Labor Law Issues for the Transit Employer Considering Automation

Insights
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This is the first post in a five-part weekly series reviewing the legal landscape for transit employers considering automation. The series will address relevant statutes, the effects of existing collective bargaining agreements, the subjects over which an employer may be required to bargain, and steps an employer can take now to better position itself to automate.

Autonomous vehicle technology has reached a place where certain technologies are market-ready or readily adaptable to transit operations, and further automation technologies continue to be developed. These developments are expected to result in future operational savings in part through the elimination of driver and maintenance staff positions and reduced overtime. For the remaining workers, job responsibilities will change, and new skills will be required. Even partial automation may result in job losses or a "de-skilling" of the vehicle operator role. These eventualities will trigger labor law obligations.

Legal protections for transit labor may exist in collective bargaining agreements, federal or state law and under section 13(c) of the Federal Transit Act. If a mass layoff or closing is necessary, advance notice to employees and government entities may be required.

When a transit authority considers automation, a duty to bargain with labor over the decision to automate and a duty to bargain over the effects of the decision may arise. The duty may arise from one of three types of labor laws that govern the transit employment relationship: the National Labor Relations Act, the Railway Labor Act or state-specific public sector collective bargaining statutes. Also, obligations may arise from an employer's collective bargaining agreement with a union if it addresses the implementation of automation, robotics or artificial intelligence. The employer may have agreed to bargain over the decision to automate or the agreement may reserve such decisions to management. If the agreement is silent on the issue, the statutory requirements come into play.

If a transit authority is receiving or seeking a construction grant or loan from the U.S. Department of Transportation's Federal Transit Authority (FTA) related to its efforts to automate, it will want to consider its obligations to employees affected by that project under the Federal Transit Act. The Act protects mass transit workers by requiring that labor standards be maintained on construction work financed with an FTA grant or loan. As a precondition to receiving a grant or loan, an applicant must enter into a protective arrangement with the U.S. Department of Labor that provides for the preservation of rights and benefits of employees under existing collective bargaining agreements

preservation of rights and benefits of employees under existing collective bargaining agreements, the continuation of collective bargaining rights, the protection of individual employees against a worsening of their positions in relation to their employment, assurances of employment to employees of acquired transit systems, priority of reemployment, and paid training or retraining programs.

An employer contemplating automation must also keep in mind that the elimination of a sizable number of positions or a closing may trigger notice requirements under the Worker Adjustment and Retraining Notification Act (also known as WARN) and state law counterparts or a collective bargaining agreement.

For a more in-depth analysis and overview of the labor law issues discussed in this series, please refer to our white paper, *Labor Law Issues in Deciding to Automate Mass Transit Operations*.

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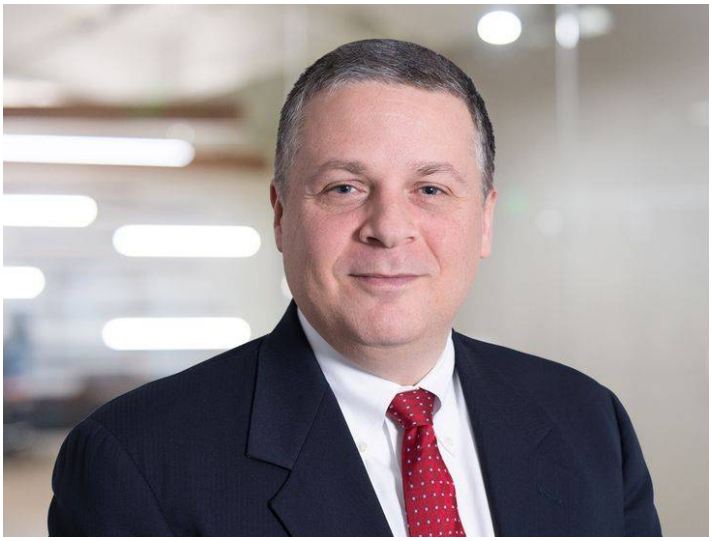

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