May 2, 2001

Leslie Rogers
Regional Administrator
Federal Transit Administration
201 Mission St., Rm. 2210
San Francisco, CA 94105-1839

Dear Ms. Rogers:

The Sacramento Regional Transit District will be asking your agency for a waiver to continue using a Project Labor Agreement (PLA) on the remaining construction of the South Sacramento Corridor light rail expansion. We are asking you to deny the waiver and allow the remainder of this project to be built under fair and open competition.

There are dozens of Merit Shop companies in the Sacramento area that would bid on this job except for the PLA they would be required to sign with the Sacramento-Sierra Building and Construction Trades Council. Local Merit Shop companies, their workers, and their apprentices have put up a fierce fight against the PLA since the unions first proposed this discriminatory agreement in 1997. Even the Sacramento Bee published an editorial against the PLA, calling it a "sweetheart contract" that would "hurt the poor, minorities, taxpayers."

Please follow the spirit of President Bush's Executive Order 13202 and deny the Sacramento Regional Transit District's request for a waiver on the South Corridor expansion. Workers, taxpayers, and ultimately the riders of light rail will benefit.

Sincerely,

Kevin C. Dayton
Government Affairs Director

Enclosures

cc: Hiram J. Walker, Acting Deputy Administrator
May 2, 2001

Hiram J. Walker  
Acting Deputy Administrator  
Federal Transit Administration  
400 7th St. SW  
Washington, DC 20590

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Kevin C. Dayton  
Government Affairs Director

Enclosures

cc: Leslie Rogers, San Francisco FTA Office
Regional Transit scraps union plan after Bush signs executive order

KATY ROBERTSON / STAFF WRITER

Sacramento Regional Transit has scuttled a plan to require union labor on its Folsom extension due to an executive order signed by President Bush last month.

The Bush administration outlawed project labor agreements on construction projects that use federal money.

On Monday night, the Regional Transit board of directors mixed a proposed project labor agreement on the $209 million project that will extend light-rail up the Highway 50 corridor to Folsom, while also building a short spur to the Amtrak station in downtown Sacramento.

Project labor agreements — or PLAs — require most employees of contractors working on the job to be union members. Nonunion contractors claim PLAs force them away from public works projects.

A project labor agreement was put in place three years ago on RT's $222 million South Sacramento light-rail extension. Most of the contracts have already been awarded, but one contract for a substation has not gone out to bid.

'That piece is in limbo. We don't know the status,' said Mike Wiley, assistant to the general manager at RT. 'We need an interpretation from the Federal Transit Authority.'

PLAs have been around since the 1930s, but became popular in the 1990s, including the Hoover and Grand Coulee dams.

Locally, a project labor agreement was first adopted by the city of Conco Sacramento in 1995 on the Folsom Bridge. The Sacramento Municipal Utility District adopted agreements for the power cogeneration projects of Carson Energy Group and Campbell Soup Co.

The idea is to streamline the work force and dispose of labor issues up front,' said Dugan from the trades council. While wildcat strikes still occur occasionally under PLAs — as they did in the San Francisco Airport project — they tend to be resolved more quickly, he said.

Unions can also be helpful, he said, in helping projects get entitlements when they face environmental hurdles. 'Unions are pretty good at interfacing,' Birenbaum said.

The argument against: Under a PLA, supervisors can be nonunion, but the general work force must come from the union labor pool. Contractors can keep their regular employees, but the workers have to sign on with a union for the life of the project, and the company can wind up paying extra benefits for the privilege.

While nonunion contractors can bid for work under a PLA, they have to either hire union workers or ask their own employees to join a union until the project is complete. Most say that's just not worth the hassle, particularly while the economy remains strong in California and other work is available.

As a merit shop, I'd naturally prefer not to work under a project labor agreement,' Erfert said. 'I have to put more money in the bid to cover my costs.'

The first time she tried working on a PLA job she didn't pad her bid and wound up losing money. Now she adds 2 percent to 3 percent.

'I either have to get painters from the union or put my own people in. I have to pay them to join the union. Since they aren't doing it voluntarily, I feel I have to pay the dues. That increases the price to the owner.'

Bush's order sent organized labor scrambling, while nonunion business groups celebrated.

'The PLA is probably the most successful vehicle ever created in this country for management and labor to work together cooperatively,' said Michael Dugan, spokesman for the State Building and Construction Trades Council of California. 'This is a big hit, no question.'

'It will help level the playing field,' countered Paullette Erfert, owner of D.W. Painting, a 'merit shop' contractor in Sacramento. She noted that 86.5 percent of the American labor force is nonunion and excluded from jobs that require project labor agreements.

Labor's viewpoint: PLAs were first used on big public works projects in the 1930s, including the Hoover and Grand Coulee dams.

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RT's sweetheart contract: Union deal may hurt the poor, minorities, taxpayers

(Published April 13, 1998)

In a report to the Regional Transit board last November, RT staff recommended against negotiating a project labor agreement with the local building trade unions for Sacramento's $200 million southern light-rail extension. The staff was clear about the risks of such a novel agreement. They worried it could effectively preclude nonunion shops -- which represent some 80 percent of the construction firms in California -- from bidding, thus reducing competition and driving up the cost of the project.

The staff also predicted such an agreement could have an adverse impact on small businesses, on women and minority contractors and on female, minority and low-income workers. Finally, since only a small percentage of the construction workers in Northern California are unionized -- fewer than 20 percent -- the proposed agreement could have an adverse impact on RT's ability to hire locally, particularly in a tight labor market.

Yet despite all the serious potential drawbacks -- and no documentation or testimony to refute them -- the RT board ordered its staff to draw up a project labor agreement. That proposed agreement is before the board for possible adoption today.

Nonunion contractors are understandably incensed. They charge that they and their workers are being cut out of one of the area's biggest public works projects in decades. Even though many of the nonunion firms complaining worked on previous light-rail projects -- one of them, Rutherford & Smith, built several RT Light Rail stations along Highway 50, on time and within budget -- the proposed labor agreement would effectively preclude them from bidding for any of the new work.

They are angry that the proposed agreement was negotiated exclusively between RT and the unions. No construction firms, either union or nonunion, were at the table. Yet, if the firms want to bid on any light-rail work, they will have to sign a labor agreement they had no part in forming. Moreover, 80 percent of construction workers who aren't unionized weren't represented at the negotiations either. That's wrong.

Supporters of the project labor agreement testified that it would save public money, ensure labor peace and enhance on-the-job safety. But they offered not one scintilla of evidence to support those contentions. The workers who build Sacramento's light-rail extension certainly deserve decent wages, benefits and safety protections; fortunately, those are guaranteed under prevailing wage and labor laws already in place.

Given the potential downsides outlined by RT's own staff, board members -- City Council members Lauren Hammond, Steve Cohn and Darrell Steinberg and Sacramento Supervisors Illa Collin, Dave Cox and Muriel Johnson -- owe it to the public to explain why they ordered such an agreement negotiated in the first place.

Finally, the RT board's lawyer has advised members to defer any decision until after the California Supreme Court issues its pending ruling on the legality of such labor pacts. If RT board members can't bring themselves to reject this competition-killer outright, they should at least follow their own counsel's advice and wait until the Supreme Court acts.
Labor accord voted by RT: It covers project to extend light rail

By Emily Bazar
Bee Staff Writer
(Published April 14, 1998)

The Sacramento Regional Transit District board approved a labor agreement Monday night favoring contractors with unionized workers for the agency's southern light rail extension project.

After hearing three hours of testimony from dozens of laborers and business owners, the board voted 5-1 to approve the agreement, saying it ensures construction jobs will go to local residents.

Board members Darrell Steinberg, Illa Collin, Steve Cohn, Rob Kerth and Chairwoman Lauren Hammond voted for the agreement, while board member Muriel Johnson voted against it. Board member Dave Cox was absent.

This is the first time RT has approved a project labor agreement negotiated by the agency itself.

"This agreement maximizes the opportunities for local hire. It's as close as we come to a guarantee that Sacramentans are put to work on the extension," Steinberg said.

Board members also said the agreement helps assure that the 6.3-mile extension to Meadowview Road will be built quickly, because it specifies that strikes or other labor disputes cannot get in the way of construction. If the extension isn't completed by fall 2003, RT would jeopardize $111 million in federal funding, about half of the project's entire cost.

The project labor agreement only relates to the project's construction costs, or about $70 million, said RT's chief legal counsel, Mark Gilbert.

Johnson said she wasn't necessarily against the agreement, but would have preferred to wait until the state Supreme Court renders opinions on two cases dealing with project labor agreements before deciding on the RT agreement.

She also expressed concern that the agreement excludes nonunion shops from vying for the contract. "I'd like to see the doors open to all construction workers, whether they belong to unions or not," she said.

But union supporters said the agreement will not chill competition and will mean good wages and pensions for workers.

"This agreement is not a competition killer," said Roland Katz, attorney for the Operating Engineers Local Union No. 3. "No one is precluded from bidding on jobs."

While the agreement wouldn't prevent nonunion shops from bidding or receiving contracts, it requires that all workers on the project pay union dues and fees, and also requires nonunion contractors to contribute to union pension plans and benefit packages.

"Why would we force our employees who don't belong to a union to pay union dues and fees?" said Kevin Dayton, government affairs director for the primarily non-union Golden Gate Chapter of the Associated Builders and Contractors.

Others fear that minority- and women-owned contracting firms, as well as small contractors generally, will suffer under the agreement.

"I will not be able or willing to bid on a job that is all union," said Illa Jones, president of IAS Construction in Carmichael. "I will not be able to have the flexibility . . . if I were required to be a union contractor."
Kevin C. Dayton  
Government Affairs Director  
Associated Builders and Contractors  
11875 Dublin Boulevard, Suite C-258  
Dublin, CA 94568-2842

Re: Sacramento Regional Transit Authority

Dear Mr. Dayton:

This is to acknowledge receipt of your letter dated May 2, 2001, advocating denial of the Sacramento Regional Transit Authority's request for an exemption from Executive Order 13202. President Bush issued Executive Order 13202 on February 17, 2001, in order to promote and ensure open competition on federal and federally funded or assisted construction projects and to maintain government neutrality towards government contractors' labor relations on federal and federally funded or assisted construction projects.

The Sacramento Regional Transit Authority's request is presently under consideration by Secretary Mineta and your letter will be given every consideration.

If you have any questions on this matter please contact Donald R. Durkee at (202) 366-1936.

Sincerely,

Edward D. Faren

Hiram J. Walker
Acting Deputy Administrator
ISSUE

Whether or not to authorize solicitation of bids for construction of 4th Avenue/Wayne Hultgren, City College, and 47th Avenue Stations for the South Sacramento Corridor Project.

RECOMMENDED ACTION

Adopt Resolution No. 01-06-____, Authorizing Solicitation of Bids for Construction of 4th Avenue/Wayne Hultgren, City College, and 47th Avenue Stations for the South Sacramento Corridor Project.

FISCAL IMPACT (CI-304)

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This action does not involve the expenditure of funds. The contract award, which will involve the expenditure of funds will be presented to the Board as a future action. The work under this contract is budgeted as part of the South Sacramento Corridor Project.

DISCUSSION

Construction of the South Sacramento Corridor Project includes seven (7) new stations at Broadway, 4th Avenue/Wayne Hultgren, City College, Fruitridge Road, 47th Avenue, Florin Road, and Meadowview Road. These stations are divided into three separate packages for design and construction. The first package to complete design is for 4th Avenue/Wayne Hultgren, City College, and 47th Avenue stations. The projects include platforms, landscaping, passenger shelters on the main platforms and the mini-high ramps, a bus loop at City College, and a park-and-ride lot at 47th Avenue. Artwork is to be included under separate contracts.

The bid specifications incorporate the Project Labor Agreement (PLA) for the South Corridor Light Rail Extension Project and require that the successful bidder/contractor become a signatory to the Regional Transit (RT) PLA. The bidding process will also utilize the RT Pre-qualification of Bidders System for prime contractors (due to the nature of the work there is not expected to be a primary subcontractor).
Subject: Authorizing Solicitation of Bids for Construction of 4th Avenue/Wayne Hultgren, City College, and 47th Avenue Stations for the South Sacramento Corridor Project

Pursuant to the revised Disadvantaged Business Enterprise (DBE) regulation in 49 CFR Part 26 and RT's revised DBE Program, no DBE participation goal has been established for this Project. RT staff will assist potential bidders identify DBE firms to solicit DBE subcontractor participation on the Project.

Staff recommends Board authorization to solicit bids for Construction of 4th Avenue/Wayne Hultgren, City College, and 47th Avenue Stations for the South Sacramento Corridor Project.
RESOLUTION NO. 01-06-____

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

June 25, 2001

AUTHORIZING SOLICITATION OF BIDS FOR CONSTRUCTION OF 4TH AVENUE/WAYNE HULTGREN, CITY COLLEGE, AND 47TH AVENUE STATIONS FOR THE SOUTH SACRAMENTO CORRIDOR PROJECT

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, the Bid Documents for Construction of 4th Avenue/Wayne Hultgren, City College, and 47th Avenue Stations for the South Sacramento Corridor Project are hereby approved and authorized for release.

THAT, the Invitation for Bids be advertised pursuant to the provisions of the RT Procurement Ordinance.

ROGER DICKINSON, Chair

ATT E S T:

PILKA ROBINSON, Secretary

By: Cindy Brooks, Assistant Secretary
July 26, 2001

Jennifer L. Dor
Administrator
Federal Transit Administration
400 Seventh St., SW
Washington, DC 20590

Dear Ms. Dom:

The Sacramento Regional Transit (RT) District Board of Directors has violated Executive Order 13202—Preservation of Open Competition and Government Neutrality Towards Government Contractors’ Labor Relations on Federal and Federally Funded Construction Projects—by requiring contractors to sign a Project Labor Agreement (PLA) for the 4th Avenue/Wayne Hultgren, City College, and 47th Avenue Stations for the South Sacramento Corridor Project.

On June 25, the Sacramento Regional Transit District voted to authorize solicitation of bids for the 4th Avenue/Wayne Hultgren, City College, and 47th Avenue Stations for the South Sacramento Corridor Project. As stated in the RT Issue Paper for this agenda item (#12), the bid specifications incorporate a PLA and require the contractors to sign the PLA.

President Bush’s Executive Order 13202 would prohibit the use of a PLA on this contract for the South Sacramento Corridor Project unless, as stated in Executive Order 13208, the head of an executive agency exempts the project from sections 1 and 3 of Executive Order 13202.

Today, I learned from Mark Gilbert, RT’s Chief Legal Counsel, that RT has not received an exemption from the Federal Transit Administration to use a PLA on this job.

The Federal Transit Administration should not be awarding funds to the Sacramento Regional Transit District for the South Sacramento Corridor Project as long as the RT Board of Directors continues to violate Executive Order 13202.

Sincerely,

Kevin C. Dayton
Government Affairs Director

cc: Leslie Rogers, San Francisco FTA Office

enclosure