



April 13, 2023

David Guzman, Field Representative
AFSCME Local 59
1155 Westmoreland suite 113
[REDACTED]

Ramona Frazier, Assistant City Attorney
City of El Paso
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El Paso, Texas 79901
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By Electronic Mail Only

Re: American Federation of State, County and Municipal Employees, Local 59 (AFSCME) v.
City of El Paso, Texas, Sun Metro (City)
DSP Case No. 21-13c-03

Dear Mr. Guzman and Ms. Frazier:

The above captioned claim was docketed by the Department of Labor (Department) on May 14, 2021. The parties to this claim both complied with our request for written statements of their respective positions in this matter and the Department closed the record on August 17, 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.

The American Federation of State, County and Municipal Employees' (AFSCME) initial claim and supporting documents do not specify the date of protective arrangements on which it relies, but AFSCME asserts that the City of El Paso (City) took actions in contravention with a "13(c) Agreement" at paragraph (2). AFSCME also relies upon paragraph 15(b) of the same agreement to demonstrate that the parties have exhausted the claims procedures at the local level and that the claim was ripe for a final and binding resolution of the matter by the Department. The Department's review of these paragraphs reveals that AFSCME intended to rely upon a January 3, 1980 El Paso protective arrangement. The record further shows that in its June 9, 2021 initial response to the claim, the City also assumed that it was the January 3, 1980 protective arrangement on which AFSCME relied as the basis for resolution of its claim.

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. OLMS records reflect that as of April 9, 2012, in

connection with grant TX-95-X028, the Department certifications references two arrangements applicable to the City for protection of its employees. The first is the January 3, 1980 arrangement for employees represented by the Amalgamated Transit Union (ATU). The second is the UPA which, in accordance with department guidelines at [29 CFR 215.3\(b\)\(2\)](#), has been made applicable to employees represented by AFSCME.

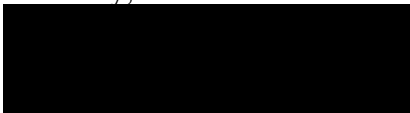
Paragraph (15) of the UPA provides:

(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 Federal Transit Administration (FTA), the City accepts the terms and conditions of the UPA, including the resolution of claims dispute through private arbitration, not – as in the January 3, 1980 arrangement – by the Secretary of Labor. Even if the parties contend, or agree to submit claims to the Department, there is no contemplated jurisdiction in the Department for adjudicating claims under the UPA.

AFSCME is directed, if it wishes, to proceed with its claim under paragraph 15 of the UPA. 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,



Jeffrey Freund, Director
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