

U.S. Department of Labor

Assistant Secretary  
for the American Workplace  
Washington, D.C. 20210



November 7, 1994

Mr. Louis F. Mraz  
Regional Manager  
Federal Transit Administration  
Region VIII  
Federal Office Building  
1961 Stout Street  
Room 520  
Denver, Colorado 80294

RE: FTA Application  
Regional Transportation  
Commission of Clark County,  
(Las Vegas) Nevada  
Operating Assistance: FY 1994  
Capital Assistance: 15 ADA 40'  
Buses; 54 ADA Vans; 5  
Articulated ADA Buses;  
Fareboxes; Radios; Support  
Vehicles  
(NV-90-X021)

Dear Mr. Mraz:

This is in reference to the letter of certification dated September 21, 1994 concerning the above captioned matter. That letter contained the Department of Labor's determination that the Regional Transportation Commission (RTC) of Clark County had not acquired the Las Vegas Transit System (LVTS) and, therefore, that certain terms and conditions proposed by the Amalgamated Transit Union (ATU) were not necessary to assure a fair and equitable employee protective arrangement as required by Section 13(c) of the Federal Transit Act.

To avoid a misunderstanding with regard to the intended breadth of this certification, it should be made clear that, as has always been the case, the Department's determinations in matters under Section 13(c) turn on the specific facts in each case. The certification letter was intended to address the unique facts and the arguments raised by the parties regarding the then-pending RTC application and was not intended to be construed as determinative with respect to other situations.

By letter dated September 28, 1994, within one week after the certification had issued, the ATU requested reconsideration of

the certification based on concerns regarding its intended scope and meaning. The Department, on October 7, granted the request, indicating that the reconsideration would be based on the existing record. Accordingly, this reconsideration has been based exclusively on the record that was the basis of the initial certification. Although neither the statute nor regulations address the issue of reconsideration, the Department exercised its inherent authority because these concerns raised issues of fact and law which, if correct and challenged in court, might have resulted in a finding that the certification was erroneous. See, e.g., Albertson v. FCC, 182 F.2d 397 (D.C. Cir. 1950).

After reconsideration, the Department affirms its finding that there was no acquisition in this matter that would give rise to assurances of employment due under Section 13(c)(4) of the Act. LVTS continued to operate after the initiation of the Citizens Area Transit (CAT) system in 1992. Although the RTC and LVTS eventually entered into a settlement agreement pursuant to which the LVTS ceased to compete with RTC-provided service, the terms of that settlement agreement did not provide sufficient bases for finding the acquisition of a "mass transportation system[]" contemplated by the statute. Generally, one competitor's agreement not to compete for a period of years is not an acquisition or successorship. There was no transfer of assets, and the RTC did not continue LVTS' business operations. The RTC obtained no routes or licenses, no pension liabilities and no control over LVTS employees or their working conditions. Moreover, the RTC-LVTS settlement did not result in the RTC stepping into the shoes of the LVTS; rather, the settlement merely resolved certain claims between the two competitors. LVTS remained a separate entity able to bid on providing future mass transportation services to the RTC. Further, although not necessarily dispositive, the agreement itself expressly stated that the parties did not intend the transaction to be an acquisition.

With respect to job rights, the original determination states that subsections 13(c)(1) and (2) "are not, in and of themselves, sufficient to ensure a right to jobs." The statement that "no exclusive job right or preference is derived solely from (c)(1) and (2) absent protections afforded by Section 13(c)(4) under an acquisition" (emphasis added) reiterates this interpretation. This language was developed in the context of this case where first, an issue was raised as to whether an acquisition had occurred which would give rise to the statutory rights under subsection (c)(4), and second, where the argument was made that subsections (c)(1) and (2), apparently standing alone, could provide the assurances of employment set forth in subsection (c)(4). Accordingly, the RTC certification, focusing on the operation of the statute in this context in a case where no acquisition was found, reflects the Department's determination

that subsections (c)(1) and (2) do not automatically create a right to a job.

The original certification, in responding to arguments raised by the ATU, did not provide a full statement of the Department's interpretation of subsections (c)(1) and (2). However, in developing its analysis, the Department recognized that these subsections can provide the bases for providing assurances of employment under the language of subsection 13(c)(1), which requires preservation of rights, privileges and benefits "under existing collective bargaining agreements or otherwise." (Emphasis added.) Examples of where assurances may be mandated would include not only cases where other laws or personnel manuals may provide that right to a job but also where "assurances of employment" are due pursuant to collective bargaining agreements or protective agreements or arrangements or past practice.

The role of the Secretary in this matter was to resolve the issues remaining in dispute between the parties negotiating protective arrangements under Section 13(c). The process is not an adjudication; and, therefore, treating these determinations as binding, precedent-setting decisions does not accurately reflect the nature of the process. As stated above, the resolution of these disputes is confined to the particular circumstances of each project under review.

Finally, this certification was not intended to limit or alter prior Departmental, fact-specific determinations in this area. Any interpretation that would lead to a contrary conclusion either misinterprets this or the earlier determinations.

Sincerely,



Charles L. Smith  
Special Assistant

cc: Donald Durkee/FTA  
Earle Putnam/ATU  
John Sweeney/SEIU  
Ron Carey/IBT  
Dennis Kist/Kist & Associates  
Kurt Weinrich/RTC  
G. Kent Woodman/Eckert Seamans Cherin & Mellott