Section 13(c)

Federal Transit Employee Protections, State Attacks on Collective Bargaining Rights, and Claims Arbitration

August 2013
What is Section 13(c)?

- Special Transit Employee Labor Protections certified by the U.S. DOL as a precondition for public agencies to receive federal funding

- Originally in Section 13(c) of the Urban Mass Transportation Act of 1964

- Now found at 49 U.S.C. Section 5333(b) of the Federal Public Transportation Act
Why is Section 13(c) Important?

- Protects Existing Public/Private Sector Collective Bargaining Rights – Mandatory and/or Traditional Subjects of Bargaining
- Protects Jobs and Benefits Against Adverse Impacts from Federal Funds
- Provides Resolution Procedure for Disputes over Making Collective Bargaining Agreements and the Terms of the Section 13(c) Agreements
What does Section 13(c) Require?
Public Transit Bodies Are Required to:

✓ **Preserve** transit employees’ rights and benefits;
✓ **Continue** transit employees’ collective bargaining rights;
✓ **Protect** transit employees’ against a worsening of their employment conditions;
✓ **Assure** jobs for employees of acquired mass transit systems;
✓ **Provide** priority of reemployment if an employee is laid off or his/her job is eliminated; and
✓ **Provide** paid training.
How Does the Section 13(c) Administrative Process Work?
29 C.F.R. 215

- Public Agencies **Submits** Grant Applications to Federal Transit Administration (FTA)
- FTA **Forwards** the Grants to the Department of Labor (DOL) for Section 13(c) Certifications
- DOL **Refers** the Proposed Section 13(c) Protective Terms and Conditions to Applicant and Union(s)
- Parties have **15 days** to Agree or File Objections to the DOL’s Proposed Terms
- DOL **Issues** Final Determination on Objections and/or Issues Final Certification Action
- DOL **Certification Required to Receive Federal Funds**
State Attacks on Collective Bargaining Rights 2010-2013
Wisconsin

- Act 10 eliminates most public employees right to bargain over anything but a restricted range wages
- Bans “Fair Share” agency fee provisions in collective bargaining agreements
- Compels public sector unions to win recertification annually by a super-majority vote
- Bans payroll deduction of membership dues

ATU’s Response/Status Now

- ATU objected to limits on bargaining rights
- Wisconsin Act 32 passed which exempts transit employees from Wisconsin Act 10
Michigan

- Local Financial Stability and Choice Act – PA 436
  - Replaces the Accountability Act (aka Emergency Financial Manager Act) – PA 4 – which allowed for the gubernatorial appointment of a manager in a financial emergency
  - When a financial emergency is found to exist, the local government can choose to either sign a consent agreement, have an emergency manager appointed, undergo a neutral evaluation process, or file for Ch. 9 bankruptcy

- PA 54 freezes wages and benefits of employees at the expiration of an existing collective bargaining agreement
  - Requires employees to pay any increased costs associated with insurance benefits
  - Prohibits any retroactive wage or benefit levels

- PA 152 imposes hard cap or 80/20 split on health care costs

- PA 63 and PA 107 prescribe eligibility requirements regarding qualifying for revenue sharing incentives (EVIP) for cities, villages and townships, which include an employee compensation plan that would mandate employee concessions.

ATU’s Response/Status Now

- ATU objects to limits on collective bargaining rights

- PA 4: DOL required letter of assurance that transit systems are not in financial distress so as to trigger PA 4

- PA 436: Legal Department currently reviewing its impact on Section 13(c) rights, especially in light of Detroit’s filing for bankruptcy on July 18, 2013

- PA 54: DOL ruled new law restricts the rights of public employees to engage in collective bargaining
  - DOL directed the parties to engage in good faith negotiations to resolve issues
  - DOL secured AG ruling permitting 6 month contract extensions to avoid adverse effects
  - Supplemental agreements negotiated with MI transit systems in order to overcome limitations imposed by PA 54

- PA 152: Transit agencies who have existing Section 13(c) agreements in place that are inconsistent with the new law’s mandates have the ability to “opt-out” under PA 152

- PA 63 and PA 107: If a transit body is eligible for EVIP, it must provide assurance that it will not pursue employee concessions in order to qualify.
New Jersey

- Public Law 2011, Ch. 78, mandates that active employees pay between 3% and 35% of the cost of health benefits based on salary and coverage selected.
- Minimum contributions are phased in over four years.

ATU’s Response/Status Now

- ATU objected to limits on bargaining rights.
- DOL secured state attorney general opinion that new law does not apply to NJT transit employees.
Massachusetts

- Amendment to MBTA law abolished health care plan and amended the retirement plan
- Transferred MBTA employees to the state GIC health insurance
- Required new hires to become eligible for a pension after 25 years of service and no earlier than reaching age of 55

ATU’s Response/Status Now

- ATU objected to limits on bargaining rights on health care benefits
- DOL ruled new law removes mandatory and/or traditional subjects of bargaining which violates Section 13(c)
- Parties reached agreement to address adverse affects. MBTA and unions negotiated a Health and Welfare Trust Plan which provides supplementary health benefits and coverages. Additionally, legislation was passed allowing the creation of the Plan
- DOL now approves all pending grants
Ohio

- SB 5 limits public employee bargaining to wages; excludes health care, sick time, or pension benefits
- Eliminates automatic pay increases and replaces them with merit raises or performance pay
- Bans strikes and reduces organizing rights

ATU’s Response/Status Now

- ATU objected to limits on bargaining rights
- DOL initially ruled that SB 5 does not affect transit employees because of special state law
- By referendum in November 2011, SB 5 was defeated
California

- Public Employees’ Pension Reform Act (PEPRA) impacts new employees hired after January 1, 2013:
  - Raises minimum retirement age (from 55 to 62)
  - Imposes new formulas for calculating pension benefits (2% at 62)
  - Requires contributions from employees to equal ½ of the normal costs of plan
  - For existing employees: bans enhancements in benefits for past service; supplemental or replacement plans; and airtime purchases

ATU’s Response/Status Now

- ATU objects to limits on bargaining rights
- DOL initially ruled that new law appears to remove mandatory and/or traditional subjects of bargaining which violates Section 13(c)
- On August 1, 2013, DOL issued a letter to CA Governor Brown urging the passage of an amendment to PEPRA exempting transit employees
Discussion

✓ Restructuring/Outsourcing:
  • Contractor to Contractor Change
  • Public to Private Operational Change
  • Transferring Work to Other Contractor(s)

✓ Request for Proposals/Competitive Bidding

✓ Claims:
  • Notice and Negotiations
  • Arbitrations