U.S. Department of Labor

Office of Labor-Management Standards
Washington, D.C. 20210

In the matter of Appeal:

Our Struggle for Survival and Justice Committee (OSSJC) [Appeal of Claim to El Paso SM-10-006(B)]	
v.	DSP Claim 11-13c-03
City of El Paso, Texas – SUN METRO	ISSUED: May 18, 2012

On April 14, 2011, Our Struggle for Survival and Justice Committee (OSSJC), on behalf of Mr. Benito Robles, submitted an appeal pursuant to Title 49 U.S.C. Section 5333(b)(commonly referred to as Section 13(c) of the Federal Transit Act). OSSJC alleged that the City of El Paso-Sun Metro violated the employee protections provided by Section 13(c) of the Federal Transit Act by dismissing Robles as a Sun Metro bus driver. In particular, OSSJC alleged that paragraphs 2, 4 and 15(b) of the February 8, 1980 section 13(c) agreement were violated.[1] OSSJC also alleged that Robles was terminated without due process because the City of El-Paso did not follow the established grievance procedures. As a remedy OSSJC seeks reinstatement of Robles with back pay, restored seniority and related benefits, as well as litigation expenses.

FACTS

According to your submissions, Robles was employed by Sun Metro as a Coach Operator on August 17, 2008, and was separated from his employment with Sun Metro on February 12, 2009 for "failed probationary period."[2] Further,

---

[1] The submission cites the pertinent paragraphs from a February 8, 1980 agreement. Consistently, for several years, the Department of Labor has certified grants to the City of El Paso on the basis of a January 3, 1980 Protective Arrangement. Regardless, the paragraphs you cite are identical in both documents. The Department will refer to the January 3, 1980 Arrangement in the body of the letter.

[2] Document #6, "*Separation and Clearance Form*".

supporting documentation demonstrates that on at least two occasions, Robles sought re-employment with Sun Metro. Inasmuch as these attempts were unsuccessful, OSSJC presented a 13(c) employee protective claim to the City of El Paso's 13(c) Claims Committee. A letter addressed to OSSJC from Jay Banasiak, Sun Metro, dated October 18, 2010, indicated that Claim SM-10-006 regarding the rehire of two former Coach Operators was denied by the Committee on the grounds that the employees were dismissed for cause and not as a result of any project as required by the protective arrangement.[3] According to your submissions, you filed an appeal with the City of El Paso Civil Service Commission (CSC). On January 13, 2011, the CSC met and considered your appeal, but chose to delete the appeal from the agenda.[4]

Discussion

The Department of Labor is responsible for certifying that employee protective arrangements satisfy the requirements of Section 13(c), recodified at 49 U.S.C., 5333(b), and that these arrangements are in place prior to the release of federal assistance to a Recipient such as the City of El Paso, Texas. Among the employee protective requirements are provisions that the Department determines are necessary to protect the interests of employees from impacts that *occur as a result of the project.* [5] Section 5333(b) protections do not preclude discharge for just cause, nor do they generally address standards for, or Departmental review of, decisions regarding the presence of just cause. Such matters normally are addressed in a collective bargaining agreement with the union or through a meet and confer process with the representative organization and the employer. Dismissal for just cause or other disciplinary actions lay outside the scope of Section 13(c) employee protective arrangements.

The City of El Paso's Section 13(c) January 3, 1980 Protective Arrangement provides at paragraph 9(b) that "[a)n employee *shall not be regarded as dismissed*, however, if he is dismissed for cause, or voluntarily resigns or retires." OSSJC submissions on behalf of Robles clearly support that he was dismissed for reasons of poor performance and because he failed his probationary period.[6] In this case, Robles' dismissal pertains exclusively to the performance of his duties as a bus driver and Sun Metro's evaluation of that performance and is not a "dismissal" that occurred as a result of the City of

---

[3] See Documents #5, "*October 18, 2009 letter*". The letter of October 18, 2009 did not specifically name the two former Sun Metro employees being addressed in the letter.
[4] See Document #1, *January 18, 2011 letter*
[5] The Department's procedures and further requirements of the statute can be found at the following website: http://www.dol.gov/olms/regs/compliance/compltransit.htm.
[6] See Documents #11, "*performance evaluation*" and #6, *Ibid.*

El Paso's receipt of federal assistance. As such, his dismissal is not within the scope of the Section 13(c) protective arrangements, and he has no claim for dismissal and displacement rights under the City of El Paso's January 3, 1980 Protective Arrangement.

With regard to your claim that the employee was denied due process, you have not successfully demonstrated that the City of El Paso has failed to follow the established grievance procedures in the January 3, 1980 Protective Arrangement. In addition, you have not evidenced or alleged a violation of OSSJC's procedural rights here, nor otherwise indicated that proper grievance handling was not executed.[7] The January 3, 1980 Protective Arrangement provides only that the established grievance and dispute resolution procedures are preserved and continued. Section 5333(b) does not convey additional rights in this regard.

Accordingly, the City of El Paso Claims Committee followed the dispute resolution procedures pursuant to the January 3, 1980 Protective Arrangement, and rightfully denied the claim for 13(c) employee protection, as not a *"dismissal"* as a result of the project as required by the Protective Arrangement. Likewise, the City's Civil Service Commission was within its rights to delete the appeal from the agenda.

Determination

For the aforementioned reasons, the Department of Labor closes the record in this matter and denies your request for an appeal. The Department finds no violation of Paragraphs 2, 4 and 15(b) of the January 3, 1980 Protective Arrangement, nor is it endowed with the authority under the law to address the merits of this individual grievance.

This decision is final and binding on the parties.

MAY 18, 2012

John Lund, Ph.D.
Director
Office of Labor Management Standards

[7] No valid argument was presented showing that the City of El Paso failed to continue the procedural rights of employees from the time of the initial influx of funding.

Denise Diminuco

Digitally signed by Denise Diminuco
DN: cn=Denise Diminuco, o=OLMS - Div. of Statutory Programs, ou=US Department of Labor, email=Diminuco.Denise@dol.gov, c=US
Date: 2012.05.18 13:54:30 -04'00'