Employee Protections Under the Federal Transit Act – What Transit Employers Need to Know

Insights
9.30.19

This is the fourth post in a five-part weekly series reviewing the legal landscape for transit employers considering automation. Please click here to see the prior post in this series.

As part of our series on labor law issues for the transit employer considering automation, we turn now to the Federal Transit Act.

In order to acquire, improve or operate a mass transit system, perhaps as part of an effort to automate, a transit authority may seek a construction grant or loan from the U.S. Department of Transportation's Federal Transit Authority (FTA) under the Federal Transit Act. The Act requires, as a precondition to receiving a grant or loan, that an applicant enter into a "protective arrangement" with the U.S. Department of Labor (DOL) that provides for the preservation of certain employment rights and benefits of mass transit workers.

Protective arrangements must provide for the preservation of rights and benefits under existing collective bargaining agreements. They also require 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. Before the FTA releases funds to an applicant, the Secretary of Labor must determine that the protective arrangements are fair and equitable and certify that they are in place. There are no provisions for waivers or exemptions from these requirements.

If the transit authority's employees are represented by a labor union, the transit authority and the union may already be signatory to the National (Model) Agreement. If not, the employer proposes a protective arrangement to the DOL which, in turn, refers it to the funding recipients and the union for negotiation. The DOL has developed a "Nonunion Protective Arrangement" for use with nonunion employers.

Existing Protective Arrangements – the National (Model) Agreement

The National (Model) Agreement requires an employer to give the union at least 60 days written notice of each proposed change that may result in the dismissal or displacement of employees, or rearrangement of the working forces covered by the agreement, as a result of the project. Either party may request immediate negotiations. If no agreement is reached within 20 days, either party

may submit the matter to arbitration and a final decision must be rendered within 60 days. Other significant obligations under the Model Agreement include payment of a monthly displacement allowance for a period of up to six years to employees who are placed in a worse position with respect to compensation as a result of the project. Any employee whose place of employment changes and who is required to move his or her residence is entitled to moving and traveling expenses and to his or her actual wage loss. Employees laid off or deprived of employment as a result of the project are entitled to a monthly "dismissal allowance" and dismissed employees are entitled to priority of placement incomparable, vacant positions for up to six years, including training if necessary for the employee to become qualified for the position.

New Protective Arrangements

If there is no previously-certified arrangement, the DOL proposes the terms and conditions found in its "Unified Protective Arrangement." There is a procedure for either party to submit objections to the recommended terms, but the parties are expected to engage in good faith efforts to reach mutually acceptable protective arrangements through negotiation within certain timeframes. The DOL will impose a protective arrangement when no agreement can be reached.

If neither the grant applicant's employees nor employees of any other transit provider in the service area are represented by a union, the DOL certifies the protections contained in a "Nonunion Protective Arrangement" developed by the DOL.

The protections found in the Unified Protective Arrangement and the Nonunion Protective Arrangement track those found in the Model Agreement.

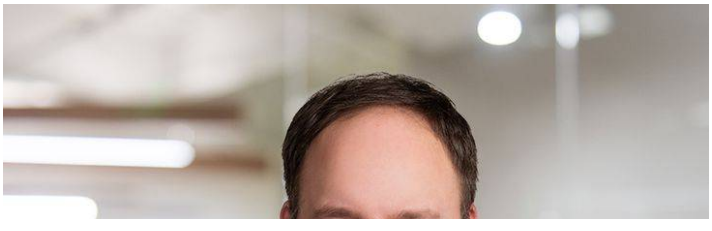
Conclusion

An employer's obligations under a protective arrangement are so extensive and of such duration that they should be considered when an employer evaluates whether to seek funding for automation through a construction grant or loan under the Federal Transit Act.

Our series on labor law issues for the transit employer considering automation continues next week with a discussion of notice requirements under other laws and agreements.

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*.

Related People



Joshua D. Nadreau
Regional Managing Partner and Vice Chair, Labor Relations Group
617.722.0044
Email