

CITY OF MADISON
CITY ATTORNEY'S OFFICE
Room 401, CCB
266-4511

MEMORANDUM

TO: Chuck Kamp, General Manager, Metro Transit
Greg Leifer, Labor Relations Manager, Human Resources

FROM: John Strange, Assistant City Attorney

DATE: March 15, 2018

RE: Reduction of federal funding and its relation 49 U.S.C. § 5333(b).

You asked whether I believe Metro Transit's planned response to the recent reductions in federal funding violate Section 13(c) of the Federal Transit Act. I do not.

A. The Language of Section 13(c)

49 U.S.C. 5333(b) (also known as Section 13(c) of the Federal Transit Act) provides, in pertinent part:

(1) As a condition of financial assistance under sections 5307-5312, 5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, and 5338(b) of this title, the interests of employees affected by the assistance shall be protected under arrangements the Secretary of Labor concludes are fair and equitable. The agreement granting the assistance under sections 5307-5312, 5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, and 5338(b) shall specify the arrangements.

(2) Arrangements under this subsection shall include provisions that may be necessary for:

- a. the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;
- b. the continuation of collective bargaining rights;
- c. the protection of individual employees against a worsening of their positions related to employment;
- d. assurances of employment to employees of acquired public transportation systems;
- e. assurances of priority of reemployment of employees whose employment is ended or who are laid off; and

- f. paid training or retraining programs. ...

B. The Purpose of 13(c).

By way of background, when Congress passed the Urban Mass Transportation Act of 1964 and included the precursor to the above-cited language, it did so against a backdrop of a deteriorating urban mass transit system that saw private transit systems increasing fares, trimming service, and deferring maintenance. This resulted in loss of ridership, which forced transit riders into automobiles, resulting in increased congestion on streets and highways. Viewing this as a national problem, Congress introduced legislation to implement programs that would provide federal financial assistance to urban mass transit systems through grants and loans for the purpose of financing capital facilities and equipment. These improvements, Congress hoped, would help maintain the continuing growth of commerce in the nation's urban centers, while reducing street and highway congestion.

At the time, some transit unions expressed concern about the potential loss of transit employment that would accompany projects paid for or supported by federal funds. This concern was based primarily on fears that newly automated systems paid for with federal funding would displace transit workers. Transit unions were also concerned about the potential impact of transferring transit operations from private ownership to ownership by state or local public bodies. This concern centered around the possibility that private transit employees transitioning to public transit positions would consequently lose collective bargaining rights, the right to strike, and pension and retirement benefits, because state and local government employers were expressly exempt from coverage under the National Labor Relations Act (NLRA).

In debating the new law, several Senators sponsored what became 13(c) for the purpose of maintaining the status quo as it related to collective bargaining and requiring provisions protecting existing employees against, among other things, a worsening of conditions caused by the provision of federal assistance. For a complete history of Section 13(c) see Transit Cooperative Research Program, Legal Research Digest, June 1995 – Number 4.

Thus, the purpose of Section 13(c) was to protect employees from a loss of collective bargaining rights and other employment benefits that might result from the provision of federal funding to local transit agencies.

As you know, in 1970 the City of Madison started accepted federal funds for its transit system. Since that time, the City has entered into 129 Section 13(c) arrangements with the Teamsters. The current 13(c) agreement contains provisions required by 13(c) relative to the preservation of collective bargaining rights, protections against the worsening of conditions, termination and lay off. See 129th Agreement to Section 13(c) of the Federal Transit Act between the City of Madison and the Teamsters (attached).

Moreover, the City has collectively bargained over the rights and benefits due employees who are covered by these provisions of the 13(c) agreement.

C. The Application of Section 13(c) to a reduction in transit services caused by a reduction in state and federal funding.

Against this backdrop, we consider the current situation.

Metro Transit's paratransit program has been funded, in part, by federal transit assistance. Metro Transit has used this federal funding to buy vans and other capital equipment necessary to provide paratransit services. Currently, two things are happening. First, the useful life of the capital equipment purchased with the federal funding is coming to an end. Second, reductions in federal funding mean that Metro Transit does not have funding to replace this equipment. This creates a predictable scenario: some paratransit services will be reduced and the employees providing those services may be displaced.

It is my understanding that Metro Transit's response to the possible displacement of these employees will be to honor its Section 13(c) obligations (and its collective bargaining agreement) and work with these employees in a variety of ways towards reassignment, reemployment, retraining, and the maintenance of certain benefits.

Indeed, this is exactly the type of employment response Section 13(c) was intended to ensure and, therefore, I believe Metro Transit's response is appropriate and, as discussed below, particularly admirable.

D. There is some question in my mind whether Section 13(c) protections are applicable to a reduction of transit services caused by a cut in federal funding.

As the brief history above shows, Section 13(c) protections were designed to protect the existing rights of transit employees at the point in time when a transit agency began *receiving* federal assistance. It is not altogether clear whether these protections apply to employment actions caused by a *reduction* in federal assistance, which is the case here. Given Metro Transit's intent to honor its Section 13(c) obligations, I do not find it necessary to fully explore this legal issue, but believe it is still worth noting.

The National Section 13(c) Model Agreement provides some key definitions for determining when Section 13(c) protections apply. It states that the term "Project...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." It goes on to state that only those actions that are taken "as a result of the Project" are subject to protection and that "as a result of the Project" include "events 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 by causes other than the Project are not within the purview of this agreement.” See National (Model) Agreement Pursuant to Section 13(c) of the Urban Mass Transportation Act of 1964, as Amended. Importantly, the Model Agreement then goes on to explain that “*An employee covered by this Agreement...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.*” See *id.* Moreover, in 1994, the FTA provided guidance to the DOL that *because responsibility under section 13(c) flows with the federal assistance provided when federal funded assets are sold and the federal interest is extinguished, the federal assistance is terminated along with any attendant requirements included section 13(c).* See Transit Cooperative Research Program, Legal Research Digest, June 1995 – Number 4, fn. 127.

Arguably, since the employment decisions being made in this situation are due to a *loss* of federal funding and corresponding decision to reduce paratransit services, it follows that the attendant requirements of Section 13(c), which are intended to accompany the provision of federal assistance, would not apply. Nevertheless, since Metro Transit intends to honor its 13(c) obligations, I do not anticipate this being an issue.

If you intend to circulate this memorandum to others, please let me know.