

In the Matter of Arbitration:

Jaime A. Arellano, Jr., President Our
Struggle for Survival and Justice
Committee,

Claimant,

v.

City of El Paso – Sun Metro,

Respondent.

DSP Case No. 11-13c-04

Issued: April 29, 2014

FINAL DECISION

The Federal Transit Act (the Act) requires as a condition of federal financial assistance that the interests of employees affected by the assistance be protected under arrangements the Secretary of Labor certifies are fair and equitable, 49 U.S.C. § 5333(b)(1). The Act specifically provides:

- Arrangements . . . shall include provisions that may be necessary for –
- (A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;
 - (B) the continuation of collective bargaining rights;
 - (C) the protection of individual employees against a worsening of their positions related to employment;
 - (D) assurances of employment to employees of acquired public transportation systems;
 - (E) assurances of priority of reemployment of employees whose employment is ended or who are laid off; and
 - (F) paid training or retraining programs.

49 U.S.C. § 5333(b)(2). These protective arrangements are often referred to as section “13(c)” arrangements or agreements because the requirement for such arrangements originated in section 13(c) of the Urban Mass Transportation Act of 1964, 78 Stat. 307, as amended, 49 U.S.C. § 1609(c).

All protective arrangements include a procedure for final and binding resolution of disputes over the interpretation, application, and enforcement of the terms and conditions of the arrangement. This procedure, referred to as a “claim for employee protections,” may be utilized when an individual employee, a group of employees, or representative of a bargaining unit believes he or they have been negatively affected as the result of federal assistance. Only a representative of a bargaining unit may file a claim for a violation of continuation of collective bargaining rights under 49 U.S.C. §

5333(b)(2)(B). The outcome of the final and binding determination pursuant to a protective arrangement is enforceable in state court as a matter of contract law. *Jackson Transit Authority v. Local Division 1285, Amalgamated Transit Union*, 457 U.S. 15 (1982).

In this case, as described below, paragraph 15(b) of the parties' protective arrangement provides for final and binding arbitration of claims by the Department of Labor (Department).

ORIGIN OF THE CLAIM

These claims arise under the terms and conditions of the January 3, 1980 protective arrangements (the Arrangement) executed by the City of El Paso (City) to protect the interests of employees in the service area of the City's Sun Metro mass transit system (Sun Metro). The Arrangement has been certified by the Department as fair and equitable to protect the interests of employees and sufficient to meet the requirements of the Act, and has been made applicable to federal assistance provided to the City since its adoption.

Jaime A. Arellano, Jr., President of Our Struggle for Survival and Justice Committee (collectively referred to as "OSSJC"), brought this claim on behalf of himself and other retirees of Sun Metro. OSSJC and the City made attempts to resolve these claims pursuant to the local procedures provided in paragraphs 15(a) and (b) of the Arrangement for resolving disputes over the interpretation, application and enforcement of the Arrangement. The City's Civil Service Commission denied the claim on March 10, 2011. Pursuant to paragraph 15(b) of the Arrangement, OSSJC appeals the denial to the Department to make a final and binding determination.

POSITION OF OSSJC

OSSJC alleges that the City violated paragraph 2 of the Arrangement by failing to provide retirees with cost of living adjustments (COLAs) and free life insurance on the same basis as raises and life insurance are provided to employees.

The Arrangement, paragraph 2, states:

2. All rights, privileges, and benefits (including pension rights and benefits) of employees (including employees already retired) shall be preserved and continued, provided that any such rights, benefits and privileges may be improved, changed, or added to so long as there is no denial of accrued rights.

OSSJC claims Sun Metro workers received eight pay increases between 2000 and 2010 while Sun Metro retirees only received two COLAs. OSSJC also claims that Sun Metro employees receive life insurance policies of \$50,000.00 for free. OSSJC further contends that retirees who work for other transit agencies in Texas receive some level of life insurance coverage while Sun Metro retirees do not receive any. OSSJC claims that the disparity in treatment is unlawful discrimination in violation of the Act and the Arrangement.

POSITION OF THE CITY

The City argues that that OSSJC has “failed to identify any specific grants or projects which resulted in the removal or lessening of retiree benefits, rights or privileges.” *City’s Amended Initial Response*, p. 2. The City also asserts that OSSJC failed to show a causal nexus between the alleged harm and any Federal assistance received by the City. With regard to the specific claims, the City states that the City’s pension fund is governed by a pension board and that all COLAs are “ad hoc,” not regular or scheduled, and that COLA increases are not a guaranteed or vested right. Regarding the life insurance claim, the City asserts that OSSJC has failed to provide any authority showing that free life insurance is a vested or protected right. The City states that free life insurance ceases with employment, but retirees have the option of continuing their life insurance coverage at their own expense by dealing directly with the life insurance company.

DISCUSSION

A. The Preservation of Rights, Privileges, and Benefits

Contrary to the City’s assertions, claims regarding the preservation of rights, privileges, and benefits do not need to establish a causal nexus with a project. See *Amalgamated Transit Union, Local 691 v. City Utilities of Springfield, Missouri*, OSP Case No. 91-13c-18 (June 1, 1999)(“ Protections pursuant to sections 13(c)(1) and (2) do not require a result of a project.”); *Amalgamated Transit Union v. Donovan*, 767 F.2d 939 (D.C. Cir. 1985). However, a factual basis supporting a finding that an alleged benefit amounts to an accrued right must be established, particularly where, as in Texas, the employer is prohibited under state law from executing a collective bargaining agreement, and the alleged affected rights, privileges and benefits are “otherwise” derived. Here, OSSJC failed to provide sufficient information on the origin and implementation of the alleged benefits to allow the Department to make this conclusion. OSSJC seems to rely solely on the disparity between retiree benefits and employee benefits to support its allegations. Neither the Act nor the Arrangement requires that employee and retiree benefits be equal, nor that City retiree benefits be comparable to other transit agency retirees.

DETERMINATION

The Department finds that the evidence submitted does not support a finding that there was a denial of an accrued right. Therefore, this claim is denied.

This decision is final and binding.

Date _____

Michael J. Hayes
Director, Office of Labor-Management Standards