



U.S. Department
of Transportation
**Federal Transit
Administration**

BEFORE THE FEDERAL TRANSIT ADMINISTRATION

Docket No. 2007-01

LAIDLAW TRANSIT, INC., Complainant

v.

ROCHESTER-GENESEE REGIONAL TRANSPORTATION AUTHORITY, Respondent

DECISION

I.

INTRODUCTION

On June 14, 2007, Laidlaw Transit, Inc. (Laidlaw) submitted a complaint to FTA alleging that the Rochester-Genesee Regional Transportation Authority (RGRTA), an FTA grantee, planned to take over thirty-eight school bus routes from Laidlaw for the 2007-2008 school year, in violation of 49 U.S.C. Section 5323(f) and 49 CFR Part 605. After reviewing the submissions in this matter, FTA finds that RGRTA's operation of Routes 580-593 and Routes 480-488 violates the statute and regulations.

For the sake of thoroughness, FTA summarizes below the allegations and procedural history of this matter. However, our decision rests primarily on the following acknowledgement in RGRTA's September 14, 2007 submission:

Since this service is identical to the service that Region II previously found constituted impermissible school bus service in your July 2007 decision for Docket No.: 2006-2, we assume that you will come to the same conclusion with respect to these routes. Further, since your July 2007 decision ordered RGRTA to cease operating all routes with numbers over 200, our understanding is

that we have been ordered to stop operating Routes 480-488 and 580-593.

RGRTA submitted no new arguments in this proceeding as to why its proposed service complies with FTA regulations.

II.

COMPLAINT HISTORY

A. Laidlaw Complaint

On June 14, 2007, Laidlaw filed what it styled an "emergency" complaint with FTA, alleging that RGRTA had negotiated with the Rochester City School District (RCSD) to provide thirty-eight new school bus routes previously operated by Laidlaw. Laidlaw submitted, as evidence, an undated letter from RCSD to RGRTA, stating that RCSD intends to transfer students attending Marshall High School and Wilson Foundation Academy from Laidlaw's bus service to RGRTA's bus service. On June 19, 2007, FTA sent a copy of the complaint to RGRTA and requested certain information on the matter.

B. RGRTA's July 5, 2007 Response

RGRTA responded to Laidlaw's complaint on July 5, 2007, contending that it would not operate thirty-eight new routes, but rather, that it would design or modify twenty existing routes. RGRTA incorporated by reference its submissions filed with FTA in *District Union Local One v. Rochester-Genesee Transportation Authority*.¹ In its response, RGRTA enclosed copies of slides from an RGRTA PowerPoint presentation to RCSD entitled, "Transportation Provides Results: The Partnership Continues." The presentation stated that it represented RGRTA's "initial thoughts" on routes designed or modified to accommodate the students attending the two schools. RGRTA proposed to serve 1,524 additional students at the two schools in exchange for a \$1,042,000 "subsidy" from RCSD. One slide consisted of route maps corresponding to the proposed service expansion. Additionally, RGRTA indicated that it planned to provide "direct neighborhood routing" for students attending Marshall and Wilson, and that to improve attendance, RGRTA would provide its "regular line service" at no additional charge for students who miss the "direct neighborhood bus."

C. Laidlaw's July 19, 2007 Rebuttal

Laidlaw submitted its rebuttal on July 19, 2007, which included a July 18, 2007 affidavit signed by Mr. Ralph Frisch, Laidlaw's special consultant and advisor. Mr. Frisch stated that he overlaid transparencies of Laidlaw's Marshall and Wilson route maps onto depictions of Marshall and Wilson student residency density clusters and RGRTA planned route maps, and

¹ School Bus Docket No. 2006-02 (July 30, 2007).

that based on the student density clusters, the RGRTA routes paralleled Laidlaw's previous routes for Marshall and Wilson.²

D. FTA's August 24, 2007 Letter

After reviewing the submissions, FTA advised the parties by letter dated August 24, 2007 that, because RGRTA had not yet provided service to Marshall or Wilson, the matter was not ripe for adjudication. FTA requested that Laidlaw and RGRTA file further submissions after RGRTA commenced the proposed service. Specifically, FTA invited each party to make two submissions, the first by September 14, 2007, and the second by September 22, 2007.

E. RGRTA's September 14, 2007 Submission

RGRTA submitted a two-page letter to FTA dated September 14, 2007 and, as requested by FTA, RGRTA enclosed route maps and timetables for its Marshall High School and Wilson Foundation Academy service, or Routes 580-593 and Routes 480-488, respectively. The timetables for these routes indicate that RGRTA runs its service several times in the morning when school begins, and several times in the afternoon when school ends. Each timetable also includes adjusted pickup times on days when the schools have "early dismissal." RGRTA's submission includes the concession set forth in Section I of this decision. RGRTA chose not to make any further submissions to FTA in this matter. Thus, FTA did not receive any materials from RGRTA on September 22, 2007.

F. Laidlaw's September 14, 2007 and September 22, 2007 Submissions

Laidlaw made two submissions to FTA in this matter, one on September 14, 2007 and the other on September 22, 2007. Laidlaw posited many of the same arguments FTA received before issuing its July 30, 2007 decision.

III.

DISCUSSION

In FTA's July 30, 2007 decision in *District Union Local One*, FTA found RGRTA in violation of FTA's school bus regulations at 49 CFR Part 605. FTA subsequently ordered RGRTA to cease and desist school bus service corresponding to its routes numbered over 200 prior to the commencement of the 2007-2008 academic year, and barred RGRTA from receiving Federal financial assistance in an amount to be determined by FTA, after receipt of certain information from RGRTA.

Here, RGRTA states in its own submission that the challenged service "is identical to the service that Region II previously found constituted impermissible school bus service in [*District Union Local One*]." RGRTA submits no new arguments as to why its service complies with FTA's requirements. RGRTA even goes so far as to state that its "understanding is that we have

² FTA also received comments dated July 19, 2007 from the United Food and Commercial Workers Union, District Union, Local One, members of which work for Laidlaw.

been ordered to stop operating Routes 480-488 and 580-593," the routes at issue in this matter. Finally, RGRTA failed to submit on or before September 22, 2007 any rebuttal to Laidlaw.

As a result of RGRTA's concessions, and its failure to contest this matter, FTA finds RGRTA in violation of its school bus regulations for the reasons set forth in our July 30, 2007 decision.

Again for the sake of thoroughness, however, FTA notes the following non-exhaustive list of factors that confirm RGRTA's own assertion here, specifically, that the challenged service is "identical" to that prohibited in FTA's July 30, 2007 decision:

The service is designed exclusively for school students.

- In its PowerPoint presentation to RCSD, RGRTA presented its plan to provide new service to approximately 1,524 Marshall High School and Wilson Foundation Academy students, in exchange for a \$1,042,000 subsidy payment from RCSD.

- The timetable for each route indicates that RGRTA operates its service based on the times when school begins and ends. RGRTA adjusts its pickup time for days when the schools have "early dismissal."

- As RGRTA states in its PowerPoint presentation, if students miss the direct bus to school, students may ride RGRTA's "regular" buses.

The routes unfairly compete with the private sector, using Federal funds.

- An analysis of Mr. Frisch's July 18, 2007 affidavit with attachments, which RGRTA does not contest, shows that RGRTA's routes are carefully designed to pick-up and drop-off students in neighborhoods that contain clusters of Marshall High School and Wilson Foundation Academy students.

- The planned routes Mr. Frisch analyzed are substantially the same as Laidlaw's previous routes for Marshall and Wilson. RGRTA even provides a "direct neighborhood bus" specifically for these students.

- RCSD's letter to Laidlaw states that the school district transferred Marshall High School and Wilson Foundation Academy routes from Laidlaw directly to RGRTA.

IV.

CONCLUSION AND ORDER

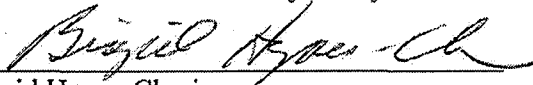
For the reasons outlined above and in its July 30, 2007 decision, FTA finds that RGRTA's operation of Routes 580-593 and Routes 480-488 violates 49 U.S.C. Section 5323(f)

and 49 CFR Part 605. RGRTA has established a pattern of systematically taking over school bus routes from private school bus operators. Instead of complying with Federal school bus law, RGRTA has spent Federal tax dollars operating routes that it *admittedly* believes FTA will find illegal. The facts identified in the submissions demonstrate the nature of RGRTA's service and the daily competition that it engenders in the Rochester area -- precisely the type of competition between private school bus operators and FTA-funded public transit providers that Congress prohibited under 49 U.S.C. Section 5325(f).

In accordance with 49 CFR Section 605.33, FTA orders RGRTA to cease and desist from operating Routes 580-593 and Routes 480-488.

In addition, 49 U.S.C. Section 5323(f)(2) mandates that the U.S. Department of Transportation (and thus FTA by delegation of authority) bar a transit system from receiving Federal transit assistance in an amount FTA considers appropriate, if FTA finds that a recipient has provided impermissible school bus service. In our July 30, 2007 decision, FTA found it "appropriate to bar RGRTA from receiving an amount not to exceed the amount it has received in subsidy for school bus operations in the 2006 school year, less the amount of documented direct variable costs that RGRTA incurred in operating the service." FTA thus directed RGRTA to "provide information that FTA can use in calculating this amount within 60 days of this decision." Similarly, here FTA bars RGRTA from receiving Federal funds in an amount not to exceed the subsidy it has received (or will receive) for operating Routes 580-593 and 480-488 during the 2007-2008 school year, less the amount of documented direct variable costs that RGRTA incurred in operating the service. If, however, RGRTA has not received (and will not receive) any subsidy from RCSD for operating Routes 580-593 and 480-488, then RGRTA should let FTA know immediately. In that case, FTA will use another appropriate formula to determine the amount of its mandatory withholding under Section 5323(f).³

This decision is subject to judicial review pursuant to 5 U.S.C. Sections 701-706.


Brigid Hynes-Cherin
Regional Administrator

10/15/07
Date

³ FTA disagrees with the statement in RGRTA's September 14, 2007 submission that because FTA's July 30, 2007 decision ordered RGRTA to cease and desist from operating all routes above 200, FTA's decision -- and thus Judge Larimer's temporary stay against the enforcement of FTA's decision -- also applies to Routes 580-593 and 480-488. *Rochester-Genesee Regional Transportation Authority v. FTA*, No. 07-cv-6378-DGL (W.D.N.Y. August 28, 2007). These routes did not even exist at the time of FTA's decision, or for that matter, the Court's Order. RGRTA lacks the authority to unilaterally change the scope of a Federal administrative decision or a Federal Court Order. Thus, RGRTA cannot bring the service challenged here -- which RGRTA acknowledges runs afoul of FTA's July 30 decision -- within the scope of FTA's decision or the Court's stay.