



U.S. Department  
of Transportation

**Urban Mass  
Transportation  
Administration**

REGION IX  
Arizona, California,  
Hawaii, Nevada, Guam

211 Main Street  
Room 1160  
San Francisco, California 94105

SCHOOL BUS COMPLAINT

California School Bus  
Contractor's Association

v.

Decision

Southern California Rapid Transit District

SUMMARY

This complaint was filed by the California School Bus Contractors Association (association) on August 23, 1983. The association claimed that the Pasadena Unified School District (school district) would reduce the number of school buses provided by Embree Buses, Inc. it uses to transport students. The school district allegedly would rely on the Southern California Rapid Transit District (RTD) to serve the needs of many of its students. The association alleged that the RTD provision of transit services to the students would constitute de facto school bus operation in violation of the prohibition in the Urban Mass Transportation Act of 1964, as amended, (UMT Act) against a grantee conducting school bus operations. The association claimed that the alleged RTD school bus operations would violate the Sherman Antitrust Act.

As detailed below, UMTA finds that the association's allegations are not substantiated.

ALLEGATIONS

The association filed this complaint based on information contained in newspaper articles. These articles were published before the school district took any action. Based on this, the association alleged that the school district would reduce from 71 to 48 the number of Embree buses it uses to transport students for the school year beginning September 18, 1983. Instead, the school district allegedly would give out approximately 4,000 passes to students to use RTD buses. The use of RTD service rather than Embree's service allegedly would reduce the school district's outlays for high school and junior high students from \$747,000 to \$160,000. The association claims that the RTD accommodation of these students violates the section 3(g) of the UMT Act which prohibits school bus operations.

In connection with the above, the association claims that RTD may only engage in school bus operation, if at all, on an "incidental basis." The association bases this view on the UMTA school bus regulation (49 CFR Part 605). The association recognizes in its complaint that while the regulation generally prohibits school bus operations, it does not prohibit "tripper services." The association states that while a tripper service exception in the regulation may attempt to allow a grantee to design or modify transit service to accommodate student needs, the accommodation to meet the needs of 4,000 students during peak morning hours violates the UMT Act.

The association's complaint also claimed that the school bus operations (i.e., the tripper services) violates the Sherman Antitrust Act (15 USC 2). In this regard, the association explains that RTD is not brought under the protective umbrella of antitrust immunity given to the states. Consequently, the RTD is allegedly vulnerable to a challenge based on antitrust grounds, especially since the RTD is allegedly conducting its operations in violation of another Federal statute (i.e., the UMT Act).

This apparently is a claim that the RTD is attempting to monopolize school bus operations in Pasadena. However, in this regard, the association never clearly cites any facts which would constitute a violation nor even clearly defines their claim. Further, the association recognizes in its complaint that UMTA has no jurisdiction to enforce the antitrust statute.

#### RTD RESPONSE

On September 9, 1983, the RTD submitted a denial of the complaint. The RTD in its denial stated that it is in the school district's discretion whether or not to provide transit services for its students and that, if the school district does provide such services, any available means may be used, including the use of available common carriers open to the general public. RTD states that it, or its public transit predecessor, has provided general public mass transit service in Pasadena since 1941 and that the last major route restructuring was performed in that area in 1976. In addition, RTD claims that the RTD may engage in incidental school bus operations to transport students. The RTD references the tripper service definition of the school bus regulation as did the complainant and claims that RTD is complying with the regulatory requirement. The RTD stated that in anticipation of increased patronage it would increase service on nine Pasadena routes.

With regard to the antitrust allegation, RTD agrees with the complainant that UMTA has no jurisdiction to enforce the Sherman Antitrust Act. RTD also denies that it is in violation of that Federal statute.

#### COMPLAINANT'S REBUTTAL

On October 18, 1983, the complainant submitted its rebuttal of the RTD submission. The complainant's rebuttal explained that the association's complaint was based on the claim that the RTD service at issue was designed in such a form that the service was not useful for the general public. The association also admits that the record of the case as it was at the rebuttal stage did not contain the "operational date (sic) which UMTA requires to act upon the Complaint." The association states that this is because RTD failed to submit detailed information. The association outlined 14 items of information that it believed RTD should be required to respond to.

The association claims that the antitrust count of its complaint is an effort to explain that RTD should not be allowed to subsidize the complained of school bus operations. The association submitted a detailed cost analysis to show the cost differential between RTD and Embree. It is also claimed that using public subsidy to keep bus passes' prices down is predatory.

#### RTD RESPONSE TO ASSOCIATION'S REBUTTAL

On January 23, 1984, the RTD provided much of the specific information that the association requested. RTD submitted numerous documents to show that it was conducting trippers in compliance with the UMTA regulation. The documents included route maps, fare lists and route schedules to support the RTD assertion that it only intensified service on nine existing route. It also submitted documentation to show the RTD agreement to sell the school district 5,000 student passes.

#### APPLICABLE CRITERIA

The standards to which UMTA holds grantees are found in 49 CFR Part 605. That regulation implements the general prohibition against school bus operations by grantees and delineates the extent to which a grantee's mass transit operations can accommodate student transit needs.

Section 605.12 generally prohibits a grantee from engaging in any school bus services. This provision implements Sections 3(g) and 12(c)(6) of the UMT Act on this subject (49 USC 1602(g) and 49 USC 1608(c)(6)).

However, the regulation specifically recognizes that students may also be mass transit patrons and that grantees may design or modify mass transit services to accommodate their needs. (49 CFR 605.3). The specially designed mass transit routes are called "tripper services." The regulation sets out specific criteria which the grantee must meet so that its services to students qualify as mass transportation. Buses must be operated by the following criteria, which if properly implemented would constitute permissible "tripper service":

- a) Be clearly marked as open to the public.
- b) Not carry "school bus" or "school special" markings.
- c) Be operated according to the grantee's regular route service as indicated in their published route schedules.
- d) Stop at its regular service stops.

Also, an accommodation of student needs may include the use of various types of subsidy and fare collection systems. (See Section 605.3).

#### ANALYSIS AND FINDINGS

##### Alleged School Bus Operations

Neither the association's factual allegations nor its interpretation of the applicable rules support a conclusion that RTD is in violation of the prohibition against the provision of school bus operations as contained in the UMT Act or the UMTA implementing regulation.

The association apparently believes that when students are the predominant users of a bus service, the service becomes an exclusive school bus operation. This view is incorrect. The regulatory standard is quite different: RTD must keep the service open to the general public. That openness must be connoted by the characteristics listed in the school bus regulation. (See section 605.3 described above). Other members of the general public need not necessarily ride the tripper buses for it to be a mass transit service.

In connection with the above, both the complainant and the grantee are in error in their characterization of tripper service as an incidental school bus operation. Tripper service need not be conducted on an incidental use basis. Tripper service is permissible, not because it is done as an

incidental use, but because it is mass transportation. The incidental use concept is only applicable to UMTA regulation of grantee charter bus operations. (cf., 49 CFR 604.11).

RTD has submitted detailed information with its January 23 submission that the only actions RTD has taken were the addition of buses to existing routes to accommodate increased patronage from students who are going to schools near the routes and to sell to the school district 5,000 bus passes. These are permissible actions which, if accepted as violations, would put UMTA in the strange posture of prohibiting RTD from selling bus tickets or responding to patronage demands.

In connection with this, UMTA cannot prohibit the RTD from responding to patronage demands solely because the travelers' trip objectives are for school purposes. Nor can UMTA prevent RTD from selling bus passes for use by Pasadena students. The UMT Act expressly prohibits UMTA from attempting to regulate a grantees fares or route service. (49 USC 1608(d)). The tripper service portion of the school bus regulation, contrary to the association's view, are thus quite consistent with applicable law.

**Alleged Antitrust Violation**

As both the complainant and grantee note, UMTA does not have jurisdiction to enforce the provisions of the Sherman Antitrust Act. As a consequence, UMTA will take no action pursuant to this allegation. As for the point that the association attempts to make with its cost analysis, the discussion above centering on section 1608(d) applies here. UMTA cannot prevent a grantee from choosing which mass transit service it will provide.

**CONCLUSION**

For the reasons stated in this finding, we believe that the association's complaint is not substantiated.

Submitted by: *[Signature]* OCT 10 1985  
 ERNESTO V. FUENTES Date  
 Regional Counsel

Concurred in by: *[Signature]* 10/15/85  
 JOSEPH A. LASALA Date  
 Chief Counsel