



In the matter of arbitration between:

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Amalgamated Transit Union Locals 22,	)	
174, 448, 589, 690, 1037, 1363,	)	
1512, 1548 and 1578	)	
<i>Claimants</i>	)	DSP case no. 99-18-1
	)	
v.	)	
	)	Issued: March 16, 2001
Massachusetts Executive Office of	)	
Transportation & Construction	)	
<i>Respondent</i>	)	
_____		

**Origin of the Claim**

These claims for employee protections arise under the Small Urban and Rural Warranty protective arrangement for Federal grants of money under Section 18 of the Urban Mass Transportation Act, as amended. Section 18 is recodified at 49 U.S.C. § 5311 of the Federal transit law. These grants for the period in question would include MA-18-X020 and MA-18-X021, and any other applicable grants for MEOTC from 1996 through 1999. The Department of Labor (Department) has certified this Warranty as satisfying the requirements of Section 13(c) of the Urban Mass Transportation Act ( 49 U.S.C. §1609(c), as amended (recodified at 49 U.S.C. § 5333(b)), necessary for Section 18 grant approvals. Amalgamated Transit Union Locals 22, 174, 448, 589, 690, 1037, 1363, 1512, 1548 and 1578, through their representative, the Amalgamated Transportation Union International, have filed these claims with the Department pursuant to Sections B (4) and (9) of the Section 18 Warranty. Under those sections and Section A, paragraph 1, of the Warranty, any party to the Warranty, and any transportation-related employees of any public transportation providers in the service area of the Federal project, may file disputed claims for employee protections with the Department of Labor. These claims are properly filed with the Department of Labor.

**The Dispute**

ATU asserts four violations of the applicable Warranty protections:

- (a). That the Massachusetts Executive Office of Transportation and Construction (MEOTC), Respondent, has failed to provide to the Department, and to maintain for the

duration of the project(s), a complete and up-to-date list of all existing transportation providers in the service area of the project and any labor organizations representing the employees of such providers;

(b). That the Department incorrectly neglected to insist on correction of such defects in MEOTC's obligations under the Warranty.

(c). That the Department was remiss in failing to identify Respondent as in non-compliance with the Act for the failure in (a), above;

(d). That the Department has failed to timely affirm the requests of some, or all, of the Claimant labor organizations to become party to the Warranty protective arrangement as applied to the projects in question. The Claimants seek to become parties to the Warranty as follows: ATU Local 22 on behalf of the workers it represents that are employed by RTA Transit Services, Inc.; ATU Local 448 in its status as the collective bargaining agent of certain employees of Springfield Transit Management, Hampden County Transit, Inc. and Longueil Transportation, Inc., (U.S. Express); ATU Locals 174 and 1037 as the joint collective bargaining representative for Union Street Bus Company, Inc., employees; ATU Local 589 as the union representative of certain Massachusetts Bay Transportation Authority workers; ATU Local 690 as the collective bargaining agent of certain employees of Management of Transportation Services, Inc., and of Montachusett Opportunity Council, Inc.; ATU Local 1512 as the bargaining representative for Peter Pan Bus employees; ATU Local 1548 as the representative of certain Plymouth & Brockton Street Railway Co. employees; and ATU Local 1578 on behalf of the LoLaw Transit Management, Inc., workers (staffing Lowell RTA services) which it represents. Additionally, information in the record of this case (Claimants' Exhibit 2 in the ATU letter of August 12, 1999) indicates that ATU Local 1363 seeks to become a party to the Warranty for the applicable grants as the representative of certain employees of Bonanza Bus Lines.

### **Discussion**

The facts of this case are not in dispute. MEOTC acknowledges the failure to provide to the Department, and to maintain, a complete and up-to-date list of all transportation providers who are eligible recipients of transportation assistance funded by the project, and of the labor organizations representing employees in the service area of the project representing employees of such providers. Such delay may occur from time to time when the sub-recipients fail to furnish the necessary information to the grant recipient, which nevertheless has the responsibility for obtaining this information and submitting it to the Department. MEOTC states in its brief that it stands ready to amend the 1996-1999 grant applications so that the Claimant labor organizations are included. MEOTC further indicates a willingness to readily resolve the current matter and to provide a mechanism for monitoring the process in the future.

The Department also recognizes a substantial delay in its affirming the Claimant labor organizations' requests to sign-on as parties to the Warranty for the pertinent projects. This delay may have accompanied Department efforts to provide technical assistance to Respondent in its efforts to comply with the Section A requirements to provide and maintain the list of eligible recipients and the list of labor organizations representing their employees. I take administrative notice of the Department's letter of September 28, 1999 (copy attached), which affirmed that all the Claimant labor organizations are considered party(ies) to the Warranty arrangements agreed to by Respondent for the pertinent grants and/or projects. Such affirmation does not make such recognition effective with the date of that letter. Rather, it recognizes that the labor organizations are parties to the Warranty as of the date of the respective grants. This is in keeping with Respondent's observation in its brief, that "no damages have resulted to any local or union member as a result of omissions."

In this Small Urban and Rural Program, recipients and sub-recipients sometimes lack the familiarity with grant requirements that is customary in grants for larger transit projects in urban areas. Requirements such as the need to provide the Department with a complete and up-to-date list of eligible recipients and of the labor organizations that represent their employees, may appear to lack a self-interest component, from a recipient's or sub-recipient's point of view. This requirement is not entirely lacking in self-interest to a recipient or sub-recipient, however. As the Department previously has noted,<sup>1</sup> a recipient which fails to fulfill an obligation (whether it's own obligation or one dependent upon information from a sub-recipient) under the Warranty can lose its eligibility to avail itself of the expedited Warranty approval for its grant applications. Further, a grant applicant or sub-recipient who has failed to comply fully and in good faith with the requirements of the Warranty may subject itself to ongoing, potential liability for any unfilled claims, until the body achieves full compliance with all aspects of the warranty. "The time period for filing [any/all] claims under grants approved prior to the date of DOL's compliance certification to FTA for RIDOT shall begin with the date of the DOL compliance certification."<sup>2</sup> These are but two of the possible self-interests that might motivate a sub-recipient or recipient to ensure that they have complied with the Section 13(c) requirements of the Section 18 Warranty arrangements.

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<sup>1</sup>ATU Local 1363 v. Rhode Island Department of Transportation, OSP case no. 92-18-6, Employee Protections Digest, p. A-436, A-447 (1996).

<sup>2</sup> Letter of November 12, 1996 (copy attached), page 2, from Ronald W. Glass, Director, Division of Statutory Programs, ESA, U. S. Department of Labor, to Leonard F. Clingham, Jr., Esq., Rhode Island Department of Transportation.

## Award of Remedy

In this situation I find no indication on the part of Respondent of an absence of good faith nor an unwillingness to deal with any labor organization. Furthermore, Respondent has indicated both the willingness and the ability to comply with the requirements of the Section 18 Warranty and to assure appropriate resolution of this matter. To the extent that any uncertainty remains as to the status of the Claimant labor organizations represented herein in by the ATU International, I repeat that each of them is a party to the Section 18 Warranty for the applicable Section 18 grants, and has been party thereto, as described above in reference to the Department's letter of September 28, 1999.

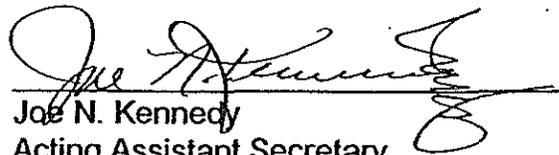
There has been no indication of a lack of good faith in these matters and I have confidence that the parties will be able to develop adequate written assurances, sought by Claimants, of Respondent's future compliance with the applicable mandates of the Warranty. To ensure that the protected employees were not prevented from pursuing claims as a result of the issues raised herein, the time period for filing claims under the applicable grants will begin to run 20 days after the issuance of this decision. Additionally, Respondent is directed to implement its offer to resolve any remaining details in the current situation and to develop a mechanism for monitoring the process in the future to ensure that such omissions will not recur, by initiating discussion and negotiation with the ATU International to secure those ends.

In order to facilitate compliance with this Award and with the Warranty, a copy of each Section 18 grant application of Respondent is to be provided to the ATU Counsel herein when such application is made to the Federal Transit Administration, through December 2002.

This decision is final and binding upon the parties.

March 15, 2001

Date

  
Joe N. Kennedy  
Acting Assistant Secretary