



Legislative Fiscal Bureau

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February 16, 2011

TO: Representative Tamara Grigsby
Room 307 West, State Capitol

FROM: Al Runde, Fiscal Analyst

SUBJECT: Impact of Local Collective Bargaining Changes under SS SB 11 on Federal Transit Aid

As requested, this memorandum provides information on the federal requirements related to local collective bargaining agreements between local units of government and transit workers. The memorandum also provides information as to whether the state's federal transit funding could be impacted by the proposed changes in local collective bargaining laws included under Special Session Senate Bill 11 (SS SB 11).

Special Session Senate Bill 11

SS SB 11 would make various changes to municipal employees' collective bargaining rights currently provided them under the municipal employee relations act (MERA). Specifically the bill would prohibit municipal employers from collectively bargaining with a general municipal employee with respect to any factor or condition of employment except wages. This would be a significant change to the number of factors or conditions of employment on which municipal employees are allowed to collectively bargain.

Existing Transit Funding

In 2010, transit systems in the state received \$60.9 million in federal operating transit aid as follows: (a) \$21.3 million for Tier A-1 (Milwaukee County); (b) \$7.1 million for Tier A-2 (Madison); (c) \$19.1 million for Tier B systems (systems serving populations between 50,000 and 200,000); and (d) \$13.4 million for Tier C systems (systems serving populations less than 50,000).

In addition, in 2010, the state received specific capital funding of: (a) \$5.6 million for new and replacement buses; (b) \$1.3 million in fixed guideway modernization funding; (c) \$1.4 million

in transportation planning funds; (d) \$2.3 million in federal elderly and disabled aid; and (e) \$2.4 million in federal job access reverse commute program funding.

US Department of Labor Collective Bargaining Protections for Transit Workers

The U.S. Department of Labor indicates the following relative to federal labor law and the collective bargaining rights of transit workers (see attachment):

"...federal statute requires that employee protections, commonly referred to as "protective arrangements" or "Section 13(c) arrangements" must be certified by the Department of Labor and in place, before federal transit funds can be released to a mass transit provider."

As a general rule, federal labor law (under US Code 49 Section 13(c)) protects transit employees who may be affected by federal transit funding. It requires the continuation of collective bargaining rights, and protection of transit employees' wages, working conditions, pension benefits, seniority, vacation, sick and personal leave, travel passes, and other conditions of employment. It also requires paid training or retraining for employees affected by federal assistance.

Section 13(c) requires the continuation of any collective bargaining rights that were in place when the employer started receiving federal funds. However, if transit employees did not have the right to bargain collectively at the time their employer began receiving federal funds, section 13(c) does not grant that right. Where transit employees do not have the right to bargain collectively, but have the right to meet and confer or present grievances under state law or as an ongoing practice, section 13(c) mandates that these practices must continue. The section 13(c) arrangement is not a collective bargaining agreement and does not create a collective bargaining relationship where one does not already exist.

These protections are typically developed and agreed to by the transit employees' representative, union, and the grant applicant. If this agreement meets the requirements of section 13(c), the Department will certify the protections. The Department only mandates specific protections when the parties are unable to agree, or the negotiated provisions do not satisfy the requirements of section 13(c). If the transit employees are not represented by a union, the Department certifies a standard "non-union" protective arrangement.

The Department usually certifies subsequent grants to the same transit provider based on protective arrangements that are already in place. However, the Department's guidelines allow the parties to change the existing protective arrangements if a party submits an objection that "raises material issues that may require alternative employee protections," or "concerns changes in legal or factual circumstances that may materially affect the rights or interests of employees". If the Department finds that an objection is sufficient, it directs the parties to renegotiate the provisions of the protective arrangements that are at issue. The Department will certify the newly negotiated protective arrangements provided they meet the requirements of section 13(c). If the parties are unable to reach agreement, the Department will determine the appropriate arrangements, after all

sides have had the opportunity to submit written views and arguments.

Impact on Federal Funding

Relative to Section 13(c) would affect only those transit systems that are unionized and would involve the collective bargaining rights in place at the time the federal transit aid was first received. Most bus transit systems in the state are staffed by unionized transit workers. In addition, a few of the Tier C shared-ride taxi systems may involve unionized workers.

According to information from the U.S. Department of Labor, the proposed changes in collective bargaining rights included under SS SB 11 could impact the ability of unionized transit systems in the state to receive existing federal transit aid, unless actions are taken to protect the collective bargaining rights of their employees (see the attached memo from Mr. John Lund). If the federal Department of Labor makes the determination that the changes in local transit worker collective bargaining rights resulting from the collective bargaining changes under SS SB 11 affect the continuation of collective bargaining rights, and protection of transit employees' wages, working conditions, pension benefits, seniority, vacation, sick and personal leave, travel passes, and other conditions of employment, the Federal Transit Authority could not provide federal transit funding under these provisions.

Currently, Milwaukee County contracts with a private, nonstock corporation known as Milwaukee County Transport Service, Inc. (MCTS) to provide transit services in Milwaukee County. MCTS is the transit system that is eventually provided federal transit aid and is responsible for obtaining the required certification from the U.S. Department of Labor regarding the 13(c) requirements. According to MCTS, its transit workers are employed directly by MCTS and those workers bargain collectively with the MCTS management and not Milwaukee County. Therefore, the proposed changes to the current law collective bargaining rights under MERA likely do not apply to MCTS transit workers, or any other state transit system under a similar ownership arrangement and federal transit funding to such systems would not likely be affected.

In addition, many shared-ride taxis systems, which also receive federal transit operating assistance, are privately owned and operated. In 2010, these systems served 40 nonurbanized areas in state with populations of 50,000 or less. These systems generally contract with the local municipalities for the provision of transit service. As a result, such systems would also not likely be affected by the proposed changes to municipal employee collective bargaining rights included in SS SB 11.

As indicated earlier, the state received \$73.9 million federal transit funding in 2010. Approximately \$22.5 million of this funding was for the Milwaukee urbanized area. Other non-specific funds may also go to Milwaukee urbanized area. In addition, in 2010, shared-ride tax systems received \$4.8 million in federal transit aid. Therefore, \$27.3 million in the state's federal transit aid would not likely be affected by the changes in SS SB 11. However, the remaining \$46.6 million to Tier A-1, Tier B, and Tier C bus systems could potentially be withheld from state transit

systems under the federal 13(c) provisions as a result of the changes to municipal collective bargaining under SS SB 11, unless further actions are taken.

The state and those transit systems that receive federal transit aid directly have yet to apply for their federal fiscal year 2011 federal transit funding. The state applies for aid for those nonurbanized systems serving areas of 50,000 in population or less. All other systems apply directly to FTA for their annual federal funding. At the time of the application for federal funding, each applicant has to certify that the 13(c) collective bargaining provisions have been met. FTA then provides the certifications to the U.S. Department of Labor for their review and for public comment.

I hope this information is helpful. Please contact me if you have any further questions.

AR/le
Attachments

ATTACHMENT 1

49 U.S.C. 5333(b) (also known as Section 13(c) of the Federal Transit Act)

(1) As a condition of financial assistance under sections 5307-5312, 5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, and 5338(b) of this title, the interests of employees affected by the assistance shall be protected under arrangements the Secretary of Labor concludes are fair and equitable. The agreement granting the assistance under sections 5307-5312, 5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, and 5338(b) shall specify the arrangements.

(2) Arrangements under this subsection shall include provisions that may be necessary for--

- the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;
- the continuation of collective bargaining rights;
- the protection of individual employees against a worsening of their positions related to employment;
- assurances of employment to employees of acquired public transportation systems;
- assurances of priority of reemployment of employees whose employment is ended or who are laid off; and
- paid training or retraining programs.

(3) Arrangements under this subsection shall provide benefits at least equal to benefits established under section 11326 of this title.

(4) Fair and equitable arrangements to protect the interests of employees utilized by the Secretary of Labor for assistance to purchase like-kind equipment or facilities, and grant amendments which do not materially revise or amend existing assistance agreements, shall be certified without referral.

(5) When the Secretary is called upon to issue fair and equitable determinations involving assurances of employment when one private transit bus service contractor replaces another through competitive bidding, such decisions shall be based on the principles set forth in the Department of Labor's decision of September 21, 1994, as clarified by the supplemental ruling of November 7, 1994 with respect to grant NV-90-X021. This paragraph shall not serve as a basis for objections under section 215.3(d) of title 29, Code of Federal Regulations.

ATTACHMENT 2

U.S. Department of Labor

Office of Labor-Management Standards
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(202) 693-0202



February 16, 2011

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Dear Mr. Runde:

The following is a response to your request yesterday for information regarding DOL labor certification of Federal Transit Administration grants.

When Federal funds are used to acquire, improve, or operate a transit system, Federal law requires arrangements to protect the rights of affected transit employees. These arrangements must be approved by the Department of Labor (DOL) before the Department of Transportation's Federal Transit Administration (FTA) can release funds to grantees. The terms and conditions of the protective arrangements are included in the grantee's contract with FTA.

The requirement to protect transit employees is contained in Section 5333(b) of Title 49 U.S. Code (formerly Section 13(c) of the Federal Transit Act). Section 5333(b)(2) specifies that the arrangements must provide for: (A) the preservation of rights and benefits of employees under existing collective bargaining agreements or otherwise, (B) continuation of collective bargaining rights, (C) protection of individual employees against a worsening of their positions in relation to their employment, (D) assurances of employment to employees of acquired transit systems, and; (E) priority of reemployment, and paid training or retraining programs.

Section 13(c) requires governing bodies to continue "collective bargaining rights" that existed at the time of the initial influx of Federal assistance. In the past, some states that have prohibited public sector collective bargaining have ensured continuation of collective bargaining rights by a "Memphis Plan," where the transit authority contracts with a management company to operate the system and to hire workers, thus maintaining the private sector rights of the employees. If changes in a state law affect the collective bargaining rights employees enjoyed at the initial influx of federal assistance alternative employee protections may be required to address these changes. The need for alternative protections would be addressed in the context of a pending grant application. This does not preclude the parties from addressing this issue in advance of a pending grant application.

If you have any additional questions in this matter, please do not hesitate to contact me.

Best regards,

John Lund, PhD
Director