U.S. Department of Labor

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

June 14, 2019

Robert Molofsky, General Counsel
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Re: RESPONSE TO OBJECTIONS TO EMPLOYEE PROTECTION TERMS
FOR PENDING FTA GRANT APPLICATIONS
CA-03-0806-04 and CA-90-Z117
Sacramento Regional Transit District and Caltrans *on behalf of* Monterey-Salinas Transit; and
Alameda-Contra Costa Transit District, CA-2017-017-01 and CA-2019-011;
Golden Gate Bridge, Highway and Transportation District, CA-2019-041;
Los Angeles County Metropolitan Transportation Authority, CA-2018-012-01 and CA-2018-093-01;
Riverside Transit Agency, CA-2019-048;
San Francisco Bay Area Rapid Transit District, CA-2019-029;
San Joaquin Regional Transit District, CA-2019-034;
San Mateo County Transit District, CA-2017-104-01;
Santa Clara Valley Transportation Authority, CA-2018-081-01 and CA-2019-047

Dear Mr. Molofsky:

This is in response to your November 29, 2018 letter, in which Amalgamated Transit Union (ATU) Local 1225 and Local 256 registered certain objections to the Proposed Terms for Employee Protection Certification contained in the Department of Labor's (Department) referral letters of November 16, 2018 for CA-03-0806-04 and CA-90-Z117. This letter also responds to ATU's objections to the other above captioned grant applications. Pursuant to Department Guidelines (29 CFR Part 215), all of the objections were timely received.

With regard to grants CA-03-0806-04 and CA-90-Z117, ATU asserted that the Department's sole rationale for proposing to certify the current grant is to comply with the decisions of the U.S. District Court for the Eastern District of California. *See California v. U.S. Dep't of Labor*, 306 F. Supp. 3d 1180 (E.D. Cal. 2018) (final decision). ATU in turn objected to the Department's proposed certification on the basis that it would be premature and improper to certify the grant in order to comply with the district court's decisions given that an appeal is still pending before the United States Court of Appeals for the Ninth Circuit. ATU noted that while the Department moved to voluntarily dismiss the appeal, ATU moved to intervene for the purpose of taking over the Department's appeal.

After ATU submitted its objection, the Ninth Circuit denied ATU's motion to intervene and dismissed the appeal. ATU's objection regarding the pendency of the appeal is therefore moot. As such, the Department determines in accordance with the Guidelines at 29 C.F.R. § 251.3 that ATU's objection to CA-03-0806-04 and CA-90-Z117 is not sufficient.

Regarding the remaining grants, ATU objects to the Department's proposed certification due to PEPRA's (California Public Employees' Pension Reform Act (PEPRA), Cal. Gov't § 7522 et seq.,) effect on transit employees' collective bargaining rights.

In light of the district court's decisions, the Department has reexamined its earlier determinations denying certification pursuant to section 13(c) of the Urban Mass Transportation Act (UMTA), now codified at 49 U.S.C. § 5333(b) (hereinafter "section 13(c)"), to these grants because of the PEPRA's impact on transit employees. Based on that reexamination, the Department has concluded that PEPRA does not present a bar to certification under section 13(c).

Background and Procedural History

The facts were set out in the Department's previous correspondence issued on September 4, 2013, September 30, 2013, and August 13, 2015. As such, only a brief summary of the relevant facts and subsequent procedural history is provided here.

The Sacramento Regional Transit District (SacRTD) and the California Department of Transportation (Caltrans) on behalf of Monterey-Salinas Public Transit System Joint Powers Agency d/b/a Monterey-Salinas Transit (MST) first submitted the grants at issue to the Federal Transit Administration in 2012. The Federal Transit Administration forwarded the grants to the Department with a request for certification pursuant to section 13(c), which requires that the Department certify that "fair and equitable" arrangements are in place to protect the interests of affected employees before state and local transportation agencies can receive federal mass transit funding assistance. *See* 49 U.S.C. § 5333(b). Those arrangements "shall include provisions that may be necessary for," *inter alia*, "the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise," and "the continuation of collective bargaining rights." 49 U.S.C. § 5333(b)(2)(A), (B).

The Department initially denied certification to SacRTD's application on September 4, 2013 and to MST's application on September 30, 2013, on the basis that PEPRA precluded certification. PEPRA, enacted in 2012, reformed California's public employee pension system and applies to most California public employees, including transit employees affected by these grants. Among other requirements, PEPRA mandates that public employees hired after 2013: contribute at least 50% of the cost of their pension benefits; establish minimum time-in-service requirements; caps the pension benefits they can receive; and prescribes the calculation of their pension benefits at retirement. PEPRA also changes some aspects of pensions for public employees hired before 2013, including ending employees' ability to purchase service credit for non-working time ("airtime"). SacRTD and MST transit employees had collective bargaining agreements in place in 2013 that provided defined benefit pension plans with more employee-favorable terms than

those permitted by PEPRA. The Department determined that PEPRA's unilateral changes to pension benefits without bargaining were inconsistent with section 13(c)(1)'s mandate to preserve pension benefits under existing collective bargaining agreements and section 13(c)(2)'s mandate to ensure continuation of collective bargaining rights.

The transit agencies sought review of the Department's determination in federal district court. In a December 30, 2014 decision, the court held that the Department's determinations were arbitrary and capricious. *California v. U.S. Dep't of Labor*, 76 F. Supp. 3d 1125 (E.D. Cal. 2014). Among the reasons the court provided was that the Department erred in "reflexively" relying on *Amalgamated Transit Union v. Donovan*, 767 F.2d 939 (D.C. Cir. 1985), in light of the factual differences between that case and the circumstances here, which involved "a state's system-wide changes in some aspects of public employment." 76 F. Supp. 3d at 1143. Additionally, the court found that the Department's conclusion that PEPRA prevented collective bargaining over pensions was erroneously premised on an assumption that a pension must necessarily be a defined benefit rather than a defined contribution plan. *Id.* at 1143. The court further stated that the Department was arbitrary and capricious in, *inter alia*, "fail[ing] to consider the realities of public sector bargaining," and in determining that not yet hired employees had rights under collective bargaining agreements. *Id.* at 1144-45. The court remanded the matter to the Department for further proceedings consistent with its decision. *Id.* at 1148.

On August 13, 2015, the Department issued new final determinations denying section 13(c) certifications. The Department explained its interpretation that the lessening or diminution of collective bargaining rights as accomplished by PEPRA violates section 13(c), drawing support from the statute's text, legislative history, and case law establishing that the commonly understood meaning of collective bargaining precludes unilateral changes to mandatory subjects of collective bargaining. The Department also explained its disagreement that the factors and issues identified by the court supported certification of the grants. The transit agencies challenged the new final determinations, and the district court ruled that they were arbitrary and capricious. *California v. U.S. Dep't of Labor*, 306 F. Supp. 3d 1180 (E.D. Cal. 2018) (hereinafter 2018 Decision); *California v. U.S. Dep't of Labor*, No. 2:13-CV-02069-KJM-DB, 2016 WL 4441221 (E.D. Cal. Aug. 22, 2016) (hereinafter 2016 Decision). The court found that the statutory text and legislative history of section 13(c) were ambiguous as to whether section 13(c)(2)'s provision requiring "the continuation of collective bargaining rights" protected those rights from a diminishing or lessening that fell short of elimination. 2016 Decision, 2016 WL 4441221, at *9-12, 15-17. The court noted, however, that the history of the statute suggested that the provision was "motivated primarily by larger-scale restrictions on collective bargaining rights." *Id.* at *17. The court also determined the Department erred in relying on case law establishing that even minimal unilateral changes by an employer could violate the statute because Congress' intent was not to apply all National Labor Relations Act (NLRA) law to states through the UMTA. *Id.* at *19-20. The court determined that PEPRA was a permissible state law "backdrop" for collective bargaining because it did not substantially interfere with federal labor policy. *Id.* at *21-26. The court also determined the Department erred in failing to explain why the transit authority's ability to negotiate for other types of benefits did not make up for any change made by PEPRA. *Id.* at *27-28.

The district court also ruled that the Department had been arbitrary or capricious in concluding that there were not adequate arrangements in place to preserve the pension rights of MST employees hired before 2013 ("classic employees"). 2018 Decision, 306 F. Supp. 3d 1180. The court reasoned that section 13(c)(1)'s obligation to preserve rights and benefits was intended "to prohibit only those changes that harm or diminish bargained-for rights" in a manner that is not trivial. *Id.* at 1186-87. The court determined that PEPRA's change to classic employees' airtime rights "was not sufficiently meaningful to trigger § 13(c)(1)." *Id.* at 1189. The court enjoined the Department from relying on PEPRA to deny California's application of funding for MST or SacRTD under section 13(c)(1) or (2). *Id.* at 1190. The Department initially appealed the court's decisions, but on November 5, 2018, moved voluntarily to dismiss the appeal. On December 19, 2018, the Ninth Circuit denied ATU's motion to intervene and dismissed the appeal.

Pursuant to its Procedural Guidelines, 29 C.F.R. § 215, the Department refers grant applications and proposed protective arrangements and terms and conditions to: the recipient and any subrecipient of the funding, and any unions representing employees of the recipient(s), its contractors, and/or other service area providers. Following these guidelines, on November 16, 2018, the Department re-referred the grant applications at issue in the litigation on the basis of the previously certified protective arrangements.

Once a grant application is referred to the parties, the parties have fifteen days to inform the Department of any objection to the recommended terms. For the Department to find an objection sufficient, it must "raise" material issues that "may require alternative employee protections," or "concern changes in legal or factual circumstances that may materially affect the rights or interests of employees." 29 C.F.R. § 215.3(d)(3). If no party objects or the Department does not find the objection sufficient, the Department certifies the proposed terms. The Department then provides FTA with a certification specifying the protective arrangements and terms and conditions to be made applicable to the federal assistance. 29 C.F.R. § 215.3(d)(5). After reviewing the above listed objections, the Department concludes that no sufficient objections have been raised.

Analysis

Analysis of sections 13(c)(1) and (2)

After the district court's decisions, the Department independently reexamined the scope of its authority under section 13(c) and the best way to provide fair and equitable employee protective arrangements. The Department now concludes that Section 13(c) grants the Secretary broad discretion in determining whether there are adequate "employee protective arrangements." 49 U.S.C. § 5333(b). The protective arrangements required as a condition of financial assistance are those that "the Secretary concludes are fair and equitable." *Id.* (emphasis added). The plain terms of the statute make clear the deference to be afforded to the Secretary's judgment of what provisions are fair between an employer and employees. *See Kendler v. Wirtz*, 388 F.2d 381, 384 (3d Cir. 1968) ("It is for the reasonable accommodation of unavoidably conflicting interests . . . that the Congress has seen fit to make the judgment of the Secretary of Labor as to what is fair and equitable controlling."); *cf. City of Los Angeles v. U.S. Dep't of Commerce*, 307 F.3d 859,

870-71 (9th Cir. 2002) (holding that statute providing that the Secretary of Commerce "shall, if he considers it feasible," use statistical sampling, vests "meaningful discretion" on the Secretary to set a standard for feasibility and to determine whether the standard has been met); *Connecticut Dep't of Children & Youth Servs. v. Department of Health & Human Servs.*, 9 F.3d 981, 985-86 (D.C. Cir. 1993) (statute requiring that specified procedures and programs must be implemented to the "satisfaction of the Secretary" constituted an "extraordinary grant of discretion" to the Secretary, subject to reversal only for an "egregious claim"); *Marshall County Health Care Auth. v. Shalala*, 988 F.2d 1221, 1224-25 (D.C. Cir. 1993) (statute empowering Secretary to provide "such other exceptions and adjustments * * * as the Secretary deems appropriate" grants "broad delegation of discretion" subject to "quite narrow" judicial review).

The statutes provides that the Secretary must conclude that each of the five[1] different varieties of protective provisions that must be included among the § 13(c) arrangements are fair and equitable. But the Secretary still retains broad discretion in evaluating fairness and equity vis-à-vis each of the five objectives. *Kendler v. Wirtz*, 388 F.2d 381, 383 (3d Cir. 1968). Section 13(c) directs that the "[a]rrangements . . . shall include provisions that <u>may be necessary</u>" to meet these five objectives. 49 U.S.C. § 5333(b)(2) (emphasis added). The use of the permissive term "<u>may be necessary</u>" underscores the breadth of the Secretary's discretion under section 13(c) to determine what provisions are needed to satisfy the five requirements. *See Amalgamated Transit Union Int'l, AFL-CIO v. Donovan*, 767 F.2d 939, 944 n.7 (D.C. Cir. 1985) (differentiating requirement that the Secretary determine all five objectives are satisfied prior to certification from Secretary's discretion to determine "whether or not a specific provision within a labor agreement satisfies one of section 13(c)'s express objectives").

In this case, the Secretary must determine whether arrangements satisfy section 13(c)'s objectives of "preservation of . . . benefits . . . under existing collective bargaining agreements" and "continuation of collective bargaining rights." 49 U.S.C. § 5333(b)(2)(A)&(B). As the district court correctly recognized, the terms "continuation" and "preservation" could be construed strictly to mean that no changes can be made to employees' collective bargaining rights, or more leniently to mean that the rights must only be substantially continued or preserved. *See* 2016 Decision, 2016 WL 4441221, at *10-12; *see also Random House Webster's Unabridged Dictionary* 440 (2d ed. 2001) ("continuation" means "something that continues some preceding thing by being of the same kind or having a similar content"). The statutory text permits either interpretation.

Although courts and the Department have looked to the legislative history of section 13(c), that history does not fully resolve the ambiguity in the meaning of "continuation" and "preservation." As the Department explained in its earlier determinations, Senator Wayne Morse, section 13(c)'s sponsor, indicated that the provision was designed to avoid a "lessening" or "worsening" of rights, suggesting Congress could have been concerned about any diminishment of rights. *See* 109 Cong. Rec. 5671-72 (1963). Senator Morse's reference to "lessening" or "worsening" may be considered in context as opposition to a committee bill's mere encouragement of the continuation of collective bargaining rights, however. In that context, he could have been using

[1] As previously codified, section 13(c) enumerated five subsections. *See* 49 U.S.C. § 1609(c) (1988). In 1994, the text of the statute as codified was revised to separate the fourth assurance into two separate lettered paragraphs, which is how it remains today. *See* 49 U.S.C. § 5333(b)(2)(d) and (e) (1994).

the terms at a high level of generality to oppose the "lessening" or "worsening" that would result if states were only encouraged to continue collective bargaining rights, *i.e.*, a system in which collective bargaining rights would not be entirely eliminated but preserved only partially and to varying degrees in different states. The legislative history does not show that legislators had a settled conception that any lessening in rights in a particular collective bargaining relationship, no matter how minor, would necessarily fail to preserve rights under an existing collective bargaining agreement or discontinue the right to bargain collectively.

The purpose and context of the statute, however, do suggest that an appropriate interpretation is that the statute does not preclude certification in all circumstances where there may be diminishments in collective bargaining rights and benefits. Section 13(c)'s purpose was to allow the Secretary to accommodate states' unique circumstances while ensuring fairness and equity and the "legislative history stress[es] the need for flexibility and discretion." *Local Div. 589, Amalgamated Transit Union, AFL-CIO, CLC v. Mass.*, 666 F.2d 618, 634 (1st Cir. 1981). It would be contrary to this flexible design to conclude that any change in state law over the years that affects bargaining rights or benefits of its public sector employees means the Secretary would lose any discretion in determining whether the requirements of the statute are met.

It is also revealing that section 13(c)'s purpose was not to "subject local government employers to the precise strictures of the NLRA." *Donovan*, 767 F.2d at 949; *see also Jackson*, 457 U.S. at 28 ("Congress designed § 13(c) . . . to accommodate state law to collective bargaining, not as a means to substitute a federal law of collective bargaining for state labor law."). During debate, Senator Morse assured Senator Goldwater that section 13(c) did not disturb the NLRA's exemption of state and local governments from its requirements. *See* 109 Cong. Rec. 5674 (1963). Senator Morse also clarified that workers would not retain the right to strike after becoming employed by a state that forbade strikes by public employees. *See id.* at 5672. Despite the loss of this economic weapon, Congress did not explicitly require workers be given some other right to compensate for the loss. *See Donovan*, 767 F.2d at 953-55. In fact, the *Donovan* court suggested that it may be proper under 13(c) to allow wage disputes, which are universally acknowledged to lie at the heart of collective bargaining, *id*. at 950-51, to be resolved through "good faith" collective bargaining supported, if necessary, by non-binding mandatory, meaningful fact-finding. This indicates that Congress did not intend that the Department apply with rigidity the requirements of the NLRA when interpreting section 13(c) requirements and recognized that the transition from private workers protected by the NLRA to public employees exempt from it would necessarily entail a loss of some collective bargaining rights, including the right to bargain over a no-strike clause. Consequently, it is reasonable not to apply with rigidity to section 13(c) arrangements the rule that private employers may violate the NLRA by making "[e]ven minimal unilateral changes to terms and conditions of employment." *See* 2016 Decision, 2016 WL 4441221, at *19. Rather, section 13(c)'s purpose and context suggest that not all changes to bargaining rights and benefits accomplished through state law preclude certification.

This more lenient interpretation of the meaning of "continuation" and "preservation" provisions in section 13(c) is not inconsistent with the relevant case law. It follows the California district court's decisions. *See* 2018 Decision, 306 F. Supp. 3d at 1187 (explaining section 13(c) protects affected employees against "meaningful negative changes to rights and benefits conferred by their then-existing collective-bargaining agreements"). It also does not conflict with the D.C.

Circuit's opinion in *Donovan*. The D.C. Circuit explained Senator Morse's reference to "[m]aintaining the status quo" as usually meaning "*substantially* preserving collective bargaining rights that had been established by federal labor policy." *Donovan*, 767 F.2d at 948 (emphasis added). The D.C. Circuit therefore recognized that section 13(c) did not require the absolute preservation of all collective bargaining rights.

This interpretation is also consistent with case law recognizing that the Department's role is to ensure the arrangements are fair and equitable as opposed to ensuring the perpetuity of certain benefits or rights. Under section 13(c), the Department must certify as of the time of a pending grant application that the "protective arrangements" are "fair and equitable" under the five objectives, and, if the state were to change its law "'contrary to the policy of 13(c)'" and "'halt the flow of funds or take other appropriate action.'" *Donovan*, 767 F.2d at 948 n.9 (quoting *Local Div. 589*, 666 F.2d at 634). Only a change that is "basically unfair or inequitable" would be problematic since "Congress's general intent to secure fair arrangements does not require the implementation of any *particular* set of detailed provisions." *Local Div. 589*, 666 F.2d at 634 (emphasis added). These courts recognized that Congress granted the Department discretion to determine whether the agreement is fair and equitable, but section 13(c) does not require the Department to go beyond that role.

Application of section 13(c) in this case

The discussion above shows that section 13(c) does not compel the results the Department reached in 2013 and 2015. Instead, it shows that key statutory terms can be interpreted in different ways and that the Secretary has broad discretion to determine which fair and equitable arrangements may be necessary for "preservation of . . . benefits . . . under existing collective bargaining agreements" and "continuation of collective bargaining rights." 49 U.S.C. § 5333(b)(2)(A)&(B). As explained below, there are several reasons why the Department now determines that such arrangements exist despite PEPRA's impact on affected employees.

While PEPRA does make significant reforms to California's public employee pension system, the reforms do not substantially affect transit employees' benefits under existing collective bargaining agreements. PEPRA addresses only one substantive term of employment (pensions). PEPRA imposes few, if any, restrictions on other subjects of collective bargaining. Moreover, PEPRA does not preclude bargaining over pensions altogether, but rather caps defined benefit plans and their eligibility criteria prospectively while allowing bargaining over defined contribution plans. As attorneys representing California noted, "PEPRA does not stand as an obstacle to substantive bargaining over participation in, and contributions to, defined contribution qualified retirement plans such as a 401(k) or 457(b) plan, or other forms of deferred compensation as the parties may bargain." AR 001323. "In fact, nothing in PEPRA prohibits the negotiation of an actuarially equivalent retirement benefit to that which may have been allowable through a defined benefit pension prior to PEPRA." *Id.* Additionally, since some of PEPRA's changes to defined benefit plans only go into effect after the expiration of a collective bargaining agreement in effect on January 1, 2013, *see* Cal. Gov. Code § 7522.30(f), the law allowed time and opportunity for such negotiations. Therefore, the Department concludes that, despite PEPRA, the section 13(c) arrangements meet section 13(c)(2)'s standard

of "preservation of . . . benefits . . . under existing collective bargaining agreements." 49 U.S.C. § 5333(b)(2)(A).

PEPRA also does not impermissibly impair collective bargaining rights in violation of section 13(c)(2)'s standard of "continuation of collective bargaining rights." PEPRA does not interfere with the collective bargaining process. It leaves agencies and employees "free to negotiate around [PEPRA's] effects and within [its] restrictions." *See* 2016 Decision, 2016 WL 4441221, at *25. In fact, as the court noted, transit agencies and employees "have continued collective bargaining over other complementary pension strategies in the wake of PEPRA's enactment." *Id.* Such a determination is consistent with Congress' implicit acknowledgement that collective bargaining rights remain even if state law takes away an employee right without replacing it with an equivalent benefit. *See Donovan*, 767 F.2d at 953-55 (explaining that Congress recognized transition from private to public would result in the loss of the right to strike, but did not necessarily require employees be provided with some equivalent economic weapon).

Moreover, the Department concludes that the section 13(c) arrangements are "fair and equitable" despite PEPRA's requirements. As the court noted, even the NLRA "allows private employers to follow the dictates of economic necessity, so long as they bargain over the effects of management's decisions." 2016 Decision, 2016 WL 4441221, at *25. Section 13(c) therefore allows California some latitude to address a problem of economic necessity concerning its budget, especially given that the legislative history indicates that Congress did not intend the provision to result in a strict application of NLRA precedent and intended more flexible dealings with states. *See id.* at *24; *see also Local Div. 589*, 666 F.2d at 639 (explaining "[t]he state's 'paramount authority . . . extends to economic needs as well,'" and "the importance of allowing states to legislate freely on social and economic matters of importance to their citizens, modifying the law to meet changing needs and conditions" (quoting *Veix v. Sixth Ward Ass'n*, 310 U.S. 32, 39 (1940)).

In this instance, PEPRA was not aimed at undermining this collective bargaining system but at alleviating the state's serious financial problem of pension funding. The Department considers both PEPRA's unique purpose and its limited effect in deciding to certify the grants at issue. Since PEPRA's effect is limited to one area of collective bargaining, and that area remains open for bargaining over significant aspects of pensions, PEPRA does not prevent the parties from meeting their statutory minimum and the employee protective arrangements appear fair and equitable. Thus, the Department determines that PEPRA does not preclude certification of the grants at issue.

The Department recognizes the ATU's desire to defend the Department's 2013 and 2015 determinations not to certify the grants at issue based on PEPRA. The Department does not consider that position a sufficient reason to deny certification. Since the 2013 and 2015 determinations, the Department has changed its position in a number of ways. First, as the district court concluded, the Department previously improperly treated *Donovan* as controlling even though the law at issue in *Donovan* was materially different from PEPRA. The law in *Donovan* applied to one transit authority, was aimed at collective bargaining, and removed five subjects from the collective bargaining process. *Donovan*, 767 F.2d at 942-43. In contrast, PEPRA is a state-wide law applicable to public employees generally and is not directed to the

process of collective bargaining but rather addresses the substantive terms of employment in one respect (pensions), an area where states traditionally have latitude, and, as discussed above, it does not preclude bargaining over pensions altogether. In light of the district court's decision, and on reexamination of *Donovan*, the Department concludes that its earlier determinations should not have treated *Donovan* as controlling.

Second, the Department's earlier determinations gave insufficient consideration to terms in section 13(c), discussed above, that give discretion to the Department to interpret section 13(c)'s requirements. Third, the earlier determinations adopted definitions of statutory terms such as "continuation" and "preservation" that were not compelled by the statutory language or legislative history. As explained above and in the district court's decisions, section 13(c) grants the Secretary broad discretion to determine whether arrangements continue bargaining rights and preserve benefits even if a state law has made certain changes impacting collective bargaining rights and benefits of transit employees. *See* 2016 Decision, 2016 WL 4441221, at *20; 2018 Decision, 306 F. Supp. 3d at 1187. Fourth, the 2015 determination focused on NLRA precedents concerning the duty to bargain and preemption without sufficient consideration of UMTA's purpose and context, which indicate that the Department should not apply section 13(c) in a manner that reflexively incorporates NLRA precedent to a public sector setting.

Finally, the Department's earlier determinations gave too little weight to what the district court termed the realities of public sector collective bargaining. The district court's decisions and the statutory purpose and context of section 13(c) indicate that Congress intended the Department to exercise flexibility when accommodating state's public sector collective bargaining. The provisional purpose of Congress in enacting section 13(c) – to cushion the impact on transit employees of a change from private to public sector employment – is relevant in interpreting the scope of section 13(c)'s protections. The Department considered that purpose in more carefully examining the changes made by PEPRA to determine if there is still a sufficient continuation of rights and preservation of benefits. The Department determines that PEPRA's effects are sufficiently limited in scope and purpose so as to allow the Department to conclude the arrangements continue to exist that meet section 13(c)'s requirements for the continuation of collective bargaining rights and the preservation of rights, including continuation of pension rights and benefits under existing collective bargaining agreements.

Sincerely,

[redacted]

Arthur F. Rosenfeld, Director
Office of Labor-Management Standards

cc: See certifications