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THE WHITE HOUSE

WASHINGTON

July 20, 1976

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: JAMES M. CANNON

FROM: JAMES E. CONNOR JEC

SUBJECT: Report and Recommendations of Secretaries Usery and Coleman for Improving Procedures Under Section 13 (c) of the Urban Mass Transportation Act of 1964, as Amended

The President has reviewed your memorandum of July 16th on the above subject and has approved the following:

1. Negative Declaration with Changed Burden of Proof.
   Option c -- Compromise position

2. Set Time Limits.
   Option b -- Department of Transportation Position

3. Multi-Year Certifications.
   Option b -- Department of Transportation Position

4. Promulgate and Publish Regulations.
   Option b -- Department of Transportation Position

Request for Meeting
   Approve meeting

Please follow-up with the appropriate action on above.

cc: Dick Cheney

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THE WHITE HOUSE
WASHINGTON

July 16, 1976

TO: DICK CHENEY

FROM: JIM CANNON

Usery's need for a meeting on 13(c) is more political than substantive.

I recommend such a meeting.

THE WHITE HOUSE

WASHINGTON

INFORMATION

July 16, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Joint Meeting with Secretaries Usery and Coleman on UMTA Section 13(c) Question

Here is a decision memorandum for your review in connection with the five issues which you directed Secretaries Usery and Coleman to review.

Secretary Usery, with whom I talked today, feels strongly that he should meet with you before you make your final decisions.

Bob Hartmann, Bill Seidman and I recommend such a meeting.

Attachment

THE WHITE HOUSE DECISION

WASHINGTON

July 16, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: Report and Recommendations of Secretaries Usery and Coleman for Improving Procedures Under Section 13(c) of the Urban Mass Transportation Act of 1964, as Amended

SUMMARY OF ISSUE

The fundamental issue is whether to continue existing Federal procedures that impose higher labor costs on transit operators and on city and county governments; or whether to simplify these procedures and thereby alienate certain employees of transit operators and the unions which represent them.

BACKGROUND

Section 13(c) of the 1964 UMTA Act (Amended) requires that before any Federal assistance for Mass Transit is granted, the Secretary of Labor must certify that "fair and equitable" arrangements have been made for transit employees "adversely affected" by the grant.

Although the intent of this provision of the law was sound, many believe the procedures have been manipulated so that, even where there is no "adverse" effect on workers, the process is used to win higher wages and increased fringe benefits; if transit operators do not agree to these terms, the unions will not approve the certification, DOL will not certify under 13(c), and UMTA funds will not flow. Transit operators, city and county officials and UMTA heads have consistently expressed dissatisfaction with Section 13(c), and complaints from localities, documented as far back as 1967, have become more vehement in recent months.

The National Conference of Governors, the National Association of Counties and the National League of Cities have all gone on record in recent weeks urging changes in the 13(c) process similar to those put forward by the Department of Transportation.

On June 2, 1976, you reviewed a May 28, 1976 memorandum (attached at Tab B) describing the history of the 13(c) problem and directed Bill Coleman and Bill Usery to try to reach agreement on specific proposals for improving the 13(c) process.

SUMMARY OF RECENT DEVELOPMENTS

After extensive discussions and lengthy exchange of written as well as oral views, Mike Moskow, for Department of Labor, and Robert Patricelli, Administrator of UMTA, reached agreement on one of the five proposals you made, partial agreement on another, and no agreement on the remaining three proposals. (The joint paper is attached at Tab A).

Secretary Usery and Secretary Coleman have not met to discuss or attempt to resolve these issues. Secretary Usery told me today that he believes no useful purpose would be served in an Usery-Coleman meeting at this time. Usery believes he should talk with you personally about some of the implications to Labor of these issues.

The issue on which Department of Labor and Department of Transportation agree is the granting of a single certificate for a single Federal grant.

The issue on which there is partial agreement is publication of regulations or guidelines.

The issues on which there is major disagreement are these:

ISSUES TO BE RESOLVED

1. NEGATIVE DECLARATION WITH CHANGED BURDEN OF PROOF.

   Pursuant to your decision on June 3, you proposed that DOT and DOL could establish categories of capital and operating assistance 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, there could be a simple departmental declaration that no adverse impact is likely to occur, and that no specific 13(c) arrangement need be negotiated.

   This would shift the present burden of proof from local transit operators (to prove that the Federal dollars will not harm employees) to the unions (to prove that there is an adverse impact.)

A review procedure could also be provided whereby an employee or union could also ask for special protective arrangements in connection with any grant based upon a showing of a substantial prospect of "adverse impact."

OPTIONS:

(a) Department of Labor Position

The Department of Labor questions the legality of this "negative declaration," and objects to it from a national policy standpoint as well. They argue that the recommended national model agreement for 13(c) certification, negotiated a year ago under the auspices of Secretary Dunlop, would be abrogated by such a procedure. Further, shifting the present burden of proof from the operators (to prove there is no adverse impact) to unions and employees (to prove there is such adverse impact) would be unfair, and might increase the delays already present in DOL 13(c) certifications.

(b) Department of Transportation Position

While DOT urges that 13(c) requires certification only where employees are actually "adversely affected," Bill Coleman offers a compromise: limit the certification procedures to standard operating or revenue sharing type grants. DOT could require that any such operating assistance funding include a warranty by the transit district that no "adverse impact" will result, together with a promise to redress any such grievance if it shows up later.

(c) Compromise Position

Rather than calling this procedure a "negative declaration," a category could be established called "standardized approvals." In recurring grants, the Secretary of Labor on his own initiative, could require that certain Labor protections be guaranteed in the granting contract, without the need for the collective bargaining process. DOL did just this on a recent demonstration project grant for the lower east side of Manahattan, approved June 4.

_____ DOL Position: Supported by none.

_____ DOT Position: Supported by none.

_____ Compromise Position: Supported by Buchen (Schmults), Friedersdorf, Hartmann, OMB, Marsh, Seidman, and Cannon.

Greenspan favors (legislative) repeal of 13(c), at least for grants involving operating expense and capital grants for the purchase or repair of equipment. If that is not feasible, he supports the initial DOT position: negative declarations for all UMTA grants.

2. SET TIME LIMITS

You urged the two Departments to cut the red tape in the 13(c) process by setting time limits for the negotiation of agreements.

OPTIONS:

(a) Department of Labor Position

The Department of Labor argues that the 13(c) process has usually worked well without time limits but agrees that a limited category of reasonable time frames should be established.

(b) Department of Transportation Position

DOT disagrees that the 13(c) process has worked basically well without time limits. DOT urges that time limits be set on a case-by-case basis in all cases where DOT indicates that there is a significant possibility of funding.

_____ DOL Position: Supported by Greenspan and Marsh.

_____ DOT Position: Supported by Buchen (Schmults), Friedersdorf, Hartmann, Seidman and Cannon.

3. MULTI-YEAR CERTIFICATIONS

You asked the two Departments to consider granting multi-year certifications for projects which result from a single UMTA grant decision.

OPTIONS:

(a) Department of Labor Position

DOL agrees that multi-year certifications would be useful so long as the parties agree to their use. They would limit such certifications to particular projects involving multi-year funding unless, through collective bargaining, the parties agree to broader protections.

(b) Department of Transportation Position

DOT urges that the proposed procedure is merely a piggy-back or recertification procedure based on existing agreements already collectively bargained between the parties. It should apply to three categories of repetitive grants:

(1) Grants for normal equipment replacement;

(2) Grants for maintenance carried out over a period of years, such as repairs on rights-of-way;

(3) Grants for specified multi-year programs on identifiable projects.

DOT urges that labor protections, once certified by DOL, should continue to apply to subsequent capital grants that have basically the same impact.

DOL Position: Supported by none.

DOT Position: Supported by Buchen (Schmults), Friedersdorf, Greenspan, Hartmann, OMB, Marsh, Seidman and Cannon.

4. PROMULGATE AND PUBLISH REGULATIONS

The two Departments basically agree that guidelines for the 13(c) process, not formal regulations, should be published. Although clear rules are needed, formal regulations would be complex and might serve only to institutionalize the defects in the 13(c) process which are already thorns in the sides of local officials.

(a) Department of Labor Position

DOL recommends the deferral of formal rule-making until the two Departments can consult with those affected by 13(c).

(b) Department of Transportation Position

DOT urges that simple guidelines, rather than lengthy regulations, be published, and that this be done quickly. DOT questions the need for further delays or consultations, since all affected parties have been making their views known for over 8 years. (Simple guidelines could be published in 60 days.)

_____ DOL Position: Supported by none.

_____ DOT Position: Supported unanimously by all your advisors. They recommend that the two Departments should consult together to achieve this.

REQUEST FOR MEETING

Secretaries Usery and Coleman have requested a meeting with you to discuss this question.

_____ Approve Meeting: Supported by Hartmann, Seidman, and Cannon.

_____ Disapprove Meeting.

Buchen (Schmults), Friedersdorf, Greenspan, OMB and Marsh express no opinion on holding a meeting.

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

JUN 25 1976

MEMORANDUM FOR: THE HONORABLE JAMES CANNON
Assistant to the President
for Domestic Affairs

FROM: W.J. USERY, JR.
Secretary of Labor

WILLIAM T. COLEMAN, JR.
Secretary of Transportation

This is in response to your memorandum of June 3 transmitting the President's direction that we address five specific proposals relating to the administration of Section 13(c) of the Urban Mass Transportation Act of 1964. The positions of the two Departments on each of these five proposals are set forth in the attachment. We have also attached some tabular background material.

In view of the potentially controversial nature of some of these recommendations, we request an opportunity to meet jointly with the President to discuss these issues prior to his making any decisions.

Attachment

6/25/76

MEMORANDUM ON SECTION 13(c)

1. NEGATIVE DECLARATION WITH CHANGED BURDEN OF PROOF

Proposal from June 3 Memorandum:

"Establish categories of capital grants that historically have had minimal, if any, adverse impact on transit employees. Such categories might include bus and rail car purchases which result in no reduction in fleet size. In such cases, there could be a simple departmental declaration that no adverse impact is likely to occur, and that no specific 13(c) arrangement need be negotiated.

This procedure would shift the present burden of proof of adverse impact from local transit operators to the unions or the employees.

Provide a review procedure 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.'"

Department of Labor Position:

The Department of Labor questions the legality of establishing categories of UMTA assistance where prior certification under 13(c) would no longer be required. The statute states that each "...contract for the granting of any such assistance shall specify the terms and conditions of the protective arrangements." The Solicitor of Labor has advised that implementation of a negative declaration procedure would be inconsistent with the statute and legislative history. His opinion letter is attached at Tab A.

The Department of Labor also objects from a policy standpoint to the proposed negative declaration procedure. Establishing categories of projects where individual certifications would not be required would abrogate the national model agreement which was negotiated only this past July to be effective through September, 1977. This agreement, negotiated among representatives of the American Public Transit Association and of the national transportation unions, set forth a recommended model set of protective conditions for application in individual 13(c) agreements relating to operating assistance. A separate memorandum from Lewis M. Gill (Tab B), who mediated this agreement, sets forth the understanding of the parties that, while use of this agreement was to be encouraged, existing Labor Department case-handling procedures

including individual project notice and sign-off were to continue. Existing case-handling procedures were to stay in effect for capital, operating or demonstration projects not covered by the agreement. This agreement has served as the basis for approximately 85 percent of Labor Department certifications for covered operating assistance projects during 1976. Any unilateral change in procedures by the Labor Department would contravene the agreement of the parties.

Secondly, the proposed negative declaration procedure would shift to individual employees or their unions the burden of establishing adverse impact resulting from Federal assistance. This would be a radical change from current procedure, since the common practice under existing agreements is to place the burden of proof upon the employer. It would be very difficult, if not impossible, for employees to meet this burden, since proof of causality requires familiarity with information peculiarly within the knowledge of the applicant. This shifted burden would detract substantially from the current level of employee protections, and would in our view be inconsistent with the purposes of the statute.

Given a major administrative change of this type, we would anticipate that unions and individual employees would frequently file claims of adverse impact. This would trigger a formal review procedure, possibly including public hearings requiring DOL inquiry into the specifics of individual employee's cases. This process could substantially delay the DOL certifications and require a major increase in DOL staff to handle the workload. It would also create a burdensome two-step process for the parties: an administrative hearing on adverse impact, then possible grievance proceedings to determine remedies. Further, as the DOL made determinations regarding adverse impact, a body of case law would develop which could affect labor and management's own decisions under grievance procedures in existing collective bargaining arrangements. The end result would be to create yet another area where a Federal agency would be issuing decisions with a potentially substantial impact on public and private sector activity.

Department of Transportation Position:

The Department of Transportation considers this a viable, desirable procedure, and believes that it is allowable within the law.

As a matter of law, Section 13(c) does not require protective arrangements in each and every contract for assistance, but rather only in situations where employees would be adversely "affected by such assistance." There are classes of projects which do not

adversely affect employees, and the Secretary of Labor has ample administrative authority to so hold. This was, in fact, the way the provision was administered in 1965. Opinion of counsel is attached at Tab C.

While we support the application of the negative declaration approach to a range of projects as the June 3 memorandum suggests (and we have been assured that the omission of operating assistance from that proposal in your memorandum was an oversight), we could accept limiting its use to a single category of operating assistance projects. These would be grants where funds are provided in the nature of general purpose operating assistance or revenue sharing, and where the term "project" has no particular identity but is identified as a certain proportion of the total sum of money needed to operate an entire system. In such cases, adverse impacts seem inconceivable and the Secretary of Transportation should be able to make grants without a 13(c) certification. Further, the Secretary of Transportation should require that there be included in UMTA operating assistance funding contracts a warranty by the grantee of no adverse impact, together with a commitment by such grantee to provide redress under Section 13(c) upon any subsequent showing of actual adverse impact.

As to the burden of proof problem, while it is difficult for either party to show that an alleged harm does or does not relate to the presence of Federal funds which are comingled in the operator's budget, it certainly seems more equitable for the party who is charging he has been harmed to have to make that showing. A shift in the burden of proof to labor should not increase the filing of claims, but should rather cut down on any filing of frivolous charges. Once a claim is filed, the Labor Department will have to make a finding no matter which party has the burden of proof, so there is no basis for arguing that this proposal will cause administrative problems.

The presence of a negotiated national model agreement does not alter the desirability of moving to a negative declaration approach. That agreement expires in 1977 and was, at best, only a guideline; the American Public Transit Association (APTA) was not negotiating as the bargaining representative of transit authorities and never pretended to be binding them. Moreover, the national model agreement is itself causing substantial problems and perpetuates an unnecessary collective bargaining procedure in a situation where that is unnecessary. APTA has now proposed a very different 13(c) procedure affecting operating assistance, so the Department of Labor would not be abrogating the agreement on its own motion. There is an increasing number of requests for changes in 13(c) administration from every level of government; see, for example, communications from the Governor of Massachusetts and the National Association of Counties (NACO) at Tab D.

2. SET TIME LIMITS

Proposal from June 3 Memorandum:

"DOL could set time limits for the negotiation of agreements, after which the Secretary of Labor could make his own determination of what arrangements constituted 'fair and equitable' protection. DOL could provide conditional certifications so that UMTA funds could flow before critical deadlines were reached (end of the fiscal year, or exhaustion of local operating funds)."

Department of Labor Position:

The Department of Labor recognizes the advantages of establishing reasonable time frames for negotiations regarding protective arrangements in certain project situations. The Department objects, however, to standardized time limits that would apply automatically to all projects within a given category. The circumstances of individual grants and the protective arrangements that may be required vary considerably, even within a particular category of grant. The length of time required for both parties acting in good faith to negotiate an agreement on protective terms varies accordingly. Unless used selectively, time limits could thus cut short the bargaining process before agreement has been reached, even in cases where lack of certification is not delaying grant approval. In addition, in many cases such time limits will provide an incentive for one or both parties not to bargain in good faith, given the prospect that a particular level of protections would be imposed by the Department of Labor at a certain point. Rigid time limits would therefore operate, in our view, to undercut the philosophy of the statute to encourage local collective bargaining. This philosophy is quite clearly stated in the legislative history. The House Committee Report on the Urban Mass Transportation Act of 1964 explicitly stated that "specific conditions for worker protection will normally be the product of local bargaining and negotiation."

There are cases where time limits are advisable, and the Department of Labor will apply them on a flexible basis. We will ask the Department of Transportation to identify those high-priority projects where timely resolution of 13(c) issues is crucial to the administration of the mass transportation assistance program. These projects will be given expedited processing by the Department of Labor, including the setting of time limits on negotiations where we consider appropriate. We anticipate that such time limits will be infrequently imposed, since the 13(c) process has usually worked well without such limits in the past. In the great majority

of cases, certification occurs before UMTA is ready to approve the grant. Further, as labor, management and the Department of Labor have gained more experience under the program, the average processing time for 13(c) certifications has decreased substantially. Despite a tripling in case load since Fiscal Year 1974, average case processing time has been reduced from 3.5 months to 2.5 months.

Department of Transportation Position:

The position of the Department of Labor is not adequately responsive to the problem or to the White House proposal. It would make time limits the exception rather than the rule. The Department of Transportation agrees that time limits can reasonably vary with the type of grant involved, and if necessary with local conditions. But time limits should be set, on a case by case basis, in all cases where we indicate that there is a significant possibility of funding. In addition, we support the concept of an expedited processing track for those projects which DOT indicates to DOL have a high priority.

We cannot agree that the 13(c) process has worked well without time limits in the past. Average processing time is deceptive as a measure, since it lumps the difficult situations in with routine grants. In fact, the unconstrained procedures currently followed by DOL have resulted in the documented feeling by grantees that they are in an uneven bargaining position, and a perception that unions have a veto over transit grants.

Nor would the introduction of time limits defy the legislative history. That legislative history makes clear that the Secretary of Labor is not expected to be guided solely by a devotion to collective bargaining. For example, the 1963 Report of the Senate Committee on Banking and Currency on S.6 states:

> "The Committee expects that the Secretary of Labor in addition to providing the Administrator with technical assistance will assume responsibility for developing criteria as to the types of provisions that may be considered as necessary to insure that workers' interests are adequately protected against the kinds of adverse effects that may reasonably be anticipated in different types of situations."

Further, 12 years of experience in the program have resulted in rather standard arrangements, making the risk of injustice owing to a time constraint minimal.

Some procedural hedge against the possibility of failure to bargain in good faith seems appropriate. That can easily be accomplished by providing that any party seeking a direct certification by the Labor Department after expiration of the time period should have to make a showing that it has sought to bargain in good faith.

3. MULTI-YEAR CERTIFICATIONS

Proposal from June 3 Memorandum:

"Instead of having each grant of Federal dollars give rise to a new 13(c) agreement, DOL could establish a policy of granting multi-year certifications which would be good for all grants made within a specific period of time subject to review based upon the union or an employee showing 'adverse impact.'"

Department of Labor Position:

The proposal calls for a certification for a particular authority for a specified period, presumably to cover all forms of operating, capital or demonstration assistance from UMTA. The Department of Labor believes that where the parties agree to their use, multi-year certifications can be a useful mechanism for improved administration of Section 13(c), particularly for the operating assistance grant program. In fact, the model agreement, which covers a period of three fiscal years, was a positive step in this direction. Multi-year, and multi-project, arrangements are also frequently negotiated between the parties under the capital grant program. Increased utilization of such agreements can and will be encouraged by the Department of Labor.

The Department of Labor would limit such certifications, however, to particular identifiable projects involving multi-year funding unless the applicant and employee representatives were to agree to a broader protective arrangement. For the government to impose protective arrangements negotiated in one set of circumstances in a different set of circumstances runs counter to the basic premise of the statute that employee protections in individual cases be determined by collective bargaining. Project circumstances inevitably differ as a result of routine and recurring technological, operational and organizational changes. It is difficult, if not impossible, to predict what type of protections might be appropriate in the context of a particular operating, capital or demonstration project.

Any such change in the Secretary of Labor's current certification practices would be inconsistent with the procedures agreed to and jointly recommended to him by the parties to the model agreement. Furthermore, since the proposed procedure contemplates an administrative mechanism for review of union or employee claims of adverse impact, a cumbersome administrative procedure could arise, presenting the same problems discussed under Issue No. 1.

Department of Transportation Position:

The procedure the Department proposes would be better described as "recertifications based on existing agreements." In the case of certain categories of grants which are routine and/or repetitive in nature, the Secretary of Labor should provide automatic certification based upon the application to that grant of any pre-existing Section 13(c) agreement previously agreed to by the parties for a grant of that type. Such certification should be routinely made unless the grantee or any affected employee shows cause within a reasonable period of time as to why some new protective arrangements need to be considered.

This procedure should apply to at least the following categories of grants:

(a) capital grants for purchase or renovation of vehicles (including buses, railcars, or other vehicles) based on a normal equipment replacement or maintenance cycle, not resulting in a contraction of service levels;

(b) capital grants for refurbishing of rights-of-way, building, or other real property where the maintenance activity is closely similar to that carried out over a period of years;

(c) grants pursuant to specified multi-year programs of identifiable projects.

The model agreement is irrelevant in the context of this DOT proposal since that proposal deals only with capital grants while the model agreement dealt only with operating assistance.

More in point, it can be argued that even though a grant might have the same content and impact from year to year, the circumstances within which the parties might bargain on protective arrangements can change over time so that annual collective bargaining cannot be precluded. However, the Department of

Transportation does not feel that the law intended to permit or require an upward ratcheting of protective arrangements year after year even though the content or impact of the grant assistance does not vary. Once adequate protections have been certified, they should continue to apply to subsequent grants that have basically the same impact.

4. SINGLE CERTIFICATION FOR SINGLE GRANT

Proposal from June 3 Memorandum:

"Only a single certification should be required for a given project, even if such a project is funded through several successive grants or grant amendments."

Department of Labor Position:

The Department of Labor agrees that a single certification is feasible for a given project which may be funded through several successive grants or grant amendments as long as there is no change in the scope of the project. Such a practice is in fact utilized at present.

The Department of Labor will develop appropriate procedures as outlined in our position on Issue No. 5.

Department of Transportation Position:

Concur.

5. PROMULGATE AND PUBLISH REGULATIONS

Proposal from June 3 Memorandum:

"To assist all parties in participating in the 13(c) process, simple published regulations should be available."

Department of Labor Position:

The Department of Labor will prepare and publish appropriate guidance for interested parties with respect to the orderly and timely administration of Section 13(c). While the Department is of the view that published regulations are appropriate, it may be advisable to defer initiating the formal rulemaking process until the Department has had further opportunity to confer with the Department of Transportation and with management and labor regarding

their current differences over the administration of the 13(c) program. The Department of Labor plans to convene the standing committee contemplated in paragraph 9 of the Gill memorandum to assist in this consultative process.

Department of Transportation Position:

The Department of Transportation concurs but would urge that simple guidelines, rather than lengthy regulations issued through a formal rulemaking, would be a better way to proceed.

File C

THE WHITE HOUSE DECISION

WASHINGTON

May 28, 1976

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES CANNON

SUBJECT: POLICY OPTIONS FOR IMPROVING PROCEDURES UNDER SECTION 13(c) OF THE URBAN MASS TRANSPORTATION ACT OF 1964, AS AMENDED

BACKGROUND:

Section 13(c) of the 1964 UMTA Act (Amended) requires that before any Federal assistance is granted, The Secretary of Labor must certify that "fair and equitable" arrangements have been made for transit employees "affected" by the grant. There are no published regulations governing 13(c). The presumption has developed that each and every grant of Federal dollars "affects" transit employees, and DOL has adopted a procedure whereby localities' applications for UMTA funds are forwarded directly to transit union representatives in the geographical area requesting funds. The unions and the transit operators then engage in collective bargaining to arrive at protective arrangements which the Secretary of Labor can certify as "fair and equitable." Union rules generally then require that the agreement be subject to the approval of the International Union. For this reason, DOL almost never certifies an agreement unless the International has approved it - but it can do so. UMTA may not make a grant until the DOL certification is obtained.

Transit operators, city and county officials, and UMTA heads have consistently expressed dissatisfaction with Section 13(c), and complaints from localities, documented as far back as 1967, have become more vehement in recent months. The principal complaint is that unions use the 13(c) requirement and management's need for the UMTA funds to indirectly raise bargaining issues unrelated to the UMTA grant. This feeling is not well documented, but then it is not the kind of matter which lends itself to documentation.

In 1974, an informal DOL-DOT task force was established to examine 13(c) procedures and make recommendations. At the staff level an impasse soon occurred and there was little result except for an increased tendency on the part of each Department to blame the other for any problems in the 13(c) process.

Within recent weeks we have heard of Section 13(c) problems in such diverse locations as Omaha and Lincoln, Nebraska; Los Angeles, California; Albuquerque, New Mexico; Nassau County, New York; and Ocean County, New Jersey. In some instances we have been able to help expedite the process through Domestic Council inquiries.

On March 9, 1976, the Board of the Southern California Rapid Transit District "reluctantly" approved a 13(c) agreement citing "economic duress."

On March 30, 1976, the Board of the National Association of Counties passed a resolution requesting a thorough Federal review of 13(c) procedures which were found to "allow labor organizations to hold hostage needed UMTA grants;" and "make management of transit operations in an orderly, efficient and cost effective manner impossible."

A current draft GAO Report, being made at the request of Senator John Tower, will include the following results of interviews with 12 local grantees on 13(c) effects. Eight of the 12 feel DOL procedures put them in an uneven bargaining position with the unions; none of 26 unions contacted felt they were in an uneven relationship.

CURRENT ADMINISTRATION ACTIONS:

On March 24, 1976, Jim Connor requested DOL and DOT to prepare a joint memorandum outlining 13(c) problems and possible Administration solutions. The Departments, unable to agree, have submitted separate papers. (At Tab A: DOT's submissions of April 8, 1976, and May 28, 1976; at Tab B: DOL's submissions of April 7, 1976 and April 21, 1976.)

In mid-April the Domestic Council convened a meeting of the Administrator of UMTA and the Counselor to the Secretary of Labor in an effort to achieve some agreement on steps which could be taken. After an hour or more of discussion, it was apparent that representatives of the two Departments could not even agree on the issues to be discussed or the facts surrounding the implementation of 13(c). The meeting did lead to the second series of memoranda from the two Secretaries and at least some clarification of the issues.

Our discussions with all levels of the two Departments, including the two Secretaries, have been frequent and extensive but I do not believe Bill Coleman and Bill Usery have ever discussed the matter with each other.

In early May the Domestic Council convened separate meetings with leading transit management representatives and with the local government groups (National Association of Counties, etc.) to get first hand descriptions of their perception of the problems with the implementation of 13(c).

Since last fall there have also been numerous contacts with interested local officals, such as Pete Schabarum who serves on the Board of the Southern California Rapid Transit District.

Transit management and local government officials have expressed considerable pleasure at our willingness to look into the 13(c) process but also some concern at the slow progress they perceive us to be making.

DISCUSSION:

Although some critics of Section 13(c) would like us to assault its philosophic underpinnings, legislative change is clearly unattainable and probably undesirable. The root of most of the problem, in any event, is not Section 13(c) but the way it has been implemented.

There is little dispute that workers who are adversely affected by the grant of Federal money should be recompensed. The grants themselves, however, should not be the vehicles for escalation of wages and benefits.

Because DOL and DOT have basically not worked together on this issue, we have been unable to define specific proposed Administration action. We have, however, identified several steps which we believe can and should be taken.

RECOMMENDATIONS:

I recommend that you instruct Secretaries Usery and Coleman to address the specific proposals which follow and, within one week, to submit final, joint recommendations to you for decision.

AGREE_____ DISAGREE_____

I recommend that the specific proposals to be addressed include:

1. Simplification of procedures under existing law. For example:

   -- SET TIME LIMITS

      DOL could set time limits for the negotiation of agreements, after which the Secretary of Labor could make his own determination of what arrangements constituted "fair and equitable" protection. DOL could provide conditional certifications so that UMTA funds could flow before critical deadlines were reached (end of the fiscal year, or exhaustion of local operating funds).

   -- MULTI-YEAR CERTIFICATIONS

      Instead of having each grant of Federal dollars give rise to a new 13(c) agreement (often more than one per year per city) DOL could establish a policy of granting multi-year certifications which would be good for all grants made within a specific period of time (three years) subject to review based upon the union or an employee showing "adverse impact."

   -- SINGLE CERTIFICATION FOR SINGLE GRANT

      Only a single certification should be required for 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. Under present practice each such annual grant requires a separate 13(c) agreement, collectively bargained and certified.)

-- NEGATIVE DECLARATIONS WITH CHANGED BURDEN OF PROOF

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, there could be a simple departmental declaration that no adverse impact is likely to occur, and that no specific 13(c) arrangement need be negotiated.

This would shift the present burden of proof from local transit operators (to prove that the Federal dollars will not harm employees) to the unions (to prove that there is an adverse impact.)

A review procedure could 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."

AGREE _____ DISAGREE _____

2. Promulgate and Publish Regulations

Regulations were drafted in 1974 and 1975 but never finalized. Such guidelines would assist all parties in participating in the 13(c) process.

AGREE _____ DISAGREE _____

3. I recommend that the Domestic Council be charged with co-ordinating this effort.

AGREE _____ DISAGREE _____