



U.S. Department  
of Transportation  
Federal Transit  
Administration

BEFORE THE FEDERAL TRANSIT ADMINISTRATION

District Union Local One of the United Food & Commercial Workers Union  
Complainant

v.

Docket No.2006-02

Rochester-Genesee Transportation Authority,  
Respondent.

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DECISION

Summary

The Federal Transit Administration (FTA) is hereby issuing a decision on the above referenced matter brought by the United Food & Commercial Workers Union Local One (Union), Docket No. 2006-02 against Rochester Genesee Regional Transportation Authority (RGRTA). The complaint relates to service provided by RGRTA's Regional Transit Service (RTS) to the Rochester City School District (RCSD). Upon reviewing the allegations in the Complaint and the subsequent filings of both complainants and respondents, FTA has concluded that the some of the service in question does violate FTA's regulations regarding school bus service.

Complaint History

a. Union Complaint

Union filed its complaint by letter dated June 15, 2006 ("Union Complaint"). The Union Complaint alleges that RGRTA's provision of service pursuant to a subsidy agreement with the Rochester City School District is a violation of FTA's school bus regulation at 49 C.F.R. Part 605 and the service will displace nearly 70 routes operated by Laidlaw Education Services.

b. RGRTA Response

RGRTA filed its Response by letter dated August 24, 2006 ("RGRTA Response"). RGRTA's Response denied that it was providing illegal closed door, exclusive school bus service and maintained that it is providing permitted "tripper service." RGRTA submitted as exhibits a copy of a variety of printed schedules, a copy of its Tripper Service Subsidy Agreement with RCSD, and some of RGRTA's website pages to demonstrate that RGRTA is not engaging in school bus operations. All of the tripper service routes have numbers of 99 and above.

RGRTA relies upon the definition of "tripper service" as regularly scheduled mass transportation to uphold its service and states that its service fits within the parameters of tripper service. RGRTA/RTS states that some of its routes have required no modification to meet the needs of students while other routes have been designed or modified to meet the needs of students.

Under the terms of the Subsidy Agreement, the routes are open to the public at the standard fare and are not operated exclusively for students. Students must show a school identification card in order to board the buses without paying a fare. The terms provide that the RCSD gives permission for the general public to enter school property to board a bus and allows RGRTA buses to enter onto school property and to erect bus stop signs.

c. Union Rebuttal

The Union submitted a rebuttal dated November 8, 2006. By that Rebuttal, the Union argues that RGRTA's service is not "tripper service" but prohibited exclusive school bus service. The Union states that the one infallible test to distinguish the two types of service is whether the bus stop is a regular route stop and/or on private grounds. The Union also points to the provision of Section 605.15(2), that a grantee agrees that it will not engage in any practice which constitutes a means of avoiding the requirements of this agreement. According to the union, further evidence of this violation rests in the \$5.9 million subsidy amount from RCSD to RGRTA. The Union has submitted a DVD which videos a RGRTA bus on one of the routes in question and the loading of passengers in a school parking lot.

By follow-up letter dated November 16, 2006, the Union submitted a copy of RGRTA's official regular route map dated May 2004. The Union contends that this substantiates that the routes in question are not tripper routes as they do not appear on the regular schedule.

d. RGRTA 2d Response

RGRTA sent a second response dated November 27, 2006 raising the late submittal of the Union's Rebuttal. As the service in question is already operating, FTA would like to consider all the views of the parties during the investigation of this matter.

In the 2d Response, RGRTA raises the issue of the location of bus stops on school property. RGRTA also points out that the bus stop locations are included on their printed schedules, the electronic schedules and the on-line trip planner service. RGRTA states that RGRTA buses regularly congregate at one location and that there is nothing unusual about having a lot of buses waiting at one location.

e. Union 2d Rebuttal

A second Rebuttal was submitted by letter dated December 28, 2006 and advance notice of this second Rebuttal was provided by letter dated December 13, 2006. In the second Rebuttal, the Union specifically confines its Complaint to RGRTA's triple digit routes with service to schools. The Union also contends that the RGRTA has also violated the school bus regulations by not seeking a Section 605.11 exemption demonstrating that private school bus operators are unable to

provide adequate transportation. Quoting FTA's Jan. 28, 2005 Federal Register Notice, the Union argues that "tripper service is intended to make ordinary transit bus service available to school children; it is not intended to substitute for school bus transportation."

### Discussion

As with any tripper service question, it is necessary to compare the current operations of the tripper service with the tripper service criteria at 49 C.F.R. Section 605.3. The regulations define tripper service as follows:

Regularly scheduled mass transportation service which is open to the public, and which is designed or modified to accommodate the needs of school students and personnel, using various fare collections or subsidy systems. Buses used in tripper service must be clearly marked as open to the public and may not carry destinations such as "school bus" or "school special". These buses may stop only at a grantee or operator's regular service stop. All routes traveled by tripper buses must be within a grantee's or operator's regular route service as indicated in their published route schedules.  
49 C.F.R. § 605.3.

Mass (public) transportation means "transportation by a conveyance that provides regular and continuing general or special transportation to the public but does not include school bus... transportation." 49 U.S.C. Section 5302 (a)(10).

In reviewing this matter, FTA has made the following findings in its analysis:

#### A. Regularly scheduled mass transportation service

RGRTA has a website with a published route map; this same route map is also available in paper form. The routes that the Union asserts are essentially charter are those routes with route numbers over 99 e.g. those routes with triple digit numbers. Neither the website route map nor the paper route map show routes with the triple digit routes; the route map only shows the regular routes below number 99 and has a corresponding legend.

In addition to the route map, RGRTA has published timetables on its website and RGRTA has also published a paper book entitled "RTS Schedule Book Routes 99 and Above." There is a significant difference between RGRTA's routes under 99 and its routes to schools over 99. All of the routes below number 99 operate throughout the day whereas the routes with numbers of 99 and above with school destinations or origin points only operate one-way in the morning and one-way in the afternoon.

Both the failure to have the 99 and above routes on the regular published route map and the irregularity of the timetables indicates that these routes are not part of their regular mass transportation or public transportation service.

Finally and more important than any indicia FTA uses, public transportation excludes school bus service unless it is regular and continuing service.

## B. Designed or modified to accommodate the needs of school students

A transit operator is permitted to design or modify routes to accommodate the needs of school students as long as the routes are open to the public and are part of regularly scheduled service. In this instance, the RGRTA provides legitimate tripper service on its routes below number 100 where the students travel on regular mass transit routes or where the routes have been modified to meet the school student needs. These routes appear on the regular route map and on the RGRTA's regular timetables and operate all day long and connect with other routes.

The routes in contention are the approximately 109 new triple digit routes designed to accommodate the school students which were apparently operated previously by the private operators. These routes make many stops and either end at the school or originate at the school and are designed to operate for the school opening time or the school closing time. As FTA stated in its Jan. 28, 2005 Federal Register Notice on tripper service, "tripper service is intended to make ordinary transit bus service available to school children; it is not intended to substitute for school bus transportation." 70 Fed. Reg. 4081, 4082 (Jan. 28, 2005).

This comports with the legislative history of the regulations. "It is undisputed that the purpose of the school bus provision was to prevent competition with private school bus operators, competition perceived by Congress to be unfair." Chicago Transit Authority v. Adams, 607 F.2d 1284, 1292 (7<sup>th</sup> Cir. 1979). "After examining the legislative record, we are persuaded that Congress intended to bar grantees from competing with private operators in daily bus transportation to and from the students' school of regular attendance." Chicago at 1293. "UMTA (FTA) has interpreted the Acts to prohibit federally-funded buses in school bus operations so as to preserve these buses for use in mass transportation." Id. At 1294.

Accordingly, this new service appears to have been designed specifically to meet the demands of these school students. Although technically, the service is not exclusive, from the DVDs submitted, from the RGRTA's own statements and the manner of operation, it is clear that the service transports most of the school's students and it does not meet the needs of the general public. When school gets out, one can discern that all of the buses parked in the school's parking lot are waiting to pick-up the students at dismissal and drop them home along the route. This represents the same type of service that the private operators would normally be performing and is in direct competition with the private operators. Therefore, this type of service would contravene the purpose and intent of the school bus regulations and would undermine the statute and regulation itself if this type of service were permitted.

## C. Fare Collection or Subsidy System

The RGRTA has entered into a Tripper Service Agreement (Agreement") with the RCSD. This provides for a subsidy from the RCSD to the RGRTA in return for allowing the students with appropriate RCSD identification to board the buses without paying and includes not only the specific buses which go to their schools but any RGRTA buses. This type of arrangement is not a violation of the school bus regulations.

The Agreement also gives permission for RGRTA buses to enter onto school property, for the erection of bus stop signs and for the general public to enter onto the property.

**D. Open to the Public, Regular Service Stops and Published Schedules**

The RGRTA has a schedule for the number 99 and above routes on its website. As mentioned above, this schedule does not resemble its other schedules with route numbers below 99; they have a wholly different format. This reinforces the idea that this purported tripper service is operated separately and distinctly from RGRTA's regular and continuing public transit service. See Erie Metropolitan Transit Authority, April 13, 1989. In addition, there are differences between the "RTS Schedule Book Routes 99 and Above" ("Schedule Book") and the posted timetables for the routes 99 and above on the website.

The Schedule Book posts an A.M. pick-up time for the trip going to school and a P.M. pick-up time for the after school departure in the afternoon. The Schedule Book shows 3 or 4 stops for each route. It also includes another column with a time for an apparent departure that varies from the regular departure time entitled "Early Dismissal". This appears in both the exhibits submitted by RGRTA with their Response as well as on the RGRTA/RTS website. There is clearly a change in the schedule for those days when there is Early Dismissal. Again, this confirms the nature of this service to be school bus, not regular public transportation. There would be no means by which a member of the public would know on which date the bus was going to return at a different early dismissal time if they were only referring to the Schedule Book. Apparently, to utilize these schedules and to have the routes serve a useful purpose, it would be necessary to be a part of the school environment with inside knowledge of the school schedule.

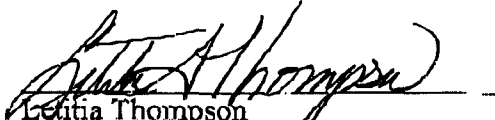
On the other hand, when one looks up these routes by number on the RGRTA website, one gets a completely different set of information. In its 2d Response, RGRTA provided exhibits and explained how one could look up a route with its stops and times on their website. First of all, it appears that the routes have many more stops than is included in the Schedule Book. For instance, on Route # 270, instead of 3 or 4 stops as shown in the Schedule Book, there are 14 stops on the route. The 14 stops are one minute or less apart. On Route #270, there are 5 buses operating along this same route. (This is true with many other routes as well). On Route #270, three (3) of the scheduled buses travel to identical stops with the same stop schedules and have one minute intervals between the stops. This is a clear indication of service designed for school bus operations, not regular public transportation. RGRTA's routes below 99 do not have 3 buses operating in tandem along the same routes; furthermore, the other routes do not have stops at one minute intervals.

With respect to the location of the bus stops, there are numerous stops along the street and the destination or origin stop is on school property. It is permissible to have a stop on school property so long as it is obviously accessible to the public. RCSD provided permission for the general public to go on school property in the Agreement, however, it is not clear that the public would know that they were permitted on the property or that the bus stop sign would be visible to the public. From the DVD submitted by the Complainant, there are quite a few buses loading at school dismissal time and it appears more like a school operation than a traditional public transportation bus stop, despite the fact that buses often congregate on public streets. See FTA's

decision in Lamers Bus Lines, Inc. v. Green Bay Transit System, May 10, 1982.

Conclusion and Order

While some aspects of RGRTA's service comports with the requirements for public transportation, the substance of this service contravenes the purpose and intent of the regulations and, in some of its characteristics, specifically violates the school bus regulations. FTA finds that through the provision of service with route numbers over 99, RGRTA has engaged in school bus operations. Therefore, in accordance with 49 C.F.R. § 605.33, RGRTA will cease and desist from this school bus service as soon as it is feasible. This decision is subject to judicial review pursuant to title 5 U.S.C. 701-706.

  
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Leticia Thompson  
Regional Administrator

01/18/07  
Date