The original documents are located in Box 21, folder "Mass Transit - Labor Protective Agreements (1)" of the James M. Cannon Files at the Gerald R. Ford Presidential Library.

THE WHITE HOUSE

WASHINGTON

March 24, 1976

Labor
copies to UMTA [13(c)]
Quern
McCauley
Lissy
Hope

MEMORANDUM FOR: THE SECRETARY OF LABOR
THE SECRETARY OF TRANSPORTATION

FROM: JAMES E. CONNOR
SECRETARY TO THE CABINET

Copies sent 3/31 G.R.

The President has asked for a report on the status of section 13(C) of the Urban Mass Transportation Act which requires that the Secretary of Labor certify that fair and equitable arrangements have been made to assure that no employees are adversely affected by any UMTA grant.

Could you please prepare a joint memorandum to the President which addresses the major problems posed by the requirements and implementation of section 13(C). Your memorandum should include an analysis of the problems, an indication of what Administration actions may be advisable, and a proposed timetable.

I would appreciate it if you would coordinate your efforts with the Domestic Council.

The memorandum to the President should be submitted to me by Wednesday, April 7th.

cc: James M. Cannon
Executive Director, Domestic Council

THE WHITE HOUSE
WASHINGTON

Date 4/8

TO: Jim Cannon

FROM: DAVID LISSY

✓ FYI

_____ For Appropriate Action

COMMENTS

cc: Hope

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES
856 HALL OF ADMINISTRATION / LOS ANGELES, CALIFORNIA 90012

(213) 974-4111

PETER F. SCHABARUM
SUPERVISOR, FIRST DISTRICT

April 5, 1976

Mr. David H. Lissy
Associate Director, Domestic Council
The White House
Washington, D.C. 20510

Dear David:

I was pleased to learn of the memorandum sent by Dr. James Conner to the Secretaries of Labor and Transportation with regard to Section 13(c). This action, I believe, is a giant step in solving this problem.

I have enclosed a copy of a resolution adopted by the National Association of Counties which will illustrate the problems of the transit operators. As to cost implications, I can only say again that this labor agreement is a direct byproduct of ICC regulations of the 1890's which eventually drove our nation's railroads into bankruptcy. The continuation of such labor protective agreements can only drive the public transit operators of this country into the same bankruptcy court.

Sincerely yours,

PETE SCHABARUM
Supervisor, First District

PS:dsc

Enc.

1735 new york avenue, n.w., washington, d.c. 20006 (202) 785-9577

NACo POLICY RESOLUTION

TRANSPORTATION LABOR PROTECTIVE AGREEMENTS SECTION 13(c)

Adopted by NACo Board of Directors

March 30, 1976

WHEREAS, Section 13(c) of the Urban Mass Transportation Act of 1964 requires as a precondition to UMTA assistance, "fair and equitable" arrangements to protect the interests of employees by such assistance; and

WHEREAS, the determination of what is "fair and equitable" is made only by the Secretary of Labor without benefit of written regulations; and

WHEREAS, before making this determination, the Secretary of Labor submits proposed labor protective agreements to unions representing affected employees; and

WHEREAS, the Secretary of Labor typically submits such proposals to many labor organizations, even where there is only a very minimal potential interest involved; and

WHEREAS, the Secretary of Labor sets no limit on the length of time such organizations may take to review the proposed agreement and such review often results in unreasonable and unnecessary delays in funding; and

WHEREAS, the effect of this practice is to allow labor organizations to hold hostage needed UMTA grants; and

WHEREAS, the pressure on transit officials to sign these agreements in order to assure continuity of public transportation service cannot realistically be ignored; and

WHEREAS, these pressures make management of transit operations in an orderly, efficient and cost-effective manner impossible;

NACo URGES THAT

the Congress and the Department of Transportation and the Department of Labor conduct a thorough review, study and reconsideration of the administrative procedures currently utilized in achieving compliance with Section

13(c) of the Urban Mass Transportation Act of 1964. Particular attention should be given to the effect of the general provisions and administrative procedures of 13(c) as they impact on the provision of public transportation services

the study should also include but not be restricted to considerations such as:

° The relevance and effectiveness of 13(c) in assuring agreements which are fair and equitable to public transportation users and taxpayers at the federal, state and local levels.

° A limitation of 13(c) review provisions to these unions having a direct interest in them.

° A limitation of the amount of time affected unions may be permitted in their review of labor protective agreements.

° The need for written regulations to guide the Department of Labor in its administration of 13(c).

° The need for a review of the appropriateness and relevance of the provisions and use of the so-called "model agreement" negotiated and signed by the American Public Transit Association (representing management) and the Amalgamated Transit Union and Transport Workers Union of America.

° The need to separate application of agreement provisions appropriate for rail transit employees which are based upon 19th century rail provisions from those appropriate for modern transit system employees.

° The need to ensure that state collective bargaining laws will apply to local transit public employee labor relations and shall not be prempted by the Secretary of Labor.

THE WHITE HOUSE

WASHINGTON

INFORMATION

April 13, 1976

MEMORANDUM FOR: JIM CONNOR

THROUGH: JIM CANNON

FROM: JUDITH RICHARDS HOPE
DAVID LISSY

SUBJECT: UMTA Section 13(c) Labor Protective Arrangements

We hosted a meeting today attended by Bob Patricelli, UMTA Administrator, Bob McManus, his staffer, and John Read, Executive Assistant to Secretary Usery. Although DOT and DOL are far apart on 13(c) issues, Read will prepare a written Labor Department response to the options presented in Secretary Coleman's April 7 position paper to the President. That written response will be submitted by April 21.

13(c)

THE WHITE HOUSE

WASHINGTON

April 22, 1976

MEMORANDUM FOR: JIM CANNON

FROM: DAVID LISSY

Attached is your copy of Bill Usery's latest memo on the 13(c) problem.

Jim Cavanaugh, Steve McConahey and Judy Hope also have copies.

Attachment

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

April 21, 1976

MEMORANDUM FOR THE PRESIDENT

ATTENTION: James E. Connor
Secretary to the Cabinet

SUBJECT: Section 13(c), Urban Mass Transportation Act of 1964, as amended

This memorandum follows up on a meeting held on Tuesday, April 13, 1976, between David H. Lissy of the Domestic Council Staff, Administrator Robert E. Patricelli and Robert McManus of the U.S. Department of Transportation's Urban Mass Transportation Administration, and John C. Read, Executive Assistant/Counselor to the Secretary of Labor. At the conclusion of the meeting it was agreed that the Department of Labor would prepare a memorandum in response to the DOT Memorandum for the President dated April 8, 1976, concerning Section 13(c) of the Urban Mass Transportation Act of 1964, as amended. A copy of DOT's April 8, 1976 memorandum is attached.

Prior to commenting on individual items in the DOT memorandum, there are some initial comprehensive observations that must be made. First, we believe that there is among public bodies, transit systems, and others who become involved in the UMTA grant process a widespread lack of understanding of the employee protection requirements and the procedures utilized by the Department of Labor in processing grant applications for certification purposes. There also is a strongly-felt opposition by some to the specific statutory protection requirements. This lack of understanding and opposition is reflected in the overall thrust of the DOT memorandum. Thus, many of the proposals set forth therein are contrary to the specific letter of the law. Others run counter to the statute's spirit and intent. Accommodation of DOT's position on these matters cannot be accomplished through administration action, but instead would require amendment to the existing legislative requirements.

As a second initial observation, we would emphasize that since the passage of the Act, the Department of Labor has made in excess of 1350 certifications. In only a handful of cases has the Department been unable to make the required certification. Given the many diverse and complex situations in which the protection requirements must be implemented, we believe that this record is commendable. A 1971 evaluation by an outside contractor concluded that the Department of Labor's performance in administering Section 13(c) had been "uniformly excellent."

PROBLEMS

Six problem areas are cited in the DOT memorandum, as follows:

1. Applicability.

DOT questions whether "protective arrangements developed in the context of public subsidies to privately owned transit companies and of railroad mergers and consolidations are appropriately applied to what is now a publicly owned transit industry."

There is very little room for administrative discretion under Section 13(c) in this area. Section 13(c) requires that protective arrangements certified thereunder "shall include provisions protecting individual employees against a worsening of their positions which shall in no event provide benefits less than those established pursuant to Section 5(2)(f)" of the Interstate Commerce Act. (Underscoring added.) This language could not be more clear. The Secretary of Labor cannot certify protective arrangements under Section 13(c), UMTA, which do not include Section 5(2)(f), ICA, benefits or the equivalent thereof. Moreover, we believe it appropriate that a uniform level of protections apply to employees who are affected by Federally sponsored and/or funded activity, no matter what particular industry is involved. What should vary from industry to industry is the application of the required levels of protection to place them in harmony with particular industry and area practices. This can be and is best accomplished through negotiations between industry and employee representatives.

Interestingly, no Federal funds are involved in normal Section 5(2)(f) applications, merely the Federal (ICC) approval of a private industry "consolidation". In the transit industry application on the other hand,

substantial Federal grant money accompanies the employee protection requirements, and under the UMTA operating assistance program, grant money can be used to pay employee protection costs.

DOT's memorandum acknowledges that employee claims for benefits under Section 13(c) have been small in number and states "[T]herefore, Section 13(c) is probably producing very little in terms of necessary protection, while its operation is causing significant frustration, red tape, and intrusion on labor-management relations . . ." The lack of large numbers of employee claims is no indication that Section 13(c) is producing "little in terms of necessary protection". The development of the specific protective arrangement for application to a particular project situation resolves many issues that would otherwise lead to claims. This is particularly true in the area of preservation of pension and other fringe benefit programs. Claims for protection of such benefits are in effect resolved by the parties in advance. Similarly, arrangements to give retraining and priority employment rights to employees who would otherwise be deprived of employment as a result of the Federal assistance reduce the number of future claims.

The claim that Section 13(c) causes "significant frustration, red tape, and intrusion on labor-management relationships" simply is not true as a general proposition. Comments on specific points raised in the DOT memorandum with respect to this theme are set forth below. We would merely point out here that no evidence or documentation has been offered in its support. Also, we would cite the following two statements concerning Section 13(c) contained in a report prepared by UMTA staff following a November 20, 1975 Conference and Symposium on Transit Industry Labor-Management Relations Research:

1. Of the many factors which affect transit industry labor-management relationships, the provisions and implementation of Section 13(c) of the UMTA Act appear to be among the least significant, either in arriving at contractual agreements or in the substance of those agreements. Although the perception by those not involved in collective bargaining of the influence of 13(c) ranges from 'no effect' to 'blackmail,' the perception by the parties

themselves is that 13(c) is not a significant issue in negotiations. It was the judgment of the researchers and most of the participants that if 13(c) had never been enacted, the problems and issues facing the industry in the area of labor relations would be similar, if not identical in magnitude and composition.

2. It was generally agreed that the attention and level of importance given to the ramifications of the jurisdictional dispute [DOT-DOL] involving 13(c) is misplaced and unwarranted. Such a confrontation takes out of context the overriding concern of the Act as a whole, which must be the Federal interest and the public interest in assuring a viable and a responsive mass transit system. It is in this framework that labor's and management's responsibilities, whether on the 13(c) issue or in the broader content of labor-management relations, should be assessed.

Whatever frustrations and red tape exist in the process arise out of the labor-management and collective bargaining relationships which are allowed to operate and not from any Federal intrusion on these relationships.

2. Labor unions veto.

The DOT memorandum states that the operation of Section 13(c) "gives labor unions an effective veto power over UMTA grants." The memorandum then goes on to expand on the problems which arise for grant applicants in the bargaining process utilized by Secretaries of Labor in the development of protective arrangements under Section 13(c).

The DOT memorandum itself states that "[T]he legislative history of Section 13(c) clearly indicates that Congress contemplated collective bargaining as a method of arriving at the labor protective arrangements to be followed in the transit industry . . ." To quote

from the Report of the Senate Committee on Banking and Currency dated March 28, 1963: "The committee does not believe that it is feasible to enumerate or set forth in great detail the provisions that may be necessary to assure the fair and equitable treatment of employees in each case. In this regard, it is expected that specific conditions will be the product of local bargaining and negotiation, subject to the basic standard of fair and equitable treatment." (underscoring added)

In point of fact, we would note that we have had to make "determinations" of protective arrangements over union objections in project situations in Denver, Delaware, Chicago, Detroit, and Boston. This fact certainly tends to discredit the "union veto power" charge

The DOT memorandum states that the Department of Labor "has issued no regulations to guide the operation of law". With cooperation and involvement by representatives from UMTA, regulations in the form of guidelines were drafted during calendar years 1974 and 1975. Those regulations received the internal approval of Department of Labor officials. However, when final UMTA concurrence and/or comment was sought, none could be obtained and the proposed regulations were never finalized.

The DOT memorandum alleges that "labor's effective veto over UMTA grants gives labor an important hostage in collective bargaining on issues unrelated to labor protection . . ." However, the memorandum admits that "such abuses have not been documented." We of course would be interested in reviewing any factual situation supporting this allegation, however it is our belief based on twelve years' experience under the statute and over 1350 certification actions that abuses of the process have been virtually nonexistent.

3. Impression of clumsy management.

The basis for this problem area is that "UMTA cannot reliably plan which capital projects will receive funding in any given year because of the uncertainties of Section 13(c) negotiations."

We would point out here that UMTA and the applicants for assistance always have the most control over timing of grant application processing and 13(c) negotiations. At the request of certain applicants, we have commenced negotiations prior to submission of a project application to UMTA and occasionally have been in a position to certify a project prior to UMTA's formal referral of it to us.

There are and always will be certain fiscal year-end crises. However, avoidance of such crises seems to be most within the control of applicants and UMTA.

4. Burden of proof.

The DOT memorandum apparently seeks to make two points under this heading: first, that the Department of Labor requires that protective arrangements be developed even if there is little likelihood of adverse impact on employees and secondly, that grant recipients must carry the burden of proof in claims cases and are therefore at a disadvantage, particularly in the context of an operating assistance grant situation.

With respect to the first point, we would refer to the last sentence of Section 13(c), which states that "[T]he contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangements." (underscoring added) Interpreted in the context of the legislative history, we believe that this language clearly contemplates the development of specific protective arrangements in each project situation. The Department of Labor has continually interpreted Section 13(c) as requiring the development of protective arrangements in advance of final project approval, so that all parties will be aware of their rights and obligations thereunder. Also, in the event of disputes as to whether valid claims exist, or as to the proper administration of those claims, procedures will be available in the protective arrangement for the orderly resolution of such disputes.

With respect to the second point raised in the DOT memorandum under the "Burden of proof" heading, it would seem that DOT is concerned that employees may now be protected against any adverse effect that takes place during the course of UMTA assistance, whether or not the adverse effect is a result of that assistance. The model agreement, which was negotiated for specific application to operating assistance projects, defines the terms "Project" and "as a result of the Project" as follows:

> The term "Project", as used in this agreement, shall not be limited to the particular facility, service, or operation assisted by Federal funds, but shall include any changes, whether organizational, operational, technological, or otherwise, which are a result of the assistance provided. The phrase

> "as a result of the Project" shall, when used in this agreement, include events occurring in anticipation of, during, and subsequent to the Project and any program of efficiencies or economies related thereto; provided, however, that volume rises and falls of business, or changes in volume and character of employment brought about by causes other than the Project (including any economies or efficiencies unrelated to the Project) are not within the purview of this agreement. (underscoring added)

On the basis of the underscored language, it is clear that employees are not provided protection against adverse effects unrelated to the Federal assistance.

Finally, we would point out that under most protective arrangements claiming employees have an obligation to identify the project and specify the pertinent facts of the project relied upon. The burden is then placed on the grant recipient to prove that factors other than the project affected the employee. The rationale for this arrangement is that normally only the grant recipient possesses the information necessary to establish the validity of or disprove an individual employee's claim. Were the burden of proof on the employee, he would find it impossible to meet in virtually every case because of the lack of availability of necessary factual information to him.

5. National Agreement.

The DOT memorandum states incorrectly that the "Department of Labor has been unwilling to accommodate specific geographic differences" in connection with the operation of the so-called National Agreement. At the time the industry and union representatives who negotiated the National Agreement presented that agreement to the Secretary of Labor, they also proposed the utilization of certain specific procedures which themselves contemplated possible modifications to the National Agreement. The National Agreement has been applied in a number of instances both with and without modification. In still other instances, other arrangements than the National Agreement have been utilized.

The DOT memorandum then states that the "National Agreement contains a great number of specific provisions that overly constrain management decisions--for example, a requirement that a 60-day

notice plus 80-day appeals/arbitration period be given to local unions before any schedule or route modification can be implemented."

The National Agreement was negotiated by highly skilled and capable negotiators on the industry side. In toto, we believe that it compares quite favorably from the applicant side with previously negotiated Section 13(c) agreements.

The specific National Agreement provision cited in the DOT memorandum--and interpreted therein as requiring that "a 60-day notice plus 80-day appeals/arbitration period be given to local unions before any schedule or route modification can be implemented"--was addressed and highlighted by the Department of Labor in the context of a recent proceeding to determine its appropriate application to a Los Angeles, California operating assistance grant. In its January 29, 1976 letter of determination in that case, the Department of Labor found that the notice provision clearly was not intended to apply to normal schedule and route modifications. To quote from the Department of Labor's determination:

> "Indeed, it is difficult to construe any events arising 'as a result of' an operating assistance project which would require notice and negotiation of what are commonly called implementing agreements. The mere acceptance of Federal operating assistance funds certainly does not make every action of the District 'a result of the Project'."

6. Stifling innovation.

The DOT memorandum states that Section 13(c) has a "seriously inhibiting effect on innovation in the transit industry."

We are aware of no idea or experimental method of operation jeopardized or prevented by Section 13(c). Over the past year we have been able to develop protections for novel and experimental endeavors such as the Knoxville van pooling and Rochester dial-a-ride projects. To quote Daniel Roos of MIT who studied the application of Section 13(c) to para-transit projects: "Many labor

difficulties arise from approaching labor unions with suspicion and mistrust." Professor Roos noted that problems existed; he stated that "[W]e tend, however, to exaggerate those labor problems and thus establish potential conflict situations between labor and management."

We do not understand the statement that Section 13(c) "perils the continued survival of the private taxi industry which would likely benefit from paratransit development." DOT determines the projects and applicants which are eligible for Federal funds and it is our understanding that certain taxi or taxi-related projects have already been funded.

Proposed Remedies

DOT proposes six remedies "to rectify the problems of 13(c) as they apply to all categories of UMTA capital grants." Prior to listing those remedies, however, the DOT memorandum states that "it is clear that Section 13(c) is being misapplied in connection with Section 5 grants for operating assistance . . ." The DOT memorandum suggests that the Secretary of Labor use alternative administrative practices from those used in capital grant situations in applying Section 13(c) to operating assistance grant applications. It is stated that this is "wholly consistent with the statute" and that "Congress had to apply 13(c) to Section 5 in order to cover the capital grant aspect," apparently suggesting that Congress may not have intended that 13(c) apply to operating assistance grants under the Section 5 formula grant program.

We would point out here that during the consideration of the legislation which eventually became the National Mass Transportation Assistance Act of 1974, and provided Federal money for the first time for the subsidization of operating expenses, DOT proposed a "technical revision" to a pending bill which would amend it so as to make Section 13(c) inapplicable to operating subsidy grants. The Department of Labor opposed the proposed revision and it apparently was not seriously considered by the Congress. The language of the statute in Section 5(n)(1) clearly applies Section 13(c) to operating assistance projects and the legislative history supports its application just as for the capital grant program.

The Department of Labor's comments on the six options set forth in the DOT memorandum follow under the same headings as used by DOT:

1. Multi-year certifications, with stronger DOL role

In accordance with what we interpret to be the legislative mandate, the Department of Labor approaches the development of protective arrangements on a project by project basis. For many applicants and projects, this produces a multi-year certification. The model agreement is in effect a multi-year protective arrangement for application to operating assistance grants.

In the light of a legislative history calling for the development of specific protective arrangements through collective bargaining in the context of particular projects it is inappropriate for the Department of Labor to attempt to predetermine such arrangements. Applicants can seek to and do negotiate multi-project, multi-year protective agreements. This is in keeping with the spirit of the development of protective arrangements through collective bargaining. It appropriately limits such arrangements, however, to specifically anticipated project situations.

The Department of Labor continues to feel that it is neither appropriate nor useful to set fixed time limits on negotiations. Instead, the Department expects involved parties to make a good faith effort to reach agreement on appropriate and mutually acceptable protective arrangements. If, having made a good faith effort to reach agreement, the parties find themselves unable to consummate an agreement, either party may request that the Secretary of Labor determine the terms and conditions upon which he will base his certification. As pointed out earlier, this is a process that is most in the control of applicants and the Department of Transportation.

2. Negative declarations with changed burden of proof.

The DOT suggested categorization of projects and use of a negative declaration of impact statement is a questionable practice under the statutory language, which states that "[T]he contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangements." (underscoring added) Attempts to develop specific protections only after claims of adverse impact are made

would obviously be difficult. We have repeatedly interpreted 13(c) as requiring protective arrangements in advance of project approval so that all parties will be aware of their rights and obligations thereunder. Also, should disagreements arise as to whether valid claims exist, procedures are already in place for the resolution of such disputes.

3. Federal definition of fair and reasonable arrangements

This DOT suggestion is in our view contrary to the expressed congressional intent. The recently negotiated national or model agreement, on the other hand, is an approach which reflects the spirit of the legislative intent and sets forth a set of presumably reasonable protections for application in the majority of project situations while allowing for modification to accommodate special local circumstances.

Both industry and union representatives have raised the possible future development of other model agreements for application to other types of UMTA projects. This approach is in keeping with the spirit of the development of specific protective arrangements through collective bargaining as opposed to by Government fiat.

The DOT memorandum at this point devotes a paragraph to the relationship of employee protective arrangements and productivity improvements.

We are not completely clear as to the intent of this paragraph. However, the Report of the House of Representatives Committee on Banking and Currency when it reported out the Urban Mass Transportation Act of 1963 bears on this point in attempting to strike a balance between public and private interests:

> Although the problem of worker protection may arise in only a limited number of cases, the committee nevertheless believes that the overall impact of the bill should not be permitted to obscure the fact that in certain communities individual workers or groups of workers may be adversely affected as the result of the introduction of new equipment or the reorganization of existing transit operations. The principle of protecting workers affected as a result of adjustments in an industry carried out under the aegis of Federal law

is not new, particularly in the transportation industry. Thus, railroad employees for years have enjoyed Federal protection against adverse effects attendant upon railroad consolidations. The problems of worker protection presented by the bill are not necessarily identical to those presented under other laws. The committee believes, however, that workers for whom a standard of benefits has already been established under other laws should receive equally favorable treatment under the proposed new program. The committee also believes that all workers adversely affected by adjustments effected under the bill should be fully protected in a fair and equitable manner, and that Federal funds should not be used in a manner that is directly or indirectly detrimental to legitimate interests and rights of such workers.

4. Limitation of Section 13(c) to public takeovers.

DOT's proposal here would clearly violate the Congressional intent. Note the reference in the House report cited immediately above to workers "adversely affected as the result of the introduction of new equipment or the reorganization of existing transit operations."

5. Legislative approaches

The Department of Labor does not believe that efforts to amend or repeal the employee protection provisions of the Urban Mass Transportation Act are appropriate. Moreover, it is highly unlikely that the Congress will be receptive to any proposed amendment to Section 13(c).

NEXT STEPS AND TIMETABLE

DOT's memorandum proposes steps to achieve the "effective resolution of the positions of the Departments of Transportation and Labor." As suggested at the outset, the Department of Labor seriously questions whether problems exist to the extent one would be lead to believe by the DOT memorandum. If the Section 13(c) program operated as has been alleged by DOT and others, modification would be called for.

However, the record of more than 1350 successful certifications during the past twelve years does not support the modification proposals.

The DOL memorandum forwarded to Dr. Connor on April 7, 1976 listed some five current studies underway which are directed at or touch on Section 13(c). Three of those studies are DOT funded. A fourth is being conducted by the General Accounting Office. It would not be appropriate to modify the Section 13(c) program until the results of these studies are known.

W. J. Usery Jr.

Secretary of Labor

Attachment

cc: James Cannon
Secretary Coleman

THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

APR 8 1976

MEMORANDUM FOR: THE PRESIDENT

SUBJECT: Labor Protective Arrangements Under Section 13(c) of the Urban Mass Transportation Act

This memorandum is in response to your request for a report addressing the major problems posed by the implementation of Section 13(c) of the Urban Mass Transportation Act. You have asked that the Secretary of Labor and I jointly analyze the problems, indicate what actions this Administration might take, and propose a timetable for action.

I. Background

Section 13(c) has been a provision of the Urban Mass Transportation Act since 1964. That provision states:

> "It shall be a condition of any assistance under section 3 of this Act that fair and equitable arrangements are made, as determined by the Secretary of Labor, to protect the interests of employees affected by such assistance. Such protective arrangements shall include, without being limited to, 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 re-employment of employees terminated or laid off; and (5) paid training or retraining programs. Such arrangements shall include provisions protecting individual employees against a worsening of their positions with respect to their employment which shall in no event provide benefits less than those established pursuant to section 5(2)(f) of the Act of February 4, 1887 (24 Stat. 379), as amended. The contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangements."

This language was inspired by a specific anti-labor action taken in Dade County, Florida, in anticipation of an UMTA grant. The provision was designed to protect employees of private transit companies which in 1964 were just beginning to receive Federal subsidies; at that time, the rush to conversion to public ownership had not yet begun. The statutory reference to the 1887 Act (as amended in 1940) incorporates the standards regarding worsening of employees' positions developed by the Interstate Commerce Commission in the context of mergers and/or consolidations of rail companies.

The legislative history of Section 13(c) clearly indicates that Congress contemplated collective bargaining as a method of arriving at the labor protective arrangements to be followed in the transit industry, although the statute calls for "arrangements" not "agreements". The Secretary of Labor, in reliance on this legislative history, has followed a procedure under which DOL staff forwards applications for UMTA assistance to national transit union representatives who then forward them to local unions. The unions and transit operators then engage in collective bargaining to arrive at the protective arrangements which the Secretary of Labor certifies as fair and equitable within the meaning of the law. The national union typically plays a more dominant role in this bargaining than the local, such that local desires to settle are sometimes subverted. UMTA does not make a grant until the DOL certification is obtained.

While the 1964 Act covered principally capital grants under Section 3, the 1974 Act extended Section 13(c) to capital and operating assistance formula grants under Section 5. Having seen 13(c) operate from the local level, when I became Secretary of Transportation in March of 1975, I raised the issue with Domestic Council staff and with Secretary of Labor Dunlop. The Secretary of Labor responded affirmatively and used his good offices in the Spring of 1975 to develop a model agreement which could apply to the formula grants, including those for operating assistance. This National Agreement was negotiated by transit union representatives and representatives of the American Public Transit Association, and was signed in July of 1975. The National Agreement is a useful step toward simplification of Section 13(c) administration, but its provisions are now raising problems of their own.

II. Problems

The problems with the operation of Section 13(c) might be categorized as follows:

1. Applicability. As a general matter, there is a substantial question as to whether protective arrangements developed in the context of public subsidies to privately owned transit companies and of railroad mergers and consolidations are appropriately applied to what is now a publicly owned transit industry. We now know, through twelve years of experience with the UMTA program, that the characteristic result of UMTA grants has been to expand, not contract, the labor force involved in mass transportation. The potential for employee displacement and disadvantage as a result of most UMTA grants is slight, as demonstrated by the small number of claims for benefits under the protective arrangements which have been negotiated. Therefore, Section 13(c) is probably producing very little in terms of necessary protection, while its operation is causing significant frustration, red tape, and intrusion on labor-management relationships as summarized below.

2. Labor union veto. A major problem with the operation of 13(c) has been the fact that it gives labor unions an effective veto power over UMTA grants, and thereby upsets the balance of power between labor and management.

This arises, in part, because Secretaries of Labor have been unwilling to determine, on their own motion, what arrangements are "fair and equitable" and have instead left the matter to collective bargaining between the parties. However, DOL sets no time constraints on the collective bargaining process and has issued no regulations to guide the operation of the law. From the transit authorities' point of view, collective bargaining under such conditions is unrealistic since, while the unions can bargain indefinitely, management has to get the UMTA capital grant before the end of the fiscal year (or UMTA will reallocate the funds elsewhere to prevent their lapse) or before shut-downs of service occur in the case of operating assistance grants. The problem is complicated by the fact that the bargaining is really done by the national unions, which have no real stake in the specific community's receipt of the UMTA funds.

Some transit operators have further alleged that labor's effective veto over UMTA grants gives labor an important hostage in collective bargaining on issues unrelated to labor protection--e.g., wages, working conditions, etc. While such abuses have not been documented by transit operators, such a prospect certainly exists.

3. Impression of clumsy management. The operation of Section 13(c) also creates a strong public impression of Federal intervention in local affairs and of clumsily managed Federal programs. From the point of view of good program management, UMTA cannot reliably plan which capital projects will receive funding in any given year because

of the uncertainties of Section 13(c) negotiations, especially toward the close of the fiscal year.

4. Burden of proof. Another problem arises out of the fact that DOL has followed Interstate Commerce Commission practice in requiring the transit authority to sustain the burden of proof that an UMTA grant will not have an adverse effect on labor, rather than placing that burden on labor to demonstrate some potential harm. In the context of operating assistance funding, where the UMTA subsidy funds have a pervasive effect in support of the entire program of the transit authority, it is completely impossible to disprove any relationship between a specific management action and the general UMTA subsidy. Thus, practically any employee who receives less pay--for instance, due to an adjustment in service--could make a claim for displacement benefits, and the operator would have an extremely difficult burden of proof to carry in rebuttal.

5. National Agreement. A number of specific problems are cited by transit authorities as a result of the operation of the National Agreement associated with operating assistance grants. They argue that, at the very most, it should only serve as a guide and that no such agreement should be made rigidly applicable nationwide; they allege that the Department of Labor has been unwilling to accommodate specific geographic differences. They further argue that the National Agreement contains a great number of specific provisions that overly constrain management decisions--for example, a requirement that a 60-day notice plus 80-day appeals/arbitration period be given to local unions before any schedule or route modification can be implemented.

6. Stifling innovation. A final problem has to do with the impact of 13(c) in terms of limiting development of service mechanisms in transit which do not involve the use of salaried union drivers. For example, there is much interest in exploring the use of "paratransit"--shared ride taxis, vanpools, jitneys, subscription buses, etc.,--as an adjunct to normal transit service. But any use of UMTA funds to support such services, even if the funds pass through the transit operator by subcontract, can be vetoed by the national and local unions which may view paratransit as a threat to maintenance and expansion of the transit authority labor force. Not only can this have a seriously inhibiting effect on innovation in the transit industry, but it perils the continued survival of the private taxi industry which would likely benefit from paratransit development. Taxi operators see some of their business undercut by

government subsidized public and private non-profit organizations, and yet cannot themselves gain access to the public funds in appropriate cases.

III. Proposed Remedies

A number of options for administrative action are available which might alleviate the problems cited.

As an initial matter, however, it is clear that Section 13(c) is being misapplied in connection with Section 5 grants for operating assistance, as opposed to capital grants under that Section. It is self-evident that making Federal funds available for operating subsidies to deficit-ridden public transit authorities can only help, not hurt, the employment status of transit employees. In fact, it is the availability of the Federal money which itself is forestalling curtailments of service and job terminations in a great many cases.

Therefore, I believe that the Secretary of Labor should provide an immediate "negative declaration" to cover UMTA Section 5 operating assistance grants. Under such a procedure, borrowing the practice used in connection with environmental clearances, the Federal official determines in advance that there is no significant likelihood of adverse impact as a result of the Federal grant, and a lot of needless red tape is by-passed.

This is wholly consistent with the statute, since Section 5 funds are available at local option for either capital or operating assistance. Congress had to apply 13(c) to Section 5 in order to cover the capital grant aspect.

What follows, then, is a set of options in generally ascending order of departure from current practice to rectify the problems of 13(c) as they apply to all categories of UMTA capital grants.

1. Multi-year certifications, with stronger DOL role. DOL could provide that its certification would be good for all grants made within a specific period of time, say, three years, subject to review based upon an employee showing that a specific grant raised a substantial prospect of adverse impact that could not reasonably have been foreseen at the time the Section 13(c) agreement was negotiated. In addition, DOL would set time limits for the negotiation of agreements, after which the Secretary of Labor would make his own determination of what arrangements constituted

fair and equitable protection. Further, DOL would provide conditional certifications, based perhaps upon an extension of the existing 13(c) agreement then in force with that transit property, so that UMTA funds could flow before critical deadlines were reached (end of the fiscal year, or exhaustion of local operating funds). During the period of the conditional certification, collective bargaining could continue or the Secretary of Labor could review the facts and make his own determination.

Further, only a single certification should be required of a given capital project, even if such a project is funded through several successive grants or grant amendments. This would be the case for a new rapid transit system, where UMTA makes a multi-year commitment of funds and liquidates that commitment over time with a series of annual grants.

2. Negative declarations with changed burden of proof. Alternatively, DOT and DOL could establish categories of capital grants that historically have had minimal, if any, adverse impact on transit employees. Such categories would include bus and rail car purchases which result in no reduction in fleet size. In such cases, the Secretary of Labor would make a blanket negative declaration--as suggested above for operating assistance grants--that no adverse impact is likely to occur, and that no specific 13(c) arrangement need be negotiated. A review procedure would be provided whereby an employee or union could ask for special protective arrangements in connection with any grant based upon a showing of a substantial prospect of adverse impact. As an additional protection, the standard UMTA capital grant contract could require a certification by the transit authority that no adverse employee impact would result from the grant. This certification could be specific as to lack of adverse impact--i.e., no loss of pension rights, protection of collective bargaining rights, etc.

For categories of capital grants for which such negative declarations were not appropriate, the streamlined approach described under option 1., above, would pertain--i.e., three-year certifications, time limits on negotiations, and conditional certifications as funding deadlines approach.

3. Federal definition of fair and reasonable arrangements. As an alternative to the above options, DOL and DOT could collaborate to identify labor protective arrangements for capital grants which would be enforced through the UMTA grant contract. This would observe

the strict requirement of the law, which does not in fact speak to "agreements" at the local level but only "arrangements" certified by the Secretary of Labor. Previous collective bargaining experience provides ample basis for identifying a set of reasonable protections; a limited appeal procedure might be made available to handle particular local conditions.

Such federally determined protective arrangements would be carefully drawn to ensure that productivity improvements remained possible, subject to whatever constraints on them were forthcoming from normal collective bargaining. I strongly believe that it is inappropriate for the Federal Government to enforce the Section 13(c) provision in a way that limits public transit authority management prerogatives to make productivity improvements. I find no basis for believing that the Congress intended otherwise. In fact, for us to take any other position would run counter to the recent collectively bargained contract settlement in New York City where cost-of-living increases are to be financed by productivity improvements. Federal requirements can hardly be more restrictive in this regard than such a labor management settlement.

4. Limitation of Section 13(c) to public takeovers. A further alternative might be to limit the operation of Section 13(c) to the protection of employee rights during the period of public takeover from private transit companies. This approach finds a basis in the origin of the legislative language in the history of railroad merger and consolidation practice. Accordingly, any UMTA capital grant made, say, three years after the time of public acquisition would be deemed to require no further protective arrangements.

5. Legislative approaches. As an alternative to the above options which might be pursued by administrative action, we might elect to seek legislation which would constrain the impact of Section 13(c) in capital grant situations. Such legislation might, for example, limit the impact of the provision to public takeover situations as suggested in option 4. Outright repeal of 13(c) is deemed very unlikely.

IV. Next Steps and Timetable

This memorandum has outlined the major issues and suggested actions which I have wanted to present, and I have welcomed the opportunity to do so. However, there remains the task of bringing about some

effective resolution of the positions of the Departments of Transportation and Labor.

I suggest that this can best occur by your designating someone to oversee a thorough interaction between representatives of the two Departments, and to stick with it until something is accomplished. Past efforts have not been particularly effective. I believe the missing ingredient may have been a persistent White House convenor or mediator to ensure results.

It would seem to me that a month to negotiate would be enough to identify both common ground and sharp differences. I consider all of my suggested remedies except the fifth (legislative approaches) do-able within three months, if agreed to during the first month.

/s/

William T. Coleman, Jr.