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March 2, 1998

TO: BOARD OF DIRECTORS

FROM: JULIAN BURKE 
CHIEF EXECUTIVE OFFICER

**SUBJECT: SUCCESSFUL RESULT IN SOCIAL SECURITY
LITIGATION**

On March 2, 1998, in an important victory for the MTA, the Los Angeles Superior Court upheld the Board of Directors' decision to establish the Public Transportation Services Corporation ("PTSC") as a new organization structure that would allow a unified retirement plan for non-represented employees. The Court found PTSC to be a legitimate public agency entitled to contract with the Public Employees Retirement System ("PERS") for retirement benefits in lieu of Social Security coverage.

This lawsuit was filed approximately one year ago by MTA's two largest unions, the United Transportation Union ("UTU") and Amalgamated Transit Union ("ATU"), in an attempt to recoup moneys expended by MTA for its non-represented employees' Social Security and tax obligations. The Unions also sought to have PTSC declared a sham corporation.

In rejecting the Unions' claims, the Court found no evidence that PTSC is a sham either in the sense that it was not formed in accordance with the law governing the formation of such non-profit public benefit corporations or in the sense that it was formed for some illegal purpose.

Finally, and most importantly, the Court ruled that PTSC is not required, by either federal or state law, to obtain Social Security coverage for any employee that does not want it. Accordingly, the Court ruled that no useful purpose would be served by issuing an order that would require PTSC employees to make Social Security contributions.

The Court's decision leaves no doubt that PTSC is a valid corporation organized for a legitimate public purpose. As such, PTSC may contract with PERS and need not obtain Social Security coverage for its employees. This ruling alone will save the MTA millions of dollars each year. While the Unions have vowed to appeal, MTA legal counsel is confident that the Court's well-reasoned decision will survive appellate review. A copy of the Court's preliminary ruling, which will be incorporated into a final order, is attached.

I am appreciative of the excellent work of County Counsel in achieving this organization's important goal in this litigation.

Attachment

cc: David Kelsey

(b)
T E N T A T I V E R U L I N G S

L.A. Superior Court Central Civil
Civil Division

NEIL SILVER, ET AL VS. LOS ANGELES COUNTY M.T.A., ETC.,	BS044100
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Date: 03/02/98 Time: 9:30 am Room: 86
Judge: David Yaffe
Event Type: *Hearing--Writ of Mandate*

HEARING- WRIT OF MANDATE;

C/F 11-12-97 PER EX PARTE ORDER DATED 10-24-97;

C/F 1-28-98 ON COURT'S OWN MOTION;

Deny Petition for Writ of Mandate.

The demand for a Writ ordering respondent to "rescind" its payment of social security obligations and tax liabilities made on behalf of its employees and recoup the money expended cannot be granted because the employees from whom the recoupment would have to be made are not parties to this proceeding. No constructive purpose would be served by an order declaring said payments were illegal if the order would not be binding upon the persons for whose benefit the payments were made. If the employees are not made parties to this proceeding, respondent will have to sue them in a separate proceeding to recoup the monies expended, causing a multiplicity of litigation and the possibility of inconsistent results. It appears that the petitioners have no interest in joining said employees as respondents in this proceeding, because at least one of the petitioners would have to be joined as a respondent.

There is no evidence that PTSC is a "sham" either in the sense that it was not formed in accordance with the law governing the formation of such corporations or in the sense that it was formed for some illegal purpose. The contention that is not a "public agency" is likewise without merit, as it appears to be a non-profit corporation whose membership is confined to public agencies, within the meaning of

T E N T A T I V E R U L I N G S

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Government Code Section 20057(e).

Finally, respondent is not required, by either federal or state law, to obtain social security coverage for any employee that does not want it. Public Utilities Code Section 30740 does not contain any such requirement, nor is any such requirement contained in Judge O'brien's order of November 22, 1993 in case number BS025945. With respect to federal law, there is no showing by petitioners that the Internal Revenue Service, whose responsibility it is to collect social security contributions, believes that it is entitled to collect such contributions from either respondent or any of its employees who have opted into the PERS system. Petitioner also fails to produce any evidence to the effect that any employee of respondent who wishes to make such contributions is prevented from doing so. Furthermore, neither the federal agency that is supposedly required to collect the contributions nor the employees who are supposedly required to make them are parties to this action. The court fails to see what useful purpose would be served by making an order that would purportedly require such non-parties to make and collect such contributions. Petitioners appear to be officious intermediers in a matter that does not concern them.