

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT TRIAL DEPARTMENT

Suffolk, SS

Case No. 09-3954 B

In the Matter of:

LOCAL 589, AMALGAMATED TRANSIT
UNION, Stephan G. MacDougall, Allen R. Lee,
John F. Dwyer, Syliva Nogueira Patricia Cargill
and all Others Similarly Situated,

LOCAL 104, INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, Hugh Boyd,
and all Others Similarly Situated,

LOCAL 453, OFFICE AND PROFESSIONAL
EMPLOYEES INTERNATIONAL UNION,
Patrick Ronan, and all Others Similarly Situated,

LOCAL 600, OFFICE AND PROFESSIONAL
EMPLOYEES INTERNATIONAL UNION,
John Horan, and all Others Similarly Situated,

THE ALLIANCE OF UNIONS, Patrick Cahill, and all
Others Similarly Situated,

LODGE 264, INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
William Irvin, Robert T. Broderick and all Others
Similarly Situated,

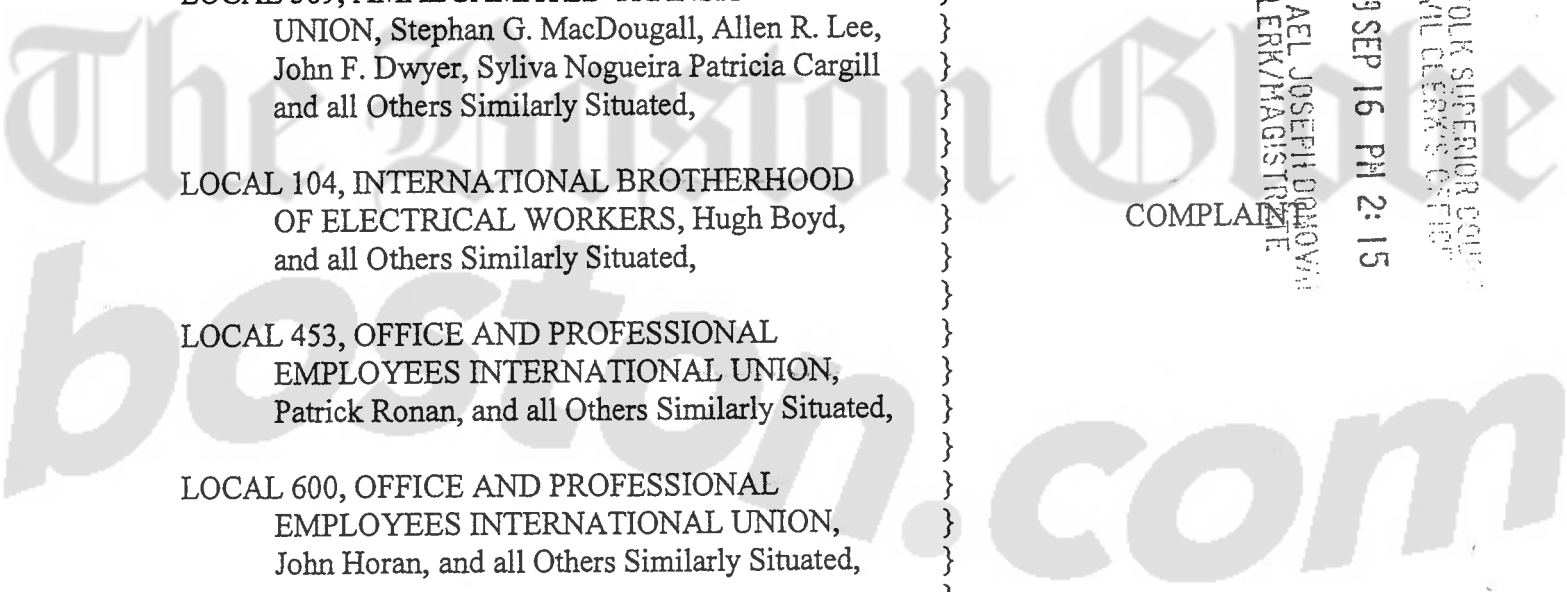
THE BUILDING AND CONSTRUCTION TRADES
COUNCIL OF THE BOSTON METROPOLITAN
DISTRICT, James Coyle, and all Others Similarly
Situated,

MBTA POLICE ASSOCIATION, Robert Marino, Paul
Byrne and all Others Similarly Situated,

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SUFFOLK SUPERIOR COURT
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MICHAEL JOSEPH DOMOVINI
CLERK/MAGISTRATE

COMPLAINT



MBTA SERGEANTS ASSOCIATION, Michael
Flanagan, and all Others Similarly Situated,

MBTA EXECUTIVE UNION (LOCAL 9501, UNITED
STEEL WORKERS), James J. Condon, Jr., and
all Others Similarly Situated,

Plaintiffs,

v.

THE COMMONWEALTH OF MASSACHUSETTS,
THE GROUP INSURANCE COMMISSION,
COMMONWEALTH OF MASSACHUSETTS,

and

THE MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY,

Defendants.

NATURE OF THE ACTION

This complaint seeks declarative and injunctive relief to prevent implementation of certain sections and subsections of the Acts of 2009, on grounds that the provisions, though duly enacted, are incompatible with the Constitutions of the Commonwealth of Massachusetts and of the United States of America. In particular, Sections 140 and 146 of Chapter 25 of the Acts of 2009 purport respectively to abolish the health care plan of the employees of the Massachusetts Bay Transportation Authority ("MBTA") and to amend the terms of the Massachusetts Bay Transportation Authority Retirement Plan. These provisions violate existing contracts (labor protective arrangements in contract form, as mandated by Federal Law) as well

as Constitutional provisions because the new statutes impair existing contracts and appropriate private property without adequate compensation.

JURISDICTION

This Court has primary jurisdiction to interpret and enforce labor protective arrangements, contracts which qualify the Massachusetts Bay Transportation Authority to obtain Mass Transit Grants of Assistance from the government of the United States. Jackson, Tennessee v. Local 1287, Amalgamated Transit Union, 457 U.S. 15 (1982) see 49 U.S.C. 5333(b). This Court also has general equitable jurisdiction and jurisdiction to interpret and enforce the Constitutions of the Commonwealth of Massachusetts and of the United States of America with respect to legislative enactments of the General Court. Ma. Gen. L. Ch. 214, Section 1.

THE PARTIES

The Plaintiffs are as follows:

1. Local 589 of the Amalgamated Transit Union has represented in collective bargaining bus, subway and streetcar operators, along with streetcar and subway maintenance and other occupations of the MBTA and its predecessors, continuously since 1912. Currently, Local 589 represents over 4,000 active MBTA employees and among its members are over 1,700 retired MBTA workers. Local 589 represents no one who is not an active or retired employee of the MBTA. The offices of Local 589 are located at 295 Devonshire Street, Boston, Massachusetts, 02110.

2. Plaintiff Stephan G. MacDougall is President/Business Agent of Local 589, Amalgamated Transit Union. Mr. MacDougall is an MBTA Streetcar Motorperson (operator) on leave from active duty to serve full-time in his Union position. Mr. MacDougall remains a member of the MBTA health care and retirement plans.
3. Plaintiff Allen R. Lee is an active MBTA Streetcar Motorperson. He is 61 years of age and has worked for the MBTA for sixteen years. Mr. Lee resides at 9 High Street, Dorchester, Massachusetts, 02122. Mr. Lee is a participant in the MBTA Retirement Plan and received health care benefits under the MBTA health and welfare plan.
4. Plaintiff John F. Dwyer retired from the MBTA on January 1, 1996 after more than 20 years of service. Mr. Dwyer is 70 years of age. He resides at 31 Moore Street in Wilmington, Massachusetts, 01887 and receives a monthly pension in the net amount of \$1,688.23, which the MBTA Retirement Fund is obliged to pay until his death. Mr. Dwyer is also a participant in the MBTA healthcare plan. He is enrolled in Medicare and receives a Medicare Supplement from the MBTA, without cost to him or a reduction in his monthly pension.
5. Plaintiff Sylvia Nogueira retired in November, 2008 from an executive position in operations management of the MBTA. Ms. Nogueira resides at 18 Ronald Way

in Stoughton, Massachusetts, 02072 and receives both a monthly pension from the MBTA Retirement Fund and health care benefits, without cost to her, from the MBTA health and welfare plan.

6. Plaintiff Patricia Cargill has retired from an executive position in operations management of the MBTA. Ms. Cargill resides at 8 Lovin Drive, Wilmington, Massachusetts, 01887 and receives both a monthly pension from the MBTA Retirement Fund and health care benefits, without cost to her, from the MBTA health and welfare plan.
7. Plaintiff Local 104 of the International Brotherhood of Electrical Union represents and has represented in collective bargaining since 1973, MBTA employees responsible for the manufacture and distribution of electricity, including linemen, operators, technicians and maintenance workers. Currently, Local 104 represents seventy active MBTA employees and among its members are several retired MBTA workers. The offices of Local 104 are located at 130 West Street, Walpole, Massachusetts, 02081.
8. Plaintiff Hugh Boyd serves as Treasurer of Local 104, IBEW and has retired from the MBTA. Mr Boyd receives both a monthly pension from the MBTA Retirement Fund and health care benefits, without cost to him, from the MBTA health and welfare plan.

9. Plaintiff Local 453, Office and Professional Employees' International Union, represents several hundred MBTA supervisory and managerial employees, some active and some retired. The address of Local 453 is 147 West 4th Street, South Boston, Massachusetts, 02127.
10. Patrick Ronan is an active employee of the MBTA and business agent of Local 453, OPEIU. He is also a member of the MBTA Retirement Plan and receives health care coverage from the MBTA health and welfare plan.
11. Plaintiff Local 600, Office and Professional Employees' International Union is located at 147 West 4th Street, South Boston, 02127. Local 600 represents in collective bargaining several hundred active and retired MBTA Inspectors and Chief Inspectors.
12. Plaintiff John T. Horan is Business Agent of Local 600 and is on leave from his position as Chief Inspector of the MBTA. Plaintiff Horan participates in the MBTA Retirement Plan and receives health care coverage from the MBTA Health and Welfare plan.
13. Plaintiff Alliance of Massachusetts Bay Transportation Authority Unions ("Alliance") represents 400 members, all of whom are employed by the MBTA as foremen and weekly paid supervisors, throughout the MBTA's system. Alliance members constitute the first line of supervision for all MBTA maintenance and operations activities. In addition, there are many MBTA retirees who are former

Alliance members and, as a result, are members of the MBTA pension plan. At all times relevant to this litigation, Alliance members' terms and conditions of employment have been governed by the parties' 2002-2006 Collective Bargaining Agreement and 2006-2010 Memorandum of Agreement. The Alliance's office is located at 147 West Forth Street, South Boston, Massachusetts, 02127.

14. Plaintiff Patrick J. Cahill is President of the Alliance and is employed by the MBTA as a Section Foreman, a position he has held for over twenty (20) years. Mr. Cahill is fifty-one (51) years of age and has worked for the MBTA for almost thirty (30) years. Mr. Cahill resides at 19 Colonial Road, Hingham, Massachusetts, 02043. Mr. Cahill and his family are enrolled in an MBTA sponsored health plan, and Mr. Cahill is a member of the MBTA's pension plan.
15. Boston Lodge 264 of the International Association of Machinists and Aerospace Workers has represented MBTA Fuelers and Machinists (bus maintenance workers) for many decades. Currently, Lodge 264 represents 412 active MBTA employees and among its members are 298 retired MBTA workers. The offices of Lodge 264 are located at 299 Newport Avenue, Suite 8, Quincy, Massachusetts, 02170.
16. Plaintiff William Irvin is President of Lodge 264, a retired MBTA Machinist and has served as a member of the MBTA Retirement Committee. Mr Irvin receives both a monthly pension from the MBTA Retirement Fund and health care

benefits, without cost to him, from the MBTA health and welfare plan.

17. Plaintiff Robert T. Broderick is retired from the MBTA, where he worked for many years as a Machinist and member of Lodge 264, IAMAW. Mr. Broderick resides at 1414 South East 46th St., Unit 1 A, Cape Coral, Florida, 33904. He receives a regular monthly pension from the MBTA Retirement Fund and is also a participant in the MBTA healthcare plan.
18. Plaintiff Building and Construction Trades Council of the Metropolitan District (“Council”) is a confederation of local unions representing over 30,000 tradesmen and women throughout the Boston metropolitan area. The Council’s General Agent and Secretary Treasurer is James M. Coyle. The Council’s offices are located at 12A Everdean Street, Suite 2, Boston, Massachusetts 02122-3530. Through its union affiliates, the Council represents approximately 300-400 MBTA employees. At all times relevant to this litigation, the terms and conditions of employment for members of the Council’s affiliate unions employed by the MBTA have been governed by the parties’ 1999-2003 Collective Bargaining Agreement and 2003-2007 Memorandum of Understanding. Council affiliate unions with members employed by the MBTA include the following, all of which are headquartered in the Boston Metropolitan area: International Association of Heat and Frost Insulators and Allied Workers, Local 6; International Union of Bricklayers and Allied Craftworkers, Local 3; Operative Plasterers and Cement Masons International Association, Local 534; International Brotherhood of

Electrical Workers, Local 103; International Union of Operating Engineers, Local 4; International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 7; Laborers International Union of North America, Local 22; Laborers International Union of North America, Local 223; International Union of Painters and Allied Trades, District Council No. 35; United Association of Plumbers, Pipefitters, and Steamfitters, Local 537; United Union of Roofers, Waterproofers and Allied Workers, Local 33; Sheet Metal Workers International Association, Local 17.

19. Plaintiff MBTA Police Association has represented MBTA Officers in collective bargaining since 1983 and now has 200 active members. The Association's address is 147 West Fourth Street, South Boston, Massachusetts, 02127
20. Plaintiff Robert Marino is President of the MBTA Police Association and an MBTA Police Officer who is a member of the MBTA Police Association Retirement Plan and receives health care under the MBTA health and welfare plan.
21. Plaintiff Paul Byrne retired from MBTA Police Department service. He, like 195 other retirees, receives a monthly pension from the MBTA Police Association Retirement Plan and health care from the MBTA health and welfare plan.
22. Plaintiff MBTA Sergeants' Association represents in collective bargaining approximately 35 active supervisory officers of varying ranks in the MBTA Police Department, and has represented the same categories of employees since 1983.

The Association has no place of business, but receives correspondence in care of the MBTA Police Department, 240 Southampton Street, Boston, Massachusetts, 02118.

23. Plaintiff Michael Flanagan is President of the MBTA Sergeants Association and an active Police Officer in the MBTA Police Department, who is a participant in the MBTA Police Retirement Plan and receives health care through the MBTA health and welfare plan.
24. Plaintiff MBTA Executive Union (Local 9501, USW) represents in collective bargaining several hundred MBTA Professional and Executive employees, both active and retired. The MBTA Executive Union's office is located at 279 Corey Street, West Roxbury, Massachusetts, 02132 and receives correspondence at P.O. Box 70, Boston, Massachusetts, 02117.
25. Plaintiff James J. Condon, Jr. is employed by the MBTA Law Department and is President of the MBTA Executive Union. Plaintiff Condon is a participant in the MBTA Retirement Plan and receives health care through the MBTA health and welfare plan. Mr. Condon resides at 279 Corey Street, West Roxbury, Massachusetts, 02132.

The Defendants are as follows:

26. The Commonwealth of Massachusetts ("Massachusetts," "the State" or "the Commonwealth").

27. The General Insurance Commission (“GIC”) is a public body consisting of officials appointed by the Governor for terms of three years. M.G.L. Ch. 32A Section 3. The General Insurance Commission establishes terms of health care insurance for employees of Massachusetts State Government and for those of those particular local governments which have opted to participate. The Commission determines unilaterally the scope of health care benefits and the amounts to be paid by employees themselves to insurance companies as premiums and to health care providers as “co-pays,” to qualify for coverage and to claim benefits. The Group Insurance Commission is located at 19 Staniford St Boston, MA 02114-2502.
28. The Massachusetts Bay Transportation Authority is an independent body politic, created by the Commonwealth of Massachusetts to own and operate mass transportation service throughout the metropolitan Boston area. MBTA transportation service includes bus, subway, streetcar, trackless trolley, commuter rail, paratransit for the elderly and handicapped, and other modes such as commuter ferry service, adopted from time to time. The MBTA may sue and be sued, MGL. Ch. 161A, Section 2 and negotiates through collective bargaining its employees’ terms and conditions of employment including retirement and health care plans which cover its employees, MGL Ch. 161A, Section 25. The MBTA negotiates some 28 distinct collective bargaining agreements. The MBTA is located at 10 Park Plaza, Boston, Massachusetts, 02116.

THE PARTIES' RELATIONSHIPS

29. The MBTA is empowered by law:

to enter into agreements, with [labor organizations representing its employees] relative to wages, salaries, hours, working conditions, the assignment of work schedules and work locations on the basis of seniority, including: (a) hours of work each day and days worked each week; provided, however, that a change in such assignment shall not provide for a change in classification; and (b) the filling of vacancies by promotion or transfer of qualified applicants on the basis of seniority, health benefits, pensions and retirement allowances of such employees;

MGL Ch. 161A Section 25 (The scope of bargaining is constrained by so-called "inherent management rights" which are not applicable in this case.)

30. The MBTA and all of its employees have agreed, through the process of collective bargaining where applicable, to participate in the MBTA Health and Welfare program.
31. The MBTA and all of its employees except for the MBTA Police Officers and Superior Officers, have agreed through the process of collective bargaining, where applicable, to participate in the MBTA Retirement Plan.
32. The MB TA and its Police Officers and Superior Officers have agreed through the process of collective bargaining to participate in the MBTA Police Association Retirement Plan.

33. The Collective Bargaining Agreements now in place expire as early as June 30, 2010, with the exception of the Agreement between the MBTA and the Plaintiff Construction Trades Council.
34. Although an independent agency and subdivision of the Commonwealth of Massachusetts, the MBTA is actively governed by its Board of Directors, Chaired by the Secretary of Transportation, all of whom are appointed by the Governor of the Commonwealth.
35. The Commonwealth provides funds for MBTA operating expenses which exceed its fare receipts and other earnings. Commonwealth assets ensure repayment of MBTA bonds and other debt. The Commonwealth provides matching funds for the purpose of procuring annual Federal Project Grants through the MBTA.
36. Multiple and repeated MBTA Federal Project Grants have in turn supplanted, to the benefit of the Commonwealth, the amount of Commonwealth funds allocated to support MBTA service. Project funds have been used for almost every MBTA fiscal need, but particularly to complete capital projects such as construction of stations, bridges, tunnels, track, garages, and the purchase and installation of bus garages, rail carhouses and vehicles, along with communication and automatic control systems.

37. Buses, street and subway cars, including many in current use by the MBTA, have been procured through Federal Project Grants which paid 80% of the cost of each vehicle, with the Commonwealth providing the balance of the purchase price.

38. The MBTA was founded in 1964, exactly the year that the United States enacted its first mass transportation assistance program, and since that date has applied for and received many project grants, numbering some half dozen or so each year, on average, and providing billions of dollars in Federal Assistance to the MBTA and the Commonwealth. The MBTA Act includes a number of provisions specifically designed to ensure that it will qualify for federal grants, including specifically the authority:

To accept gifts, grants and loans from agencies of local, state and federal governments, or from private agencies or persons, and to accede to such conditions and obligations as may be imposed as a prerequisite to any such gift, grant or loan.

M.G.L.A. 161A § 3(h)

39. The Federal Act included, and includes, as a condition of each respective grant, a “condition and obligation” that any recipient must protect employees who are “affected by” that particular grant of assistance, The protection must be in the form of an “arrangement” adequate to protect the interests of the employees. The arrangement must accomplish at least:

(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;

(B) the continuation of collective bargaining rights;

(C) the protection of individual employees against a worsening of their positions related to employment;

* * *
49 U.S.C. Section 5333(b)

The adequacy of each arrangement is certified by the U.S. Secretary of Labor on the occasion of each project grant.

40. In practice, each time the MBTA applies for a grant, it explains to the Federal Transit Administration (“FTA”) how the MBTA intends to protect the employees who will be affected by the grant. That proposed arrangement is conveyed by the FTA to the U.S. Secretary of Labor for review. The Secretary then inquires of the various unions representing MBTA employees whether any Union sees an infirmity in the proposed arrangement. Any Union may object to the arrangement proposed by the MBTA, and there is an administrative procedure to examine and, if necessary in the opinion of the Secretary, adjust the terms of the arrangement to meet the objection. 29 C.F.R. Part 215. When the arrangement has been approved, the Secretary of Labor sends a letter, called a “certification letter,” informing the FTA that labor arrangements are adequate. If the MBTA’s proposal

meets all other requirements, the FTA authorizes expenditure on the project and the labor protection arrangement is “incorporated” into the contract of assistance between the FTA and the MBTA.

41. To preclude re-negotiating new terms of a protective arrangement on the occasion of each grant, the MBTA and its employees’ unions have used and re-used a set of contract provisions they first established by signed agreement in 1974. At that time the labor protective section of the mass transit act was denominated “13(c)” (now Section 5333(b)) and so the agreement is known colloquially as the “13(c) Agreement.” By letter, the original terms have been augmented slightly from time to time and those accumulated amendments appear in each project grant and certification letter. (The Agreement is attached as Exhibit A, and a recent certification letter reciting amendments used by the MBTA in connection with each new grant as Exhibit B.)
42. Each time the MBTA has sought federal grant assistance, it has proposed, and now proposes in a number of pending grant applications, to honor the terms of the 1974 agreement, together with certain additions accumulated over the years. Labor protective arrangements are now routinely approved on this basis each year. Thus, for each separate project grant, there has arisen a labor protective arrangement which constitutes on each occasion a new contract between the MBTA and its employees’ unions. Examples of recent grants and the 13(c) agreements are summarized in certification documents as follows:

- a. Project Number 03-0228-06 - Money to Procure Bi-Level Commuter Rail Coaches, in the amount of \$142,400,000. (Certification dated September 11, 2008)
- b. Project Number 05-0114 - Money to rehabilitate and renovate electrical transformers on the Orange Line and related administrative expenses, in the amount of \$2, 232,268. (Certification dated September 11, 2008)
- c. Project Number 90-X563 - Money to conduct preventive maintenance, in the amount of \$10,000,000. (Certification dated April 20, 2009)
- d. Project Number 96-X001 - Money to purchase 108 paratransit vans, construct the Silver Line busway, bus stop and shelter enhancements, fencing and bicycle parking and access improvements in the amount of 26,628,250. (Certification dated June 12, 2009)
- e. Project Number 96-X014 - money to construct the Silver Line , rehabilitate maintenance facilities, fund improvements pertaining to double track operation, buy 25 hybrid buses, purchase real estate and construct the Ashmont MBTA facility, in the amount of \$99,846,188. (Certification dated July 10, 2009)
- f. Project Number 90-X568 - Money to construct a rail station, purchase 310 low floor buses and 175 buses without low floors, in the amount of \$17,824,315. (Certification dated July 24, 2009)
- g. Project Number 56-0001 - money to design and purchase transitway lines, Dudley Station, commuter rail bridges, purchase and construct signals and track in Haverill, design and purchase materiel for Commuter Rail Stations, in the amount of \$51,513,648. (Certification dated June 26, 2009)

THE PRESENT DISPUTES

43. Among many provisions, the MBTA 13(c) Agreements all include the following particular terms (paragraph numbers taken from original document):

2. The project shall be carried out in such a manner and upon such terms and conditions as will not in any way adversely affect employees covered by this agreement;
- 3.(a) All rights , privileges (including pension rights and benefits) of employees of the Authority in classifications represented by the Labor Organizations signatory hereto (including employees already retired) under the existing collective bargaining agreements or otherwise shall be preserved and continued unless changed, altered or amended as provided in said collective bargaining agreements.
4. The collective bargaining rights of employees of the Authority represented by Labor Organizations signatory hereto including the right to arbitrate labor disputes and to maintain union security and check-off arrangements, to the extent such are provided for by laws and/or existing collective bargaining agreements, or otherwise, shall be preserved and continued. . . .
23. In the event that the Project is approved for assistance, under the Act, the foregoing terms and conditions shall be made part of the contract of assistance between the Federal government and the applicant for Federal funds; provided, however, that this agreement shall not merge into the contract of assistance but shall be independently binding and enforceable by and upon the parties hereto, in accordance with its terms, nor shall any collective bargaining agreement merge into this Agreement, but each shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms.
4. (See Certification Letters, Complaint Exhibit B)

Employees of urban mass transportation carriers in the service area of the project, other than those represented in the protective arrangements, shall be afforded substantially the same levels of

protection as are afforded to the employees represented by the unions under the December 16, 1974 agreement and certification. .

....

(13(c) Agreement, Complaint Exhibit A, pages 2,3 and 18)

44. Each collective bargaining agreement which governs any of the Plaintiffs' terms and conditions of employment, encompasses particular health care benefits negotiated between them and the MBTA. Health care benefits and cost sharing have been negotiated through collective bargaining by the MBTA since it was first created and is authorized by law. M.Gen.L. Ch. 161A, Section 25

45. The current range of health care benefits included in the MBTA health and welfare plan, approved and adopted by all Plaintiff Unions and applicable to all active and retired MBTA employees, are identical and include the following plans, from which each MBTA employee or retiree may choose:

- A. Blue Care Elect
- B. Blue Choice
- C. Network Blue
- D. Harvard Pilgrim
- E. Tufts
- F. Medex (Medicare Supplement, sole option for medicare recipients.)

46. Under the collective bargaining agreements and MBTA Health Care Plan, active employees pay 15% of the premium for their health care. However, retired MBTA employees pay no portion of the cost of their health care.
47. The MBTA Retirement Plan and MBTA Police Association Retirement Plan both provide that an employee's pension is calculated on the basis of their earnings in the last three years of their employment. Both Plans also provide that a participant who accumulates 23 years of credited service may retire at any time thereafter without an "early retirement" reduction of benefits. This provision has been a feature of the MBTA Retirement Plan for almost thirty years. (Pertinent provisions of the MBTA Retirement Plan are attached as Exhibit C)
48. On June 30, 2009, the Commonwealth enacted the following provision:

Notwithstanding the provisions of any general or special law to the contrary, an employee, retiree, surviving spouse or dependent of the Massachusetts Bay Transportation Authority who becomes or who is eligible for group insurance coverage under plans offered by the authority or who is insured under such a plan, shall have his eligibility and coverage transferred to the jurisdiction of the group insurance commission and such person shall cease to be eligible or insured under plans previously offered by the Massachusetts Bay Transportation Authority; provided, however, that employees whose benefits are provided under the terms of an existing collective bargaining agreement shall be transferred on the expiration date of that agreement; provided, further, that for all other employees, this transfer shall be effective January 1, 2010. . .

Upon transfer: (I) all benefits of all employees, retirees, surviving

54. The effects of Sections 140 and 146 of Chapter 25 of the Acts of 2009 to: diminish through legislation the health care and pension benefits of MBTA employees; increase the amount of money that employees and retirees must pay to obtain health care benefits; and preclude collective bargaining by MBTA employees over their own health care, must be set aside. The provisions violate the MBTA's and Commonwealth's own contracts with the Unions representing MBTA employees, violates the labor protective arrangements or 13(c) agreements which the MB TA and Commonwealth adopted and re-adopted in order to qualify for massive amounts of Federal assistance, and violates the Constitutions of the Commonwealth of Massachusetts and of the United States of America.
55. MBTA Executive Employees, such as Plaintiffs Cargill and Nogueira have been directed by the MBTA and the GIC to make selections of new health care coverage during the calendar month of October, to be effective on January 1, 2010. Health care benefits under the GIC will be applicable to MBTA employees covered by collective bargaining agreements as early as July 1, 2010, unless implementation is enjoined by this Court.
56. The Plaintiffs comprise a cross-section of MBTA employees, both active and retired, with respect to the matters and issues presented by this lawsuit, and will fairly and adequately represent the interests of all retired and active MBTA workers who would be affected by the implementation of Sections 140 and 146 of Chapter 25 of the Acts of 2009.

CAUSES OF ACTION

COUNT I. BREACH OR REVOCATION OF LABOR
PROTECTIVE ARRANGEMENTS.

57. All allegations are re-asserted as part of this Count.
58. The MBTA, acting on behalf of the Commonwealth, repeatedly promised, and continues to promise on a monthly basis, to preserve terms and conditions of employment of MBTA employees and to alter pension and health care benefits of MBTA employees only through collective bargaining and to preserve collective bargaining rights as to pension and health care benefits for so long as MBTA employees are “affected” by projects of Federal assistance.
59. The above-listed promises and protections were tendered by the MBTA and the Commonwealth in exchange for and as a condition of each Federal project of assistance since 1974, amounting to billions of dollars given to the MBTA by the U.S. Government.
60. Every single MBTA current employee is “affected” by one or more project grants of Federal assistance and is a direct beneficiary of the labor protective arrangements which underlie them.
61. As a matter of law, MBTA employees protected by the arrangements, and the Unions which represent them, are entitled to enforce the arrangements as contracts in State Court.

62. Defendants MBTA, GIC and the Commonwealth of Massachusetts intend to implement and enforce Sections 140 and 146 of Chapter 25 of the Acts of 2009.

63. If the Defendants were allowed to implement Sections 140 and 146, they would violate the labor protective arrangements they have signed and continue to sign.

64. The Defendants have no plan or intention to return the Federal Project grants they have accepted in exchange for the protective arrangements and, accordingly, are bound by them as a matter of law.

ACCORDINGLY,

65. This court should enjoin the Defendants from breach or revocation of their labor protective arrangements.

COUNT II. SECTIONS 140 AND 146 OF CHAPTER 25 OF THE ACTS OF 2009 IMPAIR THE OBLIGATIONS OF CONTRACT, IN VIOLATION OF THE UNITED STATES CONSTITUTION.

66. All allegations are re-asserted as part of this Count.

67. The labor protective arrangements and existing collective bargaining agreements constitute obligations of contract by the Commonwealth of Massachusetts and its subdivision the MBTA.

68. The terms of Sections 140 and 146 of Chapter 25 of the Acts of 2009 are intended to revoke, set aside or breach the existing contracts.

69. Article 1, Section 10, Clause 1 of the United States Constitution prohibits any state from passing any law “impairing the obligation of contracts.”

ACCORDINGLY,

70. Sections 140 and 146 of Chapter 25 of the Acts of 2009 are unconstitutional, should be stricken by the Court and implementation of those sections prohibited by the Court.

COUNT III. SECTIONS 140 AND 146 OF CHAPTER 25 OF THE ACTS OF 2009 IMPAIR THE OBLIGATIONS OF CONTRACT, IN VIOLATION OF THE MASSACHUSETTS CONSTITUTION.

71. All allegations are re-asserted as part of this Count.
72. The labor protective arrangements and existing collective bargaining agreements constitute obligations of contract by the Commonwealth of Massachusetts and its subdivision the MBTA.
73. The terms of Sections 140 and 146 of Chapter 25 of the Acts of 2009 are intended to revoke, set aside or breach the existing contracts.
74. Article X of the Declaration of Rights of the Massachusetts Constitution prohibits unjust appropriation of property, including contractual rights.

ACCORDINGLY,

75. Sections 140 and 146 of Chapter 25 of the Acts of 2009 are unconstitutional, should be stricken by the Court and implementation of those sections prohibited by the Court.

COUNT IV. SECTIONS 140 AND 146 OF CHAPTER 25 OF THE ACTS OF 2009 COMMAND A TAKING OF PROPERTY WITHOUT DUE PROCESS OR ADEQUATE COMPENSATION, IN VIOLATION OF THE UNITED STATES CONSTITUTION.

76. All allegations are re-asserted as part of this Count.
77. Health care without cost during retirement and a right of contract with the Commonwealth itself to continue to bargain collectively over health and retirement benefits are rights and property within the meaning of the 14th Amendment of the United States Constitution.
78. Sections 140 and 146 of Chapter 25 of the Acts of 2009 would seize MBTA retirees' vested right to free health care during retirement and terminate all MBTA employees' rights under contract with the Commonwealth to continue to negotiate concerning their health care and retirement benefits, without compensation or due process.

ACCORDINGLY,

79. Sections 140 and 146 of Chapter 25 of the Acts of 2009 are unconstitutional, should be stricken by the Court and implementation of those sections prohibited by the Court.

COUNT V. SECTIONS 140 AND 146 OF CHAPTER 25 OF THE ACTS OF 2009 COMMAND A TAKING OF PROPERTY WITHOUT DUE PROCESS OR ADEQUATE COMPENSATION, IN VIOLATION OF THE MASSACHUSETTS CONSTITUTION.

80. All allegations are re-asserted as part of this Count.
81. Health care without cost during retirement and a right of contract with the Commonwealth itself to continue to bargain collectively over health and retirement benefits are rights and property within the meaning of Article XII of the Declaration of Rights of the Massachusetts Constitution.
82. Sections 140 and 146 of Chapter 25 of the Acts of 2009 would, if followed, seize MBTA retirees' vested right to free health care during retirement and terminate all MBTA employees' rights under contract with the Commonwealth to continue to negotiate concerning their health care and retirement benefits, without compensation or due process.

ACCORDINGLY,

83. Sections 140 and 146 of Chapter 25 of the Acts of 2009 are unconstitutional, should be stricken by the Court and implementation of those sections prohibited by the Court.

RELIEF SOUGHT

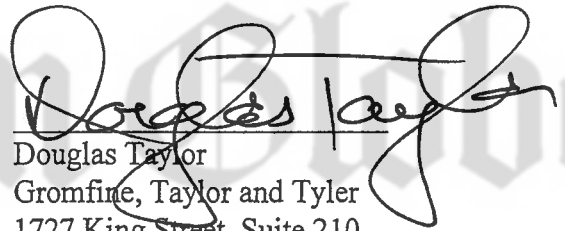
For each and all of the foregoing reasons, this Court should:

- A. CERTIFY and authorize plaintiffs to act in this matter as representatives of a class of persons, namely active and retired MBTA employees who would be affected by the implementation of Chapter 25, Sections 140 and 146 of the Acts of 2009.
- B. DECLARE that:
- 1) Sections 140 and 146 of Section 25 of the Acts of 2009 violate or retract the Commonwealth's own contract protecting MBTA employees affected by Federal Projects of Assistance are unconstitutional under both the United States;
 - 2) Sections 140 and 146 of Section 25 of the Acts of 2009 impair contractual rights in violation of the United States Constitution and the Massachusetts Declaration of Rights; and
 - 3) Sections 140 and 146 of Section 25 of the Acts of 2009 require a taking of rights and property without due process of law in violation of the United States Constitution and the Massachusetts Declaration of Rights.
- C) ENJOIN all Defendants from implementing or acting upon the authority of Sections 140 and 146 of Section 25 of the Acts of 2009.
- D) AWARD such other judgments and relief, including but not limited to damages, reimbursement for the cost of this litigation and equitable relief, as the court may adjudge necessary and proper in order to assure that the rights and property of Plaintiffs and those they represent are protected from unconstitutional diminution by the Defendants.

Respectfully submitted,

Plaintiffs LOCAL 589, AMALGAMATED
TRANSIT UNION, STEPHAN G.
MACDOUGALL, JOHN F. DWYER, PATRICIA
CARGILL, SYLVIA NOGUEIRA, and all others
similarly situated,

By their Counsel,



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Plaintiffs LODGE 264, DISTRICT 15,
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
WILLIAM IRVIN AND ROBERT T.

BRODERICK and all others similarly situated,

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PROFESSIONAL EMPLOYEES
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THE ALLIANCE OF UNIONS, THE BUILDING
AND CONSTRUCTION TRADES COUNCIL OF
THE BOSTON METROPOLITAN DISTRICT,
PATRICK CAHILL, and all Others Similarly
Situating,

By Their Counsel,

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MARINO, PAUL BYRNE, MICHAEL
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COMPLAINT
EXHIBIT

The Boston Globe

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JAN 6 1975

AGREEMENT PURSUANT TO SECTION 13(c) OF THE URBAN
MASS TRANSPORTATION ACT OF 1964, AS AMENDED.

This agreement is made and entered into by and between the Massachusetts Bay Transportation Authority ("Authority"), party of the first part, and the labor organizations signatory hereto ("Unions"), party of the second part.

WHEREAS, the Authority has filed applications under the Urban Mass Transportation Act of 1964, as amended ("Act"), for a capital grant to finance (1) Plant and Facilities Improvements; (2) Acquisition and Installation of Plant Machinery and Equipment; (3) Acquisition of Non-Revenue Equipment and Rolling Stock; (4) Power and Signal System Improvements; (5) Acquisition and Installation of Bus Radios, entitled "Plant Improvements - Phase III", as more fully described in the project application dated December 21, 1973; (6) Bus Storage and Maintenance Facilities at Charlestown, as more fully described in the project application dated April 19, 1974; (7) Purchase of 203 New Buses; (8) Purchase of 276 New Buses, as more fully described in project applications dated April 17, 1974; and (9) Restoration of Track Support Structures, as more fully described in project application dated August 7, 1974; and Immediate Needs - Power Generation Improvements, as more fully described in project application dated October 28, 1974 - ("Project"); and

WHEREAS, section 13(c) of the Act requires, as a condition of any assistance thereunder, that fair and equitable arrangements be made, as determined by the Secretary of Labor, "to protect the interests of employees affected by such assistance"; and

WHEREAS, the Unions signatory hereto represent certain employees of the Authority and certain other private carrier employers in the area presently served by the Authority; and

WHEREAS, the scope and purpose of this agreement is to provide fair and equitable arrangements pursuant to Section 13(c) of

the Act to protect the interests of employees affected by such assistance to the Project; and

WHEREAS, the following arrangements have been agreed upon by the parties hereto as fair and equitable;

NOW, THEREFORE, IT IS AGREED that in the event the Project is approved for assistance under the Act the following terms and conditions shall apply:

1. 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; provided, however, that fluctuations and changes in volume or character of employment brought about solely by other causes are not within the purview of this Agreement. The term "Project", as used in this Agreement shall not be limited to the particular facility assisted by federal funds, but shall include any changes, whether organizational, operational, technological or otherwise, which are traceable to the assistance provided, whether they are the subject of the grant contract, reasonably related thereto, or facilitated thereby:

2. The Project shall be carried out in such a manner and upon such terms and conditions as will not in any way adversely affect employees covered by this agreement.

3. (a) All rights, privileges (including pension rights and benefits) of employees of the Authority in classifications represented by the Labor Organizations signatory hereto (including employees already retired) under the existing collective bargaining agreements or otherwise shall be preserved and continued unless changed, altered or amended as provided in said collective bargaining agreements.

3. (b) The Authority shall similarly protect such rights, privileges and benefits of other employees covered by this agreement who are in the service area of the Authority against any worsening of such rights, privileges and benefits as a result of the Project.

4. The collective bargaining rights of employees of the Authority represented by Labor Organizations signatory hereto including the right to arbitrate labor disputes and to maintain union security and check-off arrangements, to the extent such are provided for by applicable laws and/or existing collective bargaining agreements, or otherwise shall be preserved and continued. If, at any time, applicable state law or the collective bargaining agreement permit or grant to the employees of the Authority the right to utilize any economic measures, nothing in this agreement shall be deemed to foreclose the exercise of such right.

5. (a) In the event the Authority contemplates any change in the organization or operation of its system as a result of the Project which may result in the dismissal, displacement or re-arrangement of the employees represented by the labor organizations signatory to this Agreement, the Authority shall do so only in accordance with the provisions of subparagraph (b) hereof.

(b) The Authority shall give to said labor organizations at least ninety (90) days written notice of such change by certified mail. Such notice shall contain a full and adequate statement of the proposed changes, including the approximate number of employees and classifications which may be affected by such change, and the number and classification of any jobs with the Authority which are available and may be filled by such affected employees.

At the request of either the Authority or the representatives of the affected employees, negotiations for the purpose of reaching agreement with respect to application of the terms and conditions of this agreement shall commence immediately. These negotiations shall include determining the selection of forces from among the employees of other carrier employers who may be affected as a result of the Project, to establish which such employees shall

be offered employment with the Authority for which they are qualified or can be trained; not, however, in contravention of collective bargaining agreements relating thereto. If no agreement is reached within thirty (30) days from the commencement of negotiations, any party to the dispute may submit it in accordance with the procedures contained in paragraph 13(s) hereof.

6. (a) Whenever an employee retained in service, recalled to service, or employed pursuant to paragraphs 5, 7(c), or 14 hereof is placed in a worse position with respect to compensation as a result of the Project, he shall be paid a monthly "displacement allowance" to be determined in accordance with this paragraph. Said displacement allowance shall be paid each displaced employee during the protective period following the date on which he is first "displaced" and shall continue during the protective period so long as the employee is unable, in the exercise of his seniority rights, to obtain a position producing compensation equal to or exceeding the compensation he received in the position from which he was displaced, adjusted to reflect subsequent general wage adjustments, including cost of living adjustments.

(b) The displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee, including vacation allowances, monthly compensation guarantees and any other pay allowances or guarantees, and his total time paid for during the last twelve (12) months in which he performed compensated service more than fifty per centum of each such months, based upon his normal work schedule, immediately preceding the date of his displacement as a result of the Project, and by dividing separately the total compensation and the total time paid for by twelve (12), thereby producing the average monthly compensation and the average monthly time paid for. Such allowance

shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments. If the displaced employee's compensation in his current position is less in any month during his protective period than the aforesaid average compensation (adjusted to reflect subsequent general wage adjustments, including cost of living adjustments), he shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that he is not available for service equivalent to his average monthly time, but he shall be compensated in addition thereto at the rate of the current position for any time worked in excess of the average monthly time paid for. If the displaced employee fails to exercise his seniority rights to secure another position available to him which does not require a change in his place of residence to which he is entitled under the then-existing collective bargaining agreement, and which carries a wage rate and compensation equal to or exceeding those of the position which he elects to retain, he shall thereafter be treated, for the purposes of this paragraph, as occupying the position he elects to decline.

(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for cause.

7. (a) Whenever any employee is laid off or otherwise deprived of employment as a result of the Project, in accordance with any collective bargaining agreement applicable to his employment, he shall be considered a "dismissed employee" and shall be paid a monthly dismissal allowance to be determined in accordance with this paragraph. Said dismissal allowance shall first be paid each dismissed employee on the thirtieth (30th) day following the day on which he is "dismissed" and shall continue during the protective period, as follows:

<u>Employee's length of service prior to adverse effect</u>	<u>Period of Protection</u>
1 day to 6 years	equivalent period
6 years or more	6 years

The monthly dismissal allowance shall be equivalent to one-twelfth (1/12th) of the total compensation received by him in the last twelve (12) months of his employment in which he performed compensation service more than 50 per centum of each such month based on his normal work schedule to the date on which he was first deprived of employment as a result of the Project. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments.

(b) An employee shall be regarded as deprived of employment and entitled to a dismissal allowance when the position he holds is abolished as a result of the Project or when the position he holds is not abolished but he loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of the Project or as a result of the exercise of seniority rights by other employees brought about as a result of the Project; and he is unable to obtain another position, either by the exercise of his seniority rights, or through the Authority, in accordance with subparagraph (e). In the absence of proper notice followed by such an agreement or award pursuant to paragraph 5 hereof, no employee who has been deprived of employment as a result of the Project shall be required to exercise his seniority rights to secure another position in order to qualify for a dismissal allowance hereunder.

(c) Each employee receiving a dismissal allowance shall keep the Authority informed as to his current address and the current name and address of any other person by whom he may be regularly employed, or if he is self-employed.

(d) The dismissal allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished when he is absent from service, he will be entitled to the dismissal allowance when he is available for service. The employee temporarily filling said position at the time it was abolished will be given a dismissal allowance on the basis of that position, until the regular employee is available for service, and thereafter shall revert to his previous status and will be given the protections of the agreement in said position, if any are due him.

(e) An employee receiving a dismissal allowance shall be subject to call to return to service by his former employer after being notified in accordance with the terms of the then existing collective bargaining agreement. Prior to such call to return to work by his employer, he may be required by the Authority to accept reasonably comparable employment which carries a wage rate and compensation equal to or exceeding that of his former position adjusted to reflect subsequent wage increases and cost of living adjustments, and for which he is physically and mentally qualified, or for which he can become qualified after a reasonable training or retraining period, provided it does not require a change in residence or infringe upon the employment rights of other employees under then existing collective bargaining agreements.

(f) When an employee who is receiving a dismissal allowance again commences employment in accordance with subparagraph 7(e) above, said allowance shall cease while he is so reemployed, and the period of time during which he is so reemployed shall be deducted from the total period for which he is entitled to receive a dismissal allowance. During the time of such reemployment, he shall be entitled to the protections of this Agreement to the extent they are applicable.

(g) The dismissal allowance of any employee who is otherwise employed shall be reduced to the extent that his combined monthly earnings from such other employment or self-employment, any benefits received from any unemployment insurance law, and his dismissal allowance exceed the amount upon which his dismissal allowance is based. Such employee, or his union representative, and the Authority shall agree upon a procedure by which the Authority shall be kept currently informed of the earnings of such employee in employment other than with his former employer, including self-employment, and the benefits received.

(h) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the failure of the employee without good cause to return to service in accordance with the working agreement or to accept employment as provided under subparagraph (e) above, or in the event of his resignation, death, retirement, or dismissal for cause.

8. In determining length of service of a dismissed employee for purposes of this agreement, such employee shall be given full seniority credits in accordance with the records and labor agreements applicable to him in his former employment and he shall be given continuing seniority credits for each month in which he receives a dismissal allowance as if he were continuing to perform services for his former employer, provided, however, that this paragraph shall not be deemed to enlarge upon the employee's protective period as defined in paragraph 18, nor to enlarge upon the benefit levels otherwise provided by this agreement.

9. No employee receiving a dismissal allowance shall be deprived during the protective period of any benefits attached to his previous employment, such as group life insurance, hospitalization, medical care and free transportation, as well as any other

benefits to which he may be entitled under the same conditions and so long as the benefits continue to be accorded to other employees of the bargaining unit, in active service or laid off, as the case may be.

10. (a) Any employee covered by this Agreement who is retained in the service of his employer, or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his employment in order to retain or secure active employment with his employer, or the Authority in accordance with this Agreement, and who is required to move his place of residence, shall be reimbursed for all expenses of moving his household and other personal effects, for the traveling expenses for himself and his immediate family, including living expenses for himself and his immediate family, and for his own actual wage loss during the time necessary for such transfer and for a reasonable time thereafter, not to exceed five (5) working days. The exact extent of the responsibility of the Authority under this paragraph, and the ways and means of transportation, shall be agreed upon in advance between the Authority and the affected employee or the representative. No claim for reimbursement shall be paid under the provisions of this paragraph unless such claim is presented to the Authority within ninety (90) days after the date on which the expenses were incurred.

(b) If any such employee is laid off within three (3) years after changing his point of employment in accordance with paragraph (a) hereof and elects to move his place of residence back to his original point of employment, the Authority shall, to the same extent provided in subparagraph (a) hereof, assume the expense of moving his household and other personal effects.

(c) Except as otherwise provided in subparagraph (b), changes in places of residence, subsequent to the initial changes

as a result of the Project, which are not the result of the Project but grow out of the normal exercise of seniority rights, shall not be considered to be within the purview of this paragraph.

11. (a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of his employer (or who is later restored to service after being entitled to receive a dismissal allowance) who is required to change the point of his employment as a result of the Project, and is thereby required to move his place of residence:

If the employee owns his own home in the locality from which he is required to move, he shall, at his option, be reimbursed by the Authority for any loss suffered in the sale of his home for less than its fair market value, plus conventional fees and closing costs, such loss to be paid within thirty (30) days of settlement or closing on the sale of the home. In each case, the fair market value of the home in question shall be determined, as of a date sufficiently prior to the date of the Project so as to be unaffected thereby. The Authority shall, in each instance, be afforded an opportunity to purchase the home at such fair market value before it is sold by the employee to any other person and to reimburse the seller for his conventional fees and closing costs.

If the employee is under a contract to purchase his home, the Authority shall protect him against loss under such contract, and, in addition, shall relieve him from any further obligation thereunder.

If the employee holds an unexpired lease of a dwelling occupied by him as his home, the Authority shall protect him from all loss and cost in securing the cancellation of said lease.

(b) No claim for loss shall be paid under the provisions of this paragraph unless such claim is presented to the

Authority within ninety (90) days after the date the employee is required to move.

(c) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through a joint conference between the employee, or his union representative, and the Authority. In the event they are unable to agree, the dispute or controversy may be referred by the Authority or the union to a board of competent real estate appraisers selected in the following manner: one (1) to be selected by the representatives of the employee and one (1) by the Authority and these two, if unable to agree within thirty (30) days upon the valuation, shall endeavor by agreement within ten (10) days thereafter to select a third appraiser or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the real estate commission of Massachusetts to designate within ten (10) days a third appraiser, whose designation will be binding upon the parties. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the neutral appraiser, including expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(d) The phrase "change in residence", when used in this agreement shall have the following meanings:

1. When the employees of the Authority represented by the Labor Organizations signatory to this Agreement are so affected-- said phrase shall mean a transfer to a work location which is located

outside a radius of 20 miles of the employee's former work location and farther from his residence than was his former work location.

2. When the employees of private mass transportation carriers represented by the Labor Organizations signatory to this Agreement are so affected--said phrase shall mean transfer to a work location which is located more than 30 normal highway route miles from his residence and also farther from his residence than was his former location.

12. If any employer of the employees covered by this Agreement or the Authority shall have rearranged or adjusted its forces in anticipation of the Project, with the effect of depriving an employee of benefits to which he should be entitled under this agreement, the provisions of this agreement shall apply to such employee as of the date when he was so affected.

13. (a) In the event there arises any dispute or controversy (except as defined in paragraph 11 hereof) with respect to the protection afforded by this Agreement, or with respect to the interpretation, application or enforcement of the provisions of this Agreement, which cannot be settled by the parties hereto within thirty (30) days after the dispute or controversy first arises, it may be submitted at the written request of any such party to final and binding arbitration or adjustment in accordance with the following arrangements:

(1) Any such labor dispute involving solely employees of the Authority covered by this Agreement shall be referred to arbitration in accordance with the arbitration procedures set forth in any then-applicable collective bargaining agreement between the Authority and the Union representing such employees. The term "labor dispute", as used in this paragraph shall be broadly construed and shall include any controversy concerning wages, salaries, hours, working conditions, or benefits, including health and welfare, sick leave, insurance.

or pension or retirement provisions, the making or maintaining of collective bargaining agreements, the terms to be included in such agreements, the interpretation or application of such agreements, the adjustment of grievances, and any claim, difference, or controversy arising out of, or by virtue of, the within arrangements for the protection of employees.

(2) Any such labor dispute involving solely employees covered by this agreement who are subject to the Railway Labor Act, as amended, shall be referred for adjustment in accordance with the terms of said Act, provided that if the Authority shall not have the power to invoke such procedures, it may refer such dispute to arbitration pursuant to the Rules of the American Arbitration Association.

(3) Any other labor dispute involving multiple parties or otherwise outside the scope of the foregoing subparagraphs (1) or (2) shall be submitted, at the written request of any of the parties to this Agreement, to a single arbitrator mutually acceptable to the parties involved in the dispute. Failing mutual agreement within thirty (30) days as to the selection of an arbitrator, the parties involved shall request the Secretary of Labor to appoint an arbitrator. The arbitrator shall convene the hearing within fifteen (15) days after his selection or appointment and shall render his decision within forty-five (45) days after the hearing of the dispute or controversy has been concluded and the record closed.

(b) Authority of the arbitrator or Board of Arbitrators shall be limited to the determination of the dispute or controversy arising out of the interpretation, application or operation of the provisions of this Agreement. The Arbitrator or Board of Arbitration shall not have any authority whatsoever to alter, amend, or modify any of the provisions of any existing collective bargaining

agreement.

(c) The salaries and expenses of the neutral member, any any other jointly incurred expenses, shall be borne equally by the parties to the proceeding and all other expenses shall be paid by the party incurring them.

(d) In the event of any dispute as to whether or not a particular employee was laid off or otherwise deprived of employment, placed in a worse position with respect to his employment, or required to change his place of residence as a result of the Project, it shall be such employee's obligation to specify, if possible, the adverse effect which he has suffered. It shall then be the Authority's burden to establish affirmatively that any such deprivation, worsening of employment, or change of residence as claimed by the employee, was not a result of the Project by proving that factors other than the Project affected the employee. The claiming employee shall prevail if it is established that the Project had an effect upon his employment even if other factors may also have affected the employee.

14. During his protective period a dismissed employee shall, if he so requests, be granted priority of employment or reemployment to fill any vacant position within the jurisdiction and control of the Authority, reasonably comparable to that which he held when dismissed, for which he is, or by training or re-training can become, qualified; not, however, in contravention of collective bargaining agreements relating thereto. In the event such employee requests such training or re-training to fill such vacant position, the Authority shall provide for such training or retraining at no cost to the employee. The employee shall be paid the salary or hourly rate provided for in the applicable collective bargaining agreement for such position, plus any displacement allowance to which he may be otherwise entitled. If such displaced

employee who has made such a request fails without good cause within ten (10) days to accept an offer of a position comparable to that which he held when dismissed for which he is qualified, or for which he has satisfactorily completed such training he shall, effective at the expiration of such ten (10) day period, forfeit all rights and benefits under this Agreement.

15. A dismissed employee entitled to protection under this agreement may, at his option, resign and (in lieu of all other benefits and protections provided in this Agreement or any other agreement) accept a lump sum payment computed in accordance with Section 9 of the Washington Job Protection Agreement of May, 1936.

16. The Authority will be financially responsible for the application of these conditions and will make the necessary arrangements so that any employee affected as a result of the Project may file a claim through his union representative with the Authority within sixty (60) days of the date he is terminated or laid off as a result of the Project, or within eighteen (18) months of the date his position with respect to his employment is otherwise worsened as a result of the Project, as provided by paragraph 6; provided, in the latter case, if the events giving rise to the claim have occurred over an extended period, the 18-month limitation shall be measured from the last such event. Unless such claims are filed with the Authority within said time limitations, the Authority thereafter will be relieved of all liabilities and obligations related to said claims. The Authority will honor the claim by making appropriate payments or will give notice to the claimant and his representative of the basis for denying or modifying such claim, giving reasons therefor. In the event the Authority fails to honor such claim, the union may invoke the following procedures for further joint investigation of the claim by giving notice in writing of its

desire to pursue such procedures. Within ten (10) days from the receipt of such notice, the parties shall exchange such factual material as may be requested of them relevant to the disposition of the claim; shall honor all reasonable requests for information; and shall jointly take such steps as may be necessary or desirable to obtain from any third party such additional factual material as may be relevant. In the event the claim is so rejected by the Authority, the claim may be processed to arbitration as hereinabove provided by paragraph 13. Prior to the arbitration hearing, the parties shall exchange a list of intended witnesses. In conjunction with such proceedings, the impartial arbitrator shall have the power to subpoena witnesses upon the request of any party and to compel the production of documents and other information which is relevant to the disposition of the claim.

17. Nothing in this Agreement shall be construed as depriving any employee of any rights or benefits which such employee may have under any existing job security or other protective conditions or arrangements by collective bargaining agreement or law, including Public Law 93-236, enacted January 2, 1974; provided that there shall be no duplication of benefits to any employees, and, provided further, that any benefit under this agreement shall be construed to include the conditions, responsibilities and obligations accompanying such benefit.

18. Whenever used herein, the term "protective period" means that period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed, to the expiration of six (6) years therefrom; provided, however, that the protective period for any particular employee during which he is entitled to receive the benefits of these provisions shall not continue for a longer period, following the date he was displaced

or dismissed, then the employee's length of service, as shown by the records and labor agreement applicable to his employment prior to the date of his displacement or his dismissal. For purposes of determining the protective period of a particular employee, the employee's length of service shall be measured in accordance with section 7(b) of the Washington Job Protection Agreement of May, 1936.

19. No provisions, terms or obligations herein contained shall be affected, modified, altered or changed in any respect whatsoever by reason of any agreement made by the Authority with employers of employees covered by this Agreement.

20. In the event any provision of this Agreement is held to be invalid or otherwise unenforceable under applicable law, the remaining provisions of this Agreement shall not be affected, and the parties shall attempt to arrive at a mutually satisfactory agreement on an adequate replacement under section 13(c) of the Act. Failing to agree, any party may invoke arbitration under the provisions of paragraph 13 of this Agreement, to determine a substitute provision which shall be incorporated in this Agreement, and any other appropriate action, remedy, or relief.

21. Any other labor organization which is the certified or recognized collective bargaining representative of Mass Transportation employees in the service area of the Project, and who are affected by the Project within the meaning of 49 U.S.C.A. 1609(c), may give written notice of its intention to become a party to this Agreement to the original signatories and to the Secretary of Labor, within sixty (60) days of the date of the original execution of this Agreement.

If the original signatories to this Agreement do not agree that such labor organization should become a party, then the dispute as to whether such labor organization shall become a signatory shall be determined by the Secretary of Labor.

22. (a) It is the intent of this Agreement to provide employer protections which meet the requirements of Section 13(c) of the Act, and are not less than the benefits established pursuant to Section 5(2)(f) of the Interstate Commerce Act and Section 405(b) of the Rail Passenger Service Act of 1970, as amended. In so doing, changes in wording and organization from arrangements earlier developed under Section 5(2)(f) and section 405(b) have been necessary to make such benefits applicable to this Project. In making such changes, it is not the intent of this Agreement to diminish such benefits. Thus, the terms of this Agreement are to be resolved in favor of this intent to provide employee protection and benefits no less than those established pursuant to Section 5(2)(f) of the Interstate Commerce Act and section 405(a).

(b) In the event the Authority should propose a change as a result of the Project which would constitute a "coordination" as defined by the Washington Agreement, or an acquisition of an existing transportation system as provided by Section 13(c)(4) of the Urban Mass Transportation Act, as amended, the Authority shall proceed with such coordination or acquisition only in accordance with the provisions of Sections 4 and 5 of the Washington Agreement.

23. In the event the Project is approved for assistance under the Act, the foregoing terms and conditions shall be made part of the contract of assistance between the Federal government and the applicant for Federal funds; provided, however, that this agreement shall not merge into the contract of assistance but shall be independently binding and enforceable by and upon the parties hereto, in accordance with its terms, nor shall any collective bargaining agreement merge into this Agreement, but each shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their respective duly authorized representatives this 16th day of November, 1974.

APPROVED AS TO FORM:

Joseph M. Elcock, Jr.
Joseph M. Elcock, Jr.,
General Counsel

MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY

By Joseph C. Kelly
Joseph C. Kelly
General Manager

LOCAL DIVISION NO. 532
AMALGAMATED TRANSIT UNION,
AFL-CIO, CLC

By Richard C. Branson
Richard C. Branson
President

Stanislaw P. Lazor
Stanislaw P. Lazor
Business Agent

Francis J. Gallagher
Francis J. Gallagher
Recording Secretary

Donald R. Albright, Jr.
Donald R. Albright, Jr.
Executive Board Member

Richard W. Pridmore
Richard W. Pridmore
Executive Board Member

Walter J. Sweeney
Walter J. Sweeney
Executive Board Member

Walter H. Drake
Walter H. Drake
Executive Board Member

Albert E. Doherty
Albert E. Doherty
Executive Board Member

BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYEES

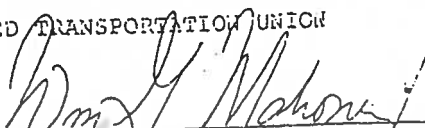
BROTHERHOOD OF RAILWAY, AIRLINE
AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EM-
PLOYEES, HOTEL AND RESTAURANT EM-
PLOYEES AND BARTENDERS INTER-
NATIONAL UNION

SEAFARRERS' INTERNATIONAL UNION
OF NORTH AMERICA

TRANSPORT WORKERS UNION OF AMERICA

UNITED TRANSPORTATION UNION

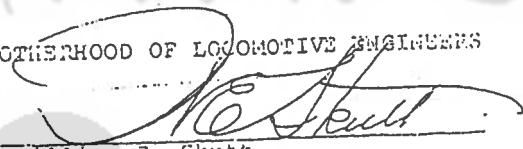
By


William G. Mahoney

Attorney and authorized agent
for the foregoing Labor Org-
anizations, Member of the
Congress of Railway Unions

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

By


William E. Skutt

AMERICAN RAILWAY SUPERVISORS' ASSOCIATION

AMERICAN TRAIN DISPATCHERS' ASSOCIATION

BROTHERHOOD OF RAILROAD SIGNALMEN

BROTHERHOOD RAILWAY CARRIERS OF THE

UNITED STATES AND CANADA

BROTHERHOOD OF CLEEPING CAR PORTERS

INTERNATIONAL ASSOCIATION OF MACHINISTS

AND AEROSPACE WORKERS

INTERNATIONAL BROTHERHOOD OF BOILER-

MAKERS, IRON SHIP BUILDERS, BLACK-

SMITH FORGERS AND HELPERS

INTERNATIONAL BROTHERHOOD OF ELECTRICIAN

WORKERS

INTERNATIONAL BROTHERHOOD OF FIREMEN

& OILERS

INTERNATIONAL ORGANIZATION MASTERS,

MATES & PILOTS OF AMERICA

NATIONAL MARINE ENGINEERS' BENEFICIAL

ASSOCIATION

RAILROAD YARDMASTERS OF AMERICA

RAILWAY EMPLOYEES' DEPARTMENT, AFL-CIO

SHEET METAL WORKERS' INTERNATIONAL

ASSOCIATION

By


William J. Riekey

Attorney and Authorized Agent for
the foregoing Labor Organizations,
Member of the Railway Labor
Executives Association

COMPLAINT
EXHIBIT

The Boston Globe
boston.com

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210



June 26, 2009

Richard H. Doyle, Regional Administrator
Federal Transit Administration, Region I
Kendall Square
55 Broadway, Suite 920
Cambridge, Massachusetts

Re: FTA Application(s)
Massachusetts Bay Transportation
Authority
Eng/Design Transitway Lines-CPF 43
Interlocking, Purchase Transitway
Lines-CPF 43 Interlocking, Force Acct
CPF 43 Interlocking, Force Acct Tunnel
Signage Program, Material Purchase
Tunnel Signage, Eng/Design-Dudley
Sq. Station Imp, Construct BRT Station,
Force Acct Construction, Eng/Design-
CR Bridges, Construct-Commuter Rail
Bridges, Materials-CR Bridges,
Eng/Design-Dbl Trk Hvrl, Construct
Line Equipment-Dbl Trk Hvrl, Purchase-
Line Equip-Dbl Trk Hvrl, Eng/Design-
Haverhill Signal, Construct-Haverhill
Signals, Purchase-Haverhill Signals,
Eng/Design-Commuter Rail Stations,
Construct-Commuter Rail Stations,
Material Purchase-Commuter Rail
Stations, Eng/Design-Commuter Rail
Facilities, Construct-Commuter Rail
Facilities, Material Purchase-Commuter
Rail Facilities

ARRA Grant

MA-56-0001

Dear Mr. Doyle:

This is in reply to the request from your office that we review the above-captioned application for a grant under Title 49 of the U.S. Code, Chapter 53.

In connection with a previous grant application, the Massachusetts Bay Transportation Authority (MBTA) and the Amalgamated Transit Union (ATU), the United Transportation Union (UTU), the Transportation-Communications International Union (TCU), the Transport Workers Union (TWU), the International Association of Machinists and Aerospace Workers (IAM), the Office and Professional Employees International Union (OPEIU) and various affiliates of the Railway Labor Executives' Association (RLEA)¹ executed an agreement dated December 10, 1974, which is supplemented by paragraphs (8) and (9) of the February 23, 1993 Settlement agreement between the MBTA and various Rail Labor organizations, and by supplementary language in enumerated paragraph 3 below and by Attachment A to the Department's May 29, 1997 certification of various MBTA projects (copy enclosed). The December 10, 1974 agreement provides to the employees represented by the unions protections satisfying the requirements of 49 U.S.C., Section 5333(b).

In addition, the MBTA has stated that under state law it has the ability to and will comply with the December 10, 1974 Agreement; by letter dated January 3, 1997, MBTA again confirmed that it has the statutory authority to comply with the 1974 13(c) Agreement.

The Department of Labor hereby applies the terms and conditions of the December 10, 1974 agreement, as supplemented by paragraphs (8) and (9) of the February 23, 1993 Settlement agreement between MBTA and various Rail Labor organizations, and as further supplemented by the language in enumerated paragraph 3 below and the enclosed Attachment A to the instant project.

In addition, the Department of Labor's certifications each contain a final enumerated paragraph which ensures that transportation related employees in the service area of the project are afforded substantially the same levels of protection as those afforded employees represented by the unions which are a party to, or otherwise referenced in the protective arrangements.

¹ Although the RLEA has disbanded, employees represented by the various unions formerly affiliated with the RLEA will be referred an application and continue to be covered by the agreement of December 10, 1974, executed between the RLEA, on behalf of these unions, and the MBTA. These unions include the American Train Dispatchers Department\BLE, Brotherhood of Maintenance of Way Employees, Brotherhood of Railway Signalmen, International Brotherhood of Boilermakers and Blacksmiths, National Conference of Firemen and Oilers/SEIU, Sheet Metal Workers International Association, Transport Workers Union of America (rail division only), International Federation of Professional and Technical Engineers, Brotherhood of Locomotive Engineers, International Association of Machinists and Aerospace Workers, and International Brotherhood of Electrical Workers.

In order to ensure that service area employees are afforded the requisite protections of Section 5333(b), the Department must include some language in its certifications which affords these employees an opportunity to pursue claims with respect to any adverse affects occurring as a result of Federal assistance. We have included alternative language in this certification in order to provide requisite protections and expedite the MBTA's receipt of Federal assistance. This alternative language does not replace or affect previously applied dispute resolution procedures for service area employees, nor modify, replace or affect Departmental policy regarding those procedures.

The Department, therefore, has included language in the last enumerated paragraph of this certification that provides for arbitration of claims of service area employees using the process developed by the American Arbitration Association.

Accordingly, the Department of Labor makes the certification called for under the statute with respect to the instant project on condition that:

1. This letter and the terms and conditions of the agreement dated December 10, 1974, as supplemented, shall be made applicable to the instant project and made part of the contract of assistance, by reference;
2. The term "project" as used in the agreement of December 10, 1974, shall be deemed to cover and refer to the instant project;
3. Disputes over the interpretation, application, and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned agreements and/or arrangements for the resolution of such disputes.

The following language shall supplement the arbitration clause of the December 10, 1974 Agreement and shall be included in the contract of assistance by reference:

The MBTA and the labor organizations referenced in this certification shall participate in any arbitration raised under the December 10, 1974 Agreement, as supplemented, and the arbitrator shall make any necessary determination of substantive or procedural

arbitrability and, thereafter, shall proceed to hear and rule on the merits of the dispute between the parties. Furthermore, the parties shall comply with the arbitrator's ruling in any such arbitration unless such award has been vacated pursuant to Massachusetts state law;

4. The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements referenced in the grant contract between the U.S. Department of Transportation and Massachusetts Bay Transportation Authority (MBTA), and the parties to the contract so signify by executing that contract. Employees not represented by any labor organization, or if so represented through their representative on their behalf, may assert claims with respect to the protective arrangements under this provision. This clause creates no independent cause of action against the United States Government;
5. Disputes over the interpretation, application and enforcement of the terms and conditions of the protective arrangements certified by the Department of Labor, which include this letter of certification, shall be resolved in accordance with the provisions in the aforementioned arrangements for the resolution of such disputes; and
6. Employees of mass transportation providers in the service area of the project who are not represented by a union designated above shall be afforded substantially the same levels of protections as are afforded to the employees represented by the union(s) under the above referenced protective arrangements and this certification. Such protections include procedural rights and remedies as well as protections for individual employees affected by the project.

Should a dispute remain after exhausting any available remedies under the protective arrangements and absent mutual agreement to utilize any other final

and binding resolution procedure, any party to the dispute may submit the controversy to final and binding arbitration. With respect to a dispute involving a union not designated above, if a component of its parent union is already subject to a protective arrangement, the arbitration procedures of that arrangement will be applicable. If no component of its parent union is subject to the arrangements, the Recipient or the union may request the American Arbitration Association to furnish an arbitrator and administer a final and binding resolution of the dispute under its Labor Arbitration Rules. If the employees are not represented by a union for purposes of collective bargaining, the Recipient or employee(s) may request the Secretary of Labor to designate a neutral third party or appoint a staff member to serve as arbitrator and render a final and binding determination of the dispute.

Sincerely,

Ann Comer

Ann Comer, Chief
Division of Statutory Programs

cc: Kerry Miller/FTA
Ms. Lenora McKenna/MBTA
Jane Sutter Starke/ Thompson Coburn, LLP
Leo E. Wetzell/ATU
David L. Neigus/IAM
Elizabeth A. Roma/TCIU
Harry Lombardo/TWU
Victor Baffoni/UTU
Gregory J. Junemann/IFPTE
Edwin D. Hill/IBEW
Michael Goodwin/OPEIU

ATTACHMENT A
May 29, 1997

The following language shall supplement the December 10, 1974 Agreement and shall be included in the contracts of assistance, by reference:

The December 10, 1974 Section 13(c) Agreement, as supplemented, shall be binding upon the successors and assigns of the parties thereto and, as affirmed by the express terms of paragraph (19) thereof, no provisions, terms, or obligations therein contained shall be affected, modified, altered or changed in any respect whatsoever by reason of the arrangements made by or for the Massachusetts Bay Transportation Authority (MBTA) to manage and operate its transit system, or any part or portion thereof.

The MBTA will ensure that any person, enterprise, body, or agency, whether publicly or privately owned, which shall undertake the management and/or operation of the system and/or provision of services, or any part or portion thereof, under contractual arrangements of any form with the MBTA, its successors or assigns, shall agree to be bound by the terms of the December 10, 1974 Section 13(c) Agreement, as supplemented, and accept responsibility with the MBTA for full performance of those conditions, and as a condition precedent to such contractual arrangements, the MBTA, its successors or assigns, shall require such person, enterprise, body or agency to so agree.



COMPLAINT
EXHIBIT

The Boston Globe
^C
boston.com

PENSION AGREEMENT

This Agreement is made and entered into as of the first day of July, 2002, by and between the Massachusetts Bay Transportation Authority (hereinafter, the "Authority") and Local Union 589, Amalgamated Transit Union, AFL-CIO, CLC, (hereinafter, the "Union").

WHEREAS, the Union and the Authority entered into an Agreement dated July 1, 1970 which Agreement has been amended many times over the years, and

WHEREAS, the Parties wish to restate such Agreement by eliminating obsolete provisions, by clarifying language and making other, non-substantive "clean-up" amendments.

NOW, THEREFORE, the Parties hereto in consideration of mutual promises and covenants do hereby agree to amend and restate the Agreement dated July 1, 1970, as amended, as follows. Except as otherwise provided herein, the rights and benefits of any Member who terminated employment prior to the date hereof shall be governed by the provisions in effect as of the date his employment terminated.

ARTICLE I - Definition of Terms in this Agreement

The following words and phrases as used herein shall have the following meanings unless a different meaning is plainly required by context:

- (1) "Fund" shall mean the Massachusetts Bay Transportation Authority Retirement Fund.
- (2) "Rules" shall mean the Rules and Regulations of the Massachusetts Bay Transportation Authority Retirement Fund; and, wherever "rules" appear herein, these refer to the rules established by the Retirement Board for the administration of the Fund and the transaction of its business.
- (3) "Effective date of the Fund" shall mean January 1, 1948.
- (4) "Authority" shall mean Massachusetts Bay Transportation Authority.
- (5) "Directors" shall mean the Board of Directors of the Authority.
- (6) "Fiduciary" shall mean the trustee by whom the assets of the Fund are held, as provided in Article VII.
- (7) "Retirement Board" shall mean the managing board of the Fund as provided in Article VI.

(8) The term "Union" shall mean Boston Carmen's Union, Local Union 589 of the Amalgamated Transit Union, AFL-CIO. The term, "union," shall mean any union recognized by the Authority for collective bargaining purposes.

(9) "Employee" shall mean any person regularly employed by the Authority who receives a regular stated compensation from the Authority, other than a pension, severance pay, retainer or fee under contract.

(10) "Member" shall mean any person included in the membership of the Fund as provided in Article II.

(11) "Retired Member" shall mean a former member who has been retired under this Agreement or the Rules, or a former employee retired from service prior to the effective date of the Fund and entitled to a benefit under Article IV, section (6).

(12) "Compensation" shall mean the full regular remuneration paid to an employee for services rendered to the Authority, excluding overtime pay (i.e. pay which is other than the pay for the normal and customary work in the employee's workday or workweek), and excluding the Authority's cost for any public or private employee benefit plan including this Fund, under rules uniformly applicable to all employees similarly situated. Compensation shall, however, include contributions made on behalf of a Member by the Authority pursuant to a salary reduction agreement pursuant to this Fund as described in Section 414(h)(2) of the Internal Revenue Code, pursuant to a cafeteria plan established under Section 125 of the Code, or pursuant to a deferred compensation plan within the meaning of Section 457(b).

For any fiscal year commencing on or after January 1, 1996 and before January 1, 2002, a member's compensation taken into account under the Fund for any fiscal year of the Fund shall not exceed \$150,000, as adjusted from time to time by the Secretary of the Treasury in accordance with Section 401(a)(17)(B) of the Internal Revenue Code.

For fiscal years commencing on and after January 1, 2002, compensation taken into account under the Fund for any fiscal year of the Fund shall not exceed \$200,000, as adjusted from time to time by the Secretary of the Treasury in accordance with Section 401(a)(17) of the Internal Revenue Code.

Any change in the dollar amounts set forth above as adjusted by the Secretary of the Treasury in accordance with Section 401(a)(17) of the Internal Revenue Code shall apply only to compensation taken into account for the calendar year in which such change is effective.

(13) "Service" shall mean all service rendered to and paid for by the Authority or its predecessors.

(14) "Membership service" shall mean the period of service rendered by an employee as a member for which credit is allowed as provided in Article III, section (2).

(15) "Creditable service" shall mean membership service.

(16) "Normal retirement date" shall mean the first day of the month coincident with or next following the sixty-fifth anniversary of an employee's date of birth.

(17) "Retirement allowance" shall mean the annual payments for life hereunder. All retirement allowances shall be payable in monthly installments, commencing at the end of the month in which the retirement allowance becomes effective, and ceasing with the last monthly payment prior to death. Notwithstanding the above, upon the death of the retired member only, there shall be payable a fractional monthly payment based on the number of days during the month that the member survived. Upon the direction of the Retirement Board, a lump sum payment, which is the actuarial equivalent of the retirement allowance, may be made in lieu of any retirement allowance amounting to less than \$120 per annum.

(18) "Actuarial equivalent" shall mean a benefit of equivalent value when computed according to the 1989 George B. Buck Mortality Table (male and female), assuming all members are male, and all beneficiaries are female, and an interest rate of 5% per annum, compounded annually, unless specifically provided otherwise in the Fund.

ARTICLE II - Membership

(1) Commencing on the effective date of the Fund, employees who are or may become members of the Union shall be included in the membership of the Fund.

(2) Employees who are not members of the Union but who are on the regular payroll of the Authority and members of the Fund on the date of the execution of this Agreement shall be included in the membership of the Fund.

(3) If an employee retires or ceases to be an employee for any reason whatsoever, his membership in the Fund shall thereupon terminate, and if he thereafter again becomes a member, he shall receive no benefits on account of service rendered prior to the date he last became a member, except as provided in Article III, section (3), and Article IV, section (5); provided that under rules uniformly applicable to all employees similarly situated, the Retirement Board may continue the membership of an employee during a period of absence from service without loss of creditable service, and shall continue membership for a period of not less than two years in the case of an employee laid off for lack of work, if such member does not withdraw his own contributions, but no credit shall be allowed for any such period, and no benefit shall become payable to or on account of any member during a period of absence, except the return of his own contributions, with interest, as defined in Article IV, section (3)(d). Membership in the Fund shall terminate only as provided in this section.

(4) Anything herein to the contrary notwithstanding, an employee granted a leave of absence by the Authority for service with a union shall be deemed to be an employee in the service of the Authority during such leave, with compensation for the purposes of the Fund at his full regular rate of remuneration paid to him by such union, and if he is a member of the Fund, credit under the Fund shall be allowed, as in the case of other employees, for the period of such

- (8) Membership service prior to November 23, 1983

A Member with part-time service prior to November 23, 1983 shall receive the Creditable Service he could have earned had he joined the plan ninety (90) working days after hire (or at any later date that he may have elected), only if he paid to the Retirement Fund no sooner than one hundred and fifty (150) days but no more than one hundred and eighty (180) days from November 23, 1983, the amount of Member contributions he would have paid for that period of prior service had he then been a Member.

ARTICLE IV - Benefits

- (1) Normal Retirement Allowance -

(a) Any member in service who reaches his/her normal retirement date shall be eligible to retire on a normal retirement allowance to become effective on his/her normal retirement date. However, no member will be involuntarily retired by the Retirement Board solely because of the age of the member.

- (b) The normal retirement allowance shall consist of:

(1) A membership service allowance equal to 2.46 percent of the average compensation in those three (3) years in which the employee had maximum compensation, multiplied by the number of years of membership service, provided, however, that such allowance shall not exceed seventy-five (75) percent of such average compensation.

(2) The minimum normal retirement allowance for any employee who has completed at least ten (10) years of creditable service shall be one hundred dollars (\$100.) per month, and for any employee who has completed at least fifteen (15) years of creditable service shall be one hundred and fifty dollars (\$150.) per month. If, during any of the years used in the computation of the highest three (3) years of Compensation, the member was a part-time employee, Compensation for that year, for the purposes of this section, shall be actual Compensation multiplied by the ratio, not less than 1.0, of 173 hours times the number of months worked in the year in question, divided by actual pay hours received during that year. The term "pay hours" as used in this paragraph shall have the same meaning as in Article III, paragraph (4) above.

- (c) Any employee in service who has not reached his normal retirement date, but who has completed at least twenty-three (23) years of creditable

service may be retired by the Retirement Board on an early normal retirement allowance on the first day of the calendar month coincident with or next following such date.

The early normal retirement allowance shall be computed in the same manner as a normal retirement allowance, but on the basis of his compensation and creditable service only to the time of actual retirement.

- (d) An employee who has completed twenty (20) years but less than twenty-three (23) years of creditable service and who has attained age 55 may be retired and upon retirement shall receive an early reduced retirement allowance computed in the same manner as a normal retirement allowance but on the basis of his compensation and creditable service only to the time of actual retirement, reduced by one-half percent for each month of retirement before age 65.

(2) Disability Retirement Allowance -

- (a) Any member in service who has not reached his normal retirement date and files application for retirement, shall be retired by the Retirement Board on a disability retirement allowance as of the first day of the calendar month next following receipt by the Retirement Board of written application therefor made by the member; provided that a physician or physicians designated by the Retirement Board shall certify, and the Retirement Board shall find, that such member is incapacitated, mentally or physically, to perform the work of his job classification or any other job classification(s) in which a job is available with the Authority and has been offered to such member by the Authority, and that such member should be retired; and provided further that such member has completed four (4) years of creditable service in case of disablement due to an occupational accident or sickness, and has completed six (6) years of creditable service in case of disablement due to any other cause.

The surviving spouse of a member whose death results solely from an injury or injuries sustained in the performance of duty, including, but not limited to, injuries resulting from assault and/or battery, shall upon such death be entitled to the Disability Retirement Allowance to which the member would have been entitled if at the time of such death the member had become totally incapacitated, mentally or physically, for the further performance of duty and that such incapacity was likely to be permanent, provided that if the Member had less than four (4) years of creditable service, the surviving spouse shall receive the minimum allowance available under subsection (b) hereof.

No employee shall be entitled to receive a disability allowance if the disability results from: