

In the matter of arbitration between:

_____	)	
IBEW Local 753	)	
<i>Claimant</i>	)	
v.	)	DSP case no. 01-18-4
City of West Plains, MO	)	Issued: March 23, 2004
<i>Respondent</i>	)	
_____	)	

### Origin of the Claim

Local Union 753 (Local 753) of the International Brotherhood of Electrical Workers (IBEW) brings this claim under the "Special Section 13(c) Warranty for Application to the Small Urban and Rural Program" (Special Warranty). The Department of Labor (Department) has certified the Special Warranty as providing the protections required by Section 5333(b) of the Federal Transit law, 49 U.S.C. § 5333(b)<sup>1</sup>, for application to the Federal Transit Administration (FTA) grants of Federal transit assistance to the City of West Plains, Missouri (City) in the Federal Transit Administration's Small Urban and Rural Program under Section 5311 of the Transit law, 49 U.S.C. § 5311. Local 753 claims that the City has failed to comply with the requirements of the Special Warranty associated with all grants received by West Plains beginning in 1997, including FTA grant number MO-18-X021. Specifically, Local 753 claims that the City has failed to continue collective bargaining rights and has adversely affected rights and benefits of the employees represented by Local 753 by failing to meet and confer with Local 753 as required by Missouri state law.

### Jurisdiction

The City opposes the Department's assertion of jurisdiction over this claim because, under Missouri State law, a public employer such as the City cannot enter into a collective bargaining agreement with the Union. The City argues further that Section 5333(b) cannot override State law to require the City to engage in collective bargaining and enter into a collective bargaining agreement with the Union.

<sup>1</sup> 49 U.S.C. § 5333(b) of the Federal Transit law is the recodification of Section 13(c) of the Federal Transit Act, formerly the Urban Mass Transportation Act of 1964, as amended.

The City accepted the terms of the Special Warranty as a condition of its receipt of Federal assistance. Section B(4) of the Special Warranty provides:

(4) Any dispute or controversy arising regarding the application, interpretation, or enforcement of the provisions of this arrangement which cannot be settled by the parties at interest within thirty (30) days after the dispute or controversy first arises, may be referred by any such 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...for final and binding determination.

This claim concerns a dispute regarding the "application, interpretation, or enforcement" of the Special Warranty. Specifically, it concerns Section B(3) of the Special Warranty, which incorporates Paragraph (4) of the National (Model) Section 13(c) Agreement (Model Agreement), which provides as follows:

(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.

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

The right to meet and confer is covered under the statutory requirements as a form of collective bargaining. ATU Local 1338 v. Dallas Transit System, case no. 80-13c-2, USDOL (1981); Employee Protections Digest, USDOL, p. A-248. Paragraph 4 of the Model Agreement requires that this right be preserved and continued as a condition of the receipt of Federal assistance. Local 753's allegation that the City has failed to continue collective bargaining rights constitutes a dispute regarding the application or interpretation of paragraph 4 of the Model Agreement. The dispute remained unsettled for more than thirty days after it arose, and the parties were not able to agree to a final and binding dispute resolution procedure. Consequently, the Department has jurisdiction over this claim under paragraph B(4) of the Special Warranty.

### **The Claim**

Local 753 alleges that the City failed to comply with its obligation under the Special Warranty and Section 5333(b)(2)(B) to continue the collective bargaining rights of Local 753 and the employees it represents, by failing to meet and confer with the Local 753 in a meaningful manner concerning wages, vacation time, and other workplace issues.

### **Missouri State Law**

Chapter 105 of the Revised Statutes of Missouri governs the labor relations between the City and its employees. Section 105.500(2) defines "Exclusive bargaining representative" as follows:

...an organization which has been designated or selected by majority of employees in an appropriate unit as the representative of such employees for purposes of collective bargaining.

Chapter 105.510 provides that employees of the City may join labor organizations and "bargain collectively." That section of the State law describes the term "bargain collectively," as "the right to present proposals to any public body relative to salaries and other conditions of employment...." Section 105.520 further describes the process of bargaining applicable to these employees:

105.520. Public bodies shall confer with labor organizations. - Whenever such proposals are presented by the exclusive bargaining representative to a public body, the public body or its designated representative or representatives shall meet, confer and discuss such proposals relative to salaries and other conditions of employment.... Upon completion of discussions, the results shall be reduced to writing and be presented to the appropriate administrative, legislative or other governing body in the form of an ordinance, resolution, bill or other form required for adoption, modification or rejection.

### **Claimant's Position**

Local 753 states that the employees it represents in the City's Public Works Department (sometimes referred to as the Utility Department), including those who perform maintenance work on the transportation vehicles and associated equipment under the Federally funded Project(s), have designated Local 753 as their bargaining agent. Local 753 alleges that the City has failed to collectively bargain with Local 753 over terms and conditions of employment for these employees following certification of Local 753 as their bargaining agent in

1997. Local 753 states that Missouri Law does provide authority for public employee unions and employers to enter into collective bargaining agreements. Local 753 also maintains that these employees, although not employed in the City's Transit Department, are nevertheless transit employees covered by the Special Warranty. Local 753 asserts that the City has failed to meet with Local 753 and to bargain in a meaningful manner as required by State law.

### **Respondent's Position**

The City maintains that the City employees represented by Local 753 are not transit employees because they do not work in the City's Transit Department. The City also maintains that the Federal transit grant funds were received for, and applied to, only the City's Transit Department and no Federal funds were used to pay the wages and benefits of the City's Department of Public Works employees. Consequently, the City concludes that the Special Warranty does not cover these employees. The City states that it has not diminished any wages, benefits and working conditions of employees in its Transit Department, and that it has increased pay for Transit Department employees by significant amounts. The City affirmatively maintains that, with respect to the Department of Public Works employees represented by Local 753, the City has met with the Union, presented proposals, considered Union proposals, and conferred and discussed matters pertaining to the Public Works employees as required by State law.

### **Findings of Fact**

Local 753 filed this claim on behalf of the employees of the Public Works Department. Pursuant to Section 105.500 of Missouri law, the Missouri State Board of Mediation conducted an election for bargaining representative and, in November of 1997, certified Local 753 as the exclusive bargaining representative of the bargaining unit:

...consisting of all full-time and part-time employees of the City Public Works Department including all DPW foremen, as well as the meter readers, the city hall janitor and the warehouse/invoice clerk, excluding department heads and all other city employees.<sup>2</sup>

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<sup>2</sup> November 13, 1997 Certificate of Representation issued by the Missouri State Board of Mediation in International Brotherhood of Electrical Workers, Local 753 v. City of West Plains, Public Case No. R 97-022.

Local 753 asserted that employees it represents perform maintenance work on the City's transportation vehicles and associated equipment.<sup>3</sup> The City did not deny that employees represented by Local 753 performed such work. Consequently, for purposes of this claim, the Local has established that its members performed maintenance work on the City's transportation vehicles and associated equipment.

Local 753 has continued to serve as the exclusive bargaining representative of the Public Works Department employees since that 1997 certification. Upon becoming the certified bargaining representative, the Union gained the right to bargain on behalf of these employees pursuant to Section 105.500 of Missouri law. Neither party asserts that the bargaining rights provided under that law have changed since Local 753 was recognized as the bargaining representative in 1997.

As a condition for receipt of the Federal grants of assistance the City agreed to abide by the terms of the Special Warranty providing the protections required by Section 5333(b). The first paragraph of Section A, "General Application," of the Special Warranty requires, among other things, that "the terms and conditions of this warranty...shall apply for the protection of the transportation related employees of any employer providing transportation services assisted by the Project ("Recipient"), and the transportation related employees of any other surface public transportation providers in the transportation service area of the project..."

Local 753 and the City participated in meetings and discussions on new terms and conditions of employment, but did not reach agreement on such new terms and conditions. Following these discussions, the City's negotiator presented to the City for its consideration the results of these discussions, including his recommendations for certain new terms and conditions of employment that would apply to these employees, including a wage increase that was sought by Local 753. The City subsequently implemented changes in the terms and conditions of employment applicable to these employees, including raising their wages.

### **Discussion and Conclusions**

#### Coverage

The City asserts that the employees represented by Local 753 who perform maintenance work on transportation vehicles are not covered under the Special Warranty because they do not work in the City's Transit Department and

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<sup>3</sup> The City has a Transit Department, whose employees have not chosen an exclusive bargaining representative.

because no funds received by the City from a Federal transit grant were used to pay the salaries or benefits of these employees. However, Section A of the Special Warranty includes in its coverage any "transportation related" employees of any employer providing transportation services assisted by the Project as well as other surface transportation providers in the service area of the project. The City is an "employer providing transportation services assisted by the Project," and maintenance of transportation vehicles is "transportation related." Neither the terms of the Special Warranty nor Section 5333(b)(2)(B) of the Transit Act limit coverage to employees who are paid from Federal grant funds.<sup>4</sup> Consequently, the employees represented by Local 753 who perform maintenance work on transit vehicles and related equipment are "transportation related" employees, and the Special Warranty covers them.

#### Preservation of Collective Bargaining Rights.

Section 5333(b) protects the status quo of collective bargaining rights, including meet and confer rights, but does not give a party additional bargaining, or meet and confer, rights that the party does not already hold from some source other than Section 5333(b). As incorporated into the Special Warranty and applied to this meet and confer situation, the Model Agreement's Paragraph (4) reference to "collective bargaining" must be understood as "meet and confer," and it cannot provide the Claimants with private-sector bargaining rights because they did not otherwise have such rights.

The parties agree that Section 105.500 of the Revised Statutes of Missouri governs their labor relations. This provision establishes a public sector, meet-and-confer relationship, not a collective bargaining relationship as that term is commonly understood in the private sector. While parts of that law refer to those meet and confer rights and procedures as "collective bargaining," the use of such terminology, by itself, does not establish private-sector collective bargaining rights or obligations for purposes of these Section 5333(b) protections. The meet and confer obligation established under Section 105.500 requires, for purposes of the Special Warranty, that the parties meet, confer and discuss proposals. There has been no demonstration in this case that the parties are required to bargain to "agreement" or to "impasse," as those terms are understood in the private sector. Local 753 gained the right to meet and confer in November of 1997 when it became the exclusive bargaining representative of these employees. In this claim there is neither suggestion nor

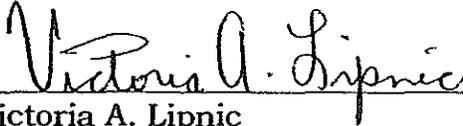
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<sup>4</sup> Compare, Rail Employees Association v. Dallas Area Rapid Transit, case no. 00-13c-2, USDOL (2002), pp. 5-6; DIGEST, p. \_\_\_\_ (Transit grant recipient unsuccessfully argued that because it had never accepted operating assistance under the Federal Transit law, no effects on "operating" aspects (salaries, benefits, assignments, seniority, etc.) could be covered under the protective provisions applicable to its grant of capital, rather than operating, assistance).

evidence that Local 753 has any other bargaining rights. Nor does the record suggest that there has been any change in Missouri Law concerning the meet and confer rights held by the Local.

The City met with Local 753 on various occasions, exchanged and considered proposals, and discussed them to some extent. Following those meet and confer sessions, the City's negotiator offered his summary of appropriate terms and conditions for these employees, to the City's governing body for adoption, modification or refusal. No violation of the Special Warranty's requirement to continue the existing meet and confer rights has been established in this case. Either party remains free to pursue any remedies that may be available under Missouri state law with respect to the State of Missouri's collective bargaining and/or meet and confer requirements for public sector parties.

This decision is final and binding upon the parties.

  
Victoria A. Lipnic  
Assistant Secretary of Labor  
for Employment Standards