



August 21, 2015

Leslie Rogers  
Regional Administrator  
Federal Transit Administration, Region IX  
201 Mission Street, Suite 2210  
San Francisco, California 94105

Re: FTA Application  
Los Angeles County Metropolitan Transportation Authority  
CA-95-X256-01

Dear Regional Administrator:

This is in reply to your request for certification of employee protective provisions for the above-referenced grant application under 49 U.S.C. § 5333. Revisions and/or amendments to this grant may be subject to additional certification in accordance with 29 C.F.R. § 215.

In connection with previous grant applications, the Department of Labor determined that the terms and conditions set forth in the Capital Protective Arrangement for the Los Angeles County Metropolitan Transit Authority (LACMTA) and Amalgamated Transit Union (ATU) Local 1277, dated August 13, 1997, meet the requirements of Section 5333(b).

Also connection with previous grant applications, LACMTA and the Transportation Communications International Union (TCU) executed an agreement dated September 10, 1996, for application to both capital and operating assistance grants. In addition, LACMTA and the United Transportation Union (UTU) executed a protective agreement dated January 16, 1997, for application to capital and operating grants. The Department determined that the deletion of the third "Whereas" clause was appropriate for its certification of these protective arrangements which, as so modified, satisfy the requirements of 49 U.S.C., Section 5333(b). The parties agree that the September 10, 1996 and the January 16, 1997 agreements, as modified, shall be made applicable to the instant project.

Also the International Brotherhood of Teamsters (IBT) Local 911, which represents employees of LACMTA, has not objected to proposals that employees it represents be afforded substantially the same levels of protection as those provided in the February 7, 1996 agreement between LACMTA and the Transit Police Officer's Association for capital and operating assistance. The February 7, 1996 agreement provides protections satisfying the requirements of 49 U.S.C., Section 5333(b). The parties agree that for the instant project, the employees represented by the IBT Local 911 shall be afforded substantially the same level of protections as those contained in the February 7, 1996 agreement.

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In addition, the January 3, 2011 Unified Protective Arrangement (UPA) provides to transportation related employees in the service area of the project protections satisfying the requirements of the Federal transit law, 49 U.S.C., Section 5333(b). The employees in the service area, represented by ATU Local 1756, the Association for Los Angeles Deputy Sheriffs (ALADS), the American Federation of State, County and Municipal Employees (AFSCME) Locals 619, 773, 809, 858, 1117, 1511, 1520, 1769, 1895, 1920, 2325, 3143, 3150, 3339, 3624, 3634, 3745, 3947, the Santa Monica Municipal Employees Association (SMMEA), Santa Monica Administrative Team Association (SMATA), the Santa Monica Supervisory Team Administration (SMSTA), the Santa Monica Management Team Association (SMMTA), the Montebello Bus Operators' Association (MBOA), Montebello Mid-Management Association (MMMA), Montebello City Employees Association (MCEA), the City Employees Associations (CEA) and Management Associations (MA) of Balwin Park (BPCEA), Burbank (BCEA/BMA), Commerce (CEA), Culver City (CCEA), Downey (DCEA), Gardena (GMEA/GMA), and Whittier (WCEA), the International Association of Machinists and Aerospace Workers (IAM), the American Train Dispatchers Association (ATDA), Brotherhood of Locomotive Engineers (BLE), Brotherhood of Maintenance of Way Employees (BMWE), the International Brotherhood of Electrical Workers (IBEW), the Service Employees International Union (SEIU), Association for Los Angeles Deputy Sheriffs (ALADS), the Southern California Conference of Carpenters (SCCC), IBT Locals 572, 848, 952, and 986, California Association of Public Employees (CAPE), the Laborers' International Union of North America (LIUNA) Local 777, and the International Union of Operating Engineers (IOUE), shall be considered third party beneficiaries in accordance with condition (5) below. LACMTA, by executing the contract of assistance with the U.S. Department of Transportation (DOT), accepts the terms and conditions of the UPA.

In addition, special procedures pursuant to 29 CFR §215(a)(2) permit the Department to include conditions (2) and (3) below to satisfy the statute in a manner which does not contravene state or local law. Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the above employee protective arrangements shall be made applicable to the instant project and made part of the contract of assistance, by reference;
2. If on remand from the decision in State of California v. U.S. Department of Labor, \_\_\_ F.Supp.3d \_\_\_, 2014 WL 7909478 (E.D. Cal. 2014), the Department of Labor (DOL) adheres to its legal position that compliance with the California Public Employee's Pension Reform Act of 2013 (PEPRA), Cal. Gov't Code § 7522, *et seq.*, is inconsistent with the requirements of section 13(c), 49 U.S.C. § 5333(b), and thus precludes the Department from certifying grant application numbers CA-90-Z117/CA-90-Z005-01, CA-90-Z117-0823 and CA-03-0806-03/CA-03-0806-04 as being in compliance with section 13(c), 49 U.S.C. § 5333(b), and that legal position is either not challenged in court within sixty (60) days of the DOL's remand decision or challenged in court

and upheld after all appeals are finally exhausted or the time for filing appeals has finally expired, then the Grantee(s) must, in accordance with the DOL's unchallenged legal position or the final judicial determination upholding the DOL's legal position, retroactively restore collective bargaining rights for its transit workers, including any rights, privileges and benefits under all collective bargaining agreements that existed directly prior to the Grantee's implementation of PEPRA.

The retroactive restoration of employee collective bargaining rights (pursuant to the DOL's unchallenged legal position or the final judicial determination upholding the DOL's legal position), including any rights, privileges and benefits under all collective bargaining agreements that existed directly prior to the Grantee's implementation of PEPRA, is the basis for this certification and must be incorporated by reference into the grant agreement(s) with the Federal Transit Administration (FTA).

3. Under this arrangement, if the Department determines that the Grantee(s) has failed to retroactively reinstate the collective bargaining rights for its transit workers, including any rights, privileges and benefits under all collective bargaining agreements that existed directly prior to implementation of PEPRA, in accordance with its obligations hereunder and incorporated by reference into its grant agreement(s) with the FTA, then FTA will take appropriate action to enforce the terms of the grant agreement(s), including, but not limited to, de-obligation of the remaining balance in the grant(s) covered by this certification and pursuit of reimbursement to FTA by the Grantee(s) of any grant funds previously dispersed under the subject grant agreement(s).
4. The term "project" as used in the above arrangements shall be deemed to cover and refer to the instant project;
5. The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements referenced in the grant contract between the U.S. Department of Transportation and the LACMTA, and the parties to the contract so signify by executing that contract. Such transit employees are also third-party beneficiaries to the protective arrangements incorporated in any subsequent contract(s) of assistance between the Grantee and any Recipient(s). Employees not represented by any labor organization, or if so represented through their representative on their behalf, may assert claims with respect to the protective arrangements under this provision. This clause creates no independent cause of action against the United States Government;

6. Disputes over the interpretation, application and enforcement of the terms and conditions of the certified protective arrangements, including those disputes arising out of this letter of certification, except for issues arising under the above paragraphs (2) and (3), shall be resolved in accordance with the procedures specified in the aforementioned certified arrangements; and
7. Employees of mass transportation providers in the service area of the project who are not represented by a union designated above shall be afforded substantially the same levels of protections as are afforded to the employees represented by the unions under the above referenced protective arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute remain after exhausting any available remedies under the protective arrangements and absent mutual agreement to utilize any other final and binding resolution procedure, any party to the dispute may submit the controversy to final and binding arbitration. With respect to a dispute involving a union not designated above, if a component of its parent union is already subject to a protective arrangement, the arbitration procedures of that arrangement will be applicable. If no component of its parent union is subject to the arrangements, the Recipient or the union may request the American Arbitration Association to furnish an arbitrator and administer a final and binding resolution of the dispute under its Labor Arbitration Rules. If the employees are not represented by a union for purposes of collective bargaining, the Recipient or employee(s) may request the Secretary of Labor to designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination of the dispute.

Sincerely,



Ann Comer, Chief  
Division of Statutory Programs

cc: Scheryl Portee/FTA  
Kathy Bahn/LACMTA  
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G. Kent Woodman, J. Sutter Starke/Thompson Coburn, LLP  
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Jeff Steck/ALADS  
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Edwin D. Hill/IBEW  
Ray Cobb/IBEW Rail  
Mary Kay Henry/SEIU  
James T. Callahan/IUOE  
Gordon Hubel/SCCC  
Teri Kaczmarek/Burbank MA  
Jamie Torres/Burbank CEA, AFSCME 3143  
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