



August 21, 2015

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Re: RESPONSE TO OBJECTIONS TO EMPLOYEE PROTECTION TERMS
FOR PENDING FTA GRANT APPLICATIONS
Los Angeles County Metropolitan Transportation Authority (LACMTA)
CA-54-0037; CA-95-X256-01; CA-79-0005; and CA-26-7015

Dear Counselor:

This is in response to your June 29, July 21, and August 11, 2015 letters, as the Counsel for the Transportation Communications Union (TCU)/, International Association of Machinists and Aerospace Workers (IAM), objecting to the terms and conditions proposed in the Department's referrals for the above captioned projects.¹ Pursuant to Department Guidelines (29 CFR Part 215), your objections were timely received.

The Department's guidelines at 29 CFR 215.3(d)(3) provide that the Department will consider an objection sufficient when the objection raises material issues or concerns changes in legal or factual circumstances that may materially affect the rights or interests of employees. On behalf of the TCU/IAM, you object on the grounds that the Department's itemized conditions (2) and (3) are inconsistent with 49 U.S.C. § 5333(b)(2)(B), which requires, as a condition of assistance, fair and equitable arrangements providing for the continuation of collective bargaining rights. You assert that the existing protective arrangements, as modified by the Department's itemized conditions, fail to provide for the continuation of collective bargaining rights. For the following reasons, the Department has determined that your objections are not sufficient under 29 CFR 215.5.

As background, in 2012, Governor Brown signed into law the California Public Employees' Pension Reform Act (PEPRA). The law took effect in 2013 and made changes to the pension rights of all public employees, including transit workers. In September 2013, the Department denied certification for two grants – Sacramento Regional Transit District (SacRTD), and California Department of Transportation (CalTrans) (seeking grant funds for a Monterey-Salinas Transit project) – on the ground that PEPRA did not adequately protect the collective bargaining rights of transit employees. SacRTD and the state of California, on behalf of CalTrans, sued the Department under the Administrative Procedure Act (APA), claiming that the Department's

¹ The Department also acknowledges LACMTA's letter of response dated July 9, 2015. The Department does not view LACMTA's letter as a formal objection to the proposed referral terms, nor does its "qualifications" outlined in the letter supplement the 13(c) agreement, and therefore, the Department will not make a determination of sufficiency.

denials of certification violated the Constitution and were arbitrary and capricious. The district court granted the plaintiffs' motion for summary judgment in late December 2014 and remanded the certifications to the Department for further proceedings. Following the court's guidance, the Department asked the parties for information to assist in the further proceedings on remand. The court did not rule on objections or order certification of the grants at issue.

The proposed supplementary terms and conditions ensure that PEPRAs does not prevent or delay certification, while simultaneously protecting workers' collective bargaining rights and benefits, as required by section 13(c). Condition (2) requires the retroactive restoration of the employee collective bargaining rights and benefits that existed directly prior to LACMTA's implementation of PEPRAs. This restoration would occur upon a final judicial determination upholding the DOL's legal position in any related litigation. Condition (3) provides that if DOL determines the Grantee has failed to restore collective bargaining rights the FTA will take appropriate action. You assert that "restoring" collective bargaining rights would be difficult, if not "impossible" and that it is "unclear" how TCU/IAM and LACMTA may be "unable to undo this damage [unfunded liability and financial dependence on new plan participants]." While your letter highlights the complicated issues involved in employee pension plan fiscal management, your objections are speculative at this juncture and too uncertain for your objections to be sufficient. Here, the Department has determined that the proposed protections are fair and equitable and satisfy the requirements of the Act.

Your letter also alleges that the LACMTA is engaging in activities which violate the applicable protective arrangement(s) at §§ 5333(b)(2)(A) and (B). The terms and conditions of the certified protective agreement provide procedures for resolving disputes over interpretation, application, or enforcement of protective arrangement. Potential or pending claim actions do not raise material issues or changes in facts or circumstances which warrant alternative protective arrangements.

The Department has proceeded to issue its certification, a copy of which is enclosed.

Sincerely,



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Enclosure

cc: Scheryl Portee/FTA
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