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DECEMBER 5, 2012

TO: BOARD OF DIRECTORS

THROUGH: ARTHUR T. LEAHY
CHIEF EXECUTIVE OFFICER

FROM: DON OTT Don Ott
EXECUTIVE DIRECTOR, EMPLOYEE AND LABOR RELATIONS

SUBJECT: CALIFORNIA PUBLIC EMPLOYEES' PENSION REFORM ACT OF 2013 AND FEDERAL 13(C)(2) AGREEMENT REQUIREMENTS

ISSUE

On September 12, 2012, Governor Brown signed Assembly Bill 340 (Furutani), the Public Employees' Pension Reform Act (PEPRA), which establishes limits on California public employee defined benefit pension plans for new employees. The MTA's pension plans must be modified to comply with AB 340.

Several collective bargaining units (CBUs) representing transit employees in California have asserted that PEPRA is inconsistent with collective bargaining rights in federal 13(c)(2) agreements, and its implementation would therefore disqualify California transit agencies from receiving federal funds for projects. They have filed their objections with the Department of Labor, which must certify that agencies that apply for FTA funds comply with 13(c)(2).

BACKGROUND

Certain federal requirements regarding collective bargaining apply to federal funding recipients. Section 13(c)(2) of the Federal Transit Act, codified as 49 U.S.C. 5333(b)(2)(B), requires preservation of rights, privileges and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements. Federal grant recipients from the FTA must sign 13(c)(2) agreements as a condition of receiving federal funding.

PEPRA requires that public agencies with defined benefit plans for their employees, with the exception of charter cities, comply with AB 340. These requirements apply to new plan members hired on or after January 1, 2013.

Since plans for current employees are not affected by PEPRA, essentially, new plans must be adopted for new employees. Among the significant changes that affect the plans for new employees are:

- Average of 36 month final compensation for calculation of the new employee's pension benefit
- Limitations on the maximum pension benefit for new employees
- 50% cost sharing, i.e., new employees must pay 50% of the normal cost of their pension benefit
- Suspension of pension benefits for employees who rehire and return to the plan from which they retired

When FTA receives applications for funding assistance, the Department of Labor (DOL) must certify that collective bargaining rights of employees are continued under section 13(c)(2). If objections to certification are raised, the DOL follows an administrative process in which it requires that the parties negotiate to settle differences that gave rise to the objections. Ultimately, the DOL has the right to withhold certification where circumstances inconsistent with federal requirements are not resolved.

As stated above, at least two CBUs representing transit workers in California have submitted objections to DOL certification on the grounds that PEPRA violates 13(c)(2) collective bargaining protections. MTA submitted a letter to the DOL in which we argued that current employees are not affected by PEPRA and it does not remove the pension issue from the scope of collective bargaining. Therefore, we believe there has been no denial of the right of existing employees to collectively bargain over pension issues under 13(c)(2). The DOL has not yet responded to the MTA's letter.

In addition to our direct contact with the DOL, the MTA is on the Executive Committee of the California Transit Association, which has headed up a state-wide effort to clarify PEPRA and 13(c)(2) issues.

MTA and union pension plan trustees have been working with plan attorneys and actuaries to determine plan provisions that would be required to comply with PEPRA.

Under the current PEPRA law, the MTA and unions will be required to adopt new plans for new employees hired on or after January 1, 2013. This will require negotiations with each CBU. Based on those negotiations, staff will recommend new plans that meet the PEPRA requirements to the Board as they are agreed upon with local CBUs.

NEXT STEPS

Staff will update the Board on our progress in resolving the PEPRA and 13(c)(2) issues as well as negotiations for new PEPRA-compliant MTA/union pension plans.