The original documents are located in Box 22, folder "Mass Transit - Labor Protective Agreements (3)" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

WASHINGTON

June 3, 1976

MEMORANDUM FOR: THE HONORABLE WILLIAM USERY
Secretary of Labor

THE HONORABLE WILLIAM COLEMAN
Secretary of Transportation

FROM: JAMES CANNON
Assistant to the President for
Domestic Affairs

The President has reviewed the memoranda of the Department of Labor, dated April 7 and April 21, 1976, and of the Department of Transportation, dated April 8 and May 28, 1976, and has considered the policy alternatives presented therein.

He has directed me to ask you to address the specific proposals outlined in the pages which follow and to submit for his decision your final, joint recommendations on these proposals by June 10, 1976.

The President has charged the Domestic Council with the responsibility for co-ordinating your effort. Judy Hope and David Lissy, of the Domestic Council staff, and I will assist in any way we can.

Attachments

PROPOSALS FOR SIMPLIFICATION OF PROCEDURES UNDER SECTION 13 (c) OF THE URBAN MASS TRANSIT ACT OF 1964, AS AMENDED

1. NEGATIVE DECLARATION WITH CHANGED BURDEN OF PROOF

Establish categories of capital grants that historically have had minimal, if any, adverse impact on transit employees. Such categories might include bus and rail car purchases which result in no reduction in fleet size. In such cases, there could be a simple departmental declaration that no adverse impact is likely to occur, and that no specific 13 (c) arrangement need be negotiated.

This procedure would shift the present burden of proof of adverse impact from local transit operators to the unions or the employees.

Provide a review procedure whereby an employee or union could ask for special protective arrangements in connection with any grant based upon a showing of a substantial prospect of "adverse impact."

2. SET TIME LIMITS

DOL could set time limits for the negotiation of agreements, after which the Secretary of Labor could make his own determination of what arrangements constituted "fair and equitable" protection. DOL could provide conditional certifications so that UMTA funds could flow before critical deadlines were reached (end of the fiscal year, or exhaustion of local operating funds).

3. MULTI-YEAR CERTIFICATIONS

Instead of having each grant of Federal dollars give rise to a new 13(c) agreement, DOL could establish a policy of granting multi-year certifications which would be good for all grants made within a specific period of time subject to review based upon the union or an employee showing "adverse impact."

4. SINGLE CERTIFICATION FOR SINGLE GRANT

Only a single certification should be required for a given project, even if such a project is funded through several successive grants or grant amendments.

5. PROMULGATE AND PUBLISH REGULATIONS

To assist all parties in participating in the 13 (c) process, simple published regulations should be available.

file 13(c)

THE WHITE HOUSE

WASHINGTON

June 3, 1976

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THE HONORABLE WILLIAM COLEMAN
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To assist all parties in participating in the 13 (c) process, simple published regulations should be available.

Transp.
13C

THE WHITE HOUSE

WASHINGTON

June 10, 1976

MEMORANDUM FOR: WILLIAM T. COLEMAN
W. J. USERY

FROM: JAMES M. CANNON

SUBJECT: President's Request for Joint Recommendations on Section 13(c)

I have received the request from John Barnum and Mike Moskow that we extend until June 17 the deadline for your joint memorandum to the President.

I understand your Departments are making progress, but need additional time to insure the best possible joint memorandum. I accept your new deadline of June 17, and point out that the memorandum must be here by noon of that day so that it can be reviewed by the White House senior staff and presented to the President.

Can - Am I to do something with this? Found it on my desk - -

Lissy / Hope

U.S. DEPARTMENT OF LABOR
OFFICE OF THE UNDER SECRETARY
WASHINGTON, D.C. 20210

JUN 9 1976

MEMORANDUM FOR: James Cannon
Assistant to the President
for Domestic Affairs

FROM: John W. Barnum
Deputy Secretary of Transportation

Michael H. Moskow
Under Secretary of Labor

SUBJECT: President's Request for Joint Recommendations on Section 13(c)

We have received your memorandum of June 3 outlining the President's request for joint recommendations from the Departments of Labor and Transportation concerning the implementation of Section 13(c) of the Urban Mass Transportation Act. The two Departments have already held meetings in response to this directive and some progress has been made. However, we think it will not be possible to meet the June 10 deadline. If you have no objection, we will plan to submit our joint recommendations by no later than June 17.

Incoming & letters to Coleman, Usery

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WASHINGTON, D.C. 20590

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Mr. James Cannon
Assistant to the President
for Domestic Affairs
The White House
Washington, D.C. 20500

JOHN Y. McCOLLISTER
SECOND DISTRICT, NEBRASKA

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202-225-4155

DISTRICT OFFICE:
FEDERAL BUILDING
215 NORTH 17TH STREET
OMAHA, NEBRASKA 68102
402-221-3251

13(c)

cc: Hope, Lissy

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE

COMMITTEE ON SMALL BUSINESS

SUBCOMMITTEE ON ACTIVITIES OF REGULATORY AGENCIES

Congress of the United States
House of Representatives
Washington, D.C. 20515

June 17, 1976

James M. Cannon
Assistant to the President
for Domestic Affairs
The White House
Washington, D.C.

Dear Mr. Cannon:

I have been advised that the Domestic Council is currently considering proposals for presentation to the President to alleviate problems that have developed in recent months with respect to the Department of Labor's certification responsibilities under Section 13 (C) of the Urban Mass Transportation Act. These problems have arisen because of the Department's use of a so-called "Model Agreement" as a mechanism for determining compliance.

I first became involved in this dispute in March, 1976, when officials of the Metro Area Transit Authority (MAT) which serves the Omaha-Council Bluffs metropolitan area contacted me. They discovered that approval of their grant application was being withheld because the Department of Labor refused to certify the application. Since that time I have been working with officials within the Department and at the White House to see what can be done to alleviate Omaha's specific problem while at the same time addressing the much larger issue of whether the Department of Labor is adhering to the legislative intent of Section 13 (C) by its use of the "Model Agreement."

I will not attempt to review the details of the Omaha situation or my specific concerns as to the arbitrary manner in which the Department of Labor is interpreting its certification responsibilities. Instead, I refer you to my letter of June 11, 1976, to Max Friedersdorf, Assistant to the President for Legislative Affairs.

My purpose in writing you is to set forth my position and that of the Metro Area Transit Authority on a series of recommendations which are now being considered by the staff of the Domestic Council and the Departments of Labor and Transportation. It is my understanding that recommendations toward resolution of the 13 (C) issue will be made to the President in the near future.

I believe that it is imperative that two principles underscore the development of any recommendations on this issue. Without clear recognition of these principles, efforts to remedy 13 (C) problems will have been in vain.

First, the Department of Labor should cease its use of the "Model Agreement" as a vehicle for determining compliance with Section 13 (C). The original law was designed to guarantee employee protection in the event of a public take-over of a privately owned transit-company -- essentially an assurance to employees that there would be no "worsening of their positions with respect to their employment." In my view, Congress intended Section 13 (C) requirements to be fulfilled through local negotiations and bargaining. Therefore, there is no need for a "Model Agreement." Indeed, its very existence contradicts the purposes of Congress when it enacted this particular section of the law.

Second, the Department of Labor should cease its routine referral of 13 (C) agreements to the International Unions. If the transit authority submitting a grant application includes a 13 (C) agreement that has been approved and signed by the authority and the affected local unions, then the Department of Labor should certify the agreement with no further questions. The International Union should become involved in this process only when requested by the local union.

These two principles should be written into any rules and regulations that may subsequently be published on 13 (C). However, they must be recognized at the outset as the reason why 13 (C) disputes developed in the first place and why an immediate moratorium should be placed on the use of the "Model Agreement."

I am aware of several specific recommendations that have been advanced by the Domestic Council on the 13 (C) issue. I believe that these are definitely a step in the right direction, and I commend your staff for its efforts to seek positive remedies for the problems which have developed over 13 (C). These recommendations will go a long way toward alleviating problems for transit authorities submitting grant applications in the future. Unfortunately, they do not address the problems facing those transit authorities whose applications are now pending before UMTA and are now being withheld by the Department of Labor because of 13 (C) disputes. Metro Area Transit in my District falls in this category. After consulting with officials of MAT, I would like to advance the following recommendations on their behalf:

(1) A moratorium should be placed on use of the "Model Agreement" until such time as new rules and regulations are published and adopted;

(2) In those instances where a Transit Authority has submitted an application for operating assistance to UMTA; and that application includes a 13 (C) agreement signed by both the Authority and the affected union; and that application is presently being withheld because of a dispute relating to the "Model Agreement," then:

---The Department of Labor should require the Union to state with specificity its reasons why the signed agreement should no longer be valid;

---The Department of Labor should grant provisional certification of the application so that funds can keep flowing pending a resolution of local differences based on local conditions;

---An attempt to resolve such differences should be limited to 30 days;

---If no resolution can be achieved after 30 days, then the Secretary of Labor should make the final determination within the limits of his authority.

These recommendations would I believe offer a means of resolving those applications currently being withheld because of conflicts over the "Model Agreement." I offer one further suggestion on behalf of MAT. Rather than the suggestion for multi-year certification, we should consider making 13 (C) agreements valid until such time as either the authority or union states in writing to the Secretary of Labor that the current agreement is inadequate, unfair, and no longer applicable. It seems that this mechanism would eliminate the bureaucratic entanglements that have characterized present administration of Section 13 (C).

In conclusion, I commend the Domestic Council for its efforts to resolve this unfortunate situation. I hope your recommendations to the President and his subsequent actions will resolve the problems that have arisen in recent months. I would be happy to meet with you personally should you have further questions. I would likewise appreciate knowing as soon as any decisions on this are made.

Sincerely,

JOHN Y. McCOLLISTER
Member of Congress

JYM/hsm

cc: Max L. Friedersdorf
Judith Hope
David H. Lissy

Miss ~~Dean~~ follow up pending meet ~~on 2/12~~

13(c)

June 15, 1976

Dear John:

Your letter concerning the problem encountered in the Urban Mass Transit Act requirements and certification has been received.

The specific detail and extensive background material you have provided will be particularly helpful in trying to resolve this situation, hopefully to your satisfaction.

Mr. David Lissy of the White House Domestic Council staff who has responsibility in the areas involved has been in contact with you following our conversation and David will be seeking to alleviate the problem.

I am forwarding a copy of your letter to David for his perusal and please be assured that we will give our full attention and effort in seeking a solution to this problem.

Meanwhile, with kindest regards,

Sincerely yours,

Max L. Friedersdorf
Assistant to the President

Honorable John Y. McCollister
House of Representatives
Washington, D.C. 20515

MLF:jg

bcc: David Lissy - For draft response and action
Judy Berg-Hansen - FYI

background material attached

JOHN Y. MCCOLLISTER
SECOND DISTRICT, NEBRASKA

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Congress of the United States
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COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE

COMMITTEE ON SMALL BUSINESS

SUBCOMMITTEE ON ACTIVITIES OF REGULATORY AGENCIES

June 11, 1976

Mr. Max Friedersdorf
Assistant to the President
for Legislative Affairs
The White House
Washington, D. C.

JUN 12 1976

Dear Max:

Per our conversation of June 9th, I am forwarding the background material you requested. Specifically, the problem focuses on Section 13 (C) requirements of the Urban Mass Transportation Act and certification by the Department of Labor on grant applications submitted by transit authorities for operating assistance. The law states that as a condition for obtaining Federal funds under UMTA, prospective grantees must have "fair and equitable" employee protection agreements which are to be certified by the Secretary of Labor.

Problems have arisen in the past several months over the Department of Labor's interpretation of Section 13 (C) and its procedures for determining compliance. These problems are being experienced by transit authorities across the country. I became involved when in March, 1976, officials of the Metro Area Transit Authority (MAT) which serves the Omaha-Council Bluffs metropolitan area contacted me. They discovered that approval of their grant application was being withheld because the Department of Labor refused to certify the application. I am enclosing a copy of a letter MAT sent to the Department of Labor which outlines their position and the facts in this specific instance.

To briefly review the case, MAT was advised in March that its 13 (C) Labor Agreement which had been negotiated in July, 1975 (and was previously acceptable to the Department in previous grant applications) was no longer satisfactory because it was not patterned after a "Model Agreement" the Department was now utilizing to determine compliance. The so-called "Model Agreement" was negotiated in July, 1975 (at the same time MAT completed its negotiations on a 13 (C) agreement) between former Secretary of Labor John Dunlop and representatives of the American Public Transit Association and the transit labor unions. Despite protestations to the contrary, it has become apparent that the Department of Labor is using the "Model Agreement" as the basis for determining compliance with Section 13 (C). Those transit authorities which have submitted 13 (C) agreements which differ from the provisions in the "Model Agreement" have found their applications withheld until they relented and agreed to the provisions in the "Model Agreement" or slight modifications thereto. In short, the "Model Agreement" has been used as a standard for determining compliance with Section 13 (C); yet, at no time was it ever submitted to normal rule-making procedures.

In Omaha's case, we were able to reach an interim solution whereby certification was granted to 1975 funds (approximately $1 million) while 1976 funds ($1.8 million) have been withheld pending a resolution of differences relating to the "Model Agreement." The release of the 1975 funds avoided a shut-down of MAT's operations. Again, I refer you to MAT's letter to the Department of Labor which provides you with the legal basis upon which the transit authority rests its case. I would add that MAT has recently filed in the Nebraska Court of Industrial Relations for a judicial ruling as to the validity of its 1975 labor contract which includes its 13(C) agreement. The affected union, Transport Workers Union (TWU) has asked the Secretary of Labor to resolve the matter. It is expected the Secretary will withhold any judgment until court action has been completed.

Naturally, my interest in this issue was sparked by the problems Omaha was experiencing. After several months of working on this matter, however, I can say without doubt that others across the nation have or will soon experience similar difficulties. The circumstances and legal positions of transit authorities may vary, but the central problem remains: The Department of Labor's use of the "Model Agreement." The implications of a nationwide "Model Agreement" are disturbing. It presents serious questions for those of us interested in preserving the principle that employer-employee agreements should be worked out in local collective bargaining situations. The "Model Agreement" is contrary to that principle.

I have raised these concerns directly with Secretary Usery. I am enclosing a copy of a letter I wrote him on April 7, 1976, as well as a copy of his response. I find it unsatisfactory in several regards.

First, the Secretary maintains that negotiations for the "Model Agreement" were initiated by the industry through the American Public Transit Association. I have been advised by officials of MAT that the initiative and effort to develop the "Model Agreement" were closely aligned with several major urban properties who used the APTA organization to accomplish their goals. The APTA negotiating team consisted of representatives of New York, Baltimore, Cleveland and San Francisco--hardly a representative group. Further, I'm told that the "Model Agreement" was approved by APTA by a vote of 3-2. That's hardly the basis upon which the Department of Labor can maintain that the "Model Agreement" is representative of industry. In addition, APTA rejects the idea that the "Model Agreement" should be a uniform standard. APTA recently wrote Secretaries Usery and Coleman:

> "A uniform approach seems to ignore or make light of the complexities of the local problems facing the various transit properties. Few transit properties are faced with similar sets of circumstances. Obviously there are varying local funding considerations, different geographic factors, separate and distinct operating considerations, unique local collective bargaining considerations, as well as different existing 13(C) Agreements. For some the model agreement fits well into the transit property's overall picture, but for others numerous details and considerations such as those mentioned above, must come into play. It is clear that a uniform approach, while of great aid to many, is not in the best interests to all."

Second, the Secretary's letter states "the intent of the Congress was that specific protective arrangements, if possible, should be developed through local negotiations and bargaining." I agree. Yet, upon receipt of grant applications the Department routinely forwards them to the International office of the Union, not the local office. Is such action following the "intent" of Congress?"

Third, the Secretary maintains that over 50 applications have been certified on the basis of the "Model Agreement." He does not mention how many of the 50 were in such a dire financial situation that they were coerced into signing the Agreement. I intend to find out. He also neglects to point out that some 230 properties have not signed on the basis of the "Model Agreement." This in spite of the fact that the new legislation allowing for operating assistance has been in effect for 18 months.

And fourth, in any event, I believe it is mandatory that the Department of Labor publish and make available to every transit authority the procedures which it follows in determining compliance. That is not now the case. Secondly, if it is determined that some uniform standards are necessary and beneficial to all parties in determining compliance, (I am not sure this is necessary) those standards should be submitted to normal rule-making procedures thereby allowing every transit authority in the country to have an opportunity for input.

As you see, the issues involved in the Section 13 (C) debate are long and complicated. The only comfort I find is that a lot of Conservatives pointed to these very problems when the legislation was first considered in 1963. Unfortunately, their warnings were ignored. It is my intent to pursue this matter vigorously, for I do not believe the Department of Labor is following the intent of Congress by its adherence to the "Model Agreement." That is the reason I am calling this matter to the attention of the White House. I will be in touch with you soon after you have had an opportunity to review the information I have provided.

Sincerely,

JOHN Y. McCOLLISTER
Member of Congress

JYM/hsm

METRO AREA TRANSIT

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OWNED BY THE TRANSIT AUTHORITY CITY OF OMAHA

March 19, 1976

MAR 1976

Mr. Paul J. Fasser
Assistant Secretary for Labor/Management Relations
200 Constitution Avenue, N. W.
Washington, D. C. 20210

Dear Mr. Fasser:

Under provisions of Nebraska law, The Transit Authority of the City of Omaha was created by ordinance of the City Council of the City of Omaha in May, 1972. Prior to the creation of The Transit Authority of the City of Omaha (The Authority) the cities of Council Bluffs, Iowa, and Omaha, Nebraska, at the urging of UMTA, agreed to the creation of a single transit authority which would serve the entire metropolitan area. It was also agreed that the City of Omaha would accept responsibility for the subsequent creation of the Authority, federal grant applications and negotiation with the private transit companies and their respective unions.

In Council Bluffs, public transportation was being provided by City Transit Lines, Inc. whose employees were represented by the General Drivers and Helpers Union, Teamsters Local #554. In Omaha, public transportation was being provided by Omaha Transit Company, whose employees were represented by the Transport Workers Union of America, Local #223.

On May 9, 1972, negotiations between the City of Omaha and the two unions (Teamsters and TWU) culminated in the signing of a separate "13-C agreement" between the City of Omaha and each of the unions. As provided for in each of the 13-C agreements, The Authority, as the successor of the City of Omaha, accepted responsibility for full performance of the obligations contained therein. Within the normal collective bargaining process, in 1973, the aforementioned 13-C agreement was included and by reference made a part of the labor agreement with TWU, International and local, effective July 1, 1973. Effective July 1, 1974, an identical 13-C agreement was included and by reference made a part of the labor agreement with the Teamsters local #554. The inclusion of the 13-C agreement in our labor agreement with TWU International and local #223, was reaffirmed in our latest labor agreement effective from July 1, 1975, through and including June 30, 1977.

In support of the above, both unions acknowledged the existence and validity of the 13-C agreement as evidenced by their original sign-off and subsequent sign-offs on other grants and grant amendments so as to receive the benefits to be derived theref

i.e., during the spring of 1972, the City of Omaha made application for UMTA capital funds to provide the financial resources required to acquire City Transit Lines, Inc. Omaha Transit Co, and for a one-year capital improvement program. After the creation of The Authority, that grant responsibility was transferred by UMTA from the City of Omaha to The Authority. In the intervening period, additional grants have been appro by UMTA and certified by the Department of Labor so that approximately 10 million dol in federal funds have been supplied to The Authority.

On December 12, 1975, under provisions of the 1964 UMTA Act, as amended in 1974, The Authority submitted a grant application to UMTA for federal operating assistance. Th grant application requested operating funds for calendar year 1975 in the amount of $1,098,494 and funds for calendar year 1976 in the amount of $1,830,825. Since submitting the above grant application, The Authority has maintained frequent contacts w the Section 5 Division of UMTA in an attempt to stay abreast of the progress and stat of grant approval.

On January 20, 1976, we were contacted by Mr. Mark Lehner of your staff, who request an additional copy of our grant application for the purpose of review prior to requir certification.

During January of 1976, because of what we believed to be a temporary cash flow probl The Authority was forced to borrow $250,000 to maintain operations. This money is du and payable and shall be paid within the week of April 10.

During the first week in March, in the face of a continued worsening of our financial position, The Authority established their grant approval status with UMTA and was informed that basic grant approval had been achieved. We were also informed that 13-C certification from the Department of Labor had not been received. Based on this info mation, we initiated contact with Mr. Larry Yud of your staff in an effort to determi the status of the Department of Labor 13-C certification for our grant. We were info by Mr. Yud that his office was having difficulty finding a copy of our grant applicat It took approximately a week, based on another call by the Authority to Mr. Yud, to determine that our grant application had been located but he had not received any com from the International office of TWU.

Subsequent calls during the second week of March produced the following information:

The International union was demanding that The Authority sign off on the model 13-C (per Mr. Yud).

The Authority informed the Department of Labor that our existing 13-C agreement is incorporated into the labor agreement with TWU and is binding on the parties thereto. (The Teamsters, local #554, had signed off on the basis of the existing 13-C agreement in our labor agreement.)

The International office of TWU would investigate and if the 13-C was in the labor agreement, they would sign off (per Mr. Yud). Mr. Yud suggested a meeting in his office, to which The Authority agreed.

A letter signed by Mr. Yud transmitting the above information was sent to us on March 12, 1976.

On the afternoon of March 12, we were contacted by Mr. Yud who informed us that the letter was partially incorrect and that the International TWU had changed its position. The International stated, through Mr. Yud, that since the 13-C agreement was only mentioned as a "whereas" in our labor agreement, it was not binding and therefore they demanded the model 13-C agreement sign-off by The Authority.

We informed Mr. Yud at that time that we held to the position that the 13-C as incorporated in the labor agreement was binding on the signatories.

Mr. Malcom Goldstein, attorney for the International TWU, indicated to Mr. Yud that no meeting between the International, The Authority and the Department of Labor representatives was desired or appropriate (per Mr. Yud).

Mr. Yud informed The Authority that he was requesting that both The Authority and the International present their respective positions in writing to Mr. Paul Fasser.

As a result of our critical financial position, an emergency meeting of the Board of Directors of The Authority was held at 8:30 a.m., March 16, 1976, at which time this entire matter was discussed in an open, public meeting. The Board, by unanimous vote passed a resolution directing that the model 13-C agreement not be entered into and further directed the staff to exhaust all administrative remedies available in procurement of grant approval prior to taking any further action. More specifically, the staff was directed to utilize, as requested by Mr. Yud, the case handing process of the Department of Labor and present a position paper to Mr. Paul Fasser, Assistant Secretary for Labor/Management Relations.

In compliance with the directive of the Board of Directors and the request of Mr. Yud we are presenting this position paper for your review and action.

Position of The Authority

We have fair and equitable protective arrangements which satisfy the requirements of Section 13-C of the Act, as amended, evidenced by the existing 13-C agreement as incorporated in our collective bargaining agreements. In executing the collective bargaining agreements the unions have confirmed that position and estopped themselves from now asserting otherwise. In view of this, we see no need for prior contact with TWU. We request that the Secretary of Labor determine that we are in compliance with Section 13-C and certify our grant application.

It is our hope that this position paper conveys to the Secretary of Labor the urgency of our circumstances. It is also our hope that the acute financial situation that

exists in the Omaha-Council Bluffs metropolitan area will serve to expedite the Secretary's certification of our grant application. An evaluation of our present financial circumstances indicates that based on projected cash flows and in the absence of federal financial assistance, The Authority will be forced to cease operations as of the week ending April 10. We are in need of a determination from the Secretary of Labor on or before March 26, 1976, in order that The Authority can meet its obligations to the public and its 360 employees and attempt to lessen the disruptive impact of a shutdown of mass transit in this metropolitan community.

Sincerely,

Fred H. Thoma

Fred H. Thoma, Chairman
Transit Authority of the City of Omaha Board

J T Erdman

J. T. Erdman
Executive Director

JTE/glc

cc: Mr. Larry Yud
Mr. Stanley Feinsod, UMTA
Congressman John Y. McCollister

JOHN Y. McCOLLISTER
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OMAHA, NEBRASKA 68102
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Congress of the United States

House of Representatives

Washington, D.C. 20515

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

SUBCOMMITTEE ON CONSUMER PROTECTION AND FINANCE

COMMITTEE ON SMALL BUSINESS

SUBCOMMITTEE ON ACTIVITIES OF REGULATORY AGENCIES

April 7, 1976

Honorable William J. Usery, Secretary
Department of Labor
Department of Labor Building
200 Constitution Avenue
Washington, D. C. 20210

Dear Mr. Secretary:

On March 17, 1976, I wrote you in regard to a problem facing the Metro Area Transit Authority (MAT) which provides public transportation to the citizens of the Omaha-Council Bluffs metropolitan area. MAT's application for Federal operating assistance under the provisions of the Urban Mass Transportation Act was being withheld because the Department of Labor refused to certify its Section 13 (C) Labor Agreement. Officials of the Transit Authority were advised that their 13 (C) Agreement was not patterned after a "Model Agreement" the Department was now utilizing to determine compliance with Section 13 (c) of the Urban Mass Transportation Act.

I refer you to that letter and its enclosures for a more detailed explanation of the situation as it relates to the Transit Authority. After more than a week of intense negotiations, an interim solution was agreed to by the affected parties so that MAT's application for 1975 funds could be approved with the stipulation that the parties "meet and confer as to the applicability of the Model Agreement for operating assistance in 1976 for a period of not to exceed 60 days."

I am pleased that the Department was able to reach this interim solution. It means that the Transit Authority can continue providing much needed service to the Omaha-Council Bluffs region. An impending shut-down of the system due to financial constraints was averted. While I am greatly relieved by this interim solution, I cannot help but be concerned about the long-range implications of the Department of Labor's position throughout these negotiations. Those implications are indeed disturbing. Their impact stretches far beyond the borders served by Metro Area Transit. Therefore, I am prompted to write this letter to you.

Quite frankly, Mr. Secretary, I am puzzled as to why this situation developed in the first place. In May, 1972 the City of Omaha completed negotiations with affected unions on a 13 (C) Labor Agreement. That agreement became incorporated into the collective bargaining agreement negotiated by the successor and assigned Metro Transit Authority and the unions beginning in 1973. It was reaffirmed by all parties in 1974 and 1975 with the latter agreement being effective through June 30, 1977. I reiterate that <u>all</u> parties, including the affected unions, signed the agreements. They were

also valid in the eyes of the Department of Labor which certified grant applications to the Transit Authority in the amount of approximately $10 million. It was not until the Transit Authority applied for operating assistance under the terms of the 1974 Amendments to the Urban Mass Transportation Act that it received notice of possible conflict between their 13 (C) Agreement and the new "Model Agreement."

It is my understanding that your predecessor, Mr. John Dunlop, worked out the details of the so-called "Model Agreement" with representatives of the American Public Transit Association and the International offices of the affected unions. Those negotiations occurred at the same time MAT was completing its negotiations for a new labor contract which included its 13 (C) agreement. I think you can see my concern that MAT's application for 1975 and 1976 funding should have ever been disputed by the Department of Labor in view of the time frame by which these two agreements were negotiated. I am sure these issues will be raised during the next 60 days. I believe, however, there are more serious questions deserving of your attention.

At this point, I do not intend to dispute the original language of Section 13 (C). I would remind you only that a number of Congressmen and Senators raised serious questions as to the meaning and possible interpretation of this section during debate of the 1964 law. From my reading of the legislative history, however, I find no mention of the need for a "Model Agreement" to determine compliance. In fact, the House Committee on Banking and Currency's report, dated April 9, 1963, states quite clearly the Committee's intention: "The Committee wishes to point out that, subject to the basic standards set forth in the bill, specific conditions for worker protection will normally be the product of local bargaining and negotiation." I have no quarrel with this interpretation of the law. Yet, we now find in the instance of Metro Area Transit and other communities throughout the nation, that applications for Federal operating assistance are being withheld because of the Department of Labor's adoption of the "Model Agreement." I think this situation prompts questions which the Department should be called upon to answer.

1. Why is there a need for a "Model Agreement?"

Prior to 1975, the Department of Labor was determining compliance on the basis of agreements negotiated at the local level. It seems to me that if employee protection arrangements are acceptable at the local level, they should not be disputed at the national level.

2. Who decided which parties should be included in the negotiations that led to the signing of the "Model Agreement?"

I know, for example, that Metro Area Transit never became a signatory to the "Model Agreement." Nor, was it ever asked by the American Public Transit Association to contribute to the negotiations. It was never given the impression that this "Model Agreement" would have a binding impact on its labor negotiations. In fact, the opposite impression was given.

3. My reading of the law would indicate that the 13 (C) certification requirement is the sole responsibility of the Secretary of Labor. Why, then, does the Department routinely send employee protective agreements to the International Unions prior to determining compliance? This simply adds unnecessary delay and harassment to the situation. In the instance of Metro Area Transit, the International Union office is requiring the local union to reverse its previous position wherein it signed a 13 (C) agreement as part of the 1975 labor contract. A representative of the International Union also signed that contract.

4. Why was the Model Agreement never submitted to normal rule-making procedures?

It seems to me that the Model Agreement is being used by the Department as a standard for compliance rather than a model which would imply room for modification to meet local situations. If this is the case, then I think it is important for us to know why the Model Agreement was never subjected to normal rule-making procedures allowing for publication in the Federal Register and appropriate review and comment by the public?

Mr. Secretary, I am deeply disturbed by this entire situation. I, therefore, earnestly solicit your response to the above questions at your earliest convenience. As the so-called "Model Agreement" was negotiated by your predecessor, I think it would be to your distinct advantage to initiate a thorough study and review of the procedures which led to the adoption of the "Model Agreement", the applicability of this agreement, and the procedures your department follows in determining 13 (C) compliance.

During the negotiations which produced the interim solution for Metro Area Transit, I heard one of my constituents describe the situation as follows: "It seems that the Department of Labor is dictating terms to MAT, and the New York Labor Unions are dictating to local labor officials what they should agree to." During my efforts to resolve this conflict, I confess that I came to the same unsettling conclusion. I do not believe it is your intention as a representative of this Administration to adhere to such a policy. Moreover, I seriously question whether the Congress ever intended the department to adhere to such practices when it approved Section 13 (C). That is an issue I intend to pursue pending a response from you to my questions.

I should also like to request an appointment at your earliest convenience so that we might discuss this situation at length. The ramifications for Nebraska and the Nation are too serious to allow for delay or inaction. Thank you for your attention, and I look forward to your response.

Sincerely,

JOHN Y. McCOLLISTER
Member of Congress

JYM/hsg

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

MAY 17 1976

Honorable John Y. McCollister
House of Representatives
Washington, D. C. 20515

Dear Congressman McCollister:

This is in response to your letter dated April 7, 1976, concerning the Department of Labor's administration of the employee protective provisions contained in Section 13(c) of the Urban Mass Transportation Act of 1964, as amended. In your letter, you raise a number of questions concerning our practices and procedures in carrying out our responsibilities under Section 13(c), particularly as they involve the so-called "model" agreement negotiated by the American Public Transit Association and various transit employee labor organizations. You raise these questions particularly in the context of recent applications for operating assistance grants under the Act filed by the Transit Authority of the City of Omaha, Nebraska.

Before responding to your specific questions on the model agreement, I would like to place that agreement in its proper perspective as it appears that there are a number of misconceptions about it. At the outset, I would point out that the model agreement is a voluntary arrangement that resulted from an industry-initiated effort. The agreement was executed on July 23, 1975, by representatives of the American Public Transit Association whose membership carries some 90+ percent of the nation's transit riders and six national union or union affiliated organizations representing the great majority of transit industry employees. The Department of Labor encouraged and actively assisted the parties in their effort to reach this agreement. We also encourage its utilization in connection with specific operating assistance grant applications. However, the model agreement is not binding on non-signatories. It remains discretionary with local involved parties as to whether they are willing to adopt the model agreement as the vehicle for development of the protective terms and conditions and also

discretionary with the Secretary of Labor as to how he will certify applications where local parties do not reach agreement. Although the model agreement has served as the basis for certification of the majority of operating assistance grants over the last few months, a number of grants have been certified on other arrangements.

To turn now to the specific questions you have raised, as follows:

"1. Why is there a need for a 'Model Agreement'?"

The National Mass Transportation Assistance Act of 1974 amended the Urban Mass Transportation Act to provide for a formula grant program under which Federal grant funds could be utilized for the first time for the subsidization of operating expenses. This created a novel project situation for application of the statutory employee protection requirements which had previously been applied only to capital and demonstration project situations. Also, a very large increase in the number of projects requiring certification was anticipated under the new program. At the same time, the industry was desirous of achieving some stability in the level of employee protective benefits. It was generally felt that individual applicants were at a serious disadvantage in employee protective arrangement negotiations and that this allowed the unions involved to continually increase the level of protective benefits from one project situation to another.

The model agreement resulted from these circumstances. That agreement has proved very useful to a great number of applicants for assistance under the Act. Since its development, over 50 operating assistance applications have been certified on the basis of the model agreement.

"2. Who decided which parties should be included in the negotiations that led to the signing of the 'Model Agreement'?"

As I stated above, the negotiations for the model agreement were initiated by the industry through the American Public Transit Association. Those representatives approached those unions whose members comprised a majority of the industry's employees. When the Department of Labor's assistance was sought by the parties in the final stages of their effort to reach an agreement, the Department worked with the representatives who had been involved up to that time.

"3. Why...does the Department routinely send employee protective agreements to the International Union prior to determining compliance?"

I agree that "the 13(c) certification requirement is the sole responsibility of the Secretary of Labor." However, as your letter notes elsewhere, the intent of the Congress was that specific protective arrangements, if possible, should be developed through local negotiations and bargaining. This reliance on the process of bargaining between appropriate parties on behalf of the applicant and affected employees requires that the Department of Labor utilize procedures which allow and promote that end. Thus, when we receive applications referred to us by the Department of Transportation together with a request for the certification required in the Act, we initiate steps, through the national union organizations representing affected employees in each case, to begin the development of appropriate protective arrangements. Copies of the project descriptions are forwarded to those national union organizations to allow the development of positions on protective terms and conditions. The national unions in turn refer these matters to their involved local unions which follow through on the negotiations, although most of the unions involved in the 13(c) program utilize national level legal and other staff support in connection with these negotiations. With respect to the Omaha grant situation, and I will comment more on that below, the Transport Workers Union spokesman was Mr. Malcolm Goldstein of the law firm of O'Donnell and Schwartz located in New York. Mr. Goldstein has represented all TWU locals in Section 13(c) matters over the past few years. In the instant Omaha case, we have no reason to believe that he is not validly expressing and advancing the position of TWU local 223 which represents the employees of the Transit Authority of the City of Omaha.

"4. Why was the Model Agreement never submitted to normal rulemaking procedures?"

The model agreement does not constitute rule-making and it would not be appropriate for the Department of Labor to adopt rule-making procedures with regard to it.

I would now like to review the Omaha grant situation from our perspective. Applications for operating assistance grants for Calendar Years 1975 and 1976 were received by the Department of Labor on January 5, 1976. In accordance with our normal procedures we subsequently referred copies

of the applications to the International Brotherhood of Teamsters and Transport Workers Union and requested their views with respect to appropriate protective terms and conditions. It subsequently developed that the Authority took the position that the terms and conditions contained in a 13(c) agreement originally executed on May 9, 1972, in connection with a previous grant, should be made applicable to the then pending operating assistance projects. The Teamsters union took an identical position. The Transport Workers Union, on the other hand, took the position that the model agreement was the more appropriate basis for certification.

Representatives of the Department of Labor had numerous conversations with Authority and union representatives in an effort to achieve a resolution to this dispute. These efforts were very strained however because the Authority's position was that the union had already agreed to apply the May 9, 1972 agreement to the operating assistance applications. The Authority pointed to the fact that the 13(c) agreement was attached to its current collective bargaining agreement, signed on October 31, 1975, and effective to June 30, 1977, as evidence of this agreement. The union, however, contended to the contrary, and argued that the mere attachment of a previous 13(c) agreement to the collective bargaining agreement, and reference thereto in a whereas clause, in no way constituted a commitment or agreement by the union to those protective terms and conditions for all future grant situations.

The Secretary of Labor has no jurisdiction over local collective bargaining agreements. However, in this case the dispute between the Authority and the TWU as to the nature and extent of their commitments resulting from their local collectively bargained working agreement impinged on their respective positions with respect to the appropriate Section 13(c) employee protective terms and conditions. It was in this context that representatives from the Department of Labor had to work in attempting to clear the way for project certification.

All parties involved cooperated in that certification effort and by letter dated March 26, 1976, copy enclosed, the Department of Labor made the certification required in the Act as a condition to final grant approval. The certification provided a means by which operating assistance funds requested for calendar year 1975 could be made available immediately.

A procedure is set forth in the certification for the timely development of protective terms and conditions for application to operating assistance grant funds for calendar year 1976.

We compliment all parties involved for their willingness to work with representatives of the Department of Labor in the development of this solution which provides for a fair and equitable method of resolving their differences without allowing those differences to impede the flow of needed funds to Omaha.

It has been repeatedly claimed that the lack of the Department of Labor's certification of the Omaha operating assistance grant application delayed transmittal of those funds to Omaha. However, at the time we made the certification we were advised that, notwithstanding that certification, the Urban Mass Transportation Administration was not in position to approve the grant because of problems involving statutory requirements other than those relating to employee protections. We now understand that the grant was eventually made some three weeks after our certification.

I will be glad to provide you with any additional information you may desire concerning this matter.

Sincerely,

W. J. USERY JR.

Secretary of Labor

Enclosure

May 28, 1976

Honorable W. J. Usery, Jr.
Secretary
U. S. Department of Labor
Labor Building
200 Constitution Avenue, N. W.
Washington, D. C. 20210

Honorable William T. Coleman, Jr.
Secretary
Department of Transportation
Nassif Building
400 7th Street, S. W.
Washington, D. C. 20590

Re: 13(c) Labor Protective Provisions
of the Urban Mass Transportation Act

Dear Sirs:

The American Public Transit Association (APTA) has completed a careful and thorough review of the present administrative procedures utilized in implementing the requirements set forth in Section 13(c) of the Urban Mass Transportation Act of 1964 as amended, 49 U.S.C. Section 1601 et seq. (the"Act").

Accordingly, we have determined that the present procedures with respect to 13(c) certification are totally inadequate, burdensome, and unduly time consuming, notwithstanding the adoption of the National Model Agreement negotiated by and between APTA and various labor organizations. Indeed, the present procedures are heavily balanced in favor of the unions' considerations with little more than cursory consideration being given to the problems facing the particular transit property.

More often than not, and in an alarmingly increasing number of circumstances, the issues raised do not touch upon the question of whether the employee protections are fair and equitable but instead involve determinations by the union as to whether they have enough leverage in dealing with the particular transit property. Clearly, this was not intended by the framers of the Act.

APTA has learned that many of its members have existing fully integrated 13(c) Agreements, applicable to both capital projects and operating assistance. Nevertheless, many unions have

insisted upon ever increasing levels of protections, without offering any concrete reasons or explanations therefor. Indeed, we have learned that even in circumstances where a transit property has been willing to sign the National Agreement, some unions are insisting that even this is inadequate, again without focusing on the question of whether the levels of protections are unfair or inadequate. We respectfully submit that activity such as this clearly flies in the face of the language, spirit and intent of the Act. As a result of the above abuses, and others like them, our membership very often is faced with bearing the burdens and pressures of uncertainty not only as to whether UMTA funds will be forthcoming in time, but indeed whether UMTA funds will be forthcoming at all.

It was hoped by many that the execution of the National Model 13(c) Agreement would ameliorate the procedural problems that traditionally have been present. Unfortunately, this has not occurred. The problems are just as severe. The only significant difference is that the crises are spaced intermittently throughout the year, due to the particular local funding problems, rather than all coming at once at the end of the fiscal year. A uniform approach seems to ignore or make light of the complexities of the local problems facing the various transit properties. Few transit properties are faced with similar sets of circumstances. Obviously there are varying local funding considerations, different geographic factors, separate and distinct operating considerations, unique local collective bargaining considerations, as well as different existing 13(c) Agreements. For some the model agreement fits well into the transit property's overall picture, but for others numerous details and considerations such as those mentioned above, must come into play. It is clear that a uniform approach, while of great aid to many, is not in the best interests to all.

Accordingly, to prevent these abuses, to provide for more orderly and timely certifications, to alleviate the uncertainties presently facing the transit properties, and to take into consideration the complexities of the various local issues, we respectfully request that UMTA and/or DOL implement administrative changes immediately establishing a more orderly and simplified procedure for automatic and/or semi-automatic 13(c) certification, as long as the particular transit property already has in force a valid and binding 13(c) Agreement. (We also respectfully request that this be done with a view toward UMTA and/or DOL ultimately issuing formal guidelines and/or regulations regarding 13(c) certification.) Thus, unless an interested party can affirmatively demonstrate the need for a change in said prior agreement, certification should issue. We submit the following suggestions:

1. Certain capital grants (such as equipment purchase grants) and operating grants that are designed as routine by UMTA should receive automatic certification as long as the transit property already has an existing valid and binding 13(c) Agreement. UMTA should compile a list of examples of what it considers to be such routine grant applications.

2. With all other grant applications the following procedure should be implemented:

a. The applicant should be required to submit its final application including the applicant's negative declaration that the use of the funds will not result in the dismissal or displacement of employees, and an additional declaration that if a dismissal or displacement should nevertheless occur, it will abide by its existing 13(c) Agreement to the local union or unions 10 days prior to filing the application with UMTA.

b. After the filing with UMTA, 13(c) certification should be automatic after thirty (30) days unless one of the interested parties petitions the Secretary of Labor that there is sufficient cause to reopen the matter and sets forth in said petition the reasons for believing sufficient cause to exist, carefully defining the issue(s) in dispute.

c. Even if a party were to so petition the Secretary, certification ought not to be held up. Instead, provisional certification should be granted with notice to the parties to attempt to resolve the defined issues, but under a strict time limit of thirty (30) days within which to reach agreement or reach an impasse. If, after 30 days, the parties have reached an impasse, the Secretary of Labor and the Secretary of Transportation then should utilize their discretionary powers by implementing the processes of hearings, fact-finding, mediation and conciliation, arbitration and recommendation in order to resolve the defined issue(s). Then the Secretarys' determination, or that of their designee, on the specific issue(s) in dispute shall be deemed final and binding.

We believe that the above procedures are fair and equitable to all interested parties. Thus, we respectfully request that UMTA and DOL promulgate and immediately implement such regulations.

Very truly yours,

By B. R. Stokes
Executive Director
American Public Transit Association

BRS:ef

cc: Bernard DeLury, Assistant Secretary for Labor Management Relations
Robert E. Patricelli, Administrator, UMTA
Dan V. Maroney, President, Amalgamated Transit Union
Matthew Guinan, President, Transit Workers Union
William Hickey, Esq., Mulholland, Hickey and Lyman
Earle Putnam, Esq., Amalgamated Transit Union
William G. Mahoney, Esq., Highway, Mahoney, Friedman
Malcolm Goldstein, Esq., O'Donnel & Schwartz
William Skutt, Brotherhood of Railroad Engineers
Judith Hope, Associate Director, Domestic Council

THE WHITE HOUSE

WASHINGTON

June 18, 1976

MEMORANDUM FOR: JIM CANNON

FROM: DAVID LISSY

SUBJECT: 13c

When we spoke last night I forgot to mention the extent to which our efforts have become public.

The attached is from NACO's newspaper. It includes virtually a verbatim report of the President's instructions to Usery and Coleman as transmitted by you.

David -

Many Thanks -

Attachment

cc: Judy Hope

Ford Seeks Clarification of UMTA

UMTA

COUNTY NEWS—June 14, 1976—Page 3

WASHINGTON, D.C.—The combined efforts of NACo, Los Angeles County and the White House staff have led President Ford to ask the secretaries of labor and transportation to produce feasibility reports of a number of administrative options clarifying and streamlining section 13(c) provisions of the Urban Mass Transit Act (UMTA). The reports were to be submitted to the President last week.

Section 13(c) requires that transit authorities and employes where jobs may be affected by UMTA funds sign labor protection agreements prior to receiving those funds. The labor protection agreements ensure that individual workers do not suffer financial or position loss through the use of the UMTA monies.

Receipt of UMTA funds depends upon submission of a labor protective agreement, along with the application for funds. The secretary of Labor must approve the protective agreement before the Department of Transportation will even consider the application. The secretary of Labor, in turn, does not issue his approval until all the individual unions involved have agreed to the provisions of the protective agreement.

A "MODEL" LABOR protection agreement was formulated in July 1975 by organizations representing transit operators and transit unions. The model agreement was designed to minimize local disputes and present a uniform basis upon which approximately $11.8 billion in UMTA funds would be distributed to counties.

Ford's request to the secretaries asked that they report on the feasibility of their taking the following actions:

- Establishing categories of capital grants from Transportation that historically have had minimal if any adverse effects on transit employes. In these instances the local transit authority would simply declare that no adverse impact would occur to transit employes. This procedure would shift the present burden of proof of adverse impact from local transit operators to the unions or the employes.
- The Department of Labor setting down limits for the negotiation of agreements; if the time limits for comment were not met by unions, the secretary of labor would have have to provide conditional certifications so that UMTA funds could flow before critical deadlines were reached, like the end of the fiscal year or the exhaustion of local operative funds.
- The Department of Labor establishing a policy of granting multi-year certifications on projects instead of having each grant of federal dollars give rise to a new 13(c) agreement.
- The Department of Transportation and the Department of Labor immediately publishing regulations so that local governments, transit operators, and the unions will know what ground rules they have to live with under the program.

NACo's INVOLVEMENT in the 13(c) issue came as a result of a March meeting called in Washington by Los Angeles County Supervisor Pete Schaborum to discuss problems related to the section. Los Angeles County has had serious problems with the impact of 13(c) on their bus service. The meeting, attended by representatives of urban transit operators from across the country attending the meeting indicated problems with the controversial provision were widespread.

NACo steering committees on Labor-Management Relations, Transportation and Urban Affairs passed resolutions, subsequently adopted by the NACo board, which called for a thorough review of 13(c) and its effects on public transportation as well as county labor-management relations in general.

The resolutions also suggested that the review include but not be limited to:

- The relevance and effectiveness of 13(c) in assuring agreements which are fair and equitable to public transportation users and taxpayers at the federal, state and local levels.
- A limitation of 13(c) review provisions to these unions having a direct interest in them.
- A limitation of the amount of time affected unions may be permitted in their review of labor protective agreements.
- The need for written regulations to guide the Department of Labor in its administration of 13(c).
- The need for a review of the appropriateness and relevance of the provisions and use of the so-called "model agreement" negotiated and signed by the American Public Transit Association (representing management) and the Amalgamated Transit Union and Transport Workers Union of America.
- The need to separate application of agreement provisons appropriate for rail transit employes which are based upon 19th Century rail provisions from those appropriate for modern transit system employes.

Since March, NACo and Los Angeles County have met with White House officials and staff from the Departments of Labor and Transportation in an effort to resolve problems associated with 13(c). The President's action is a product of that activity.