Before the Federal Transit Administration

American Bus Association
Complainant

v.

Rochester-Genesee Transportation Authority
Respondent

ABA Charter Complaint
Docket # 2006-12

Decision

Summary
By letters dated April 28, 2006 and May 30, 2006, the American Bus Association ("Complainant" or "ABA") filed a complaint ("Complaint") with the Federal Transit Administration ("FTA") alleging that the Rochester Genesee Transportation Authority ("Respondent" or "RGRTA") is providing service in violation of FTA's charter regulations, 49 Code of Federal Regulations (C.F.R.) Part 604. The service in question pertains to the Wegman's LPGA golf tournament from June 19-25, 2006. By our letter dated May 31, 2006, FTA acknowledged receipt of the Complaint and directed the parties to follow an expedited complaint process pursuant to 49 C.F.R. Section 604.15. Respondent filed a response dated June 12, 2006 ("Response"). By letter dated June 20, 2006 FTA acknowledged receipt of the Response and forwarded the Response to Complainant. By letter dated July 19, 2006, Complainant submitted their rebuttal to FTA ("Rebuttal"). Based upon our review of the allegations in the preceding documents, FTA finds that the service in question does not violate FTA's charter regulations.

Complaint History

Complainant filed its Complaint alleging that the Respondent would provide illegal charter service to the Wegman's LPGA golf tournament scheduled for June 19-25, 2006. Complainant specifically relied upon two prior FTA decisions, ABA v. Akron Metro Regional Transportation Authority; and Kemps Bus Service v. RGRTA ("Kemps 2002"). The Kemps 2002 case also involved service to the LPGA golf tournament. FTA found in the Kemps 2002 case and its appeal No. 2002-02 (2003) that RGRTA had provided charter service to the golf tournament. Subsequently, RGRTA made a variety of changes to the service such that by letter dated June 16, 2003, ("McBride Letter"), FTA found the modified service to comply with our mass transportation requirements. Herein, the Complainant challenges that the current tournament service is not public transportation because it is not "regular and continuing" as the service only operates during the week of the golf tournament. ABA also states that the McBride Letter is an incorrect statement of the law. Further, the ABA states that based on the LPGA website, the service is intended solely for golf tournament patrons; also, that there are no other stops; and that nothing on

the RGRTA website shows that the service is open to the public or a public route; and that no fee will be charged for the service.

RGRTA's response was dated June 12, 2006. In their Response, RGRTA cited the changes they made as a result of the Kemps 2002 decision and appeal. Specifically, Respondent states changes were made to their subsidy agreement to give RGRTA sole control over the route, fare and schedule; signs were placed along the route; publication was made on the RGRTA website and in the Early Summer Seasonal Route Brochure. Respondent relies upon the current fare structure, the website pages and the Early Summer Seasonal Brochure, the subsidy agreement and the regular and continuing nature of the annual service to an infrequent event to demonstrate that the service is public transportation.

By letter dated July 19, 2006, ABA filed its Rebuttal to FTA. ABA opined that the service is provided pursuant to a single, fixed contract, that it is not open door or for the public at large and the service is not regular or continuing. Complainant argues that the length of the subsidy agreement, the designated route and the hours of the route shows that RGRTA does not have control. ABA recognizes that the agreement does not specify the type or number of buses to be used but nonetheless believes that this is accomplished with a "wink and a nod". Complainant further states that the sponsor's reimbursement based on the fare structure illustrates that there is a single contract at a fixed charge. Complainant also believes that the McBride letter turned on the lack of subsidy for its finding.

Lastly, ABA believes the service was not intended to be open door because it is allegedly directed only at golf tournament patrons and was not established through public hearings and does not connect with other service.

Discussion

In reviewing this Complaint, it must be determined whether the service in question is charter or public transportation.

FTA's regulations define charter as:

> transportation using buses or vans, funded under the Acts of a group of persons who pursuant to a common purpose, under a single contract, at a fixed charge for the vehicle or service, have acquired the exclusive use of the vehicle or service to travel together under an itinerary either specified in advance or modified after leaving the place of origin.

49 C.F.R. 605.5(e).

Public transportation is defined as follows:

> Transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter, or sightseeing transportation.

In considering whether service is public transportation or charter service, FTA looks at three elements to distinguish the two types of service. First, public transportation is under the control of the recipient; the recipient sets the route, rate and the schedule; second, the service is designed to benefit the public at large and not some special organization and, third, mass transportation is open to the public and is not closed door. 52 Fed. Reg. 11920, April 13, 1987.

As to the first prong of the test, it appears that RGRTA controls the route, schedule and equipment used. RGRTA has a published route and route number with stops on the route. While there is a subsidy agreement for the route with the subsidy provider, it does not specify that Respondent should use any particular type of equipment, nor does it suggest that the provider will have the right to control the route, the equipment or the frequency of service. Indeed, since FTA issued its decision regarding this same service in Kemps Bus Service v. Rochester-Genesee Transportation Authority (Sept. 18, 2002) ("Kemps") and its Appeal on Charter Service Complaint Docket No. 2002-02 (Jan. 2, 2003), RGRTA made many modifications to its service which resulted in FTA issuing the McBride Letter, which found the service to comply with FTA requirements.

The RGRTA published the route along with its other routes and issued schedules and maps. The route is subject to the same fare structure as the rest of RGRTA's public transportation service. The subsidy provider subsidizes RGRTA depending upon the number of the passengers according to RGRTA's regular fare structure. FTA has clearly stated that the existence of a subsidy does not alone transform mass transportation into charter service. See FTA Questions and Answers, number 27a, 52 Federal Register 42248, Nov. 3, 1987 ("Questions & Answers"). According to the terms of the subsidy agreement, there is no subsidy for those individuals traveling with one of RGRTA's unlimited "Freedom Passes" or for individuals traveling one-way, indicating that all members of the public are anticipated to be using the service. Further, the subsidy agreement does not require any specific frequency of service.

With respect to the second prong of the test, whether the service is designed to benefit the public at large, it is clear that the service is designed to benefit that portion of the public interested in going to the annual golf tournament. However, the service is designed so that any member of the public wanting to travel along that route is able to board. Prior FTA decisions have found that a subset of the general public is still considered to be the public at large for public (mass) transportation purposes. Gray Line Seattle v. King County Metro (FTA Decision Feb. 2005) ("Gray Line") citing Bluebird Coach Lines v. Linton, 48 F. Supp 2d 47 (DC Dist. Co. 1999). In this instance, golf fans are a part of the general public who would like to be able to take public transportation to get to the golf tournament. The service was advertised on the LPGA website as well as on the RGRTA

website; therefore, golf patrons as well as any member of the traveling public would be able to benefit from this service and golf patrons are a subset of the general public.

ABA argues that the service is not regular and continuing as required by the definition of public transportation. However, for service to be regular and continuing, it is not necessary that it operate year-round. As set forth in FTA's Questions & Answers, service to regularly scheduled but relatively infrequent events that is open-door, with the routes and schedules set by the grantee is not charter. FTA has found that service that is provided once a year to an annual event and otherwise meets the definition of mass transportation is allowed. Gray Line 2005.

The third prong of the test is whether the service is open to the public and not closed door. As FTA discussed in Kemps, FTA also looks at the intent of the recipient in offering the service to determine whether the service is open door. To do this, the FTA considers what attempts the recipient has made to make the service known and has found that publishing the service is best marketing effort. Washington Motor Coach Association v. Municipality of Metropolitan Seattle, WA-09/87-01 (March 21, 1988). After Kemps, the RGRTA modified many aspects of its service. As stated above, the service appeared on RGRTA's website along with its other routes and schedules with the same fare structure. In addition, RGRTA published a pre-printed brochure which advertised this service. Therefore, there was a broad outreach effort and it can be concluded that the service is open to the public and did benefit the public at large.

Conclusion

FTA finds that the service to the LPGA golf tournament is public transportation and not charter service.

Appeals Right

The losing party may appeal this decision to the Administrator within 10 days of the receipt of this decision pursuant to 49 CFR Section 604.19. The appellant shall include in its appeal the basis for the appeal and evidence to support the position. The appellant shall send a copy of the appeal to the prevailing party. The appeal should be sent to: FTA Administrator, Federal Transit Administration, 400 Seventh Street, SW, Washington, D.C. 20590 and be marked Charter Appeal.

Letitia Thompson
Regional Administrator

10/05/06
Date