

In the Matter of Arbitration:

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James Lindsey et al. )  
                                  *Claimants* )  
                                  ) )  
                                  v. )  
                                  ) )  
Dallas Area Rapid Transit Authority )  
                                  *Respondent* )  
\_\_\_\_\_

DSP Case No. 03-13c-06

Issued: October 11, 2005

INTERIM DECISION

**THE CLAIM**

This claim was received by the Department of Labor (Department) following the initiation of an October 15, 2003 claim at the local level against the Dallas Area Rapid Transit Authority (DART) by Mr. James Lindsey on behalf of some 400 displaced or dismissed employees of First Transit, Incorporated. First Transit had been the operator of certain fixed route services of DART under a five-year contract, until its service agreement was terminated for convenience twenty-seven months early on October 6, 2003. DART subsequently took over the direct operation of the transit services, employing new hires and somewhat less than twenty-five percent of the former First Transit employees. Those who were rehired were employed as probationary employees without seniority and at entry level wages and benefits.

The First Transit employees had been represented by Amalgamated Transit Union Local 1635 (Local 1635). All but a very small portion of Local 1635's members were First Transit employees, while the employees who work directly for DART are represented by Amalgamated Transit Union Local 1338 (Local 1338). The termination of First Transit's contract resulted in the loss of most of Local 1635's membership at a time when its President was too ill to keep up with the operation of the Local. Mr. Lindsey filed the claim against DART as an Executive Board Member of Local 1635 on behalf of all former First Transit employees who were dismissed or rehired by DART at lower seniority, wages, and benefits.

DART immediately questioned the authority of Mr. Lindsey to file the claim, citing communications with the President of Local 1635, who indicated that the Local was closed. DART also alleged that officers of the Amalgamated Transit Union (ATU) at the international level did not support the claim and believed that the termination of the First Transit contract for convenience did not occur as a result of Federal assistance. In a November 21, 2003 letter to Mr. Lindsey, DART stated that Mr. Lindsey: 1) was not authorized to represent Local 1635 members collectively; 2) was not representing the position of the ATU International, and 3) was personally disqualified for employment because he had failed to fill out completely his DART job application form. This effectively concluded the claimants' local procedures, and Mr. Lindsey contacted the Department of Labor on November 25, 2003.

In his claim before the Department, Mr. Lindsey cited the Department's certifications of employee protections at DART under Section 5333(b) of Title 49 of the U.S. Code, Chapter 53. For operating assistance, including capitalized preventive maintenance, those protections are memorialized in the Operating Assistance Protective Arrangement dated October 22, 2003. The 2003 Operating Assistance Protective Arrangement covers employees of DART and other mass transit employees in the service area. ATU Locals 1338 and 1635, as representatives of DART and DART's contractor employees, respectively, are deemed parties to that Arrangement. For capital assistance, the employee protections can be found in three documents: 1) the Department's September 30, 1991 certification; 2) Attachments A and B of the September 30, 1991 certification; and 3) a September 1992 Addendum. The September 1992 Addendum applies to employees of private mass transportation companies in the service area of DART, such as First Transit.

### **PRELIMINARY ISSUE OF STANDING**

After receiving the positions of the parties, it became clear that the issue of whether or not Mr. Lindsey had standing to pursue this claim on behalf of the former First Transit employees needed to be resolved as a preliminary matter. Although he served as an elected Member of the Executive Board, Mr. Lindsey was not a principal officer of Local 1635 at the time of his local claim. In addition, the Local was placed in trusteeship by the ATU International later on February 18, 2004.<sup>1</sup> DART challenged Mr. Lindsey's authority to file a claim on behalf of anyone other than himself, both at the local level and before the Department. DART also challenges Mr. Lindsey's right to come before the Department

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<sup>1</sup> The Trusteeship was imposed as a result of the local's inability to manage its finances and remains in effect.

under the protections for capital assistance which provide in Paragraph 16(a) of the September 1992 Addendum that unresolved disputes may be referred to the Department of Labor for a final and binding determination. Instead, DART contends that this dispute is governed by the October 22, 2003 Operating Assistance Protective Arrangement, which, in Paragraph 15(b), calls for arbitration before a private arbitrator arranged by the American Arbitration Association.

In its initial request for information from Mr. Lindsey, the Department asked for the authority under which he represented claimants other than himself. He provided a copy of a memorandum dated September 30, 2003, from the Vice President of Local 1635. The memorandum appointed Mr. Lindsey to handle employee protection claims and was signed, in the absence of the Local's President, by the Vice President and four Local Executive Board Members. In view of the Local's entry into trusteeship on February 18, 2004, the Department later requested any authorization which Mr. Lindsey might have from the Trustee or individual affected employees. When Mr. Lindsey's counsel expressed his intention to secure signed authorizations to represent all 400 affected First Transit employees, the Department asked that the parties address the overall issue of the claimants' standing to file a claim with the Department.

The discussion below and this decision is limited to the question of the standing of the claimants to file with the Department of Labor for a final and binding resolution of their dispute. The merits of the claim will not be addressed at this time.

### **POSITION OF THE CLAIMANTS**

In his complaint, Mr. Lindsey contends that Federal assistance was used to terminate the First Transit contract early and facilitate DART's takeover of the operation of the service. In the Claim Form included with Mr. Lindsey's complaint to the Department, he listed Federal Transit Administration (FTA) Project Number TX-90-X582 and capital preventive maintenance as the Federal assistance project that had affected the First Transit employees. However, the letter accompanying the form mentions certain new buses that were funded by the same project.

Mr. Lindsey argues that he is an appropriate representative for the affected First Transit employees. Lindsey lodged the complaint on October 15, 2003, pursuant to the September 1992 Addendum, which allows either the individual employee, or a representative, to file a complaint. He claims that he received a delegation to act on behalf of the affected First Transit employees pursuant to a September 30, 2003

memorandum signed by four Local 1635 Executive Board Members and the Local's Vice President, in the absence of the President, who was ill and unable to conduct the business of the Local.

While Lindsey claims that he is still acting on behalf of the Local, he notes that there is no requirement that the union be involved in the claim under the September 1992 Addendum because the term "representative" in those protective arrangements is undefined. Lindsey admits the local lost members rapidly following the October 6, 2003 termination of the contract, but he notes the Local was still operating when the complaint was filed on October 15, 2003. Indeed, he states that the local assessed members' dues two days later on October 17.

Mr. Lindsey also sent an updated list of individuals who had been affected by the termination of the First Transit contract along with his complaint to the Department. He claims that he is prepared to pursue this case on behalf of each of these employees individually, if necessary.

Lindsey also argues that he remains a suitable representative for the affected First Transit employees despite the trusteeship placed on Local 1635 by the ATU. The ATU imposed the trusteeship because of financial difficulties experienced by the local. According to Mr. Lindsey's counsel, the Trustee is not willing to spend the Local's dwindling resources on this matter. The ATU International has also indicated to Mr. Lindsey that it would not assist with this case and has requested that any action be approved by it. However, neither the Trustee, nor the ATU has ever taken any steps to revoke or invalidate the authority granted under the September 30, 2003 Local Executive Board memorandum. Mr. Lindsey argues the ATU's International Constitution and General Laws allow him to proceed independently based on the September 30, 2003 memorandum.

Finally, Lindsey and his counsel have been able to produce more than 370 signed individual authorizations in response to the Department's December 21, 2004 inquiry, which, in part, requested authorizations from any employees which Mr. Lindsey individually represented. Mr. Lindsey contends that this overwhelming response validates his status as the legitimate representative of these former First Transit employees, either individually or collectively as a union representative.

#### **POSITION OF THE RESPONDENT**

DART argues that the September 1992 Addendum, which provides for final determination before the Department, does not apply to Mr. Lindsey's claim. The September 1992 Addendum pertains only to capital assistance, not the capital preventive maintenance Mr. Lindsey states

was involved in the termination of the First Transit contract. Since Mr. Lindsey cited FTA Project Number TX-90-X582 and capital preventive maintenance on his claim form submitted to the Department, the October 22, 2003 Operating Assistance Protective Arrangement applies to his claim. That Arrangement provides for the selection of an arbitrator from a list provided by the American Arbitration Association from among the members of the National Academy of Arbitrators, not for arbitration before the Department of Labor.

Additionally, DART contends that Mr. Lindsey is unable to appear before the Department under the protective arrangements which apply to DART and its private contract service providers. DART interprets the October 22, 2003 Operating Assistance Protective Arrangement to require that private sector employees, such as those of First Transit, file for arbitration through their union, and that only DART employees have the option to file individually or through a representative.

Furthermore, DART contends that even if the September 1992 Addendum applied to this claim, it would not be available to Mr. Lindsey. DART argues that the September 1992 Addendum only applies through Local 1635. DART claims that the term "representative" is not unlimited but is defined by the statement in Paragraph A of the September 1992 Addendum referring to Local 1338, the predecessor of Local 1635.

In addition, DART argues that Mr. Lindsey never had standing or authority to bring this claim before it or the Department on behalf of the former First Transit employees. When Mr. Lindsey filed his local complaint, DART claims that it contacted the President of Local 1635 and was informed that the Local was closed and no longer existed. DART also claims that an ATU International Vice President had told DART that the ATU did not consider the termination of the First Transit contract to be the result of Federal assistance, and the ATU had refused to assist Mr. Lindsey in filing his claim. DART believes that this disagreement with the ATU International effectively nullified any authority which may have come from the September 30, 2003 Local Executive Board memorandum. While DART concedes that Mr. Lindsey may have been able to file a local claim on his own behalf, it states that his failure to file a claim form for each one of the other 400 employees he sought to represent made it impossible for DART to consider those claims individually.

Finally, DART contends that Mr. Lindsey needed the Trustee's authorization to pursue his claim with the Department after the ATU placed Local 1635 in trusteeship. DART stated that the Trustee had advised DART that Mr. Lindsey lacked authority to pursue his claims. Therefore, DART concluded that the September 30, 2003 Local Executive Board memorandum, if it ever was valid, no longer had any effect. It also

reiterated that an individual claim form from each of the former First Transit employees was necessary for it to evaluate the alleged adverse effects of terminating the First Transit contract.

### DISCUSSION

The threshold question is whether the Department has jurisdiction to consider this claim under the protective arrangements that govern DART and the former First Transit employees. As DART points out, the October 22, 2003 Operating Assistance Protective Arrangement, which applies to Federal operating assistance, provides for final dispute resolution through private arbitration and does not contemplate a role for the Department. If the October 22, 2003 Operating Assistance Protective Arrangement applies, then Lindsey and the other employees can not come before the Department for settlement of issues which are within the purview of that Arrangement.<sup>2</sup>

On the other hand, the September 1992 Addendum, which applies to Federal capital assistance, clearly provides a role for the Department in the final and binding settlement of disputes should the parties be unable to agree on any other procedure. Contrary to the assertion of DART, however, the term "representative" as used in Paragraph (16)(a) of the Addendum does not refer exclusively to Local 1338, the predecessor to Local 1635. Therefore, the Department concludes that employees, individually or through a chosen representative may request a final and binding determination by the Department of issues involving capital assistance under the September 1992 Addendum.

The claimants identified FTA Project Number TX-90-X582 and "capital preventive maintenance" on the Department's Claim Information Form as the Federal assistance that allegedly harmed them. However, claimants are not limited to that designation as the sole source of their harm. As the Department explains in its letter transmitting the Form to claimants, "this form is only for the Department's convenience and cannot be used to restrict or limit the claim." Furthermore, Project Number TX-90-X582 also contains capital assistance, including replacement buses, of the type that were referenced in the letter from Mr. Lindsey which accompanies the Claim Form. Therefore, the September 1992 Addendum, and its provisions for final settlement of disputes by the Department, is applicable to this claim insofar as it relates to capital assistance.

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<sup>2</sup> The Department has consistently ruled that where a Claimant is a member of a unit represented by a labor union and the protective agreement or arrangement, to which the union is a party, provides for a final settlement of claims without reference to the Department of Labor, the Department does not have jurisdiction to consider the claim. (See Calvin (Grimes) Muhammad v. Houston Metro, OSP Case No. DSP-97-13c-2, USDOL (1998), Digest, p. A-469.)

The next question is whether Mr. Lindsey is an appropriate representative under the September 1992 Addendum. Mr. Lindsey presented a September 30, 2003 memorandum from Local 1635's Vice President, in the absence of the President, signed by four of five of its Executive Board Members, as his authority for pursuing this claim. The Local President, in an undated letter received by DART on November 20, 2003, confirmed that he had been ill and was unable to keep up with current communications involving the Local. There is no evidence on the record that this September 30, 2003 grant of authority was in any way contrary to the Local's constitution and bylaws or that it has been subsequently withdrawn. DART, however, has presented several reasons why Lindsey should not be allowed to represent the First Transit employees.

First, DART questioned whether Local 1635 continued to operate after the First Transit service contract ended on October 6, 2003. The record, however, indicates that Local 1635 levied a dues assessment on October 17, 2003. In addition, there is no direct information on the record to indicate any change in status of the Local or its officers other than the fact that the ATU imposed a trusteeship on Local 1635 on February 18, 2004. Although the Local experienced a rapid decline in membership after the termination of the service contract, this decline does not extinguish the Local's representational role.

Second, DART claims the ATU and the current Trustee of the Local do not support the claim. There is, however, no direct statement from either of these parties on the record. More importantly, there is no evidence that either the ATU or the Trustee has taken any action to remove Lindsay's authority under the September 30, 2003 memorandum or any other action that would prevent the filing of this claim. In view of these circumstances, there is no reason to view the September 30, 2003 memorandum as anything other than a valid delegation of authority from the Local for Mr. Lindsey to file a claim under the September 1992 Addendum.

Finally, when Mr. Lindsey filed the local claim on October 15, 2003, there may have been some question as to his authority to act on behalf of the members of Local 1635. However, in an October 31, 2003 letter addressed to the Senior Assistant General Counsel of DART, Mr. Lindsey clarified his position and included a list of some 400 individuals who he claimed were affected by the termination of the First Transit contract. Mr. Lindsey also announced his intention to file claims on behalf of each of these individuals separately, if DART would not consider them as a unit. The Department concludes that this October 31, 2003 communication, specifically identifying the affected employees, satisfied

the local claims procedures for each of the approximately 400 former employees on the list. These procedures are a prerequisite for filing a claim with the Department under Paragraph (16)(a) of the September 1992 Addendum.

Most recently, Mr. Lindsey, through counsel, presented the Department and DART with more than 370 individual claim authorizations and forms. This was in response to the Department's suggestion that he might be able to represent former employees who provided him with an individual authorization, irrespective of any authority from Local 1635 or its Trustee. These individual claim authorizations and forms represent over 90 percent of the former First Transit employees affected by the termination of the First Transit contract and an overwhelming majority of the membership of Local 1635 as of October 2003. These 370 plus individual claim authorizations and forms reaffirm Mr. Lindsey's authority to represent these employees either collectively or individually.

#### **DECISION**

The Department finds that Mr. Lindsey and the claimants he represents have standing, under the September 1992 Addendum, to come before the Department for a final and binding resolution of claims concerning the October 6, 2003 termination of the First Transit contract for service. Mr. Lindsey represents all the members of the former First Transit-Local 1635 bargaining unit under the September 30, 2003 authorizing memorandum from Local 1635's Vice President and Executive Board Members. Additionally, he represents any other former First Transit employee or affected service area employee who provides him or his representative with a signed authorization for purposes of participating in the resolution of this matter by the final closing of the record for this arbitration. To be considered properly before the Department claimants must have satisfied the DART local claims procedures. All individuals who are either members of the former First Transit-Local 1635 bargaining unit affected by the termination of the First Transit contract or who appear on the list of employees presented to DART with the October 2003 local claim are deemed to have satisfied the local procedures.

This claim is therefore continued and will receive further consideration by the Department upon arguments submitted on the merits. Initial arguments from the claimants must be received by the Department of Labor within sixty days of the date of this decision or the case will be closed. Such arguments should include a discussion of the burden of proof as described in Paragraph (16)(b) of the September 1992 Addendum and should address the determinative issue in this case, *i.e.*, the effect of Federal capital assistance and how this Federal capital

assistance may be related to the termination of the First Transit service contract.

  
Victoria A. Lipnic  
Assistant Secretary of Labor