



August 10, 2023

Via Email Only

Katherine Andrews, Associate General Counsel
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Verdenia Baker, County Administrator
Palm Beach County Board of County Commissioners
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RE: DETERMINATION AND JOINT REQUEST TO EXPEDITE
FOR PENDING FTA GRANT APPLICATION
Palm Beach County Board of County Commissioners
FL-2023-039

Dear Ms. Andrews and Ms. Baker:

This is in response to the July 31, 2023 Joint Stipulation from Ms. Andrews, on behalf of Amalgamated Transit Union Local 1577¹ (Union), and Palm Beach County (Grantee), which waives negotiations and briefings process provided under the Department's guidelines at [29 C.F.R. § 215.3](#) and jointly requests the Department to issue a final determination.

By letter dated June 29, 2023, the Department ordered the parties to negotiate and/or discuss specified issues that the Department deems appropriate. *Id.* § 215.3(d)(6), (f). If the parties cannot reach an agreement or other resolution, the Department may order briefing over unresolved issues. *Id.* § 215.3(e). In this case, however, the parties submitted a joint request to expedite our process and issue a final decision over several unresolved outstanding issues.

The parties seek a determination about whether, in light of SB 256, Grantee's protective arrangement covering mass transit employees does not meet the requirements of 49 U.S.C. § 5333(b) and that the application of SB 256 in full to employee organizations which represent mass transit employees at Palm Beach County would jeopardize the Grantee's continued eligibility for federal assistance. The parties also seek a determination whether the Grantee, acting in compliance with SB256, since July 1, 2023, has failed to preserve the existing right of dues deductions, as provided under its current collective bargaining agreement. Additionally, the stipulation references a July 13, 2023 letter from the Department to Hillsborough Area Regional Transportation Authority (HART), in which the Department determined that the time-limited waiver issued by PERC was not sufficient relief from the prohibitions of CS 256. The parties' stipulation states that if the Department issues a similar determination to Grantee, the Grantee will request an amended waiver

¹ The Service Employees International Union, Florida Public Services Union (FPSU), also represents employees engaged in the Grantee's transit service.

from PERC that covers the duration of any federal projects or acts as a permanent waiver from “(a) The prohibition on dues and assessment deductions provided in s. 447.303(1); (b) The requirement to petition PERC for recertification; and (c) The revocation of certification provided in s. 447.305(6) and (7).” Additionally, the parties seek confirmation from the Department that if the PERC issues a sufficient waiver authorized by the statute, the Grantee will be able to comply with the requirements of 49 U.S.C. § 5333(b) and continue its eligibility for Federal Transit Administration funding.

The Department determines the legislative changes required by CS 256 prevent the Grantee from complying with its previously certified protective arrangements covering mass transit employees and the requirements of 49 U.S.C. § 5333(b), and jeopardizes the Grantee’s continued eligibility to receive Federal Transit Administration funding. The Grantee must obtain a sufficient waiver² from the PERC exempting compliance with:

- (a) The prohibition on dues and assessment deductions provided in § 447.303(1) (including the ability to deduct dues for periods from July 1, 2023 through the date the waiver is issued);
- (b) The requirement to petition the commission for recertification; and,
- (c) The revocation of certification provided in § 447.305(6) and (7)

in relation to all employee organizations that have been certified as a bargaining agent to represent mass transit employees of the Grantee, including, but not limited to, the Union party to the instant stipulation.

A time-limited waiver cannot fully resolve the conflict between CS 256 and the protective arrangements required by 49 U.S.C. § 5333(b), which apply for the duration of the federally funded project.³ The Grantee must continue to abide by the commitments made in the certified protective agreements for the life of the project to which the Department’s certification applies, whether that is the period over which operating assistance is used to pay salaries or the useful life⁴ of a funded vehicle or facility.⁵ For the Department’s process, while a collective bargaining agreement may expire, the Grantee’s assurance to continue collective bargaining pursuant to 49 U.S.C. § 5333(b)(2)(b) does not. *See City of Macon v. Marshall*, 439 F. Supp. 1209 (1977) (upholding Department’s refusal to certify where city failed to continue collective bargaining rights after acquisition and expiration of the collective bargaining agreement). By executing its contract of assistance with the Federal Transit Administration (FTA), the Grantee accepts the ongoing obligations of the protections. Any waiver issued by the PERC that expires prior to the end of the project does not fully resolve the dispute over Grantee’s compliance with 49 U.S.C. § 5333. Once such a waiver would expire, the conflict with state law will immediately return while the federally funded project is ongoing.

² For the Department’s purposes, it is not necessary for the PERC to issue a waiver for each union. The Department will also accept one waiver that covers all of the Grantee’s unions.

³ CS 256 is silent as to the duration of waivers issued by PERC, indicating the legislation does not require that the waivers expire at the same time as the parties’ collective bargaining agreement. The dispute could be resolved if the PERC removed the expiration date from the waiver and otherwise reissued it.

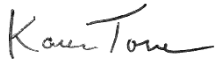
⁴ For example, shop equipment can have a 15-year useful life and 40-Ft buses have a 12-year or 500,000 mile useful life (see Palm Beach grant FL-2019-052, p.10 and p.17).

⁵ Boise, City of, Certification, ID-90-X013-A, November 24, 1987, p. 4, item 6.

In the event that a sufficient waiver is obtained and submitted to the Department, the Department will issue final certifications that include such a waiver as part of its protective arrangements for any pending grant applications. The Department will also include the waiver as part of the protective arrangements in referrals for all future grants. The Grantee will notify the Department if at any time the waiver expires or becomes inapplicable.

If you have any questions or need any additional information, please email OLMS-DSP@dol.gov, with copy to all parties indicated in this letter.

Sincerely,



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cc: Todd Bonlarron, Assistant County Administrator TBonlarr@pbcgov.org
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Also See Referral