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REPORT OF THE COMPTROLLER GENERAL OF THE UNITED STATES

RELEASED

Program To Certify The Agreements To Protect Employees Affected By Grants Made Under The Urban Mass Transportation Act Of 1964

Department of Labor

A review of the employee protective provisions of agreements certified by the Department showed that they provided protection as intended by the act.

GAO's review, however, disclosed a need for improvements in the Department's program administration. The Department needs to expedite issuance of

--criteria for use by labor unions and grantees in developing and negotiating the employee protective agreements required by the act and

--guidelines for resolving disputes that arise under the certified agreements.

The Department has recognized this need and has drafted, but not issued, regulations containing the needed criteria and guidelines.

HRD-76-126

JULY 19, 1976

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-175155

The Honorable John Tower
United States Senate

Dear Senator Tower:

Pursuant to your request and later agreements with your office, we have reviewed the Department of Labor's certification of the agreements to protect employees affected by grants under the Urban Mass Transportation Act of 1964 (49 U.S.C. 1601). Our review was to determine if the Department's Labor-Management Services Administration procedures for certifying employee protective agreements were adequate and if the agreements met the requirements of the act. As requested, we did not obtain formal comments from the Departments of Labor and Transportation; however, we discussed the contents of the report with officials of the Departments and considered their views in preparing it.

Our review of the employee protective provisions in selected agreements that were certified by the Services Administration showed that the agreements provided protection as intended by the act. We noted, however, a need to improve the Services Administration's management of its certification responsibilities.

The Services Administration needs to

--publish criteria to be used by grantees and labor unions in developing and negotiating the employee protective agreements required by the act,

--develop a model employee protective agreement, similar to the one now in use for operating subsidy grants, to be used by unions and grantees for capital facilities grants,

--issue guidelines for resolving disputes between grantees and employees not represented by labor unions when the employees believe they have been adversely affected by being deprived of benefits which are provided in the employee protective agreements, and

--emphasize to unions that disputes involving employees represented by unions are to be handled through collective bargaining and arbitration as provided for in the certified employee protective agreements.

We are recommending that the Secretary of Labor direct the Services Administration to expedite the issuance of drafted regulations containing criteria to be used by grantees and labor unions in developing employee protective agreements and guidelines for resolving disputes between grantees and employees not represented by unions. We are also recommending that the Secretary correct the other management problems noted. (See p. 14.)

As you know, section 236 of the Legislative Reorganization Act of 1970 requires the head of a Federal agency to submit a written statement on actions he has taken on our recommendations to the House and Senate Committees on Government Operations not later than 60 days after the date of the report and the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report. We will contact your office in the near future to arrange for distribution of the report to the Secretary and to the four Committees to set in motion the requirements of section 236.

Sincerely yours,

Comptroller General
of the United States

Contents

ABBREVIATIONS

GAO	General Accounting Office
LMSA	Labor-Management Services Administration
UMTA	Urban Mass Transportation Administration

COMPTROLLER GENERAL'S REPORT
TO THE HONORABLE JOHN TOWER
UNITED STATES SENATE

PROGRAM TO CERTIFY THE AGREEMENTS TO PROTECT EMPLOYEES AFFECTED BY GRANTS MADE UNDER THE URBAN MASS TRANSPORTATION ACT OF 1964
Department of Labor

D I G E S T

Under the Urban Mass Transportation Act of 1964, the Department of Transportation makes grants to help States and local public bodies (and their agencies) acquire, construct, or reconstruct and improve mass transportation facilities and services in urban areas. (See p. 1.)

Section 13(c) of the act provides that before a grant is made to any State or local body, the Secretary of Labor must certify that fair and equitable arrangements have been made to protect the interests of employees affected by such assistance. The act requires that such arrangements include provisions protecting employees against a worsening of their employment positions. (See p. 1.)

Section 13(c) requires that these employee protective arrangements (referred to as agreements) include five specific provisions, including a provision preserving the continuation of collective bargaining rights and the rights, privileges, and benefits--such as pension rights and benefits--under existing collective bargaining agreements. The employee protective agreements are usually between the grantee (public body or its transportation organization) requesting the funds and the labor union representing the employees of the transit project. (See pp. 1 and 5.)

From the program's beginning on January 1, 1965, through December 31, 1975, 1,568 applications for grants have been submitted to the Department of Labor's Labor-Management Services Administration for certifying employee protective agreements.

As of December 31, 1975, the Services Administration had certified agreements for 1,245 applications and denied 3. Of the remaining 320 applications, 148 were no longer active and had been withdrawn, and 172 were still in process on December 31, 1975. (See p. 3.)

GAO reviewed the protective provisions in selected agreements certified during fiscal years 1974 and 1975. GAO's review showed that the agreements provided the employees protection as intended by the act. (See p. 6.)

GAO's review disclosed, however, a need for certain improvements in the Services Administration's management of its certification responsibilities. GAO found that the Services Administration needs to:

--Expedite issuance of criteria to be used by grantees and labor unions in developing and negotiating the required employee protective agreements. (See p. 10.)

--Emphasize to unions that disputes involving employees represented by unions are to be handled through collective bargaining and arbitration as provided in the certified agreements. (See p. 14.)

--Issue guidelines for resolving disputes between grantees and employees not represented by labor unions when employees believe they have been adversely affected by being deprived of benefits which are provided in the agreements. (See p. 10.)

GAO's discussions with grantees and labor unions in 12 cities and a private consultant's report on the Services Administration's certification program indicated that lack of criteria has caused program administration problems.

These include negotiations becoming complicated or, according to grantee officials, taking an inordinate amount of time due to the lack of understanding as to what employee protections should be included in the agreement. (See p. 11.)

GAO also noted confusion of some local union officials in handling disputes under certified agreements. (See p. 11.)

GAO noted that in July 1975 Labor approved the use of a model National Employee Protective Agreement which details the protective terms and conditions that shall generally apply for operating subsidy grants. The model agreement when executed by grantees and labor unions will serve as the basis for the Services Administration's certification that the required employee protections have been provided. (See p. 13.)

Labor officials believe use of the model agreement should expedite handling of applications for operating subsidies. Officials, however, pointed out that the model agreement is not appropriate for capital facilities grants applications--the largest program under the act. (See p. 13.)

Also, as part of a joint Labor and Transportation project, proposed regulations have been drafted on the certification program that are intended to provide guidance to grantees and labor unions in developing and negotiating employee protective agreements. The regulations will

--include criteria as to the types of protective provisions that are necessary and should be included in the agreements,

--provide a practical guide on how the Services Administration will apply the requirements and provisions of the act, and

--establish procedures for timely completion of negotiations, including provisions for specific time limits in appropriate situations.

Proposed regulations will also include procedures for resolving disputes between grantees and employees not represented by labor unions. (See p. 13.)

GAO noted, however, that as of April 1976--over 20 months after the joint project began--the Services Administration had still not published them. (See p. 13.)

GAO is recommending that Labor expedite the issuance of criteria for developing employee protective agreements, develop a model agreement for use by unions and grantees for capital facilities grants, issue guidelines for resolving disputes between grantees and employees not represented by unions, and emphasize to unions that disputes involving employees represented by unions are to be handled through collective bargaining and arbitration as provided under the agreement. (See p. 14.)

CHAPTER 1

INTRODUCTION

At the request of Senator John Tower, we reviewed the Department of Labor's certification of employee protective arrangements required by the Urban Mass Transportation Act of 1964 (49 U.S.C. 1601 et. seq.).

The act provides Federal assistance for developing comprehensive and coordinated mass transportation systems. Under the act, the Secretary of Transportation 1/ is authorized to make grants to help States and local public bodies (and their agencies) acquire, construct, or reconstruct and improve mass transportation facilities and services in urban areas.

Several programs were established to meet the act's requirements, the largest being capital facilities grants to State and local public bodies. These grants may be used to acquire and/or improve existing transit systems--bus, rail, or other--or to build new transit systems. Since July 1, 1973, Federal assistance has been set at a mandatory 80 percent of the net project costs--those costs which could not be reasonably financed from revenues. Prior assistance was limited to two-thirds of the net project costs. Local non-Federal sources must provide any additional funds.

Also authorized under the act are programs to (1) make grants for research, development, and demonstration projects and (2) subsidize transit systems' operating expenses. The last program was authorized by the 1974 amendments to the act--the National Mass Transportation Assistance Act of 1974 (49 U.S.C. 1601(b)).

The act provides that financial assistance for the previously mentioned programs shall not be provided to any State or local public body unless the Secretary of Labor has certified that the requirements of section 13(c) of the act have been met. Section 13(c) provides that, before any assistance is granted, fair and equitable arrangements be made to protect the interests of employees affected by such assistance. Section 13(c) also provides that such

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1/Effective July 1, 1968, responsibility for administering the financial assistance programs under the act was transferred from the Department of Housing and Urban Development to the Urban Mass Transportation Administration (UMTA) of the Department of Transportation under the Reorganization Plan No. 2 of 1968.

protective arrangements include provisions protecting employees against a worsening of their employment positions.

OBTAINING A GRANT

Under the act, public bodies seeking grants are required to submit their applications to the Urban Mass Transportation Administration which determines whether the applicant is eligible and if funds are available. Before the application is approved, UMTA requests Labor to certify the employee protective arrangements. To assist the applicant, UMTA has issued instructions describing the grant application procedures--including the requirement for the certification of the employee protective arrangements.

LABOR'S PROCEDURES FOR CERTIFYING EMPLOYEE PROTECTIVE ARRANCEMENTS

The Labor-Management Services Administration (LMSA), under an Assistant Secretary for Labor-Management Relations, in the Department of Labor administers the employee protective certification responsibilities.

UMTA forwards all grant applications to LMSA for the required certification of employee protective arrangements. LMSA determines if the employees in the transit project are represented by a labor union and notifies the labor union of the need to begin negotiating with the grantee for the employee protective arrangements. LMSA notifies the union through its international headquarters, usually located in Washington, D.C. LMSA frequently gives technical and mediatory assistance to the parties during the negotiations.

The protective arrangements agreed to by the grantee and labor union are specified in an employee protective agreement signed by both parties. LMSA reviews the agreement reached to insure that the agreement meets the requirements of section 13(c). However, in the absence of concurrence by either the grantee or labor union, LMSA has the authority to determine the employee protective terms and conditions. If the affected employees are not represented by a labor union, LMSA determines the employee protective terms and conditions. In a letter to the Administrator of UMTA, LMSA specifies these terms and conditions.

Under the act, the protective agreements negotiated between the unions and the grantees or the terms and conditions imposed by LMSA or the protective arrangements LMSA specified in the absence of union representation (hereafter also referred to as agreements) are made a condition of the grant.

LMSA CERTIFICATION ACTIVITY

From the program's beginning in January 1965 through December 31, 1975, UMTA submitted to LMSA 1,568 applications requesting certification of the employee protective agreements. As of December 31, 1975, LMSA had certified agreements for 1,245 applications and had denied 3. Of the remaining 320 applications, 148 were inactive and had been withdrawn, and 172 were still in process on December 31, 1975. (See app. I.) The 1,245 applications involved grants totaling about $15.1 billion.

SCOPE OF REVIEW

As requested by Senator John Tower, the major matters we reviewed were:

--Whether the agreements certified by LMSA provided employee protection as intended by the act.

--Whether the procedures LMSA followed in fulfilling its certification responsibilities were adequate.

Also, as requested by the Senator, we reviewed:

--The extent of international and local unions' participation in negotiating employee protective agreements.

--The extent to which an unequal bargaining relationship may have existed between the labor unions and the grantees in negotiating the employee protective agreements.

--The extent to which the comments of international labor unions on the employee protective agreements became a matter of public record.

--The extent to which views of the public are solicited and considered by LMSA in certifying the agreements.

--The extent to which LMSA has certified the agreements despite the opposition of labor unions.

--The number of cases in which LMSA has denied certification.

We selected 22 capital facilities' grant applications whose employee protective agreements had been certified in fiscal years 1974 and 1975 and the 3 denied cases. We reviewed these cases for their compliance with the act and

LMSA's operating policies and procedures. Our work was done primarily at LMSA headquarters in Washington, D.C.

We interviewed LMSA officials, held discussions with UMTA officials, met with officials of several international labor unions at their headquarters, and met with American Public Transit Association representatives.

We also met with the officials of 12 grantees and 26 local unions 1/ representing the employees of the transit projects in Denver, Colorado; Washington, D.C.; Atlanta, Georgia; Chicago and Skokie, Illinois; Newport, Kentucky; New Orleans, Louisiana; Detroit, Michigan; New York, New York; Portland, Oregon; Dallas, Texas; and Seattle, Washington.

1/Affected employees for six of the grants were represented by more than one local union.

CHAPTER 2

AGREEMENTS CERTIFIED BY LMSA PROVIDE EMPLOYEES PROTECTION AS INTENDED

A review of selected agreements certified by the Labor-Management Services Administration showed that they gave employees protection as intended by the act.

Section 13(c) of the Urban Mass Transportation Act of 1964 requires that protective arrangements must include five specific provisions as follows:

> "* * * such provisions as may be necessary for (1) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise; (2) the continuation of collective bargaining rights; (3) the protection of individual employees against a worsening of their positions with respect to their employment; (4) assurances of employment to employees of acquired mass transportation systems and priority of reemployment of employees terminated or laid off; and (5) paid training or retraining programs."

Section 13(c) also states that in no event shall the protective arrangements provide benefits less than those established pursuant to section 5(2)(f) of the Interstate Commerce Act (49 U.S.C. 5(2)(f)) for the protection of railroad employees. Section 5(2)(f) provides that fair and equitable arrangements be made to protect the interests of railroad employees affected by any transaction involving a takeover, merger, or consolidation of a railroad system and that such transactions not result in employees being put in a worse employment position.

It appears to have been the congressional intent in 1940, when section 5(2)(f) of the Interstate Commerce Act was enacted, that the fair and equitable arrangements embody the basic provisions of the Washington Job Protection Agreement of May 21, 1936. 1/ This agreement was a collective bargaining agreement approved by about 85 percent of the railroad carriers and 20 of 21 railroad brotherhoods. The Washington agreement was the basis for many railroad employee

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1/ Railway Labor Executives' Association v. United States, 339 U.S. 142, 146-50 (1950). New Orleans Union Passenger Terminal Case, 282 I.C.C. 271, 280-81 (1952).

protective arrangements later negotiated, and has been modified from time to time by the Interstate Commerce Commission. 1/

Under section 13(c) of the act, the Secretary of Labor is responsible for insuring that fair and equitable arrangements are made, whether or not the level of protection exceeds the least protection that may be given under the law. We have found nothing in the act's legislative history 2/ that would prohibit LMSA from certifying agreements providing more than minimum protection provided in either section 13(c) or the Washington Job Protection Agreement.

REVIEW OF SELECTED PROVISIONS IN CERTIFIED AGREEMENTS

We reviewed 22 LMSA-certified employee protective agreements during fiscal years 1974 and 1975 to determine if the agreements contained at least the minimum protective provisions required. Also, the employee protective provisions of the National Railroad Passenger Corporation Agreement (Amtrak agreement) were reviewed. The Amtrak agreement was between the Corporation and several railroads under the Rail Passenger Service Act of 1970 (45 U.S.C. 565), to provide for the takeover of intercity passenger rail service by Amtrak. On April 16, 1971, the Secretary of Labor, as required by section 405 of the Rail Passenger Service Act, certified the employee protective provisions included in the Amtrak agreement, to protect the rights and interests of workers affected by the curtailment of intercity passenger rail service, as fair and equitable. 3/

Most of the employee protective provisions in the Amtrak agreement have been incorporated into many of the agreements submitted for certification to LMSA under section 13(c).

1/Oklahoma Railway Co. Trustees Abandonment, 257 I.C.C. 177 (1944); New Orleans Union Passenger Terminal Case, 282 I.C.C. 271 (1952).

2/H. Rept. 204, 88th Cong., 1st sess. 16 (1963); S. Rept. 82, 88th Cong. 1st sess. 28 (1963).

3/On February 5, 1976, the Congress enacted the Railroad Revitalization and Regulatory Reform Act of 1976 (Public Law 94-210, 90 Stat. 31). Section 402 of this act had the effect of providing that the employee protective agreements under section 13(c) will also be subject to the minimum protective requirements provided in the Amtrak agreement.

PROVISIONS INCLUDED IN
SELECTED CERTIFIED AGREEMENTS

In view of the complexity of the protective agreements reviewed and the diversity of agreement formats, we did not compare and contrast every provision contained in the 22 LMSA-certified agreements and the Amtrak agreement but concentrated on several similar provisions.

The 22 LMSA-certified agreements and the Amtrak agreement included provisions providing for the preservation of the employees' rights, privileges, and benefits under existing collective bargaining agreements and their rights to continue collective bargaining as specified in section 13(c).

Protective period

Section 5(2)(f) of the Interstate Commerce Act provides that an employee may not be placed in a worse employment position for a period of 4 years following the takeover, merger, or consolidation of a railroad system. The Washington Job Protection Agreement, however, provided a 5-year protective period. It was judicially determined in 1950 that the 4-year protective period in section 5(2)(f) was the minimum protection that could be provided. 1/

The Amtrak agreement and 21 of the 22 LMSA-certified agreements provided for a 6-year protective period. The remaining agreement provided for a 4-year protective period.

In all cases, when employees had been working a lesser period of time than the protective period required, they were entitled to protection equal only to the length of their employment. For example, if a worker was employed only 2 years before the transaction, then he was entitled to protection for only 2 years.

Dismissal allowance

Under the Washington agreement, as modified by decisions of the Interstate Commerce Commission 2/, employees who are dismissed for reasons associated with the project are entitled during the protective period to receive a monthly dismissal

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1/Railway Labor Executives' Association v. United States, supra.

2/Oklahoma Railway Co. Trustees Abandonment, 257 I.C.C. 177 (1944). New Orleans Union Passenger Terminal Case, 282 I.C.C. 271 (1952).

allowance equal to their average monthly compensation earned during the last 12 months of their employment. Under the Amtrak agreement and the 22 LMSA-certified agreements, dismissed employees are also entitled to receive similar dismissal allowances during their protective period.

Separation allowance

The Washington agreement provides that dismissed employees can elect to receive a lump-sum payment instead of a dismissal allowance.

The separation allowance is based on the length of employment. For example, employees with more than 1 but less than 2 years of service would receive a separation allowance equal to 3 months' pay and employees with over 5 years of service would receive a separation allowance equal to 12 months of pay.

The Amtrak and LMSA-certified agreements contained similar provisions.

Displacement allowance

Under the Washington agreement, employees who are displaced for reasons attributable to the project and placed in a lower paying job are entitled to receive a displacement allowance during their protective period. The allowance is based on the difference between the employee's average monthly compensation before displacement and his monthly compensation after displacement.

The Amtrak and LMSA-certified agreements contained similar provisions.

Moving expenses

The Washington agreement provides that an employee who is required to move his place of residence to maintain his job be reimbursed for all travel expenses, living expenses, and his own actual wage loss up to 2 working days after the transfer. The Amtrak agreement provides for reimbursement of travel expenses, living expenses, and actual wage loss up to 3 days after the transfer. The LMSA-certified agreements provided for reimbursement of travel expenses and living expenses. Twenty agreements provided for actual wage loss for periods ranging from 2 to 10 days after transfer; in 2 agreements there was insufficient information to determine the number of days to be reimbursed for actual wage loss.

CONCLUSIONS

Section 13(c) requires that the Secretary of Labor insure that fair and equitable arrangements have been made to protect the employees affected by the grants. The section also requires that such protective arrangements include five specific provisions in addition to those protections provided to railroad workers under section 5(2)(f) of the Interstate Commerce Act.

Neither section 5(2)(f) nor section 13(c) prohibits LMSA from approving agreements providing more than whatever is the minimum protection. We found nothing indicating that the agreements did not comply with the act's intent.

CHAPTER 3

ADEQUACY OF LMSA PROCEDURES FOR CERTIFYING EMPLOYEE PROTECTIVE AGREEMENTS

A review of the legislative history showed that the House and Senate Committees on Banking and Currency, in reports on the act, 1/ stated that the Secretary of Labor was expected to assume the responsibility for developing criteria on the types of provisions to assure adequate employee protection.

The Labor-Management Services Administration also has certain continuing responsibilities after the employee protective agreements are certified. LMSA is responsible for resolving disputes between grantees and employees not represented by a union when the employees believe they have been deprived of benefits which are provided in the agreement.

LMSA requires certified employee protective agreements to have a dispute provision--providing collective bargaining and arbitration procedures--to resolve disputes between grantees and labor unions concerning interpretation, application, and enforcement of the employee protective arrangements. LMSA will resolve disputes that cannot be resolved under the provision.

Our review of LMSA's procedures for certifying employee protective agreements showed that criteria have not been provided to labor unions and grantees for developing and negotiating the required agreements. Also, LMSA has not issued guidelines for resolving disputes between grantees and employees not represented by a union.

COMMENTS BY GRANTEES AND LABOR UNIONS ON LACK OF CRITERIA AND GUIDELINES

Grantee officials in the 12 selected cities said negotiations of employee protective agreements became complicated due to a lack of understanding about protective benefits and provisions that should be included in the agreements to meet section 13(c) requirements. Some officials said that the lack of criteria made it unclear as to when and under what circumstances an employee protective agreement would be required and when the use of a prior protective agreement negotiated under section 13(c) would be allowed in lieu of

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1/H. Rept. 204, 88th Cong., 1st sess. 16 (1963), S. Rept. 82, 88th Cong., 1st sess. 28 (1963).

negotiating a new agreement. We were also told that some officials believed that the negotiations took an inordinate length of time because of the lack of criteria on what protective arrangements should have been included in the agreement.

Officials of several local unions in the 12 cities complained that they were unaware of how to handle disputes arising under certified agreements. For example, officials of one local union questioned certain actions that they believed would adversely affect their members, but they did not know how or with whom they were to discuss the dispute.

In another city, union officials told us of several disputes that had come up which they did not know how to handle. One of these included whether certain employees' rights were being violated under the agreement as a result of the transit company's changes in job classifications.

Many grantees and labor union officials in the 12 cities stated that LMSA could assist in negotiating an employee protective agreement by

--issuing specific criteria stating the requirements for an employee protective agreement under the act and

--designing a standard 13(c) agreement to be used by negotiating parties.

Some officials also stated that LMSA needs to provide guidance on resolving disputes under the certified agreements.

CONSULTANT'S REPORT ON LMSA'S ADMINISTRATION OF SECTION 13(c)

A private consultant's report, 1/ financed by the Department of Labor, reviewed LMSA's performance in administering the employee protective agreement programs and noted the need for criteria. The report, issued in January 1972, generally praised LMSA's program administration but stated that problems existed in the program.

One of the problems noted in the report was the

1/"Report to U.S. Department of Labor on Administration of Section 13(c)--Urban Mass Transportation Act" by Jefferson Associates, Washington, D.C., January 1972, Contract #L-72-32.

"Reluctance of the Secretary of Labor or his designated representatives to assume affirmative responsibility for developing criteria with respect to the types of provisions that may be necessary to insure that workers' interests are adequately protected in the different types of situation that may arise."

Other problems were (1) the failure of Labor to properly inform grant applicants of their full responsibilities under section 13(c) in a complete, accurate, and timely fashion and (2) the delay in reaching agreements required by section 13(c) which critically affect other aspects of the grant process.

The report recommended that the Secretary of Labor should

--immediately prepare a brochure briefly explaining the legislative history of 13(c), including its specific provisions, and a list of some sample cases which illustrate a variety of case approaches and solutions developed under the administration of the act and

--consider attaching to the brochure a checklist or a guideline list which would include major items that any grant applicant might have to consider in approaching negotiations and/or certification of its application.

As of April 1976, Labor had not taken any action on the above recommendations.

LMSA ACTIONS TO DEVELOP CRITERIA AND GUIDELINES

LMSA officials agreed a need existed for providing more guidance to grantees and labor unions. LMSA officials advised us they have

--attempted to coordinate their certification activities with the Urban Mass Transportation Administration,

--tried to educate UMTA's project representatives about their requirements under section 13(c),

--drafted proposed regulations on certification of employee protective agreements in a joint project with UMTA, and

--drafted guidelines for resolving disputes for employees not represented by unions.

LMSA officials also stated that in July 1975 the Secretary of Labor approved the use of a model National Employee Protective Agreement which detailed the protective terms and conditions that generally apply for operating subsidy grants. Labor officials said the model agreement, when executed by grantees and labor unions, would serve as the basis for LMSA certification that the required employee protections have been provided.

On July 23, 1975, representatives of the Amalgamated Transit Union, the Transport Workers Union of America, and the American Public Transit Association (which is made up of transit organizations) agreed to have their organizations use the model agreement in negotiating employee protective agreements.

Labor officials believe that using the model agreement should expedite the handling of grant applications for operating subsidies. The officials, however, noted that the model agreement is not appropriate for capital facilities grants applications.

Also, in August 1974, a joint Labor and Transportation task force was formed to review the problems existing in the 13(c) program and to develop guidelines for administering the program. LMSA officials advised us that this project proposed regulations on the certification program which were drafted for publication in the Code of Federal Regulations.

These regulations are to provide both grantees and labor unions guidance in submitting applications and are to (1) include criteria on the types of provisions which, should be included in the agreements to insure that workers' interests are adequately protected in different situations, (2) provide a practical interpretative guide on how LMSA will apply the provisions of section 13(c), and (3) establish procedures for the timely completion of negotiations, including provisions for specific time limits in appropriate situations. The proposed regulations will also include procedures for resolving disputes between the grantees and employees not represented by unions.

However, as of April 1976--about 20 months later--LMSA had still not published and issued the drafted regulations. According to LMSA officials, a draft of the regulations was submitted to UMTA for review in May 1975 and LMSA has not received UMTA's comments.

CONCLUSIONS

The Congress intended that Labor assume responsibility for developing criteria on the type of provisions necessary to assure adequate employee protection for agreements negotiated under the act. As indicated by our visits to selected cities and the Jefferson report, the lack of criteria has caused program administration problems. We believe, therefore, LMSA needs to provide grantees and labor unions with criteria to develop fair and equitable arrangements under the employee protective agreements.

LMSA needs to issue guidelines on the handling of disputes by employees not represented by unions when the employees believe that they have been adversely affected by being deprived of benefits provided in the certified employee protective arrangements.

LMSA has recognized these needs by approving the model agreement to be used on grant applications for operating subsidies and by the proposed regulations it has drafted. However, the regulations have not been issued.

We also believe that LMSA should develop a model employee protective agreement which can also serve as a guide on applications for capital facilities grants.

Moreover, since some confusion exists on the part of local labor union officials on the handling of disputes, we believe that LMSA should emphasize to the unions, at the time it certifies the agreements, that disputes are expected to be handled through collective bargaining and arbitration as provided for in the agreement.

RECOMMENDATIONS

We recommend that the Secretary of Labor direct the Assistant Secretary for Labor-Management Relations to

--expedite the issuance of criteria for developing employee protective agreements by grantees and unions,

--develop a model employee protective agreement to be used by unions and grantees for capital facilities grants,

--expedite the issuance of guidelines for resolving disputes between grantees and employees not represented by unions, and

--emphasize to unions, that disputes involving employees represented by the unions are to be handled through collective bargaining and arbitration as provided for in the certified agreement.

CHAPTER 4

OTHER PRACTICES REVIEWED REGARDING LMSA'S CERTIFICATION OF EMPLOYEE PROTECTIVE AGREEMENTS

We reviewed other practices followed by the Labor-Management Services Administration in certifying employee protective agreements at the request of Senator Tower.

--The extent of international and local unions participation in negotiating employee protective agreements.

--The extent to which an unequal bargaining relationship may have existed between the labor unions and the grantees in negotiating the employee protective agreements.

--The extent to which the comments of international labor unions on the employee protective agreements become a matter of public record.

--The extent to which views of the public are solicited and considered by LMSA in certifying the agreements.

--The extent to which LMSA has certified the agreements despite the opposition of labor unions.

--The number of cases in which LMSA has denied certification.

Our comments on these matters follow.

INTERNATIONAL AND LOCAL UNIONS PARTICIPATED IN NEGOTIATING EMPLOYEE PROTECTIVE AGREEMENTS

In accordance with its procedures, LMSA notifies the labor union, through its international union headquarters, of the need to start negotiations for employee protective agreements (see p. 2). The international labor union representatives usually manage the drafting and negotiating of the agreements at the Washington headquarters level.

LMSA officials advised us that the international labor unions have requested that LMSA use these procedures and arrangements.

We found nothing in our review of the Urban Mass Transportation Act of 1964 or its legislative history 1/ that would prohibit LMSA from requesting the international union to initiate negotiation for employee protective agreements required under section 13(c). We noted, however, that the House Committee on Banking and Currency, in its report 2/ on the act, stated that:

> "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 negotiations."

During our visits to the 12 selected cities, we discussed with officials of 26 local unions 3/ who represented employees affected by the grants, the extent to which they had participated in negotiating employee protective agreements. The officials of 17 local unions said they had participated to some extent in the negotiations. The remaining nine local union officials said they had not participated in negotiations.

The negotiation sessions for the employee protective agreements on the grants in the 12 cities were held mostly in Washington, D.C. According to officials of the 26 local unions, LMSA and/or the international union officials requested that the local unions attend such sessions. Officials from 19 of the 26 local unions representing employees attended some of the negotiating sessions in Washington, D.C. Officials of the other seven local unions said they were unable to attend negotiation sessions because they did not have adequate resources to finance trips to Washington, D.C.

Although some of the local union officials did not participate in the negotiations, the officials from 17 of the 26 local unions said they were generally satisfied with the agreements negotiated by the international unions, and none of the 26 officials believed they received less than the minimum protective arrangements required under the act. Some of the officials of the local unions stated

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1/H. Rept. 204, 88th Cong., 1st sess. 16 (1963); S. Rept. 82, 88th Cong., 1st sess. 28 (1963).

2/H. Rept. 204, 88th Cong., 1st sess. 16 (1963).

3/Employees for six of the grants were represented by more than one local union.

that the international union representatives are experts in 13(c) negotiations and their experience and expertise should be used. Officials from 2 of the 26 local unions believed that the international labor unions' negotiations resulted in the employees receiving less in protective benefits than if the local union handled the negotiations.

We also met with representatives of five international labor unions involved in protective agreement negotiations. The representatives said they usually notify the local unions of the grant applications as soon as they receive them and request information from the local unions on their specific needs.

It is the Congress' intent that employee protective agreements normally be the product of local bargaining and negotiations. Although UMTA relies on the international labor unions to initiate negotiations for agreements, local unions are requested to participate in the negotiating sessions. While our review has shown that several of the local unions did not participate in the negotiations, officials from only 2 of the 26 local unions believed that the international unions' negotiations resulted in the employees receiving less protective benefits than if the local union handled the negotiations. However, officials of all of the local unions we contacted stated that the employees received at least the minimum protective arrangements required under the act.

AN UNEQUAL BARGAINING RELATIONSHIP MAY HAVE EXISTED BETWEEN LABOR UNIONS AND GRANTEES

Since we neither observed nor participated in any of the negotiating sessions for employee protective agreements, we could not determine to what extent, if any, an unequal bargaining relationship existed between grantees and labor unions. Of the 12 grantees we solicited, 9 believed that they were at a disadvantage in negotiating the agreements, and 3 believed they were not.

Four of the eight grantees said the unions, particularly the international unions, can hold up the grants until they are fully satisfied with the agreements. Two of the grantees also commented that the negotiations were started very close to the end of the fiscal year and they had to make concessions which they might not have made had there been more time to negotiate.

Four grantees believed that they were at a disadvantage in negotiations because:

--LMSA officials are located in Washington and most negotiations are held there, thus, requiring trips to Washington.

--LMSA officials and the international unions' officials continually work on agreements and thus are more knowledgeable of other labor unions' and grantees' agreements.

--LMSA and international union officials have a close relationship because of their continuous negotiating sessions.

Two grantees also said having to go to Washington, D.C. for meetings with LMSA and international union officials puts them at a disadvantage because of the expenses involved and because they could not stay indefinitely for the negotiations.

Some grantees said section 13(c) of the act was intended to assure that employees do not worsen their position, but was being used by unions to obtain concessions and benefits that could not be obtained through collective bargaining. For example, one grantee stated that in order to reach an agreement with the union, it agreed to provide a more lucrative pension plan and more paid holidays than it would have agreed to under collective bargaining.

Seventeen officials of the 26 local labor unions did not believe they were at a disadvantage in negotiating their employee protective agreements. None of the officials of the 26 local unions believed they received less than the minimum protective arrangements required under the act.

COMMENTS OF INTERNATIONAL LABOR UNIONS AVAILABLE FOR PUBLIC INSPECTION

LMSA maintains a case file at its Washington headquarters on each UMTA grant application on which it has been requested to certify the employee protective agreement. These files contain the comments of the international labor unions. Although LMSA has not advertised the availability of its files for public inspection, it would make such information available upon request.

Our review of 25 case files showed that the files generally contained copies of the grant application, copies of correspondence between LMSA and the grantee, the names of local and international labor unions involved, memoranda of meetings prepared by LMSA, and a copy of the LMSA-certified employee protective agreement or letter stating the reasons for denying the certification.

Since the beginning of the program through December 31, 1975, LMSA has certified employee protective agreements for 1,245 UMTA grant applications. According to LMSA, the case files on these applications fill over 55 file drawers. LMSA officials told us and others making inquiries on the availability of this data that most of this material--including comments by international labor unions--was open to public inspection and that LMSA would have no objection to a valid examination of it.

VIEWS OF THE PUBLIC ARE NOT SOLICITED NOR CONSIDERED BY LMSA

LMSA does not directly solicit the views of the public when considering certification of employee protective agreements. LMSA does not publish the receipt of grant applications requesting certification of employee protective agreements in the Federal Register. LMSA officials believe they are not responsible, under the act, for considering or incorporating the views of the public into employee protective agreements. They maintain that the applicant represents the public and is a party to the negotiations for the employee protective agreements.

UMTA requires every applicant for a capital grant to hold a public hearing on the proposed project before the final application is submitted to UMTA. This hearing allows parties with large social, economic, or environmental interests an opportunity to present their views on the proposed project.

UMTA officials believe that this public hearing is the time for citizens to express their views. UMTA requires the applicant to consider the public's views in finalizing the project.

We noted that the proposed regulations on LMSA's certification program to be published in the Code of Federal Regulations (see page 13) contained a requirement that, upon receipt of a grant application and a request for certification, notice of the filing of the application would be made by LMSA through publication in the Federal Register.

AGREEMENTS LMSA HAS CERTIFIED DESPITE THE OPPOSITION OF LABOR UNIONS

Under the Urban Mass Transportation Act, LMSA has the authority, in the absence of concurrence by either the grantee or the labor union, to determine the terms and conditions to protect the interests of employees affected by the grant and to certify them to the Urban Mass Transportation Administration.

Since the act was passed in 1964, LMSA has used this authority sparingly. For example, of the 123 agreements certified during fiscal year 1974 involving employees represented by unions, LMSA imposed the employee protective conditions in only 2 cases. We reviewed the circumstances surrounding these two cases and a similar case in fiscal year 1975. The three cases involved the cities of Detroit; Washington, D.C.; and Denver.

In all three cases, the labor unions involved had reached an agreement with the grantees on the basic terms and conditions which would apply for the protection of the employees. However, the labor unions insisted on additional protective arrangements which LMSA believed could not be granted.

In one case, four unions were involved in the service area of the project. Three of the unions negotiated and signed an agreement with the grantee, which was certified by LMSA. The fourth union would not sign the agreement. The fourth union wanted the city to be a party of the agreement on the basis that only the city could provide guarantees to meet the requirements of section 13(c). LMSA stated that the city's guarantee was not necessary. LMSA, therefore, specified the basic terms and conditions for the union.

In the second case, involving two labor unions, one union would not sign the employee protective agreement because it believed that the other union was using the agreement to take over its membership. LMSA advised the objecting union that questions of appropriate representation could not be determined through negotiations for an employee protective agreement under the act. LMSA certified the agreement on the basis of the other unions' employee protective terms and conditions.

In the third case, one labor union chose not to sign the agreement because it believed that under the agreement its members would become public employees and would lose bargaining power. The union said under the State law public employees did not have the right to strike and must agree to binding arbitration. LMSA stated that the employees would be protected either as public or private employees, and the determination of the private or public status of the employees had to be resolved through means other than negotiations for an employee protective agreement. Accordingly, LMSA certified the employee protective agreement on the basis of the terms and conditions negotiated.

CASES LMSA HAS DENIED CERTIFICATION

Under the act, LMSA has the authority to deny certification of the proposed employee protective agreement if it determines that fair and equitable arrangements have not been made to protect the interests of the employees to be affected by the grant.

Since the beginning of the program through December 31, 1975, LMSA has denied certification in three cases. These agreements involved grant applications from Amarillo, Texas; Springfield, Missouri; and Yakima, Washington. All three cases were handled in the early years of the program, two in fiscal year 1967 and one in fiscal year 1968.

In all three cases, grantees took the position that the affected transit employees were public employees and the State laws prohibited them from entering into collective bargaining contracts and employee protective agreements required by the act. LMSA informed the grantees that provisions must be made to protect the employees notwithstanding the existence of statutory impediments under State and local laws. The grantees responded that they could not legally enter into an agreement or bargain with unions and that they were unwilling to formally accept the responsibility for assuring the protection of employees affected by the grants. Consequently, LMSA said it could not certify employee protective agreements in these cases and the grants were denied.

APPLICATIONS FOR GRANTS UNDER THE URBAN MASS TRANSPORTATION ACT REVIEWED AND CERTIFIED BY LMSA FY 1965 THROUGH THE FIRST HALF OF FY 1976

	FY-65 through FY-76	Fiscal years											
		1965 (note a)	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976 (note b)
Applications received for review	1,568	27	50	45	54	75	78	136	177	175	192	388	171
Carried over from previous fiscal year	-	-	1	11	16	30	39	24	36	53	68	83	178
Total available for review	1,568	27	51	56	70	105	117	160	213	228	260	471	349
Closed (inactive or withdrawn)	148	-	-	3	2	11	15	24	26	18	17	17	15
Applications reviewed	1,248	26	40	37	38	55	78	100	134	142	160	276	162
Certified	1,245	26	40	35	37	55	78	100	134	142	160	276	162
Denied	3	-	-	2	1	-	-	-	-	-	-	-	-
Carried over to next year	-	1	11	16	30	39	24	36	53	68	83	178	172

a/Program began January 1965.

b/As of 12/31/75.

Source: LMSA

APPENDIX I

PRINCIPAL OFFICIALS OF THE DEPARTMENT OF LABOR RESPONSIBLE FOR ADMINISTERING ACTIVITIES DISCUSSED IN THIS REPORT

	Tenure of office From	To
SECRETARY OF LABOR:		
William J. Usery, Jr.	Feb. 1976	Present
John T. Dunlop	Mar. 1975	Jan. 1976
Peter J. Brennan	Feb. 1973	Mar. 1975
James D. Hodgson	July 1970	Feb. 1973
ASSISTANT SECRETARY FOR LABOR-MANAGEMENT RELATIONS:		
Bernard E. DeLury	Apr. 1976	Present
Paul J. Fasser, Jr.	Mar. 1973	Apr. 1976
William J. Usery, Jr.	Feb. 1969	Mar. 1973
ADMINISTRATOR, LABOR-MANAGEMENT SERVICES ADMINISTRATION:		
Bernard E. DeLury	Apr. 1976	Present
Paul J. Fasser, Jr.	Mar. 1973	Apr. 1976
William J. Usery, Jr.	Feb. 1969	Mar. 1973
DIRECTOR, OFFICE OF LABOR-MANAGEMENT RELATIONS SERVICES:		
Beatrice M. Burgoon	May 1966	Present
CHIEF, DIVISION OF EMPLOYEE PROTECTIONS (note a):		
Lary F. Yud	Sept. 1974	Present
Lary F. Yud (acting)	July 1973	Sept. 1974
Norris Sacharoff	May 1966	June 1973

a/Designated as Special Assistant for Urban Mass Transportation before March 25, 1976.