby withdrawn, the Department does not construe language such as that included in Paragraphs (7) of the TTDC and PTDC Agreements to specify the burden of proof applicable to any dispute subject to arbitration under Paragraphs (11) of the TTDC and PTDC protective agreements. Accordingly, Objection #1 is not sufficient.

If you have any questions or need any additional information, please contact me by phone at (202) 693-1199. The office FAX number is (202) 693-1342.

Sincerely,

MaryAnn Mullen for

Denise Diminuco
Project Representative

Enclosure

cc: Donald Durkee/FTA
Greg Dash/Dash & Associates
Michael Townes/HRT
Wendy Glover/HRT

U.S. Department of Labor

Office of Labor-Management Standards
Washington, D.C. 20210

August 31, 2000

Mr. Leslie Rogers
Regional Administrator
Federal Transit Administration
Region IX
201 Mission Street
Suite 2210
San Francisco, CA 94105-1800

FINAL CERTIFICATION

Re: FTA Application
City of Los Angeles
Department of Transportation
Construct Warner Center
Transit Hub
CA-03-0548

Dear Mr. Doyle:

This is in further response to the request from your office that we review the above captioned application for a grant, under Title 49 of the U.S. Code, Chapter 53.

On June 27, 2000, the Department of Labor (Department or DOL) issued an Interim Certification to permit Federal Transit Administration (FTA) funding of the above grant. As set forth in that certification, the interim terms and conditions were to be replaced by terms and conditions determined by the Department, following review of arguments submitted by the City of Los Angeles, Department of Transportation, (City) and the Amalgamated Transit Union, Local 1277, (ATU) on issues in dispute. This is the Department's determination of those issues and the specification of protective terms and conditions that constitute DOL's Final Certification to be substituted for the Interim Certification of June 27, 2000. (DOL Guidelines, 29 C.F.R. §215.3(g))

Introduction: Pursuant to Department Guidelines, on May 22, 2000, the City and the labor organizations referenced herein were directed to engage in negotiations/discussions to develop provisions under 49 U.S.C., §5333(b) for "Preconsummation/ Implementing Agreements," under the required Notice and Negotiations provisions, for incorporation into a final protective arrangement. The American Federation of State, County and Municipal Employees (AFSCME), the International Brotherhood of Teamsters (IBT), the Professional Peace Officers Association (PPOA), the Association of Los Angeles Deputy Sheriffs (ALADS), and the Los Angeles Police Protective League (LAPPL) elected not to negotiate over the changes to the Capital Assistance Protective Arrangement proposed by the City. The Department's certification of protective terms for employees represented by these labor organizations will be based on the City's proposal to the extent that those terms satisfy the requirements of the Act.

The United Transportation Union (UTU) and the Transportation Communications International Union (TCU) reached agreement with the City on changes to the proposed Capital Protective Arrangement, which will be incorporated into the protective arrangements applicable to employees represented by those labor organizations to the extent that they satisfy the requirements of the Act.

With regard to the Amalgamated Transit Union (ATU), after the parties failed to reach agreement, the Department called for briefs addressing the issues remaining in dispute. This determination will specify the protective arrangements applicable to the employees represented by that union in satisfaction of the requirements of 49 U.S.C. §5333(b).

Issue for Determination: Preconsummation Requirements for Implementing Agreements (¶2(c), Capital Protective Arrangement)

The City objected to language that would prohibit the City from implementing stages of its grant project pending the consummation of an implementing arrangement (whether by agreement or an arbitrator's decision). The City proposed the use of the Interstate Commerce Commission (ICC) "major/minor" standard for determining whether changes may proceed prior to the completion of an implementing arrangement, arguing that this standard was appropriate for Section 5333(b) based on the statutory

incorporation of Section 5(2)(f) of the Interstate Commerce Act (ICAct). The City also pointed out that the Department had on a number of occasions adopted this standard and that it was an inherently practical approach for conducting project activities while still ensuring the protection of employees under the "make whole" provision when activities were allowed to proceed.

The ATU, on the other hand, simply argued that the City had failed to make a foundational showing of any need for alternative language for this first-time applicant, and it had not demonstrated that the proposed language was inappropriate. It pointed out that the language in question had been used in dozens of arrangements certified by the Department. Finally, in its reply brief, the ATU sought to lend support to its position by making it clear that "the task before the Department is to provide labor protections to employees, not to shape arrangements to safeguard management's proffered interests."

The Department is fully mindful of its responsibilities, which are to ensure fair and equitable protections for employees. Pursuant to the standards of the ICAct and Appendix C-1 of the of the Rail Passenger Service Act, this includes, under certain circumstances, the initiation of project activities, some of which may even prove beneficial to employees, prior to the conclusion of an entire implementing arrangement. With due process afforded by a neutral arbitrator, the pendency of action until the completion of expedited arbitration, an appropriate burden of proof, and "make whole" assurances for activities that may have an adverse affect, the Department has concluded that the strict prohibition on proceeding with an intended change is not required by the Statute in order to ensure fair and equitable protections and it will not require such.

With regard to the protective provisions negotiated between the City and the TCU, the Department has reviewed those provisions and discovered that they omit any reference to the "selection of forces" -- language which was included in the City's original proposal to each of the affected labor organizations. The Department has previously determined "that some type of selection of forces language is required to provide employees with the protections to which they are entitled under [Section] 5(2)(f) of the Interstate Commerce Act." (DOL certification for UT-03-0013, 3/20/89) The Department has also ruled that protections to which

employees are entitled under the Act may not be waived. (See for example SCHAFFER V. GOLDEN GATE, DEP case no. 77-13(c)-1, 1979.) Therefore, the Department has reinstated the language in the City's original proposal.

With consideration to the foregoing, the Department of Labor has determined that the protective arrangements referenced below (copies enclosed) satisfy the requirements of 49 U.S.C. §5333(b) and shall serve as the basis for this final certification. The City of Los Angeles and the unions referenced herein are deemed parties to the Arrangements, respectively, under this certification.

Accordingly, The Department makes the certification called for under the statute with respect to the instant project on condition that:

1 This letter and the terms and conditions of the *Capital Assistance Protective Arrangements* Pursuant To Section 5333(b) of Title 49 of The U.S. Code, Chapter 53, *Modified*, for: (1) The City of Los Angeles and AFSCME, IBT, PPOA, ALADS, and LAPPL; (2) The City of Los Angeles and UTU; (3) The City of Los Angeles and TCU; and (4) The City of Los Angeles and the ATU, dated August 31, 2000 shall be made applicable to the instant project and made part of the contract of assistance, by reference;

2. The term "project" as used in the above Protective Arrangements shall be deemed to cover and refer to the instant project;

3. The contract of assistance shall include the following language, by reference:

"The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements of the grant contract between the U.S. Department of Transportation and

the City of Los Angeles, and the parties to the contract so signify by executing that contract. Employees, or their representative on their behalf, may assert claims under this provision. This clause creates no independent cause of action against the United States Government.";

4. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this certification letter, shall be resolved in accordance with the provisions in the aforementioned agreement and/or arrangements for the resolution of such disputes; and

5. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local unions which are a party to or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the unions under the above protective arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute remain, after exhausting any available remedies under the protective arrangements and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third

party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards
Deputy Assistant Secretary

Enclosures

cc: Donald Durkee/FTA
G. Kent Woodman/ESC&M
Leo E. Wetzel/ATU
James P. Hoffa/IBT
Gerald McEntee/AFSCME
Robert A. Scrdellettti/TCU
Bernie McNelis/UTU
copy: Guerrieri, Edmond & Clayman
Ted Hunt/LAPPL
Sharon Lawin/PPOA
Doug McLellan/ALADS
Michael Uyeno/City

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

November 22, 2000

Mr. Lee Waddleton
Regional Administrator
Federal Transit Administration
Region VIII
216 16th Street, Suite 650
Denver, Colorado 80202-5120

FINAL CERTIFICATION

Re: FTA GRANT APPLICATION
Denver Regional Transportation District
New Start Funding for Preliminary Engineering on the Light Rail Transit Southeast Corridor Multimodal Project - Full Funding Grant
CO-03-0097-01
New Start Funding for Preliminary Engineering on the Light Rail Transit Southeast Corridor Multimodal Project - In House Staffing Needs, Legal Services, 3rd Party Contracted Services, and Lease of Office Space
CO-03-0097

Dear Mr. Waddleton:

This is in reply to the request from your office that we review the above captioned applications for grants under Title 49 of the U.S. Code, Chapter 53.

Pursuant to Department of Labor (Department) Guidelines (29 C.F.R. 215), the Regional Transportation District and Amalgamated Transportation Union were directed to engage in negotiations/discussions to develop the protective arrangements required under 49 U.S.C., Section 5333(b). The parties failed to reach agreement on some of the issues in dispute and the Department issued an Interim Certification on September 26, 2000.

The Department then directed the parties to submit briefs on the issues in dispute. This determination of the outstanding issues constitutes the final certification for the above referenced project under the Department's Guidelines (29 C.F.R. 215.3(e)(4)) and, as specified in the September 26, 2000 Interim Certification, sets forth the protective terms and conditions to be substituted for those contained in the Interim Certification of September 26, 2000.

For purposes of your grant contract, you may consider the Interim Certification date of September 26, 2000, for the above captioned projects to be the official certification date for these grant applications. Please place this letter in the official project files.

APPLICABLE PROTECTIONS

In connection with a previous grant application, the Department of Labor (the Department) determined the employee protective arrangements for the Denver Regional Transportation District (RTD) and the Amalgamated Transit Union (ATU) Local 1001. The determination was based on the terms and conditions of the parties' April 7, 1976 agreement, except to the extent that paragraph (15) provides for interest arbitration, and, the agreement was supplemented by the Colorado Labor Peace Act (CLPA).

On May 26, 1992, the Colorado Supreme Court declared sections 8-3-112(2) and 8-3-113(3) of the CLPA to be constitutional. (Regional Transportation District v. the Colorado Department of Labor and Employment, Division of Labor, David D. Mitchem, and the Amalgamated Transit Union). These sections require binding arbitration of unresolved collective bargaining issues after the Director of the Colorado Department of Labor and Employment determines that a proposed strike by the employees of a mass transportation system would be contrary to the public peace, health and safety. Although the ATU continues to object to the Department's interpretation that the CLPA procedure satisfies the requirements of Section 5333(b) of the Federal Transit statute (letter dated April 16, 1993), the Department will continue to include it in the protective arrangements.

Furthermore, the parties agreed on language, included in the Department's Interim certification for the instant projects, which is included in the third enumerated condition below. As supplemented by the Colorado Labor Peace Act (CLPA) and this language, the terms and conditions of the April 7, 1976 agreement, absent paragraph (15) to the extent that it provides for interest arbitration, provide to the employees represented by the union protections satisfying the requirements of 49 U.S.C., Section 5333(b) and shall be made applicable to the instant project.

Material Modification Issue

With respect to the outstanding dispute between the RTA and ATU over the application of supplemental language addressing the material modification of project applications, the Department, as discussed below, has determined that it will include the ATU's proposal.

The ATU proposed the inclusion of "material modification" language to remedy problems associated with an administrative error which resulted in funding of an RTD grant without the application of required employee protective arrangements. The ATU argues that its language "successfully operates to safeguard employee interests against the potential of adverse impacts" attributable to such oversights. The RTD argues that the union's proposals attempt to renegotiate elements of the parties' 1976 Agreement and are not within the scope of the Department's negotiation order.

The Department has determined that the issues raised by the ATU are within the scope of the required negotiations, and do not replace provisions of the parties' 1976 agreement. In the circumstances presented it is appropriate to include the language proposed by the ATU in order to provide a separate and enforceable right for employees to require that project activities be undertaken substantially in the manner set forth in the grant application. This language does not place any obligations on FTA or the Department, and it does not require that the Department review each and every FTA administrative action. It does, however, require that RTD ensures, in

administering its grant contracts, that the project activities which it undertakes are substantially as set forth in the application that was previously reviewed by the Department.[1]

Third-Party Beneficiary Issue

The Department has also determined that, in this instance, it is appropriate to include third-party beneficiary language to ensure enforceability of the provisions of this certification which were not a product of the parties' mutual agreement. The RTD should note that the third-party provision is restricted to "the employee protective arrangements of the grant contract" and does not provide the union with third-party status with respect to other portions of the grant contract.

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the April 7, 1976 agreement, as supplemented, shall be made applicable to the instant project and made part of the contract of assistance, by reference, provided, however, that paragraph (15) of the April 7, 1976 agreement shall be made applicable except to the extent that it provides for interest arbitration;

2. The term "project" as used in the April 7, 1976 agreement shall be deemed to cover and refer to the instant project. The Project activities defined by the scope and budget as incorporated in the contract of assistance between the federal government and the application shall be undertaken, carried out and completed substantially as described in: 1) the grant application documentation

[1] FTA's procedures allow for some budget revisions which do not alter the scope of a project and do not require DOL review. Thus, RTD may make changes to a grant application which do not require review by the Department as long as it ensures that the activities undertaken are substantially as set forth in the certified project.

forwarded to the Amalgamated Transit Union by the U.S. Department of Labor pursuant to the procedures of 29 C.F.R. §215.3 and/or 2) any budget revision, administrative amendment or full grant amendment which a) the Secretary of Labor affirmatively determines, in an administrative action pursuant to 29 C.F.R. §215.5 undertaken prior to the formal and final approval thereof by the Federal Transit Administration, revises or amends the project in immaterial respects, or b) is the subject of a Section 5333(b) certification action pursuant to the procedures established by 29 C.F.R. §215.3. The Regional Transportation District will use project assets and equipment in the manner described in such grant application, budget revision or grant amendment";

3. The contract of assistance shall include the following language, by reference:

"The Regional Transportation District shall hereby be obligated to timely provide to the Legal Department of the Amalgamated Transit Union, acting as the agent of Local 1001, documentation evidencing a retroactive amendment to the grant contract for FTA Program CO-03-0097 to incorporate, by reference, the terms of the U.S. Department of Labor's Section 5333(b) certification action in response to that funding, promptly following the District's acceptance of such a retroactive alteration of the contract of assistance previously entered into between the District and the federal government (hereafter, "notice"). Proof of receipt shall be a fax confirmation printout showing receipt by the fax machine number 202-244-7824 belonging to Amalgamated Transit Union or certified mail receipt showing proof of delivery; and

"The 60-day and 18-month time limitations established by Paragraph (17) of the April 7, 1976, "Section 13(c)" employee protective agreement between the Regional Transportation District and Amalgamated Transit Union Local 1001 shall be deemed to run from either the date of the employee impact as a result of the Project or the date of the U.S. Department of Labor's certification action pursuant to 49 U.S.C. §5333(b) addressing the Project, whichever is later. In addition, with particular reference to the Federal Fiscal Year 1999 and 2000 Section 5309 funding awarded to the Regional Transportation District on or about March 17, 2000, the Paragraph (17) time limitations shall be further tolled so as to in any event not begin running prior to the notice date as referenced in Section 2 above.";

4. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of such disputes;

5. The contract of assistance shall include the following language, by reference:

"The protective arrangements certified by the Secretary of Labor shall be deemed as intended for the primary and direct benefit of those individuals represented by Amalgamated Transit Union Local 1001. Those employees thus shall be intended third-party beneficiaries to the employee protective arrangements of the grant contract between the U.S. Department of Transportation and the Regional Transportation District and the parties to that contract will so signify through their execution or acceptance of that contract. Acting through ATU Local 1001, those employees may

assert claims under this provision. This clause creates no independent cause of action against the United States Government."; and

6. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union which is a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union under the above protective arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

   Should a dispute remain, after exhausting any available remedies under the protective arrangements and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Charles A. Richards
Deputy Assistant Secretary

cc: Donald Durkee/FTA
Marla Lien/RTD
Sue Sandoval/RTD
Leo Wetzel/ATU

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

June 11, 2001

Mr. Garrome P. Franklin
Regional Administrator
Federal Transit Administration
Region IV
61 Forsythe Street, SW
Suite 17T50
Atlanta, Georgia 30303

FINAL CERTIFICATION

Re: FTA Application
Escambia County Board of
County Commissioners
Capitalized Preventive Maintenance
And Non Fixed Route ADA
Paratransit Service; Purchase 4
Replacement Buses, Shop
Equipment, ADP Hardware, Mobile
Surv/Security Equipment, Support
Vehicle, Misc. Support Equipment,
Rehab/Renovate Administrative
Facility, Project Administration,
and Purchase Signage
FL-90-X413

Dear Mr. Franklin:

This is in further reply to the request from your office that we review the above captioned application for a grant under Title 49 of the U.S. Code, Chapter 53.

Pursuant to Department of Labor (Department) Guidelines (29 C.F.R. 215), the Escambia County Board of County Commissioners, (Escambia, or ECBCC) and the Amalgamated Transit Union Local 1395 (ATU) were directed on February 26, 2001 to engage in good faith negotiations/discussions to develop appropriate language to ensure that the terms and conditions of Escambia's Section 13(c) certification apply to the successors, assigns, and contractors of the ECBCC, including, but not limited to, Tucker Transportation.

The parties failed to reach an agreement on such language and the Department issued an interim certification on April 10, 2001. On April 20, 2001, the Department directed the parties to brief the issues still in dispute. As instructed, the parties submitted initial briefs on May 10, 2001, and reply briefs on May 21, 2001.

This final certification reflects the Department's determination of the issues in dispute and sets forth the protective terms and conditions which will be substituted for those in the interim certification (See 29 C.F.R. 215.3(g)). The FTA will issue an administrative amendment, for execution by the recipient, making this substitution. The official certification date for the above referenced project will remain the date of the interim certification. By executing this administrative amendment, the recipient agrees to implement the project in compliance with the terms and conditions stated in this final certification.

ISSUES IN DISPUTE: Successors, Assigns and Contractors Provision

Provisions for successorship and similar obligations exist in the current protective arrangements. ECBCC and the ATU agree that the protective terms and conditions shall be applied to ECBCC's successors, assigns and contractors, including, but not limited to, Tucker Transportation. However, the parties disagree over the specific language to be included in the certified arrangement to ensure that any entity, including but not limited to Tucker Transportation, that undertakes the management, provision and/or operation of mass transportation services assisted by the Project is legally bound to the terms of the certified arrangement.

The Department has a well-established position that any such entity must assume responsibility to ensure the effective delivery of the required protections. In order to carry out these statutory requirements, the ECBCC must ensure that any such entity is bound by the terms of the protective arrangement and accepts responsibility with the ECBCC for the full performance of the protective conditions. Where, as here, existing language has been demonstrated to be ambiguous, misunderstood or not properly

applied, clarifying language is necessary to ensure an appropriate understanding and application of the obligations of Section 5333(b).

The Department has previously developed such language in connection with its current standard Operating Assistance Protective Arrangement (paragraph 19) and its current standard Capital Assistance Protective Arrangement (paragraph 11). Therefore, the Department will include in this certification for the above referenced project, language based on the Operating and Capital Arrangements, to clarify the intended meaning of the Department's certifications of the parties' July 23, 1975 and March 4, 1976 agreements.

That language, as particularized, is as follows:

> "The July 23, 1975 and March 4, 1976 agreements shall be binding upon the successors, assigns and contractors of the Escambia County Board of County Commissioners (ECBCC), including, but not limited to, Tucker Transportation Company (d.b.a. Paratransit Services of West Florida), and ATU Local 1395, and no provisions, terms, or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by reason of the arrangements made by or for the ECBCC to manage and operate its system.
>
> Any person, enterprise, body, or agency - whether publicly or privately-owned - which shall undertake the management, provision and/or operation of the Project services or the ECBCC's transit system, or any part or portion thereof, under contractual arrangements of any form with the ECBCC, or its successors, assigns, or contractors, shall agree to be bound by the terms of the July 23, 1975 and March 4, 1976 agreements and accept the responsibility with the ECBCC for full performance of these conditions. As a condition precedent to any such contractual arrangements, the ECBCC shall require such person, enterprise, body or agency to so agree."

With regard to the remaining provisions necessary for the Department's certification, Pensacola Transit, Inc., and the Amalgamated Transit Union (ATU) Local 1395 have previously agreed to become party to the agreement executed on July 23, 1975, by the American Public Transit Association and transit employee labor organizations. This agreement is supplemented by an undated letter from the Board of Commissioners of Escambia County to the Department of Labor, received on March 12, 1976, and a side letter concerning paratransit operations dated August 28, 1986. In addition, the parties have agreed that paragraph (15) of their March 4, 1976 Section 13(c) agreement, executed in connection with an earlier grant application, shall be included as the addendum to the July 23, 1975 agreement pursuant to paragraph (4) thereof. The terms and conditions of the July 23, 1975 agreement provide protections to employees represented by the union which satisfy the requirements of 49 U.S.C., Section 5333(b) for capitalized preventive maintenance service and for non-fixed route ADA paratransit service.

The parties, furthermore, have agreed that the terms and conditions of their agreement dated March 4, 1976, as supplemented by the undated side letter to the Department, received on March 12, 1976, shall be made applicable to the capital assistance portion of the instant project. This agreement, executed in connection with a previous grant application, provides to employees represented by the union protections satisfying the requirements of 49 U.S.C., Section 5333(b).

With consideration to the foregoing, the Department has determined that the terms and conditions set forth below satisfy the requirements 49 U.S.C. Section 5333(b), and shall serve as the basis of this final certification.

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated July 23, 1975, as supplemented, shall be made applicable to the capitalized preventive maintenance service

and non-fixed route ADA paratransit service portions of the instant project and made part of the contract of assistance, by reference;

2. This letter and the terms and conditions of the agreement dated March 4, 1976, as supplemented, shall be made applicable to the capital portion of the instant project and made part of the contract of assistance, by reference;

3. The contract of assistance shall include the following language, by reference:

"The July 23, 1975 and March 4, 1976 agreements shall be binding upon the successors, assigns and contractors of the Escambia County Board of County Commissioners (ECBCC), including, but not limited to, Tucker Transportation Company (d.b.a. Paratransit Services of West Florida), and ATU Local 1395, and no provisions, terms, or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by reason of the arrangements made by or for the ECBCC to manage and operate its system.

Any person, enterprise, body, or agency - whether publicly or privately-owned - which shall undertake the management, provision and/or operation of the Project services or the ECBCC's transit system, or any part or portion thereof, under contractual arrangements of any form with the ECBCC, or its successors, assigns, or contractors, shall agree to be bound by the terms of the July 23, 1975 and March 4, 1976 agreements and accept the responsibility with the ECBCC for full performance of these conditions. As a condition precedent to any such contractual

arrangements, the ECBCC shall require such person, enterprise, body or agency to so agree."

"The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements of the grant contract between the U.S. Department of Transportation and ECBCC, and the parties to the contract so signify by executing that contract. Employees, or their representative on their behalf, may assert claims under this provision. This clause creates no independent cause of action against the United States Government."

4. The term "project" as used in the agreements of July 23, 1975 and March 4, 1976, each as supplemented, shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant project;

5. Disputes over the interpretation, application and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of such disputes; and

6. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the local union which is a party to, or otherwise referenced in the protective arrangements, shall be afforded substantially the same levels of protection as are afforded to the employees represented by the union

under the July 23, 1975 agreement and the March 4, 1976 agreement, each as supplemented, and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute remain after exhausting any available remedies under the protective arrangements, and absent mutual agreement by the parties to utilize any other final and binding procedure for resolution of the dispute, the Secretary of Labor may designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination.

Sincerely,

Don Todd
Deputy Assistant Secretary

Enclosure

cc: Donald Durkee/FTA
Bob Blandine/ECBCC
Michael Mattimore/Esquire
Leo E. Wetzel/ATU

U.S. Department of Labor

Deputy Under Secretary for
Labor-Management Relations and
Cooperative Programs
Washington, D.C. 20210

JUN 27 1986

Mr. Peter N. Stowell
Regional Administrator
Urban Mass Transportation Administration
Region III
434 Walnut Street, Suite 1010
Philadelphia, Pennsylvania 19106

Re: UMTA Application
Jackson Transit Authority
Jackson, TN
Operating Assistance;
Purchase Replacement Bus
Parts
(TN-90-X038)

Dear Mr. Stowell:

This is in reply to the request from your office that we review the above captioned application for a grant under the Urban Mass Transportation Act of 1964, as amended.

In connection with a capital grant application in 1966 (TENN-UTG-2) for the purchase of buses and construction of facilities, the parties executed an agreement dated July 26, 1966.

The parties have been in dispute since 1975 as to the application of paragraph (6) of the July 26, 1966 agreement. Litigation over the matter in federal court culminated in the U.S. Supreme Court's decision in Jackson Transit Authority v. Local Division 1285, Amalgamated Transit Union, 457 U.S. 15 (1982). The Supreme Court found that Section 13(c) does not provide the union with federal causes of action for alleged breaches of the 13(c) and collective bargaining agreements. The Court further stated that the legislative history is conclusive that Congress intended that such agreements be governed by state law applied in state courts.

The Department of Labor determined that this agreement satisfied the requirements of Section 10(c) (now Section 13(c)) of the Act. In 1976, however, Congress, through an amendment to the Interstate Commerce Act, effectively raised the level of protections required under the Rail Passenger Service Act (RPSA). A protective arrangement under the RPSA, known and hereinafter cited as Appendix C-1, was certified by the Secretary of Labor as providing the fair and equitable arrangements required by the RPSA.

Beginning in 1983, certification letters for JTA projects stated that the "Department of Labor does not require that Section 13(c) arrangements provide for conventional interest arbitration of new contract terms. However, in those instances where employees lose the right to strike, the parties should bargain in good faith over a procedure for the resolution of interest disputes." Our certification provided that the parties negotiate in good faith over an alternative method for the resolution of labor disputes to replace the procedures in paragraph (6) of the July 26, 1966 agreement.

The Department has certified a number of capital projects on the basis of the July 26, 1966 agreement, deleting paragraph (6) which provides for interest arbitration and stipulating that "such agreement must also be consistent with the level of benefits provided by Appendix C-1. If any provision, or lack of such provision, of the July 26, 1966 agreement provides a lesser benefit than C-1, the provisions of C-1 shall prevail."

With respect to operating assistance, the Jackson Transit Authority (JTA) and the Amalgamated Transit Union have previously agreed to the use of the agreement executed on July 23, 1975 by the American Public Transit Association and transit employee labor organizations. The terms and conditions of the July 23, 1975 agreement provide protections to employees represented by the union satisfying the requirements of Section 13(c) of the Act. The unions agreement to use the July 23, 1975 National Agreement for previous operating projects was conditioned upon the Departments' determination to proceed with certification rather than awaiting final resolution of matters which were then and still remain in litigation in Amalgamated Transit Union, et al. v. Brock, et al., D.C. Cir., (Civil Action No. 84-5623), appeal pending.

By letters dated March 26, 1986, JTA and the ATU were informed that the instant project was pending certification by the Department, and they were requested to advise us of "steps that have been taken or are planned to satisfy the employee protection requirements of the Act." The parties were further informed through telephone contacts with the Department that an alternative dispute resolution mechanism must be in place before the Department could certify to UMTA that the required employee protective arrangements had been made.

Discussions between the parties on this topic have been limited. The question of an appropriate dispute resolution procedure has been at issue since 1975 and remains in litigation at this time. The Department recognizes that the parties have been unable to reach an agreement on this issue and we have, therefore, elected to make a determination of an appropriate dispute procedure to ensure that UMTA funding timetables are met and no interruption of service occurs.

The ATU has responded to the Departments' inquiries regarding this project by letters dated May 8 and June 3 and June 11, 1986. In their letters, the union indicates that they "oppose certification of the instant grant application without a dispute resolution provision." The union's letters do not propose an alternative to the interest arbitration provision previously included in paragraph (6) of the parties July 26, 1966 agreement. Rather, they request "that the Department revoke all prior (JTA) certifications and deny all future funding for any project applications, including the instant application unless and until JTA indicates its willingness to fully restore the Section 13(c) arrangements, as previously certified." The union further discusses, in its June 3rd letter, two proposed alternatives to interest arbitration and the problems presented by those proposals which were applied in other grant situations.

The JTA, by letter dated May 13, 1986, informed the Department that "Jackson has consistently maintained that it is not required to accede to interest arbitration and has sought to negotiate an alternative method for resolution of labor disputes." They further indicate that "Jackson has reviewed its options and has concluded that it can accept the conditions set forth in the certification dated March 7, 1986 for Chattanooga." JTA's letter further noted that, although the ATU continued to insist upon interest arbitration as the appropriate dispute resolution procedure, ATU has indicated its opinion that the Department's certification in Louisville, Kentucky was somewhat "better than the Chattanooga decision."

In making our determination on this matter, the Department has reviewed the current situation in Jackson, Tennessee and the positions of the parties submitted for this and previous UMTA projects. Although Section 13(c) does require some dispute resolution process that assures avoidance of unilateral control by the transit authorities, it is clear from the legislative history and case law that interest arbitration is not specifically required by the Act. The Secretary must reject interest arbitration in this instance where 1) state law permits but does not compel such a procedure; 2) the parties do not mutually agree upon the use of an interest arbitration procedure; and 3) an acceptable alternative procedure is available which will provide for the continuation of collective bargaining rights requirement under Section 13(c)(2) of the UMT Act.

The Department has reviewed the two alternatives discussed by the parties and determined that the attached Appendix A will fully satisfy the requirement of section 13(c)(2) for the continuation of collective bargaining rights. The procedure in Appendix A, which is modeled on the "Louisville" ("Lexington" is used interchangeably as the two procedures are identical.) dispute resolution procedure, was determined by the Secretary to be a more appropriate procedure than the "Chattanooga" alternative principally because it provides for factfinding sufficiently in advance of contract expiration to avoid unilateral control over

mandatory subjects of bargaining by the authority following expiration of the parties' agreement. The Department has also modified the timetables in the "Louisville" procedure to ensure that the entire procedure, through publication of the factfinder's report, can be completed prior to contract expiration.

DOL has made this modification because we believe that a procedure which clearly can be completed, through publication of the factfinding report, prior to contract expiration will adequately serve to avoid unilateral control by the employer of mandatory subjects of collective bargaining. The union suggests that the terms and conditions of any expiring collective bargaining agreement must necessarily remain in place to avoid such unilateral control. It is DOL's position that either approach will have the desired effect, and, in this instance where the partie's have not mutually agreed to continuation of the terms of the existing agreement and the process can be completed prior to expiration of that agreement, we do not require that the terms of the contract remain in effect.

The union also points out in its June 3, 1986 letter that the "Lexington" procedures do not specifically state that the parties provide the factfinder and each other with their respective positions on outstanding issues. It was intended that the parties provide the factfinder and each other with these materials, and we have clarified the Appendix to reflect this requirement. Finally, the union notes that the "parties may select the neutral factfinder without any involvement of the Federal Mediation and Conciliation Service" (FMCS). While this is certainly true where the parties mutually agree upon a neutral factfinder, paragraph 2 of Appendix A clearly provides for FMCS involvement under other circumstances. Moreover, it is apparent that the "rules and procedures" of the mediation services which will be applicable will depend upon the source from which the neutral factfinder is obtained. Absent other guidance the neutral factfinder may make this determination.

The procedure in Appendix A provides for the utilization of a neutral mediator at the request of either party after bargaining to impasse, and for mandatory factfinding at the request of either party beginning forty-five days prior to contract expiration. The language in Appendix A does not preclude the parties from requesting factfinding following contract expiration. In accordance with the rules and regulations of the mediation service, the factfinder shall have the power to make inquiries and investigations, hold hearings, or take such other appropriate steps to carry out his or her function. Should either party reject the factfinder's recommendations this arrangement provides for their publication in the local media along with the parties' statements supporting or rejecting those recommendations,thus ensuring that the parties will give serious consideration to the factfinder's recommendations. This procedure is fair and equitable and, it gives equal consideration

to the positions of both sides in a bargaining dispute, thereby preventing unilateral control over mandatory subjects of collective bargaining.

The Department, therefore, has determined that the dispute resolution procedure in Appendix A will be made applicable to the above projects and that the interest dispute language in Paragraph (6) of the parties July 26, 1966 Section 13(c) agreement will be excised from that agreement.

In addition, Departmental policy has been to require the parties to a Section 13(c) Agreement to provide for a neutral, final and binding dispute resolution procedure to resolve any controversy which may arise with respect to the interpretation, application, or enforcement of the terms of the 13(c) agreement itself. Such procedures for resolution of grievance disputes under the 13(c) agreement are a necessary requirement to ensure that employee protective arrangements are enforceable by the parties.

We are, therefore, modifying Paragraph (6) of the parties' July 26, 1966 agreement to eliminate interest arbitration by deleting the word "labor" from line 1 of this section and substituting the word "grievance", and deleting the words:

> . . . "labor dispute" shall be broadly construed and shall include any controversy concerning wages, salaries, hours, working conditions or benefits, including health and welfare, sick leave, insurance or pension or retirement provisions, the making or maintaining of collective bargaining agreements, the terms to be included in such agreements, the interpretation or application of such agreements, the adjustment of grievances, . . .

and substituting "grievance dispute shall be construed to mean . . ."

Upon careful consideration of all of the circumstances, including consideration of the arrangements satisfying each of the five matters specified in Sections 13(c)(1) through (5) of the Act, we have concluded that the protective arrangements described below are fair and equitable and in accordance with all requirements of Section 13(c) of the Act.

Accordingly, the Department of Labor makes the certification required in the Act with respect to the instant project on condition that:

1. The terms and conditions of the agreement dated July 23, 1975 and Appendix A as the addendum pursuant to paragraph (4) thereof, shall be made applicable to the operating assistance portion of the instant project and made part of the contract of assistance, by reference;

2. The terms and conditions of the agreement dated July 26, 1966 with the above modifications to Paragraph (6) and the addition of Appendix A, shall be made applicable to the capital portion of the instant project and made part of the contract of assistance, by reference;

3. The term "project" as used in the agreements of July 23, 1975 and July 26, 1966, as modified herein, shall be deemed to cover and refer to the operating and capital portions, respectively, of the instant project; and

4. Employees of urban mass transportation carriers in the service area of the project, other than those represented by the union, shall be afforded substantially the same levels of protection as are afforded to employees represented by the union under the July 23, 1975 and July 26, 1966 agreement, as modified and this certification.

5. The Department's determination that the continuation of collective bargaining rights requirement for employees is satisfied by the procedures in Appendix A will also be applicable to all previous JTA projects that have been certified on the condition that the parties continue to negotiate a dispute resolution procedure. These projects include (TN-05-0022), (TN-90-0027), (TN-05-4055) and (TN-90-0003).

Sincerely,

John R. Stepp
Associate Deputy Under Secretary
for Labor-Management Relations
and Cooperative Programs

cc: Theodore Munter/UMTA
Earle Putnam/ATU
Jim Burchfield/JTA
Joe Kaufman/JTA