



June 1, 1998

Julian Burke  
CEO

MEMO:

BOARD OF DIRECTORS

Metropolitan  
Transportation  
Authority

FROM:

JULIAN BURKE 

SUBJECT:

LOAD FACTOR DISPUTE PROCEDURES

One Gateway Plaza  
Los Angeles, CA  
90012-2932

This forwards a report from our Counsel and a copy of the Special Master's order relating to the procedures for resolving load factor issues under the Consent Decree.

Phone: 213.922.4788  
Fax: 213.922.7447

As you can see from our Counsel's letter to me, the Master's conclusion is substantively consistent with the result we urged.

Attachments

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

PROCEEDING BEFORE SPECIAL MASTER

LABOR/COMMUNITY STRATEGY )  
CENTER, et al., )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 LOS ANGELES COUNTY )  
 TRANSPORTATION AUTHORITY )  
 and JULIAN BURKE, )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

CASE NO. CV 94-5936 TJH (MCt)  
IN RE LOAD FACTOR COMPLIANCE

PROCEDURAL ORDER

Plaintiffs and plaintiff class have moved to consolidate Stage I and Stage II proceedings into a single Stage II proceeding. Defendants oppose, suggesting instead an informal briefing schedule. Plaintiffs filed a reply.

Having considered the arguments and supporting declarations, I have decided to grant plaintiffs' motion to consolidate the Stage I and II proceedings, subject to the conditions set forth below.

While defendants are correct that there are a number of sub-issues to be resolved, it is not likely that such issues will be resolved in an informal Stage I process

unless both parties are fully open to such resolution. For this reason, it would seem to be less redundant and more efficient to consolidate the Stage I and Stage II proceedings. The purpose of such consolidation, however, is to ensure that the issues are resolved in the most efficient way possible. Threshold issues relating to load factor compliance should be addressed and resolved first. Discovery should be limited to the timely development of a factual record that is necessary to address specific issues identified for resolution. Preliminary rulings, where appropriate, may help to narrow the focus. Since this is a consolidation of Stage I or II proceedings, counsel for the parties should be prepared, at appropriate times, to negotiate the resolution of specific issues and stipulate as to agreed-upon facts.

In order to proceed with the consolidation efficiently, counsel to the parties are requested to meet and prepare a preliminary report to the Special Master, which will set forth:

- The issues proposed to be addressed by the Special Master, including any sequencing of the issues for resolution.
- A proposed plan for the staged resolution of specific issues, including a suggested time frame for the resolution of issues and completion of the formal proceeding.
- Stipulated facts upon which the parties agree.
- The witnesses upon which each party intends to rely.

- A general description of the types of documents upon which each party intends to rely.
- A proposed limited discovery plan, including any limitations on depositions, document requests, interrogatories, and the length of discovery.
- Possible dispositive motions and dates for filing such motions.
- A briefing schedule.
- Outstanding issues that the parties intend to discuss further in order to seek agreement.
- Whether time should be set aside for an evidentiary hearing and, if so, when and how much time.
- A proposed time for a pre-hearing conference to discuss the issues raised in the preliminary report to the Special Master.

Counsel should jointly submit a preliminary report addressing the above issues. Where agreement is not possible, each party may present its own proposal as part of the joint preliminary report.

**THEREFORE**, plaintiffs' and plaintiff class's Motion to Consolidate Stage I and Stage II proceedings into a Stage II proceeding is granted:


The parties are directed to prepare a preliminary report to the Special Master addressing the issues outlined above;

No discovery may be initiated prior to the submission of the preliminary report to the Special Master except by prior approval of the Special Master; and

Counsel are requested to arrange for a brief status conference call with the Special Master for the week of June 1-5, 1998, in order to set a date for submission of the preliminary report, to set a date for a pre-hearing conference on the preliminary report (preferably in June), and to respond to any questions about this Order.

IT IS SO ORDERED:

Dated: 5/28/98

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Donald T. Bliss  
SPECIAL MASTER

RIORDAN & MCKENZIE

A PROFESSIONAL LAW CORPORATION

ORANGE COUNTY OFFICE  
885 TOWN CENTER DRIVE  
SUITE 1500  
COSTA MESA, CALIFORNIA 92626  
TEL: 438-2000  
FAX: (714) 446-3244

CALIFORNIA PLAZA  
870 SOUTH GRAND AVENUE  
TWENTY-NINTH FLOOR  
LOS ANGELES, CALIFORNIA 90017  
TELEPHONE (213) 520-4894  
FAX (213) 270-8550

WESTLAKE OFFICE  
5743 CORRA AVENUE, SUITE 410  
WESTLAKE VILLAGE, CA 91352  
TEL: (805) 800-1000 (800) 486-4069  
FAX: (818) 708-0089

KENNETH ALLEN  
DIRECTOR, MTA  
(213) 229-6534

June 1, 1998

RICHARD J. RIORDAN  
(RETIRED)

FILE NO.

03-142-022

Mr. Julian Burke  
Chief Executive Officer  
Metropolitan Transportation Authority  
One Gateway Plaza  
Los Angeles, California 90053

Re: Load Factor Dispute Procedures —  
MTA adv. Labor/Community Strategy Center, et al.

Dear Mr. Burke:

I have enclosed a copy of Special Master Donald Bliss' Order consolidating the Stage I and II proceedings for the load factor compliance issue (the "Order"). As you know, the MTA and the Bus Riders Union have been resolving disputes concerning the Consent Decree using a two stage procedure. First, the parties write letters to the Special Master setting out the issues and their contentions with respect to those issues. Then, after receiving the Special Master's preliminary viewpoints on those issues, either party can request a Stage II proceeding that involves discovery and results in a formal decision being written by the Special Master.

We opposed a consolidation for the following reasons: (1) there were no discussions between counsel to determine whether some of the issues relating to the load factor dispute could be resolved or at least narrowed; (2) there are many subissues and procedural issues that should be decided before the parties embark upon a Stage II proceeding; and (3) we wanted to do everything possible to avoid the substantial amount of discovery that would be necessary in a Stage II proceeding.

While the Special Master granted plaintiffs' motion to consolidate the Stage I and Stage II proceedings, he did so in a manner that accommodated each of our concerns. Specifically, by ruling that threshold issues should be addressed and resolved first, that discovery should be limited and that preliminary rulings would be made to help narrow the focus, the Special Master provided us with exactly what we requested.

RIORDAN & MCKINZIE

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Mr. Julian Burke

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Moreover, by ruling that the parties meet and prepare a very comprehensive preliminary report, the Special Master went beyond what we requested. In fact, we recommend that the MTA take the position that the procedures set forth in the Order should be permanently incorporated into the decision making process with respect to future disputes involving complex issues of fact and law.

Sincerely,



Kenneth Klein  
of RIORDAN & MCKINZIE

KK:juh  
Enclosure

cc: David B. Kelsey, Esq. (w/o encl.)  
MNDMA (ADOC) 297 286

June 1, 1998

CONTACT: ED SCANNELL/JIM SMART  
MTA MEDIA RELATIONS  
(213) 922-2703/922-2700  
FOR IMMEDIATE RELEASE

**COURT-APPOINTED SPECIAL MASTER STREAMLINES PROCESS TO  
RESOLVE ISSUES BETWEEN MTA AND BUS RIDERS UNION OVER THE  
NUMBER OF STANDEES ON METRO BUSES**

Seeking to ensure the efficient resolution of disagreements between the MTA and the Bus Riders Union (BRU) relating to the number of standees on Metro buses, Special Master Donald T. Bliss has consolidated the parties' dispute procedures and ordered them to propose a plan for the staged resolution of specific issues.

The MTA and the BRU entered into the Consent Decree in October 1996 which called for, among other requirements, a scheduled reduction of the number of standees (load factor) to lessen overcrowding on Metro buses. Bliss was appointed to rule on disputes in which both parties are unable to reach agreement.

"To the extent that the Special Master's decision expedites the resolution of disputes, we strongly support it," said MTA CEO Julian Burke.

The order agrees with the MTA's position that the proper interpretation of passenger counts should be resolved before reaching a decision on whether MTA is in compliance with the Consent Decree requirements.

"The decision preserves the sequence of dealing with the issues at hand which was the MTA's primary concern," added Burke.

Bliss has ordered counsel for both the MTA and the BRU to prepare a preliminary report to include a "proposed plan for the staged resolution of specific issues" and a proposal detailing limitations on discovery, dates for filing possible motions, and "outstanding issues that the parties intend to discuss further in order to seek agreement."

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