U.S. Department of Labor

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

April 13, 2023

Andres Vite
232 Lone Star Pl.
El Paso, TX 79907
[redacted]

Ramona Frazier, Assistant City Attorney
City of El Paso
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By Electronic Mail Only

Re: Andres Vite v. City of El Paso, Texas, Sun Metro (City)
DSP Case No. 21-13c-01

Dear Mr. Vite and Ms. Frazier:

The above captioned claim was docketed by the Department of Labor (Department) on February 24, 2021. The parties to this claim both complied with our request for written statements of their respective positions and the Department closed the record on June 16, 2021. This is to inform you that, for the reasons set out below, the Department has dismissed the claim without prejudice, for lack of jurisdiction and that the merits of this claim should be addressed through the claims procedures specified at Paragraph 15 of the Unified Protective Arrangement (UPA) for the final and binding resolution.

As condition for receipt of certain Federal Transit Authority (FTA) funds, the City of El Paso (City) is required to have in place protections required by 29 U.S.C. § 5333(b) and certified by the Department as satisfying the statute for all transit employees of the recipient and any other employees who may be impacted by a project. Term and condition number 5 in the Department's certifications provides:

> Employees of mass transportation providers in the service area of the project who are not represented by a union designated above shall be afforded substantially the same levels of protections as are afforded to the employees represented by the union(s) under the above referenced protective arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.
>
> Should a dispute remain after exhausting any available remedies under the protective arrangements and absent mutual agreement to utilize another final

> and binding resolution procedure, any party to the dispute may submit the controversy to final and binding arbitration. With respect to a dispute involving a union not designated above, if a component of its parent union is already subject to a protective arrangement, the arbitration procedures of that arrangement will be applicable. If no component of its parent union is subject to the arrangements, the Recipient or the union may request the American Arbitration Association to furnish an arbitrator and administer a final and binding resolution of the dispute under its Labor Arbitration Rules. If the employees are not represented by a union for purposes of collective bargaining, the Recipient or employee(s) may request the Secretary of Labor to designate a neutral third party or appoint a staff member to arbitrate and render a final and binding determination of the dispute.

From 1980 through 2012, the Department issued all certifications on the basis of the January 3, 1980 Arrangement for employees represented by the Amalgamated Transit Union (ATU) and upon condition that any employees not represented by the aforementioned union would be afforded substantially the same protections. In August 2011, American Federation of State, County and Municipal Employees (AFSCME) filed a claim (11-13c-01A and B) with the Department pursuant to the certifications the Department had issued up to that date. The Department therefore resolved the claim pursuant to item 5, providing AFSCME with substantially the same protections as the January 3, 1980 ATU Arrangement.

The Department first became aware of the AFSCME's representation of other City transit employees through AFSCME's filing of the 2011 claim. Thereafter, pursuant to Department guidelines at 29 CFR 215.3(b)(2), beginning April 9, 2012 for project TX-95-X028 (while the claim action was ongoing) to the present, the Department certifications for the City specify that the UPA is applicable to employees represented by AFSCME. Therefore, the Department relies on the UPA to resolve the present claim.

Andres Vite (Vite) asserts that he is not represented by a union, that he is entitled to the substantive and procedural protections of the January 3, 1980 protective arrangement and that certain changes in his working conditions were prohibited by the arrangement. The parties exhausted the available claims resolution procedures; the City's attorney denied the claim, and the El Paso Civil Service Commission declined to act on the claim. The January 3, 1980 arrangement provides that unresolved claims may be brought forth by either party to the Department for a final and binding determination and Vite sought review by the Department pursuant to the terms of that arrangement.

We dismiss this case because Vite is incorrect in asserting that he is entitled to the protections of the January 3, 1980 arrangement. Vite is a mechanic and while he may not be a "member" of AFSCME, mechanics are among the class of employees who are represented by AFSCME. The City, AFSCME, and the employees AFSCME represents are subject to the UPA. Accordingly, the dispute procedures of the UPA apply to claims pursued by all mechanics, including Vite.

Under the UPA, claims disputes are not resolved by the Secretary of Labor. Rather, Paragraph 15 of the UPA provides:

(15) Any dispute, claim, or grievance arising from or relating to the interpretation, application or enforcement of the provisions of this arrangement, not otherwise governed by paragraph 12(c) of this arrangement, the Labor-Management Relations Act, as amended, the Railway Labor Act, as amended, or by impasse resolution provisions in a collective bargaining or protective arrangement involving the Recipient(s) and the Union(s), which cannot be settled by the parties thereto within thirty (30) days after the dispute or controversy arises, may be submitted at the written request of the Recipient(s) or the Union(s) in accordance with a final and binding resolution procedure mutually acceptable to the parties. Failing agreement within ten (10) days on the selection of such a procedure, any party to the dispute may request the American Arbitration Association to furnish an arbitrator and administer a final and binding arbitration under its Labor Arbitration Rules. The parties further agree to accept the arbitrator's award as final and binding.

In executing its contract for assistance with the FTA, the City accepted the terms and conditions of the UPA, including this claims resolution procedure. Accordingly, since Vite is among the class of employees represented by AFSCME, Vite's claim requires resolution under the terms of Paragraph 15 of the UPA, and not as he alleges, under the terms of the January 3, 1980 arrangement.

Vite may bring his claim to the attention of AFSCME, the union representing mechanics, and AFSCME may proceed with the claim under paragraph 15 of the UPA as it deems appropriate. For purposes of assessing the timeliness of any filing under Paragraph 15 of the UPA, the parties shall treat the time during which the claim has been pending with the Department to have been tolled.

Sincerely,

[redacted]

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